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Responsible Tax Practice by Companies

A Mapping and Review of Current Proposals

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Introduction and Executive Summary

In recent years there has been a sharp increase in concern about corporate tax practice. At a time when national governments around the world are pursuing austerity policies, there is growing public interest in whether companies are paying a fair share of tax on their profits. In Britain, for example, corporate tax avoidance is the top public concern about business behaviour for the second year running.[1]

Shining a spotlight on corporate tax practices has changed the way in which tax is perceived and treated by businesses. What was once seen purely as a cost to be minimised and a dry, technical, matter of accounting is today squarely on the agendas of boards and investors as an area of core business risk.[2]

Importantly, tax practice has also moved to the centre of the corporate responsibility debate, as companies struggle to regain public trust in the aftermath of the financial crisis, and as consumers and communities now have growing expectations about a company's behaviour on tax. These expectations go beyond compliance with (or exploitation of) the complex web of national, regional and international tax rules. The rules are replete with loopholes and opportunities for arbitrage, and national revenue authorities (particularly in developing countries) often have neither the resources nor capacity to enforce them.

While tax practice has clearly become part of responsible corporate citizenship, there is little agreement about what a responsible approach to corporate tax looks like in practice. This paper is a stock-take and analysis of existing proposals in this area, produced by a range of interested actor groups.

We have reviewed 45 sources of recommendations for responsible tax practice by multinational companies (MNCs) published in English since 2005, with the bulk appearing in the last five years (see Appendix 1). These include documents published by: MNCs themselves, business federations and organisations, non-governmental organisations (NGOs), corporate responsibility specialists, investor groups, tax advisers, legal professional bodies, governments, courts, inter-governmental organisations, and multi-stakeholder initiatives that bring together business, professions and civil society. Sources range from proposals based on studies of individual MNCs, to industry codes of conduct to fully-fledged certification standards. While almost certainly not exhaustive, we have tried to make this body of material as wide a survey as possible of 'responsible tax' frameworks published in English.[3]

> "corporate tax avoidance is the top public concern about business behavior"

Our review finds that:[4]

1 Almost all proposals for responsible practice, from all actor groups, fall into one of **eight issue areas of tax responsibility:** tax planning practices, public transparency and reporting, governance of the corporate tax function, relationships with revenue authorities, impact assessment, policy and practice in developing countries, tax lobbying and tax incentives. All actor groups have focussed their attention to date primarily on two of these issue areas: **tax planning practices** and **public transparency and reporting.**

2 Within this top-line consensus about which issues sit under the tax responsibility umbrella, there are some very **significant differences of opinion about what good corporate practice looks like.** Proposals for country-specific tax reporting, for example, are often lumped together under the same heading - 'country-by-country reporting' - but they are based on very different views about what information should be reported and why. All indications are that **public reporting of country-specific tax payments and country-specific contextual accounting data will very soon be the benchmark for responsible practice** in all sectors.

3 Many recommendations for good practice (from all actor groups) share the **same basic difficulty: how to draw a clear line between acceptable and unacceptable tax practices.** To address this, a small number of sources recommend particular positive behaviours that promote sustainable public revenues and socio-economic development (i.e. not simply proscribing certain 'bad' practices). More work is needed in this area but such approaches may help to move the debate beyond deadlocked disagreement over what behaviour is acceptable or unacceptable.

4 'Business and human rights' frameworks have had an increasing influence on thinking about tax responsibility in recent years. These frameworks emphasise **the need for businesses to assess the impacts of their tax planning** if they are to meet their obligation to respect internationally recognised human rights. None of the frameworks we reviewed yet provide any detailed guidance on how this could or should be done - the challenge for responsible business will be to work out what impact assessment of tax behaviour looks like in practice.

5 Most of the sources reviewed, from all groups, understand and measure the impact of MNC tax behaviour in terms of 'lost' tax revenue. However, **tax behaviour also has direct impacts on taxpayers, shareholders, workers and customers.** These impacts, which are not dependent on state spending, are much less commonly considered in the proposals reviewed, but will need to be an integral part of impact assessment of tax behaviour.

6 There are few sources that **address the particular context of developing countries[5].** Only half of the NGO sources reviewed contain development specific policy recommendations and only 7 of the 45 sources we reviewed overall. Effective management of business impacts (and the risks that negative impacts create) requires that MNCs assess the particular consequences of their tax behaviour in developing countries and consider what this means for how global standards are translated into policy and practice at the local level.

7 Only 4 of the 45 sources reviewed consider MNC's lobbying for, or use of, tax incentives and exemptions. This is an important area for further thinking given that, particularly in developing countries, the **impact of tax incentives on public revenues is likely to be at least as great** as (if not greater than) the impact of tax planning practices.

ActionAid is a development organisation and, as such, our analysis of current recommendations focuses on what is promising, and what is neglected, that is relevant and important to developing countries. Working with Christian Aid, and in consultation with other stakeholders, we will use the findings of this review as the basis for a discussion paper on a framework for responsible practice. We hope that others, including those in the responsible investment community, will use this mapping and analysis to develop their own thinking on what responsible corporate tax practice looks like. We also hope it will encourage more MNCs to engage constructively in an open dialogue about responsible approaches to corporate tax, starting by communicating more clearly with their external stakeholders about their tax strategies and practices.

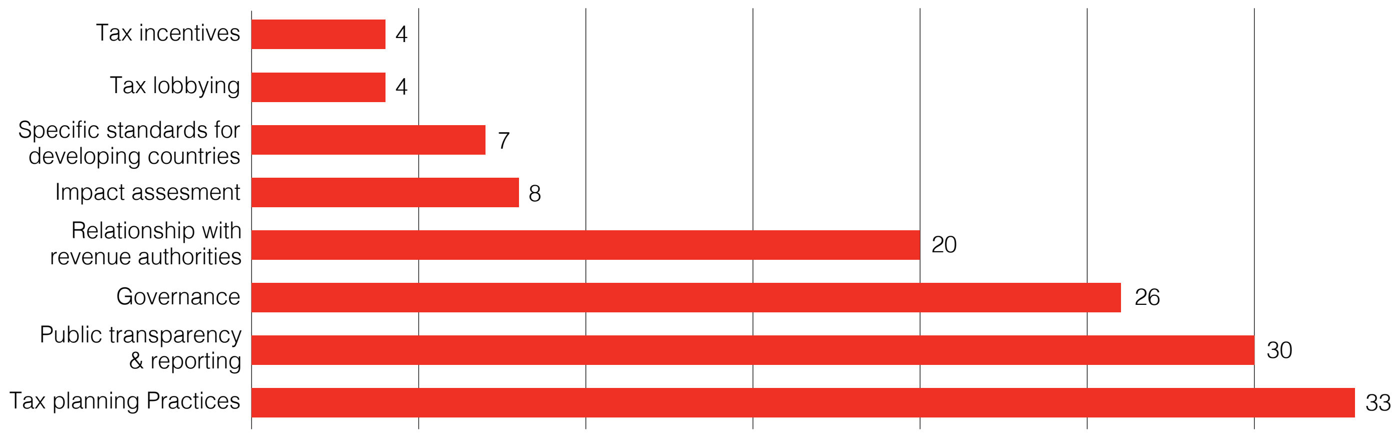
Overview of findings

There is a measure of agreement among different actor groups about which issues fall under the broad umbrella of 'tax responsibility'. Almost all recommendations for responsible practice fit into eight broad issue areas and two of these issue areas currently dominate the recommendations generated by all actor groups: **tax planning practices (issue 1) and public transparency and reporting (issue 2).**

Fig. 1: Issues of tax responsibility

Core issue area	Further explanation
1. Tax planning practices	Which tax planning practices are responsible and acceptable, and which are not?
2. Public transparency and reporting	What should be disclosed to the public and in what form?
3. Governance	How should the tax function of an MNC be managed and governed?
4. Relationship with revenue authorities	What is a good relationship between an MNC and arevenue authority and what type and level of disclosure to them is appropriate?
5. Impact assessment	What systems should MNCs design and implement to assess the impact of tax-advantageous transactions or planning practices?
6. Policy and practice in developing countries	Do uniform global policies and practices provide enough flexibility to account for the impact of tax behaviour which is highly context specific?
7. Corporate lobbying	When and how is it acceptable for companies to lobby for tax holidays or incentives, or on the development of national and international tax rules?
8. Tax incentives	What should be the criteria for taking advantage of tax incentives, exemptions and holidays, particularly those that are company-specific, non-statutory or undisclosed?

Fig. 2: Number of sources dealing with each issue area (n=45)



Four areas - **impact assessment (issue 5); policy and practice in developing countries (issue 6);** the acceptable limits of **corporate lobbying (issue 7);** and responsible approaches to tax incentives **(issue 8)** are less commonly considered, but emerging as issues of tax responsibility. As figure 3 shows, MNCs and business organisations have been amongst the first to pick up issues 7 and 8 - perhaps because of the growing spotlight on perceived ‘sweetheart deals’ between companies and revenue authorities.[6,7]

All actor groups have paid far less attention to an MNC’s policy and practice on **tax incentives (issue 8)** than to its **tax planning practices (issue 1).** That is unsurprising, given recent high profile exposés of corporate tax avoidance structures; though the distinction is arguably artificial as tax incentives often create large untaxed pools of income which can then be deployed as part of an MNC’s tax planning. Moreover, while not all incentives will be damaging, there is a growing consensus (including the World Bank, the IMF and some developing country governments) that blanket tax holidays do not consistently attract sustainable investment and that, in many cases, tax holidays and incentives seriously undermine developing countries’ tax systems, costing revenues in the same order of magnitude as those lost to aggressive tax planning - in some cases, as much as several percentage points of GDP[8].

Fig. 3: Number of sources from each constituency dealing with each issue area[9]

CONSTITUENCY	NGO	CSR Consultancy	Investor/Investor group	Multi-stakeholder partnership	Tax adviser	MNC	Business organisation	IGO	Government	Legal profession organisation	Court	Total
Total number of sources reviewed	6	3	3	3	7	6	2	5	8	1	1	45
Tax Planning Practices	5	3	3	2	4	5	1	1	7	1	1	33
Public Transparency & Reporting	6	3	3	2	4	6	2	3		1		30
Governance	5	2	3		4	5		3	4			27
Relationship with revenue authorities	3		1	1		5	2	1	7			20
Impact Assessment	3	2			1			1		1		8
Policy and practice for developing countries	3		1		1	2						7
Tax lobbying	1	1				2						4
Tax incentives	1						1	1		1		4

Behind this very top line consensus about what are the key issues of tax responsibility, it is clear from our review that different actor groups have different ideas about what responsible behaviour looks like when translated into policy and practice.

On the issue of an **MNC's relationships with revenue authorities (issue 4),** for example, all actor groups appear to speak the same language: the relationship should be close, real-time and cooperative. Looking more closely, however, cooperation implies different things for different constituencies. For NGOs the sort of close cooperation required is largely non-reciprocal. For governments and businesses close cooperation is a mutually beneficial arrangement by which MNCs trade greater openness and cooperation with revenue authorities for more limited scrutiny and increased certainty about controversial tax positions (an approach often described as 'co-operative compliance').[10]

As the OECD acknowledges in its own study of cooperative compliance approaches, close cooperation between influential taxpayers and tax authorities can be perceived by critics as overly cosy and risks inviting legal challenges on the grounds of preferential treatment.[11] A key future task for tax responsibility frameworks, therefore, will be to draw a clearer line between enhanced, responsible, cooperation and the 'sweetheart deal'.

Another very important difference is evident in the recommendations concerning **public transparency and reporting (issue 2).** Figure 3 shows there is a broad agreement between NGOs and businesses[12] that responsible tax practice requires public disclosure about a company's tax policy and governance and some form of **country-specific tax reporting,** (often given the generic label: 'Country-by-Country Reporting' or CBCR).[13] All detailed proposals for country-specific reporting require reporting tax payments by country, usually broken down into different types of tax. However, Figure 4 shows that all the proposals from NGOs and CSR specialists that require country-specific breakdowns of tax payments also require country-specific reporting of contextual accounting data, i.e. the geographical distribution of profits and economic activity, not just of taxes charged or paid[14]. This compares to only half of the frameworks dealing with CBCR produced by bodies involving MNCs and business organisations[15]. While this may seem like a technical distinction, it goes to the very purpose of country-specific tax reporting.

"responsible tax practice requires public disclosure"

Fig. 4: Breakdown of recommendations/best practices for public transparency and reporting

	ACTOR GROUP	NGO	CR Consultancy	Investor/ Investor group	Multi-stakeholder partnership	Tax adviser	MNC	Business organisation	IGO	Government	Legal profession organisation	Court	TOTAL
n=45	Totalnumberof sources reviewed	6	3	3	3	7	6	2	5	8	1	1	45
Disclose tax systems	Publish info/docs on tax policy and governance	6	3	3	1	3	6	1	2				25
Country-specific tax reporting	Report tax payments by (at least some) country breakdown	5	2		2		5	1	1		1		17
	Report profits and other contextual accounting info by (at least some) country breakdown	5	2		1		3		1		1		13
	Publish accounts for each jurisdiction where group entity exists	2	1		1								4
Structure and subsidiaries	Report beneficial ownership and/or group structure beyond subsidiary list	3											3
	Report information on subsidiaries in 'tax havens'	3	2		1	1							7
Tax reconciliation	Report enhanced tax reconciliation	1			1	3	2						7
Tax incentives / holidays	Disclose tax incentive/ subsidies received or utilised	1			1								2
	Disclose tax elements of investment contracts								1				1
Tax risk	Disclose significant disputes/uncertain tax positions/tax penalties				2	1							3
	Report tax authority risk rating	1			1								2
Lobbying / Advocacy	Disclose tax advocacy/ lobbying activities					1							1

Reporting taxes charged or paid in the countries where an MNC operates (which we might call **'taxes-paid' CBCR**) is a way of measuring and disclosing a company's **economic contribution to public finances.**

Taxes-paid CBCR was largely a response to calls from anti-corruption campaigners for companies (particularly in the extractives sector) to publish payments to governments by country, type and project - the theory being that this information better equips citizens of developing countries to hold their governments to account for the money they collect from companies and how they spend it. These calls gave rise to the country-by-country reporting standards of the Extractives Industry Transparency Initiative (EITI), Section 1504 of the U.S. Dodd-Frank Act, and recent revisions to the EU Accounting and Transparency Directives. None of these initiatives requires the reporting of contextual company accounting information, since their focus is on the economic contribution of companies, and the accountability of governments to their citizens for what happens to the money collected.

What taxes-paid CBCR does not do, however, is help determine whether a company is paying the right amount of tax. A list of tax payments provides little or no information about where a company carries out its profit-making activity or where those profits are allocated within the corporate group – in other words, nothing to indicate how much tax should reasonably have been paid by the company and where. Significantly, many taxes-paid reporting standards do not require an MNC to disclose (sometimes zero) tax payments it makes in low-tax jurisdictions where a corporate group may have few economic activities, but where it may be booking substantial profits.

In order to tell us something about whether companies are paying the right amount of tax, in the right place, country-specific disclosures must include relevant contextual accounting data: profits, stated capital, accumulated earnings, numbers of employees and tangible assets (for example). We might call this sort of CBCR: **'tax-responsibility' CBCR**.

This is not to suggest that tax-responsibility CBCR can by itself definitively adjudicate the responsibility of an MNC's tax affairs, or provide concrete evidence of tax avoidance; but it can raise red flags and provides a risk-assessment tool that taxes-paid CBCR cannot.

Fig. 5: The characteristics of country by country reporting (CBCR)

Type of CBCR	Purpose	Examples	What reported?	Which countries?
Taxes paid CBCR	To measure an MNC's economic contribution to public finances	U.S. Dodd Frank 1504 disclosures EU Accounting & Transparency Directives Rio Tinto GRI Sustainability Reporting Guidelines (G4)	Tax payments (all types)	Only in operating countries. Rarely reports tax charges or payments in jurisdictions where little or no tax is paid, but substantial profits may be booked.
Tax responsibility CBCR	To gauge an MNC's tax behaviour / highlight risks of profit-shifting	Fair Tax Mark Responsible 100 tax question EU Capital Requirements Directive IV Barclays Plc.	CIT tax payments CIT tax charge Profit Economic activity indicators (e.g. turnover, payroll, assets)	In all countries where the group has a company, branch or tax residence, including jurisdictions where little or no tax may be paid.

All indications are that tax-responsibility CBCR is, or will very soon be, the widely accepted benchmark for responsible public tax reporting by companies in all sectors. The OECD has recently published its template for country-specific disclosure, which is a full tax responsibility model, requiring disclosure of a range of contextual accounting information by country.[16] While the OECD template is intended for non-public disclosure of information by companies to tax authorities, it should not be significantly more expensive, or administratively challenging, for companies publicly to disclose the same information. Nor, it seems, should companies or policymakers be concerned that disclosure of contextual accounting data will damage companies' competitiveness: a recent report by PWC concluded that public, tax responsibility CBCR by banks could boost competitiveness, increase lending and bolster financial stability.[17]

Business support for public tax-responsibility CBCR

Individual businesses and business leaders are also beginning to show their support for the higher, 'tax responsibility' CBCR standard. In a survey by PricewaterhouseCoopers of CEOs from 36 countries, published in February 2014, 59% agreed that MNCs should be required to publish revenue, profit and tax disclosures on a country-by-country basis; just 19% disagreed.[18] And although there has been some criticism of the detail, in 2014 a major multinational – Barclays PLC – for the first time published a version of full tax-responsibility CBCR, in anticipation of a legal requirement for European financial institutions to do so from 2015.[19] Clearly best practice frameworks that require only 'taxes-paid' reporting by country risk falling behind minimum standards mandated by law for some sectors, and behind market-leading approaches to public transparency and reporting.

Tax planning practices: general principles or lists of proscribed behaviours?

Of the eight areas of tax responsibility identified, it is the tax planning practices of MNCs (issue 1) that generates the most tension between different actor groups. It is also the issue likely to be of most concern to the senior management of a responsible company. When a tax transaction or arrangement generates public scandal, political censure or attention from a revenue authority, the fact that the arrangement may have been well-intentioned, well-governed or thoroughly disclosed may do very little to mitigate the damage to a company's reputation. That is not to suggest that public or politicians' opinion should be the standard for defining unacceptable tax practices.[20] Nonetheless, justifiable concepts of responsible and irresponsible tax practice that can be accepted by business, government, civil society and citizens alike should be central to tax responsibility frameworks.

Definitions of responsible/irresponsible tax practices can largely be grouped into two categories:

Fig. 6: Definitions of responsible/irresponsible tax practices

Overarching principles or definitions	Proscribed tax behaviours, transactions or arrangements
Transactions should reflect economic substance/commercial reality; no 'artificiality'	No use of standardised or marketed tax schemes
Transactions should respect the 'spirit of law', not just the letter of the law	Don't locate IP in low-tax jurisdictions
No tax planning contrary to intention of legislature/exploiting 'loopholes'	Don't shift high-value functions to low-tax jurisdictions
No 'abusive'/'aggressive' tax planning	No use of conduit entities purely or mainly to take advantage of a tax treaty (treaty shopping)
Tax planning complies with 'generally accepted' practices or 'what tax authorities would expect'	Other lists of tax avoidance transactions e.g. reportable transactions/discloseable tax arrangements [21]

Overarching principles suffer from obvious definitional problems: sets of tax principles produced by some MNCs, business organisations and NGOs often do not include detailed guidance or definitions of 'artificiality', 'spirit of the law', 'abusive' or 'aggressive'.[22] Even where more detailed definitions are offered, boundary problems tend to remain (see Appendix 3 for examples).

By contrast, **lists of unacceptable tax practices** generate profound disagreement between different actor groups. Practices challenged by NGOs are sometimes regarded by MNCs as 'plain vanilla' or actually incentivised by government policy. A case in point is the ownership and management of an MNC's intellectual property by a centralised corporate vehicle in a low-tax jurisdiction. This practice (most recently associated with high-profile tech MNCs) has been widely challenged by the public and criticised by the International Bar Association's Human Rights Institute Task Force,[23] while being defended by some businesses[24] and promoted by European governments, many of which have established 'patent boxes' or 'innovation boxes' precisely to incentivise such practices.

Both principles and lists of proscribed practices, therefore, suffer from the same 'bright line' problem:[25] **where to draw the line between acceptable and unacceptable practice; between legitimate tax planning and tax avoidance?** This makes attempts at discussion heated and polarised.

One of the proposals we reviewed seeks to draw that line using the professional standards and practices of tax advisers. It defines tax avoidance as the deliberate reduction in the amount of tax that the taxpayer asserts is payable, where that reduction increases - however slightly - the risk that the arrangement will be disallowed in the event of revenue authority challenge. Reducing the tax payable without increasing tax risk is 'legitimate' tax planning. Tax advisers are astute to increases in tax risk – indeed they are under an obligation in most circumstances to document and advise their clients of such a risk increase in order to avoid possible claims for professional negligence. Taking this approach, tax avoidance is distinguishable in principle from legitimate tax planning, and can be identified in practice by the relevant tax adviser.[26] At least one MNC also uses tax risk (albeit at a lower standard) to distinguish between acceptable and unacceptable tax behaviour, by requiring that all its tax positions must be "more likely than not" to succeed.[27] Likewise in the USA the tax returns of large companies must disclose various 'uncertain tax positions'; and US accounting standard FIN 48 requires a company to declare the size of 'unrecognised' tax reductions which it believes the revenue authority is more likely than not to succeed in challenging.

This is useful. But an assessment of the risk of an arrangement being successfully challenged will not (and is not intended to) help us draw a bright line between the acceptable and unacceptable in every case. Tax practices which exploit 'harmful preferential tax regimes', or the genuine relocation of an MNC's high-value functions like procurement and management services to low-tax jurisdictions, are practices which are in many cases unambiguously free of the risk of legal challenge, but clearly undermine a country's tax revenues, in some cases contrary to its government's own intentions.[28]

Given the difficulty of drawing a clear bright line between unacceptable tax avoidance and legitimate tax planning, an alternative approach to developing standards for responsible practice may be not to draw one at all and instead to **describe and measure positive practices.**

We see shoots of this approach in some of the recommendations reviewed. For example, UK tax barrister David Quentin argues that when operating in developing countries, responsible MNCs should act against their own tax-minimisation interests. An MNC's transfer pricing staff should price intra-group transactions in 'utmost good faith', as if led by the viewpoint and interests of the revenue authority – perhaps analogous to an employer voluntarily introducing a living wage in wage bargaining.[29] Likewise he suggests they could voluntarily give up tax deductions from intra-group transactions between operating companies in 'fiscally vulnerable jurisdictions' and companies in low-tax jurisdictions, unless it can be shown that the location of those functions in low-tax jurisdictions has a non-tax rationale (or perhaps that the non-tax advantages cannot be obtained in other less tax-advantageous jurisdictions).[30]

Also taking a 'positive prescriptions' approach, ActionAid in two studies of MNCs' developing-country tax behaviour[31] points out that the tax-efficient practice of shifting high-value functions (like management and procurement services) to hub companies in low-tax jurisdictions, leaving lower-value functions in (generally higher-tax) developing countries, not only reduces taxable profits in those developing countries, but may also have broader socio-economic impacts: impeding the progress of developing economies up global value chains and hindering the development of higher-skilled jobs and industries. ActionAid recommends instead that "where paid-for services are being provided from tax havens, [MNCs] should aim ultimately to build the skills and expertise for those services in the countries where its main operations are located; and ensure that payments for them, at market prices, go directly to the company providing them."[32]

A positive prescriptions approach might usefully supplant the need to judge tax behaviour solely against the question of 'what is unacceptable tax behaviour' that generates much of the heat and disagreement within the tax debate, although more thinking is clearly needed about what positive prescriptions would look like across a wider range of tax behaviours, and how such an approach would be applied in practice.

Tax responsibility in developing countries

Figures 1 and 2 indicate that only half of the NGO sources we have examined, and just 7 of the 45 sources we examined overall, make **recommendations for responsible tax policy and practice specific to the context of developing countries.** Equally notably, we have been unable to identify any frameworks for corporate tax responsibility produced by the civil society, NGOs, businesses or governments of developing countries themselves (with the exception of international NGOs based in both developed and developing countries).

There is nothing inherently objectionable about a multinational company seeking to apply a standardised set of policies throughout its business. It is also understandable that global businesses tend to prefer global policies. What global policies overlook, however, is that the impacts of different corporate behaviours - on communities, economies and environments - may depend heavily on country context. Policies and practices on a wide range of issues that do no harm in in rich and developed countries may have very negative impacts in a developing-country context. It should follow that responsible behaviour does not translate into the same policy and practice for every country in which a company does business.

The importance of local context in shaping the requirements of responsible corporate practice is already part of mainstream responsible business thinking. The UN Guiding Principles on Business and Human Rights for example, while clarifying that the obligation to respect human rights is a global standard of expected conduct for all businesses, make it equally clear that a company's human rights due diligence must necessarily be rooted in, and driven by, national context.[33]

Turning back to the particular issue of corporate tax behaviour, the development-specific sources we reviewed acknowledge the relevance of country-context in the following areas:

> **Tax planning rules, and opportunities to exploit them, may be very different in the context of different countries' economies, tax regimes and revenue authorities. What is acceptable and unacceptable tax practice may vary accordingly.[34]**

> **An MNC's tax bill in a small developing country can be tiny compared to its global profits, but a huge slice of that country's total tax take[35] Impact assessments of tax behaviour should therefore compare impacts against each country's economy and public revenues.[36]**

> **A company's negotiations with governments for discretionary incentives and settlements will involve very different regulatory frameworks and very different balances of power in some developing countries, compared to developed ones. A company may have superior bargaining power in smaller economies, and be able to use it to obtain unfair and excessive tax benefits when negotiating contracts (or incentives) with a host country.[37]**

Where we find development-specific recommendations for good practice generated by companies and businesses themselves, they deal primarily with capacity building for under-resourced revenue authorities; we have found none that relate to corporate tax behaviour or transparency (see Appendix 2).

Responsible and effective management of business impacts (and the risks that negative impacts create) requires that companies assess the particular consequences of tax-related behaviour and decision-making in developing countries, and consider what this means for how global standards are translated into policy and practice at the local level.

Responsible tax practice in a developing country context

Public transparency and reporting (issue 2):

- Is there a stronger case, where an MNC has significant developing-country operations, for public reporting about global tax activities, rather than non-public disclosure to HQ tax authorities, given the greater relative cost and administrative barriers for developing countries obtaining cross-border tax information, and their much smaller networks of tax treaties and information-exchange agreements?

Governance of the tax function (issue 3):

- What is an acceptable balance between a globally-integrated corporate tax function and the need for context-specific policy and practice and locally-focussed impact assessment?

Relations with revenue authorities (issue 4):

- What kinds of additional voluntary disclosure, such as global schedules of related-party transactions and transfer-pricing documentation, might help level the playing field between large MNCs and under-resourced revenue authorities?

- Most current frameworks treat large corporate taxpayers' involvement in tax authority capacity-building as an unambiguously good thing. How should such involvement be managed to avoid conflicts of interest?

Impact assessment (issue 5):

- How should external stakeholders be involved in assessing the impact of corporate tax decision-making and in developing standards for tax responsibility in a developing-country context? Are these stakeholders different in developing rather than developed countries?

The influence of 'business and human rights' frameworks

Some NGOs and international organisations have begun to apply broader, human-rights-based responsible business frameworks to corporate tax - particularly the UN's 'business and human rights' initiative or **Ruggie Principles.**[38 39 40]

Tax and human rights

Today, there is broad consensus that businesses need to know and show that they respect human rights. This responsibility is drawn from existing international human rights law and is explained in the UN Guiding Principles on Business and Human Rights which were unanimously endorsed by the UN Human Rights Council in 2011.

The guiding principles clarify that while states are the primary duty-bearers under international human rights law, all businesses irrespective of size, sector, operational context, ownership, and structure have a responsibility to respect human rights. This entails taking proactive steps to identify, prevent and, if necessary, mitigate any adverse impacts which businesses may cause or to which they contribute. This is also known as human rights 'due diligence'. Respecting human rights also entails being transparent about how businesses address their human rights impacts as well as remediating negative human rights impacts.

There is a growing recognition that tax planning practices (like corporate investment decisions, operations or sourcing strategies) can have human rights impacts. Of particular significance are the recent reports from the **International Bar Association**[41] and the **UN Special Rapporteur on Extreme Poverty and Human Rights**[42] which illustrate how aggressive tax planning practices by some companies, including the use of secrecy and low tax jurisdictions, restrict the ability of states to finance the delivery of essential services - e.g. health and education – to which their citizens have human rights.

Where we have identified human rights approaches to tax, they emphasise four of the eight issue areas of tax responsibility: **tax planning practices (issue 1), public transparency and reporting, (issue 2), governance of the tax function (issue 3)** and **impact assessment (issue 5).** This follows from the general business and human rights logic that an MNC cannot fulfil **its obligation to respect the economic and social rights of citizens wherever it operates** (or demonstrate the same) unless it has the right robust policies and processes in place and undertakes due diligence to assess the impact of its behaviours on the enjoyment of rights.

As things currently stand, however, there are significant differences between different actor groups' conceptions of the 'harm' done by irresponsible tax behaviour (and thus what should be measured by due diligence and impact assessment). Most of the criticism of MNC tax behaviour has naturally focussed on the revenue impact of such behaviour: the amount of tax that would have been due without the transaction or structure in question.[43] Likewise the sources that currently apply human rights principles to corporate tax behaviour are focussed on reduced public revenues, and consequent constraints to public spending on health, education and the fulfilment of other human rights.[44]

Tax-driven MNC behaviour can, however, also have **a range of direct socio-economic impacts that are not mediated by state spending.** They may include the de-skilling of a sector or an economy if high-value functions are offshored to low-tax jurisdictions; the depression of wages or returns to local minority shareholders if profits in an operating company within a group are artificially depressed for tax purposes; and even volatility of employment when companies relocate to chase tax breaks, or when their investments are primarily driven by the availability of fixed-term tax holidays or discretionary tax incentives. **These broader socio-economic impacts** will need to be an integral part of any due diligence and impact assessment of tax-related decision making.[45]

Thinking in this area is plainly at an early stage and there are some significant analytical and evidential gaps to fill. No source we have examined has yet developed concrete guidance on how impact assessments of tax behaviour should be conducted in practice, or on how rights-holders themselves should be involved in designing and monitoring corporate tax policies and practices (which is a particular feature of the business and human rights approach). The challenge for responsible business (and those who seek to hold it to account) will be to work out what human rights due diligence on tax looks like in practice – just as they are doing, or have already done, for a wide range of other corporate behaviours.

Conclusions

Tax practice has emerged in recent years as a key element of good corporate governance and of good corporate citizenship. However, there remains little consensus about what a responsible approach to corporate tax looks like in practice. This review shows that, currently, almost all proposals for responsible practice fall into one of **eight issue areas of tax responsibility**. All actor groups have focussed their attention on two of these issue areas: **tax planning practices** and **public transparency.**

Beyond this top-line consensus are some very **significant differences of opinion about what good corporate practice looks like.** Most recommendations for good practice, from all actor groups, attempt **to draw a line between acceptable and unacceptable tax practices.** Yet proscribing 'bad practice' is the source of much disagreement in the tax debate. A small number of sources recommend promoting and pursuing positive tax behaviours that can support sustainable public revenues and socio-economic development. More work in this area may help with the 'bright line' problem, and will also reinforce perceptions amongst taxpayers that tax can be a positive social good.

Most of the recommendations, from all groups, understand and measure the impact of MNC tax behaviour in terms of 'lost' tax revenue. However, **tax behaviour may also have direct impacts on taxpayers, shareholders, workers and customers.** These impacts, which are not dependent on state spending, have been much less commonly discussed, or indeed measured. Further analytical and practical understanding of these impacts could enhance overall understanding of the responsible tax agenda.

For development-focused organisations it is disappointing that there are few published recommendations (just 7 of the 45 we reviewed) that **address the particular context of developing countries**. This report identifies at least four areas where there is much more work to be done to translate global standards into responsible policy and practice in a developing-country context: public transparency and reporting, governance of the tax function, relations with revenue authorities and impact assessment.

ActionAid is a development organisation and, as such, this analysis of current recommendations focuses on what is promising, and neglected, that has relevance to developing countries. Working with Christian Aid, and in consultation with other stakeholders, we will use the findings of this review as the basis for a discussion paper on a framework for responsible practice. We hope that others, including those in the responsible investment community, will use this mapping and analysis to develop their own thinking on what responsible corporate tax practice looks like. We also hope it will **encourage more MNCs to engage constructively in an open dialogue about responsible approaches to corporate tax,** starting by communicating more clearly with their external stakeholders about their tax strategies and practices.

"tax can be a positive social good"

Appendix 1: Sources reviewed

The documents examined range in purpose and scope, falling into five broad categories: (1) broad principles to guide tax behaviour or reporting; (2) detailed criteria for judging tax behaviour or reporting; (3) definitions of tax avoidance/abuse; (4) specific recommendations/ examples of good corporate tax practice; (5) tax reporting standards; (6) fully-fledged certification standards for responsible corporate behaviour.

Actor Group	Document	Type
Business organisations	Business and Industry Advisory Committee to the OECD (BIAC), Statement of Tax Best Practices for Engaging with Tax Authorities in Developing Countries (2013)	Principles
	Confederation of British Industry (CBI), Statement of Tax Principles (2013)	Principles
Legal rulings/courts	European Court of Justice, Halifax Plc and Others vs. CCE (2006)	Definition of tax avoidance/abuse
CR consultancies	Corporate Citizenship, Tax - Time for Action (2012)	Principles
	SustainAbility, Taxing Issues (2006)	Principles
	Sustainalytics, It's Time to Call for More Responsibility (2013)	Tax practice recommendations
Governments	Agencia Tributaria (Spain)/ Foro de Grandes Empresas, Código de Buenas Prácticas Tributarias (2010)	Principles
	Canada Department of Finance, Explanatory Notes in Respect of Legislative Proposals Relating to the Income Tax Act and Related Acts and Regulations (2010)	Definition of tax avoidance/abuse
	HMRC/GAAR Advisory Panel, HMRC's GAAR Guidance (2013) (UK)	Definition of tax avoidance/abuse
	HMRC, Disclosure of Tax Avoidance Schemes: Guidance (2013) (UK)	Definition of tax avoidance/abuse

Actor Group	Document	Type
	Irish Tax and Customs, The Cooperative Approach to Tax Compliance - Revenue Working with Large Business (2005)	Principles
	Revenue Commissioners (Ireland), Guidance Notes on Mandatory Disclosure regime (2011)	Definition of tax avoidance/abuse
	UK Treasury, UK Code of Practice on Taxation for Banks (2009)	Principles
	HMRC, TCRM4000 - Risk Assessment (updated 2014) (UK)	Detailed criteria
Intergovernmental organisations	European Commission, CSR Strategy COM(2011) 681 (2011)	Principles
	OECD, Cooperative Compliance: A Framework – from Enhanced Cooperation to Cooperative Compliance (2013)	Detailed criteria
	OECD, Guidelines for Multinational Enterprises (revd. 2011)	Principles
	United Nations, Guiding Principles on Business and Human Rights (2011)	Principles
	United Nations, Report of the UN Special Rapporteur on Extreme Poverty and Human Rights on Tax, A/HRC/26/28 (2014)	Principles
	Domini Social Equity Fund et al, Stockholder Proposal Regarding Tax Policy Principles [for Google Inc] (2014)	Principles
Investors/Investor groups	Nordea Asset Management, Responsible Corporate Tax Practices (2014)	Principles
	VBDO/Oikos with Pricewaterhouse Coopers, Good Tax Governance in Transition (2014)	Principles

Actor Group	Document	Type
Legal professional bodies	International Bar Association's Human Rights Institute (IBAHRI), Tax Abuses, Poverty and Human Rights (2013)	Principles
Multinational companies	Barclays plc, Tax Principles (2013)	Principles
	Legal & General plc, Annual Report and Accounts 2013 (2014)	Reporting standard
	Rio Tinto plc, Annual Report and Accounts 2013 (2014)	Reporting standard
	SABMiller plc, Our Approach to Tax (2014)	Principles
	Unilever plc, Global Tax Principles (2013	Principles
	Vodafone plc, Tax Risk Management Strategy (2013	Principles
Multi-stakeholder partnerships	Global Reporting Initiative (GRI), G4 Sustainability Reporting Guidelines: Reporting Principles and Standard Disclosures (2013	Reporting standard
	International Organisation for Standardisation, ISO 26000 – Social Responsibility (2010)	Certification standard
	Responsible 100, 'Tax Question' (2013)	Detailed criteria
Non-governmental organisations	ActionAid UK, Tax Responsibility: an Investor Guide (2013)	Principles
	ActionAid, recommendations for MNCs in ActionAid, Calling Time: Why SABMiller Should Stop Avoiding Taxes in Africa (2010) and ActionAid, Sweet Nothings: the Human Cost of a British Sugar Giant Avoiding Taxes in Africa (2013)	Tax practice recommendations
	Christian Aid, Tax and Sustainability (2011)	Principles

Actor Group	Document	Type
	Fair Tax Mark/Ethical Consumer, Criteria Notes: UK-based Multinational Companies (consultation draft) (2014)	Detailed criteria
	IBIS/Christian Aid, application of the UN Guiding Principles on Business and Human Rights to tax, in A brief on Tax and Corporate Responsibility (2012)	Principles
	IBIS/Christian Aid, 'Draft Principles for Corporate Responsibility on Tax' in A brief on Tax and Corporate Responsibility (2012)	Principles
Tax advisers	Association of Chartered Certified Accountants (ACCA), Global Policy on Taxation of Companies (2014)	Principles
	David Quentin, 'Appendix E: Submission by David Quentin' in International Bar Association's Human Rights Institute (IBAHRI), Tax Abuses, Poverty and Human Rights (2013)	Tax avoidance definition / tax practice recommendations
	David Quentin, Risk Mining the Public Exchequer (2014) (also discussed in David Quentin, 'No spoils for Moyles – but what does it mean', http://dqtax.tumblr.com/ (2014))	Tax avoidance definition
	Deloitte LLP, Responsible Tax (series) (2013)	Detailed criteria
	Ernst & Young LLP, Tax Transparency, Seizing the Initiative (2013)	Detailed criteria (reporting)
	Mazars LLP, Tax Transparency: The Mazars Response to the Debate (2013)	Principles
	PricewaterhouseCoopers LLP, Tax Transparency Framework (updated 2013)	Detailed criteria (reporting)

Appendix 2: Number of sources from each actor group that include recommendations within each issue area and sub-category

ACTOR GROUP	NGO	CR Consultancy	Investor/ Investor group	Multi-stakeholder partnership	Tax adviser	MNC	Business organisation	IGO	Government	Legal profession organisation	Court	TOTAL
Total number of documents/ sources reviewed	6	3	3	3	7	6	2	5	8	1	1	45
Public Transparency & Reporting	6	3	3	2	4	6	2	3	0	1	0	30
Publish info/docs on tax policy and governance	6	3	3	1	3	6	1	2				25
Report tax payments by (at least some) country breakdown	5	2		2		5	1	1		1		17
Report profits and other contextual accounting info by (at least some) country breakdown	5	2		1		3		1		1		13
Report beneficial ownership and/or group structure beyond subsidiary list	3											3
Publish accounts for each jurisdiction where group entity exists	2	1		1								4
Report information on subsidiaries in 'tax havens'	3	2		1	1							7
Report enhanced tax reconciliation	1			1	3	2						7
Report tax authority risk rating	1			1								2
Disclose significant disputes/ uncertain tax positions/tax penalties				2	1							3

Disclose tax incentive/ subsidies received or utilised	1			1								2
Disclose tax advocacy/ lobbying activities					1							1
Disclose tax elements of investment contracts								1				1
Tax Planning Practices	5	3	3	2	4	5	1	1	7	1	1	33
Transactions should reflect economic substance/ commercial reality; no ‘artificiality’	4	2	1		2	4	1	1	5			20
Respecting ‘spirit of law’	2	1	1			1						5
No tax planning contrary to intention of legislature/ exploiting ‘loopholes’		1						1	2		1	5
No tax haven presence or transaction purely or mainly for tax benefit	3	1	1		1	2						8
No transactions purely or mainly for tax advantage	1	2				1						4
Right amount of tax in right place at right time’				1		1			1			3
No ‘abusive’/’aggressive’ tax planning	1					1	1					3
Pay ‘fair share’ of tax					1							1
No ‘profit-shifting’										1		1
No arrangements that rely upon or exploit confidentiality or secrecy									3			3
Tax planning complies with ‘generally accepted’ practices or ‘what tax authorities would expect’						2	1		1			4

Only tax-related transactions that would be fully justifiable if made public		1			1	1						3
No standardised or marketed tax schemes	1								3			4
No locating IP in low-tax jurisdictions	2	1										3
No shifting of high-value functions to low-tax jurisdictions	2	1										3
Intra-group transactions priced in 'utmost good faith'					1							1
Filing positions must be more likely than not to succeed					1	1						2
Tax function management/ governance	5	2	3	0	4	5	0	3	4	0	0	26
Tax policy defines, reviews and evaluates tax risk	2	3				2			1			8
Detailed processes for implementation of tax policy	2	1						2	1			6
Systems for monitoring and evaluating policy implementation and compliance	1		1		2							4
Board-level approval/ involvement/responsibility	4	2	2		1	3		1	3			16
Central oversight (e.g. Group Tax) for aspects of tax planning						1						1
CSR function involved in setting/reviewing tax policy	1				1							2
External stakeholders consulted on policy	1		1					1				3
Policy & processes communicated internally	2											2

Training for relevant staff on policy/processes	2	2				1						5
Secure channel to report complaints/non-compliance	2	1				2						5
Mechanism for remedy for non-compliance	1							1				2
Policy sets list of acceptable/ unacceptable practices	1		1									2
Policy considers impact on brand/reputation		1	2			1						4
Resources set aside for implementation of tax policy	1											1
Policy compliance/ implementation built into staff performance management	1				1	1						3
Due diligence/impact evaluation of tax behaviour	3	2	0	0	1	0	0	1	0	1	0	8
Assess national-level revenue impact of tax activity/transaction	2	1										3
Consider socio-economic impact of tax activity/ transaction ('who does my decision hurt'?)		1						1		1		3
Involve external stakeholders (e.g. revenue authorities) in due diligence assessments of tax activities	1							1				2
Consider equity of tax activity/transaction (with regard to e.g. tax behaviours open to purely domestic comparator company)					1							1
Designate staff responsible for due diligence								1				1

Remedy for negative revenue or socio-economic impact of tax activity/transaction								1				1
Relationship with revenue authorities	3	0	1	1	0	5	2	1	7	0	0	20
Disclose tax planning activities/transactions	1								3			4
Disclose tax impact assessments	1											1
Early/real-time disclosure of tax risks, uncertainty, interpretation						2	2	1	4			9
Provide all relevant, reasonably requested info (beyond legal obligations)				1			1					2
No reliance on cross-border secrecy/obstacles to information-exchange						1						1
Settle all tax obligations when due	1						1					2
Criteria for responsible negotiations/settlements/ amnesties	1					1						2
Support revenue authority capacity-building			1			2						3
Other emerging issues	1	1	0	0	0	2	1	1	0	1	0	7
Tax lobbying: no use of excessive bargaining power in a given country for tax-advantageous treatment	1	1				1						3
Tax lobbying: respect right of governement to determine own tax rules and rates						1						1

Tax incentives: avoid using tax exemptions and holidays that are 'excessive' or undermine ability of government to meet obligations and needs	1							1				2
Tax incentives: no company-specific or extra-legal tax exemptions/incentives							1	1		1		3
Standards specific to developing-countries?	3		1	0	1	2	0	0	0	0	0	7
Support revenue authority capacity-building			1			2						3
Use of excessive power in small market/economy to negotiate tax advantage	1											1
Different standards for aggressiveness or types of tax planning acceptable in developing countries	1				1							2
Impact assessments must be specific to each country's fiscal needs and vulnerability	1											1

Appendix 3: Definitional problems

Term	Examples of definitions	Remaining definitional problems
Lacking 'economic substance' / diverging from 'commercial reality' / 'artificial'	Attribution of profits based purely on a "contractual description of rights for which no capability exists" or "the provision of debt where there is no commercial rationale" "The routing of transactions…through companies which play no part in the underlying commercial arrangements."[46]	Does it matter if a transaction has a commercial rationale (e.g. providing funds to a subsidiary company, or the centralisation of a high-value function within the group), but nonetheless seriously diminishes taxes due in operating jurisdictions? For example, by shifting such functions – however genuinely – to a low-tax jurisdiction?[47] Transactions with a commercial rationale (e.g. providing funds to a subsidiary company) can nonetheless be structured in contrived ways specifically to obtain a tax advantage (e.g. providing capital through hybrid instruments like shares with loan-like characteristics, which can escape being taxed in both the capital-providing and capital-receiving companies). Conversely, a step in a transaction may be entirely artificial and solely intended to generate a tax advantage, but widely understood as legitimate in order to avoid an unfair ('bear-trap') tax result, or one unintended by legislation e.g. a tax charge greater than the economic gain from the transaction.[48] Subsidiaries performing some legitimate functions that require few tangible assets or personnel e.g. group financing, may not meet definitions of 'economic substance', such as staff numbers or physical premises.
'Spirit of the law' / contrary to intention of legislature	MNC must "[take] reasonable steps to determine the intention of the legislature and [interpret] those tax rules consistent with that intention in light of the statutory language and relevant, contemporaneous legislative history."[49]	Sometimes tax laws are explicitly intended to undermine the tax regime in another jurisdiction (e.g. 'harmful preferential tax regimes' in tax havens, as defined by the OECD, specifically intended to provide tax-free shelter in one jurisdiction for income originating in another). Yet exploitation of such tax laws is often regarded as tax avoidance or abuse.

Term	Examples of definitions	Remaining definitional problems
	An attempt to circumvent an existing specific anti-avoidance law - clearly contrary to the spirit of the law, since that law is clearly intended to prevent a piece of tax avoidance.[50]	Does not help define contravention of the 'spirit of a law' when that law's purpose is not anti-avoidance.
'Abusive'	A transaction is 'tax abuse' rather than 'tax avoidance' when it "cannot reasonably be regarded as a reasonable course of action in relation to the relevant tax provisions" other than to gain a tax advantage contrary to the objective of those provisions.[51]	Still relies on determining legislative intention (above). Who decides what is 'reasonable'?[52]
'Generally accepted' practice	"accepted by all countries concerned"[53]	Practices accepted or intended by governments – particularly those of jurisdictions regarded as 'tax havens' – may not be acceptable to civil society or the public. E.g. the UK public controversy in 2014 over Luxembourg tax rulings obtained by some UK-headquartered MNCs for group finance companies. Likewise the use of tax 'loopholes' contrary to the intention of legislation may be accepted by that jurisdiction's revenue authority, but nonetheless be publicly unacceptable when their widespread use is revealed e.g. the so-called 'Eurobond loophole', in which shareholder loans to a UK company avoid UK withholding tax by being made via quoted Eurobonds that are in practice only held by shareholders or other group companies, and not widely traded.[54]

References

1.IBE Survey of British Public Opinion, 2014

2. For an example of shareholder activism in this area, see Domini Social Equity Fund et al, Stockholder Proposal Regarding Tax Policy Principles [for Google Inc] (2014); for the impact of taxes on consumer expectations and brand value, see 'Starbucks Brand Suffers over Tax Avoidance Claims', Marketing Week, 18 October 2012, http://www.marketingweek.co.uk/news/starbucks-brand-suffers-over-tax-claims/4004348.article.

3. One Spanish document is also included.

4. While we have made extensive efforts to identify relevant documents and materials, the sample of documents and sources reviewed should not be regarded as exhaustive or perfectly representative. Some categories (e.g. documents from courts or governments) are much smaller than others. Thus the breakdowns of the results given in the tables and graphs below should not be regarded as statistically robust: they are given simply as a broad comparison of the relative emphasis placed on different issues by interested actor groups, or an indication of where similarities exist between proposals from different interested actor groups.

5. In this paper, references to developing countries are to countries in which: (1) economic and social rights are typically unfulfilled (and therefore increasing public spending capacity in pursuit of such rights is particularly urgent); (2) the tax take is comparatively low in relation to the size of the economy (i.e. the tax/GDP ratio is below average); (3) multinational corporate taxpayers are responsible for a particularly high proportion of overall tax revenues; (4) tax incentives regimes tend to be more extensive and/or opaque than in developed countries; and (5) revenue authorities tend to lack capacity and information in comparison to more developed countries.

6. UK High Court of Justice (Queen's Bench Division Administrative Court), UK Uncut Legal Action Ltd vs. Commissioners of Her Majesty's Revenue and Customs, CO/12618/2011 [2013]

7. European Commission, 'State aid: Commission investigates transfer-pricing arrangements on corporate taxation of Apple (Ireland) Starbucks (Netherlands) and Fiat Finance and Trade (Luxembourg)', IP/14/663, 11 June 2014.

8. ActionAid, Give us a break: how big companies are getting tax-free deals (June 2013); International Monetary Fund (IMF), Revenue Mobilization in Developing Countries (2011), http://www.imf.org/external/np/pp/eng/2011/030811.pdf; IMF/OECD/UN/World Bank, Supporting the development of effective tax systems: a report to the G20 (2011), http://bit.ly/WeS2T9, pp. 19-20; Alexander Kusamba Dzonzi/Malawi Economic Justice Network, A study on Malawi's taxation system and its implications on the poor (2012

9 N.B. given the small numbers of documents surveyed from each constituency, percentages in this and other tables should be taken as suggestive only. This table should be read to identify areas of agreement between constituencies, rather than disagreement over the inclusion of particular issues. Different types of documents will be focussed on different areas: some, for instance, only deal with tax reporting rather than corporate behaviour. A gap from one constituency thus does not necessarily denote a lack of interest in that topic from that constituency.

10. For example: OECD, Cooperative Compliance: A Framework – from enhanced cooperation to cooperative compliance (2013); Business and Industry Advisory Committee to the OECD (BIAC), Statement of Tax Best Practices for Engaging with Tax Authorities in Developing Countries (2013).

11. The OECD study notes this risk but explicitly rejects it. Nonetheless the judicial review (forced by tax campaigners) of tax negotiations and settlements between the UK revenue authority (HMRC) and a large investment bank, which vindicated the settlement but censured some aspects of HMRC's conduct in negotiations, suggests that this risk remains live. UK High Court of Justice (Queen's Bench Division Administrative Court), UK Uncut Legal Action Ltd vs. Commissioners of Her Majesty's Revenue and Customs, CO/12618/2011 [2013].

12. For examples in MNC practice, see the country-specific tax reporting in the 2013 annual reports of Rio Tinto and Legal & General. By contrast, SABMiller's version of country-specific reporting provides the total tax contribution disaggregated by tax type, but not disaggregated by region or country; and the total tax contribution by region, but not disaggregated by tax type.

13. As Figure 3 shows, frameworks produced by tax advisers and multi-stakeholder partnerships have tended to focus on a different area of tax reporting: better explaining ostensibly low global tax payments or effective tax rates by producing more detailed and comprehensible reconciliations - either in the financial statement's tax note, or in separate tax/CSR reporting - between accounting and taxable profit (thereby showing the impact of incentives and allowances more clearly), between book and cash tax (thereby better explaining the tax payments for the year and the reasons for tax deferral), and between the headline rate of tax in the MNC's headquarter jurisdiction and the MNC's global effective tax rate. Rio Tinto and Legal & General have begun to publish such enhanced tax reconciliations; and a breakdown of deferred tax assets and liabilities forms part of the draft MNC criteria produced by the Fair Tax Mark campaign: Fair Tax Mark/Ethical Consumer, Criteria Notes: UK-based Multinational Companies (consultation draft) (2014), pp. 19-22

14. For example, the country-specific reporting of revenues, assets and personnel.

15. Multi-stakeholder partnerships, MNCs, and business organisations.

16. For example: OECD, Cooperative Compliance: A Framework – from enhanced cooperation to cooperative compliance (2013); Business and Industry Advisory Committee to the OECD (BIAC), Statement of Tax Best Practices for Engaging with Tax Authorities in Developing Countries (2013).

17. Pricewaterhouse Cooper LLP, Tax transparency and country-by- country reporting: An ever changing landscape (2013).

18. PricewaterhouseCoopers, 17th Annual Global CEO Survey: Tax strategy, corporate reputation and a changing international tax system (February 2014), p. 17.

19. Barclays plc, Country Snapshot 2013 (2014), http://www.barclays.com/content/dam/barclayspublic/docs/Citizenship/Reports-Publications/CountrySnapshot.pdf. One critic has suggested that Barclays' figures still present an incomplete picture because they provide cash tax ('tax paid') figures against profits/losses, rather than the tax accrued/due on those profits/losses during the accounting period (Tax Research blog, 30 June 2014, http://www.taxresearch.org.uk/Blog/2014/06/30/barclays-the-bank-that-just-loves-luxembourg-and-jersey/). The EU's CRDIV Directive states that banks must annually report "tax on profit or loss", but does not specify whether 'cash tax' or 'book tax' must be reported. By contrast, the (non-public) CBCR template under discussion within the OECD's BEPS process specifies reporting of 'cash tax'. More useful transparency would include both cash and book tax, as would generally be provided in non-consolidated statutory accounts. N.B. RBS has also produced a version of country-by-country reporting (http://www.rbs.com/sustainability/serving-society/tax-contributions/country-by-country-tax-payments.html), but amongst other things does not disaggregate profit taxes from other taxes, making comparisons with profits impossible.

20. Though several sets of criteria produced by CSR specialists, campaigning investors and MNCs include such a 'sniff test', recommending that MNCs only undertake tax-related transactions that would be "fully justifiable", or not "surprising", if made public: Vodafone Plc, Tax Risk Management Strategy (2013); Domini Social Equity Fund et al, Stockholder Proposal Regarding Tax Policy Principles [for Google Inc] (2014), https://investor.google.com/pdf/2014_google_proxy_statement.pdf; Corporate Citizenship, Tax - Time for Action (2012); SustainAbility, Taxing Issues (2006).

21. Examples include the UK's Disclosure of Tax Avoidance Schemes (DOTAS) regime; and Ireland's and Canada's Mandatory Disclosure Regimes.

22. One exception is Vodafone's Tax Risk Management Strategy (2013), which prohibits purely "artificial" tax transactions with reference to examples: e.g. no attribution of profits based purely on "a contractual description of rights for which no capability exists"; or "the provision of debt where there is no commercial rationale"; no " routing of transactions either financially (for withholding tax) or physically (for VAT) through companies which play no part in the underlying commercial arrangements." Nonetheless this leaves untouched a broad area of 'tax efficient supply chain management' where there may be some business activity underlying highly tax-efficient arrangements, but which may nonetheless have as large an impact on tax revenues as purely 'artificial' arrangements like circular loan relationships. Vodafone also derogates from its prohibition of 'artificiality' in allowing "accepted practice transactions" that generate tax benefit and have "little or no other commercial reason when viewed in isolation" where such transactions are accepted by "all jurisdictions involved" e.g. routing of goods imported into the EU via the Netherlands to avoid a VAT cash flow. What constitutes "accepted practice", and whether "accepted practice" is itself acceptable, is unlikely to enjoy widespread consensus amongst governments, civil society or businesses themselves.

23. IBAHRI, Tax Abuses, Poverty and Human Rights (2013), pp. 36-38.

24. Comments submitted on the OECD's June 2012 discussion draft on Revision of the Special Considerations for Intangibles in Chapter VI of the OECD Transfer Pricing Guidelines and Related Provisions (http://www.oecd.org/ctp/transfer-pricing/

25. We have borrowed this phrase from David Quentin's discussion of 'exchequer risk mining'.

26. David Quentin, 'No spoils for Moyles – but what does it mean' (2014), http://dqtax.tumblr.com

27. Vodafone, Tax Risk Management Framework (2013).

28. Of course, one response would be to say that such unambiguously lawful but potentially undesirable tax behaviours should simply be left outside the purview of voluntary action by corporate taxpayers, and dealt with by states changing tax laws. In practical terms, however, the slow pace of change in an international tax system widely accepted to be dysfunctional makes a case for voluntary restraint about tax minimization even within the unambiguously legal sphere, at least in the medium term.

29. This is, Quentin argues, an established principle in insurance contracts where the insured party is obliged to disclose anything of material risk to the insurer, even if such disclosure runs directly counter to insured's commercial interests, such as generating higher premiums.

30. David Quentin, 'Appendix E: Submission by David Quentin' in International Bar Association's Human Rights Institute (IBAHRI), Tax Abuses, Poverty and Human Rights (2013)

31. ActionAid, Calling Time: Why SABMiller should stop avoiding taxes in Africa (2010), p.35; ActionAid, Sweet Nothings: the human cost of a British sugar giant avoiding taxes in Africa (2013), p.36.

32. ActionAid, Sweet Nothings: the human cost of a British sugar giant avoiding taxes in Africa (2013), p.36.

33. United Nations, Guiding Principles on Business and Human Rights (2011)

34. David Quentin, 'Appendix E: Submission by David Quentin' in International Bar Association's Human Rights Institute (IBAHRI), Tax Abuses, Poverty and Human Rights (2013)

35. For example, eleven of Tanzania's top fifteen corporate taxpayers, majority-owned by foreign shareholders or part of multinational groups, are responsible collectively for around 30% of Tanzania's corporate tax take from 2005-11. Figures released by Tanzanian Revenue Authority: see 'Top taxpayers' list faulted', Daily News (Tanzania), 14 September 2011 (http://www.dailynews.co.tz/home/?n=23390).

36. 'Box: Every Operating Country Matters' in ActionAid, Tax responsibility: an investor guide (2013).

37. IBIS/Christian Aid, Draft Principles for Corporate Responsibility on Tax (2012): "A company should not use its superior bargaining power to obtain unfair and excessive tax benefits when negotiating contracts with a host country".

38. United Nations, Guiding Principles on Business and Human Rights (2011)

39. IBIS/Christian Aid, A brief on tax and corporate responsibility (2012);

40. United Nations, Report of the UN Special Rapporteur on extreme poverty and human rights on tax, A/HRC/26/28 (2014).

41. http://www.ibanet.org/Article/Detail.aspx?ArticleUid=4A0CF930-A0D1-4784-8D09-F588DCDDFEA4

42. https://www.globalpolicy.org/component/content/article/216-global-taxes/52648-un-special-rapporteur-tax-policy-major-determinant-in-enjoyment-of-human-rights.html

43. Such assessment obviously requires a counter-factual about which there may not be consensus, with some tax advisers arguing that a tax-efficient transaction does not generate a real revenue loss for the exchequer because tax would not be due if the transaction was not undertaken at all. See, for instance, the evidence of Bill Dodwell (Deloitte LLP) to the UK Public Accounts Committee (January 2013), arguing that corporate de-mergers designed so that the resulting gains are tax-free are not a real revenue loss to the exchequer, because the de-merger "will not cost tax. If [the group] stayed as they were, they would not pay anything [either]." House of Commons, Evidence Taken Before the Public Accounts Committee, 31 January 2013, http://www.publications.parliament.uk/pa/cm201213/cmselect/cmpubacc/uc870-i/uc87001.htm

44. Such assessment obviously requires a counter-factual about which there may not be consensus, with some tax advisers arguing that a tax-efficient transaction does not generate a real revenue loss for the exchequer because tax would not be due if the transaction was not undertaken at all. See, for instance, the evidence of Bill Dodwell (Deloitte LLP) to the UK Public Accounts Committee (January 2013), arguing that corporate de-mergers designed so that the resulting gains are tax-free are not a real revenue loss to the exchequer, because the de-merger "will not cost tax. If [the group] stayed as they were, they would not pay anything [either]." House of Commons, Evidence Taken Before the Public Accounts Committee, 31 January 2013, http://www.publications.parliament.uk/pa/cm201213/cmselect/cmpubacc/uc870-i/uc87001.htm

45. Global Reporting Initiative (GRI), G4 Sustainability Reporting Guidelines: Reporting Principles and Standard Disclosures (2013); International Organisation for Standardisation (ISO), ISO 26000 – Social Responsibility (2010).

46. Vodafone, Tax Risk Management Strategy (2013).

47. See the examples of Tax Efficient Supply Chain Management in ActionAid, Calling Time: Why SABMiller should stop avoiding taxes in Africa (2010).

48. HMRC/GAAR Advisory Panel, HMRC's GAAR Guidance (2013), Section B12.2

49. 'Chapter XI: Taxation', in OECD, Guidelines for Multinational Enterprises (revised ed, 2011). Cf. the 'Halifax principle' of striking out a tax result "contrary to the purpose" of national legislation established in the ECJ case Halifax plc and others vs. CCE [2006].

50. HMRC/GAAR Advisory Panel, HMRC's GAAR Guidance (2013), Section D2.7, http://www.hmrc.gov.uk/avoidance/gaar-partd-examples.pdf

51. UK General Anti-Abuse Rule (Part 5, Finance Act 2013).

52. In the case of the UK GAAR, this is to be determined by an Advisory Panel; self-policing CSR standards are unlikely to be able to rely upon such external assurance.

53. Vodafone, Tax Risk Management Strategy (2013).

54. This has been accepted by HMRC for many years, and is specifically cited in its GAAR guidance as an example of an 'accepted practice' that may be artificial but not regarded as 'abusive' under the GAAR. Nonetheless the widespread use of such arrangements caused significant political controversy when highlighted by the media in 2013, and the UK Labour Party has proposed closing the 'Eurobond loophole' if it comes to power at the next election.

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