actionaid

Time to clean up

How Barclays promotes the use of tax havens in Africa

Summary

Barclays bank is now reported to be the largest retail bank in Africa and is the largest UK bank operating on the continent. This puts it in a position of responsibility with regard to the way it operates and the role it can play in the economic future of some of the poorest countries in the world.

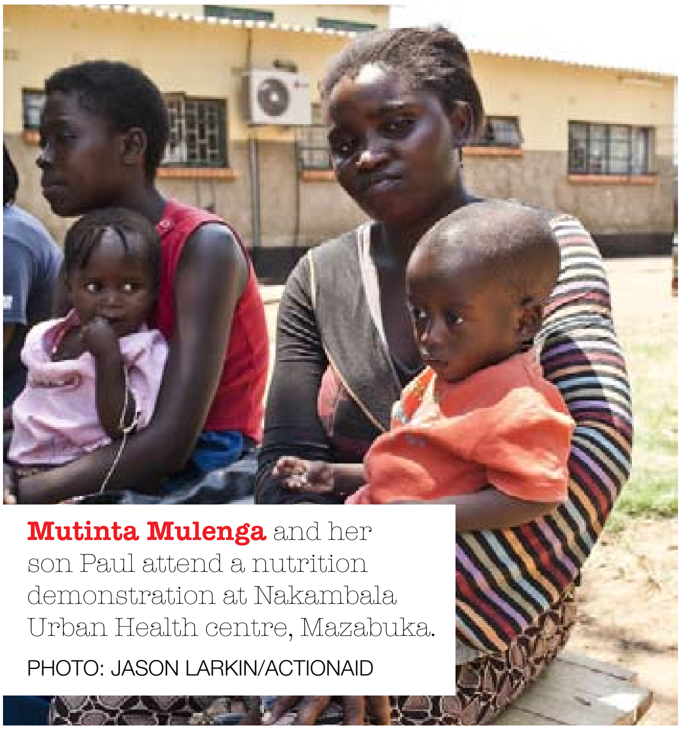
In the wake of the global crisis, Africa's economy has enjoyed one of the strongest growth rates across the world. Weak economic performance in rich countries and rapidly rising commodity prices have resulted in a steady increase in foreign investment, totalling US$50 billion in 2012 – as much as is received in overseas development aid.[1] However Africa still suffers extreme poverty and under-development. Between 1990 and 2011 the number of new-born children who died in sub-Saharan Africa went up from 1.0 to 1.1 million,[2] and the number of hungry people increased from 175 million to 239 million.[3]

If this increase in investment is to help poor Africans, it has to provide decent jobs and business opportunities, and it must be matched with appropriate taxation to pay for crucial services such as healthcare, education or environmental management. Ordinary people across Africa are increasingly demanding that multinational companies, which are making money from their countries, pay their fair share of tax. This is fast becoming a global consensus as the worldwide landscape on tax is changing.

Statements from world leaders such as Kofi Annan[4] and David Cameron[5] make it clear that companies can no longer use the "letter of the law" to avoid paying tax. It is the spirit of the law that matters, and laws are rarely made with the intention of helping companies avoid tax. Senior financial analysts warn that multinational companies risk a fierce customer backlash if they keep using offshore tax havens.[6]

Tax is far more than a simple business concern. It is a global development issue. A recent report from the high-level Africa Progress Panel estimates that illicit financial flows from sub-Saharan Africa amount to US$63 billion every year. The tax revenue lost as a result of these flows, if paid and targeted effectively, would raise billions of dollars each year in the pursuit of global goals on hunger and education.

When ActionAid visited an urban health centre in Zambia, during research into the tax avoidance of Zambia Sugar (a subsidiary of Associated British Foods) we met Sister Florence, the clinic's head nurse, who was struggling to provide basic services, despite the clinic being at the heart of a booming sugar industry. Referring to the fact that Zambia Sugar had used tax havens such as Mauritius to avoid an estimated US$17.7million in tax since 2007, Sister Florence told us, "If that tax was being paid, maybe that money would be used…to access the places where we are not able to reach frequently."[7]



Mutinta Mulenga and her son Paul attend a nutrition demonstration at Nakambala Urban Health centre, Mazabuka.

PHOTO: JASON LARKIN/ACTIONAID

Foreign companies investing in Africa have a critical role to play in the continent's economic development, providing much-needed goods, services and jobs. But, most importantly, the taxes they pay contribute to essential services – such as health, education, water and nutrition – that are a matter of life and death for people in poor countries.

Global banks play a key role as enablers of foreign investment, by providing the services needed to move large amounts of money quickly and efficiently across the globe. But they can also play a role in facilitating tax dodging.

Of all the UK banks, Barclays is by far the biggest player in Africa. It has 147 subsidiaries across the continent (four times as many as any other UK bank) and operations in 17 African countries. Barclays has said its ambition is to become the "go-to bank in Africa"[8] and its Africa strategy includes clear commitments on "making more of Africa's people, our customers and clients"…while at the same time being a "force for good in the communities we serve and the people's lives we touch".[9]

However, our research shows that Barclays' commitment to delivering responsible investment in Africa is questionable at best. We have identified two examples which show how the bank is promoting the use of tax havens by businesses investing in Africa, including African businesses themselves.

The first of these is the Offshore Corporate division of Barclays' International Wealth and Investment Management. Offshore Corporate is promoting a "proposition" to African businesses built around its extensive presence in Africa and its ability to link companies and investors in Africa with Barclays' operations in offshore locations, all of which offer low taxation and favourable tax regimes.

The second example we found relates to Barclays operations in Mauritius, where Barclays has publicly presented itself as the "pioneer of offshore" and is actively encouraging companies to set up subsidiaries in Mauritius as a route for channelling investment into Africa. In its promotional materials Barclays highlights the "favourable local tax regime" in Mauritius and the extensive network of double taxation treaties that Mauritius holds with many countries, including African ones.

The extensive use of tax havens such as Mauritius to channel investments can lead to the loss of tax revenues for poor countries through a variety of "dodges" which take advantage of the low tax regimes, tax treaties and secrecy that these tax havens offer.[10]

Promoting the use of tax havens as a way of channelling investment into Africa cannot be considered as supporting responsible investment and sustainable development for all. Barclays can, and should, do better. It is in its own interest to help create economic and social development that will provide future opportunities for its business. Barclays has an opportunity to establish itself as a champion of fair and effective taxation systems both globally and in Africa.

This means:

- **Living up to its own corporate responsibility principles** by committing itself to close down the operations of Barclays' "Offshore Corporate" and to eliminate all activities in tax havens that do not support the real economic substance of its customers' business.
- **Becoming more transparent** by making its detailed tax strategy public and proving that any remaining activities in tax havens are not linked to tax avoidance.
- **Proving that Barclays intends to play a positive role in Africa on tax** by demonstrating that it is pursuing a constructive and fully transparent relationship with the relevant tax authorities and supporting the development of strong local tax collection systems and strong onshore finance sectors in the African countries in which it operates.

As Barclays starts deploying its strategy to become the "go-to global bank in Africa", it can choose to be the champion of responsible investment, or to revert to business as usual. The future reputation of the business is at stake – as are the futures of many poor Africans, who depend on life-saving education, shelter and health services which could be paid for with the tax revenues generated by increased investment and economic growth on the continent.

Banks play a vital role in both the global economy and in the functioning of many countries' tax systems. However the extent that banks use, facilitate or promote aggressive tax planning schemes also poses a significant risk to tax systems

OECD 2009: 'Building Transparent Tax Compliance by Banks'

Introduction

In contrast to much of the developed world, Africa's economic outlook for the near future provides room for optimism. Growth across the continent is projected at 4.8% in 2013, accelerating to 5.3% in 2014.[11] This growth rate, in the wake of the global financial crisis, alongside rapidly rising commodity prices, and an increasingly open business environment has resulted in a steady increase in foreign investment in the continent.

Foreign direct investment flows are important, and the governments of many developing countries focus on finding ways to increase them and to maximise their positive social and economic impact. However, while such investments have the potential to increase development, in the absence of the right conditions they can also harm long-term social and economic prospects. The kind of services that people in Africa need, such as healthcare, education or environmental management, all require steady, dependable and long-term sources of finance, in the form of domestic tax revenues. Most African states are working towards expanding their tax bases. Many African citizens are becoming increasingly aware of the role of taxation in providing the public services and infrastructure they need. And, just as in Europe and America, where tax-dodging scandals have been brought to light, ordinary people are speaking out against the inequities of tax avoidance and the impact this is having on investment in their communities.

The ActionAid Tax Power campaign is a global initiative, reflecting the shared anger of people, in countries all over the world, at the tax dodging of multinational companies that deprives poor people of basic services.

PHOTO: DAVID HABBA/ACTIONAID

Evidence shows that foreign investment will only result in long term, sustainable growth where the right (well enforced) regulations are in place, to protect local "infant" industry, restrict profit repatriation and promote joint ventures.[12] Some commentators also believe that the current "boom" in investment in Africa, stimulated by high commodity prices and low interest rates for investors may not last much longer,[13] making it even more important that foreign investment creates long-term production capacity and good jobs while not damaging the environment. Critically, a significant percentage of profits need to be retained and used locally. This means reinvesting a share of the profits in the local economy to create opportunities for local businesses. And, most importantly, it means effective taxation that can pay for health, education and other services that can provide a decent life for all.

Banks as facilitators of financial flows – for better or for worse

Global banks play a crucial role as enablers of foreign investment and are therefore in a prime position to help ensure it makes the maximum contribution towards sustainable and equitable growth.

It is no coincidence however that, as the main channel for financial flows to poor countries, banks also play a central role in many of the aggressive tax avoidance schemes that cost African countries billions of dollars per year.[14] This tax dodging happens in many different ways. Some companies channel the profits obtained in a particular country through a tax haven and then re-invest in that country pretending this is new investment, often rewarded with tax relief. Others use complex chains of transactions to turn treaties that were meant to prevent double taxation into tax avoidance instruments.

The 2009 OECD report on Building transparent tax compliance by banks showed that banks have a critical role in developing tax systems that are transparent and effective. Their understanding of the tax system, and their interaction with clients, place them in a position of unique responsibility in this regard. The report notes the mismatch between the information and expertise available to revenue authorities operating at the national level, and the operations of transnational banks and other large corporate taxpayers. In light of such concerns, the OECD believes that banks should develop a co-operative relationship with revenue bodies in which greater transparency on their part enables those revenue bodies to offer greater certainty about the taxation of the banks themselves, and of their clients. The OECD report specifically notes that banks should be encouraged to offer a degree of transparency "above the minimum legal requirement".

An OECD spokesman told ActionAid that, as the economies and taxation systems of developing countries become more complex and sophisticated, it will be increasingly important that global banks operating in those countries do so transparently and have positive and constructive relationships with the revenue authorities.[15]

The international footprint of UK banks

The UK is host to some of the largest global banks, some of which have a strong presence in Africa. These banks are, by some way, the most prolific users of tax havens amongst listed UK companies. ActionAid UK research in 2012 revealed that five banks in the FTSE 100 have, between them, 1,780 subsidiaries in tax havens (the second most prolific sector was oil and gas, which had 1,119 subsidiaries between six companies).[16]

While the presence of subsidiary operations in tax havens does not prove tax avoidance, it does provide the type of international structure often used to do so. Tax havens have played a central role in almost all of the major public exposés of tax avoidance by multinationals.

Stepping in – a tax code of conduct for banks

A recent consultation document from the UK government on strengthening the code of practice on taxation for banks highlights that banks have "historically undertaken and promoted tax avoidance and their behaviour in this activity was typically more aggressive than that of companies in other sectors".[17] Banks, they argue, are different to other types of business because they have access to very large amounts of capital. This capital can be used as the basis for facilitating "avoidance schemes designed and implemented by others from which the banks can benefit, through sharing in the tax benefits directly or by more remunerative lending terms". Richard Brooks, in his book *The great tax robbery*, published earlier this year, describes in detail how the global banks, with their multi-country operations, through their access to almost unlimited amounts of capital and their network of large clients, have been able to manipulate and "play" the system to create vast tax breaks for themselves and their clients.

To help counter these threats, HM Revenue and Customs (HMRC) introduced a voluntary code of practice on taxation for banks in 2009, in an effort to encourage banks to follow "the spirit as well as the letter of the law" in their tax planning. All top 15 UK banks (including the five in the FTSE 100) have signed up, but HMRC itself admits that, in addition to the code being voluntary, it lacks transparency; information on compliance with the code remains a shared secret between the banks and HMRC and there are few, if any, obvious consequences for non-compliance.

The code of practice does require that the banks maintain a formal policy on tax, encompassing both strategy and governance of tax matters. However, it has to be shared only with HMRC, rather than being made public. A recent consultation on this code may recommend minor changes, but these will not be sufficient to demonstrate that banks have genuinely committed to a positive role in tax compliance. However, there are some indications that the big UK banks are beginning to see the need to demonstrate more positive tax practices.

UK banks – moving in the right direction

Following the revelations by ActionAid UK about the tax haven subsidiaries of the biggest UK banks, and the increasing public concerns about tax avoidance, these banks have all made some type of public statement about closing their subsidiaries in tax havens.

In the case of Lloyds and HSBC these have come in the form of responses to questions asked by shareholders at their Annual General Meeting, while RBS has provided a statement of intent in its annual report:

- "over the next several years, we will significantly reduce the amount of activity that has gone through so-called tax havens" Response to question by Douglas Flint at the 2013 HSBC AGM

- "we are going to close all of (our companies in tax havens) unless there are strong business reasons for our customers to keep them there" Response to question by Anne Edmonds at the 2013 Lloyds AGM

- "RBS is reducing the number of companies in offshore countries." p.32 RBS Sustainability report 2012

The public statements made by Lloyds to shareholders are particularly welcome and it is important that other banks match this level of stated commitment. It is even more important that all the banks now move beyond words and create meaningful programmes of action.

At present, none of the public statements made by the banks appear to go beyond a general commitment to overall reductions in the activity in tax havens. When directly approached, none of the banks was able to provide a clearly articulated strategy for the process of reviewing and closing their tax haven activity. So far, there are no publicly available criteria from any of the major banks to decide what constitutes a legitimate business reason to maintain tax haven operations and no timetables for closing them.

The future strategy of each bank is likely to have a major influence over whether, and how quickly, it withdraws from promoting the use of tax havens. Where banks are planning to maintain a global presence alongside a wide range of service areas, it is critical that they make clear their strategies on tax.

Spotlight on Barclays – the 'go to' bank for Africa

When Antony Jenkins took over as Barclays' boss from Bob Diamond in early 2013, he was quick to announce the closure of the controversial tax planning unit.[18] The closure of this unit was part of a "clean-up" operation, designed to send a signal that the culture of Barclays had changed following a series of high-profile scandals.

However, among the UK banks, Barclays remains one of the most persistent users of tax havens, with 471 subsidiaries listed in tax havens in 2012.[19] Barclays has stated that it is reducing the number of its operations in low tax jurisdictions, with further reductions planned for 2013.[20] But it is not clear on what basis such reductions will be made, or on what timescale. In response to a direct enquiry, a spokesperson for Barclays simply said that the "closure of each subsidiary is judged on a case by case basis."

“Banks matter… Despite its turbulent recent history, Barclays has emerged from the financial crisis, somewhat against the odds, as one of the world’s leading banks. But this has been achieved at a cost…The absence of a common purpose or common set of values has led to conduct problems, reputational damage and a loss of public trust”

Anthony Salz: April 2013 ‘The Salz Review of Barclays’ Business Practices’

In the context of international development, it is critically important that Barclays does everything possible to become a more responsible company. This is because of Barclays’ uniquely strong presence in Africa; it has by far the highest number of African subsidiaries (145) compared with other UK banks, such as Standard Chartered (37), HSBC (15) and RBS (1).

With 10% of its group profits already recorded on the continent, Barclays has big plans to become “a business that customers and clients consider as the first choice for solutions in Africa– their ‘go-to’ bank”.[21] To achieve this ambition, Barclays upped its share of South African subsidiary ABSA to 62% earlier this year and consolidated its operations across nine major African economies under its “one bank in Africa” strategy.[22]

The scale and ambition of its operations in Africa means that Barclays now has the opportunity to underpin successful development across the African continent, providing reliable financial services and good quality jobs and career opportunities for a new generation.

Barclays has committed itself to a programme of “citizenship” in every country in which it operates, and provides examples of specific activities in each African country such as supporting village-level savings and loans associations in Ghana, or the provision of water filters in Kenya. Perhaps more importantly, Barclays’ definition of citizenship includes the “way that the company does its business and how it contributes to ‘growth and job creation”. However, for this to be credible, Barclays needs to demonstrate very clearly that it will put sustainable development ahead of short-term profit and this means helping to promote effective and fair taxation. Most importantly, Barclays must show that it will always seek to act in the best interests of ordinary African citizens, such as Jane Irungu, a teacher in a Nairobi school, still waiting to be paid a basic salary by the government.

Supporting better taxation is part of corporate citzenship. It supports the equitable growth and the creation of decent jobs that will change the lives of millions of individuals and create future business opportunities for companies like Barclays.

“It is a disgrace that there is a huge need for teachers like myself, but no public funds to pay us. Eventually God will pay me back what the Government refuses to give us”

Jane Irungu is a volunteer teacher at a government-funded school in Nairobi, Kenya. Jane is one of four teachers volunteering for 5,000 shillings (US$58) per month. Like most government-run schools in Kenya, the school lacks basic amenities. It has 650 students and just 11 teachers.

PHOTO: PIERS BENATAR/PANOS PICTURES/ACTIONAID

Barclays has not always enjoyed the best of reputations regarding its activities in Africa. Its controversial involvement in apartheid South Africa in the 1980s led to a widespread student boycott in the UK. Much more recently, in 2009, Barclays was reported to be playing a leading role in a scheme (which has since been dropped) to set up an "international financial services centre" in Ghana, offering low taxes and minimal financial disclosure at the heart of the West African oil boom. To invest in the creation of onshore finance centres in Africa may be seen as a laudable aim. But to try to do this in a way that provides secrecy and the opportunity to avoid or evade tax would do more harm than good. Secrecy, and the opportunities presented for avoiding tax, would accentuate the risk of the regional oil boom turning sour and becoming yet another example of Africa's "resource curse".

Of course, Barclays faces many choices, and challenges, with regard to its African business, and "doing the right thing" is rarely simple. People in those African countries where Barclays operates need efficient and reliable banking services. This was demonstrated recently when Barclays came under fire for seeking to close down the accounts of major money-transfer services in Somalia. Barclays has very legitimate reasons for caution in this instance, but with Somali Prime Minister Abdi Farah Shirdon Saaid intervening directly and asking Barclays to reconsider its decision (based on the importance to Somalia of the money sent back from friends and relatives living overseas) this shows just what a difference the actions of a single bank can make to millions of poor and vulnerable individuals.

The jobs and infrastructure that Barclays can create certainly have the potential to contribute to development, and Barclays has a responsibility to ensure that it does not undermine its achievements by promoting the use of tax havens by companies that seek to duck paying their fair share of tax.

Barclays can choose to become part of the solution, as an active, responsible corporate citizen, or to be seen as part of the problem. In choosing to expand its operations in Africa, and making clear its commitment to positive economic development, we believe that Barclays has taken on a responsibility to all the citizens of Africa. Citizens such as Marta Luttgrodt, a small scale businesswoman in Ghana, who runs a beer and food stall in the shadow of the Accra Brewery. Marta has no choice but to pay her business taxes, but discovered only by talking to ActionAid that she has paid more income tax, in the last two years than the vast business operating next door! [23]

MARTA'S STORY

SAB Miller subsidiary Accra Brewery is Ghana's second-biggest beer producer, pumping out £29 million (GH¢69 million) of beer a year, and rising. Yet it paid corporation tax in only one of the four years from 2007-10.

"Wow I don't believe it," said Marta Luttgrodt on hearing this. Marta sells SABMiller's club beer at her small beer and food stall, in the shadow of the brewery in which it is made, for 90p (GH¢2) a bottle. She and her three employees work hard for this success, preparing food at 6.30am every day, and finishing at 8pm.

Marta's business makes a profit of around £220 (GH¢500) per month. As a taxpayer she must obtain and keep two income tax stamps as proof she has paid fixed fees of £11 (GH¢25) per year to the Accra Municipal Authority, and £9 (GH¢20) per quarter to the Ghana Revenue Authority. Marta's tax payments may seem small in absolute terms, but astonishingly she paid more income tax in the last two years than her neighbour and supplier, which is part of a multi-billion pound global business.

Ghana's government wants to bring more informal sector traders like Marta into the tax system - and is taking a tough approach to stallholders who can't afford to pay their tax bills. "We small businesses are suffering from the authorities - if we don't pay, they come with a padlock" says Marta

PHOTO: JANE HAHN/ACTIONAID

"The extensive use made by foreign investors of offshore-registered companies operating from jurisdictions with minimal reporting requirements actively facilitates tax evasion. It is all but impossible for Africa's understaffed and poorly resourced revenue authorities to track real profits through the maze of shell companies, holding companies and offshore entities used by investors."

Kofi Annan[24] Former UN Secretary General

The next section of this report examines ways in which we believe Barclays is leaving itself exposed to potential doubt regarding how it's takes on these responsibilities. We examine two examples: the activities of Barclays' wealth and investment offshore corporate unit, particularly in Africa, and Barclays' operations in Mauritius. In both cases, Barclays' promotional materials give cause for concern about its role in promoting and facilitating the use of tax havens which drain vital public funds from some of the world's poorest countries.

Barclays – promoting the use of tax havens in Africa

In July 2012, the Tax Justice Network (TJN) released a report containing new estimates for the amount of private wealth "hidden" in offshore tax havens. The numbers it presents are almost incomprehensible in size. The report estimates there is between US$21 trillion and US$32 trillion stashed away, largely tax free. Notably, the report states that these numbers should be considered as a low estimate. The TJN is not alone. In May 2013, Oxfam International reached similar conclusions and has estimated that developing countries lose tax revenues of more than $156 billion annually as a result. Oxfam too states this figure is likely to be a low estimate.

The TJN report looked not just at how much wealth was hidden, but where it came from and how it got there. The report specifically highlights the active role of private banks in facilitating, and indeed, encouraging, this situation. It estimated that, at the end of 2010, the top 50 international private banks collectively managed more than US$12.1 trillion in cross-border assets from private clients, including via trusts and foundations. Barclays Bank is one of the major players in this regard, and works with both wealthy individuals and with corporations across Africa.

Barclays' offshore corporate is part of Barclays' global, London-based, wealth and investment management division. It exists, in its own words, to help clients "maximise the advantage offered by offshore jurisdictions" and it encourages companies to use the services it offers for tax-planning. As with other parts of its business, Barclays is keen to emphasise its experience and reach in Africa, offering "a strong proposition to African businesses".

This proposition is built around its extensive presence in Africa and its consequent ability to link companies and investors in Africa with Barclays' operations in offshore locations. Each of the eight offshore locations[26] suggested by Barclays has specific advantages, but low taxation and favourable tax regimes feature highly in every case.[27]

In September 2013, Barclays' offshore corporate brochure introduced the African tax haven of Mauritius for the first time, alongside established jurisdictions such as Jersey, Cyprus and Switzerland for companies doing business in Africa. Its appearance, at a time when Barclays is looking to Africa as its new frontier, is no coincidence. Barclays offshore corporate describes Mauritius as the "offshore centre of choice for India and the Sub-Saharan region" and highlights its tax regime and network of advantageous tax treaties.

What is clear from both the brochure, and from staff profiles available on-line, is that Barclays offshore corporate is encouraging companies investing in Africa to move wealth offshore.A profile of a senior manager in the tax haven of the Isle of Man makes mention of "opening new client accounts by cold and targeted sales calls",[28] as well as sales and business development trips to Africa, indicating that these services are being actively promoted on the continent.

Increasing the use of tax havens by businesses investing in Africa, including African businesses themselves, can only add to the difficulties faced by African revenue

"Our team in this office is specially trained to provide you with a world-class service to make the most of your international lifestyle. This team is supported by our International Banking Centers in Jersey, Isle of Man, Guernsey and Knightsbridge, where our customers' accounts are held. We do not provide a local banking service from this office."

Barclays Nigeria Website[25]

authorities.[29] Rather than encouraging companies to make use of offshore havens, Barclays should be supporting revenue authorities in Africa to strengthen their systems and helping to build their knowledge and capacity. It makes little sense to invest in positive, local development without also taking the opportunity to support the development of systems that will ensure such initiatives can become sustainable in the long run.

As the British Parliament's international development committee notes in its 2012 report on tax and development, "The capacity of a developing country tax authority to obtain information on the offshore activities of its citizens or corporations… is critical to its ability to curtail illicit capital flight."

In an open letter, ahead of a major global meeting in March 2013 to discuss the framework for global development post 2015, the co-chairs of a high-level panel meeting, Ngozi Okonjo-Iweala of Nigeria, Armida S. Alisjahbana of Indonesia and Justine Greening from the UK stated that:

"A post-2015 framework will need to help countries on a path to self-sufficiency as well as reaffirm commitments on aid volumes and quality. Critical to this are developing countries' efforts to raise taxes – including in fragile states. We all need to work in a myriad of ways to reduce 'leakages' both internationally and in our own countries."[30]

Mauritius: 'the gateway to Africa'

In addition to Barclays' offshore corporate operations, other parts of the bank also actively promote the use of tax havens. In this section we look at the activities of the commercial banking division of Barclays in Mauritius.

ActionAid analysis of data on global investment shows that almost one in two dollars of reported corporate investment in developing countries is routed from or via a tax haven, with Mauritius featuring as the largest player.[31] When the *Guardian* newspaper used a freedom of Information request to review investments into developing countries by CDC (the private sector investment arm of the UK government aid programme) it discovered that, while the investments were targeting many different sectors in many different developing countries, nearly half of them were directed through Mauritius.[32] Indeed, further analysis of the CDC data collected by the *Guardian* shows that some 56% of investment specifically to Africa passes through Mauritius.

Mauritius is widely regarded as a development success story and for good reason. This small, culturally diverse and isolated country has achieved dramatic and sustained economic growth since independence. Using an export-orientated approach, along with a combination of nation building, "heterodox" market liberalisation and strong government intervention, Mauritius has rocketed to the top of Africa's "human development index" rankings.[33] The success story that Mauritius represents should indeed be celebrated. But, at the same time, it is appropriate to question whether other countries may be paying a price for some aspects of this economic miracle.

The role of Mauritius in investment flows is pertinent because Mauritius is widely considered as a tax haven, scoring highly on the Tax Justice Network's Financial Secrecy Index[34] (meaning that it "must still make major progress in offering satisfactory financial transparency") and it has long since set itself up as ra egional offshore banking hub for India and Africa. In addition to providing secrecy, Mauritius has a low tax regime, with a flat rate of income tax at 15%, a maximum effective tax rate of 3% on foreign source income and no capital gains tax, all of which provide incentives for global companies to channel funds through subsidiaries in Mauritius. Two recent case studies by ActionAid, of global companies with extensive African businesses (SABMiller and Associated British Foods, ABF), found that both companies have structured their businesses to take advantage of the low tax regime in Mauritius.

But the increasing interest in Mauritius as an offshore centre for the African continent is especially focused on the opportunities provided by its strong network of double taxation treaties signed with African countries. Mauritius has signed double taxation treaties with 14 African countries, with a further 11 in the pipeline.[35] Double taxation agreements are theoretically designed to avoid a company paying tax twice on the same earnings (double taxation). But they can also be utilised to create a situation where a company ends up avoiding, or reducing, tax in either country ("double non-taxation").

It is worth noting that there are legitimate reasons why, in some cases, investments might be moved through Mauritius. However, the sheer volume of investments being moved through a jurisdiction which can be used as a tax haven by multinational companies triggers alarm bells, as acknowledged in 2013 by the OECD.[36]

And indeed, there are increasing signs that African and Asian countries are beginning to reconsider their tax treaties with Mauritius. India has been trying to renegotiate for many years and Rwanda has recently negotiated a new treaty following the "notice of termination" of the old treaty put forward by the Rwandan government in June 2012.[37] The revised treaty, which has only to be signed by the two governments, is reported to include a 10% withholding tax on dividends, royalty and interest, and 12% for management fees. This is compared to zero in the old treaty.[38]

Kenya may also be having second thoughts about ratifying the double taxation treaty that has been negotiated with Mauritius. At a recent conference in Nairobi to launch the new Tax Research Centre of the Strathmore University Business School, there was reported to be a strong agreement among participants that it would not be in the interests of Kenya to ratify the treaty.[39]

The reluctance to sign is, in large part, a result of the aggressive positioning of the treaty (see box below). In reality there is little evidence to show that, for low income countries, signing tax treaties leads to increased flows of foreign direct investment,[40] so Kenya's caution appears to be prudent. However, domestic pressure to sign a treaty such as this can be significant, either from the fear of losing out in competition for investments or from local vested interests wishing to make use of such a treaty for their own ends.

Kenya-Mauritius tax treaty

The Kenya-Mauritius double tax treaty, signed on 12 May 2013, has yet to be ratified by the Kenyan parliament, and there is widespread concern that this treaty could be damaging to Kenya and should not be ratified. A look at the proposed treaty with Mauritius compared with existing treaties with other countries reveals some reasons for this concern. Kenya's existing treaties do not generally force a reduction in withholding tax rates, apart perhaps from those for technical service fees. In contrast, the Mauritius treaty is much more aggressively positioned:

	Domestic rate	Mauritius	Canada	Denmark	United Kingdom	Germany
Qualifying companies	10%	5%	25%	30%	15.1%	5%
Other companies, individuals	10%	10%	15%	20%	15%	15%
Interest	10-25%	10%	15%	20%	15%	15%
Royalties	20%	10%	15%	20%	15%	15%
Technical service fees	20%	0%	15%	20%	12.5%	15%

Kenya does not have a capital gains tax, but there is talk of introducing one. It is a concern, therefore that the KE-MU treaty doesn't allow source countries to tax capital gains from share sales. This means that if Kenya ratifies the treaty, it won't be able to charge capital gains tax if any of its $3bn inward direct or $149m portfolio investment from Mauritius changes hands.

Barclays: Promoting the use of Mauritius as a tax haven

Pioneering offshore in Mauritius

Barclays has a significant presence in Mauritius and, until very recently proudly, described itself on its website as "the pioneer of offshore banking in Mauritius":

There are five Barclays subsidiaries listed in Mauritius. From its establishment in 1919 until 2013, Barclays' Mauritius office was run as a branch of Barclays PLC, meaning it was operating as a foreign branch and not actually incorporated there. In early 2013, Barclays' operations in Mauritius were converted into a Mauritian subsidiary of Barclays Bank PLC, rather than a branch. The relatively small number of subsidiaries need not be indicative of the scale of operations. With 1,300 staff in the country it is clear that Barclays is engaged in a high level of activity for a relatively small jurisdiction. Staff profiles for Barclays in Mauritius indicate that they are engaged in both domestic and international banking activity, with staff often moving between the two.

As the first bank to be granted an offshore licence in Mauritius, Barclays has been intimately wrapped up in the evolution of Mauritius' offshore finance sector. As well as promoting the opportunities that Mauritius offers to multinational companies, it appears from a review of on-line staff profiles that Barclays staff in Mauritius are engaged in lobbying "to protect the bank's and its customers' interests… with a view to minimise impact on customers' operating requirements in Mauritius".[41]

Promoting the Mauritius–Africa link

In its promotional materials and information to clients, Barclays plays very heavily on its network of operations in Africa and its ability to provide linked services across the continent, stating on its Mauritius website that, "Barclays has a strong historical presence in 14 African countries. The markets we cover are: Botswana, Egypt, Ghana, Kenya, Mauritius, Mozambique, Namibia, Nigeria, Seychelles, South Africa, Tanzania, Uganda, Zambia and Zimbabwe. This unique offering makes Barclays Mauritius the natural bridge to Africa." It is worth noting that Mauritius has double taxation treaties with eight of the countries on this list and is in the process of agreeing treaties with the other five.

The Barclays operations in Mauritius are a critical part of this offer and, while Barclays is very clear that it does not, itself, provide tax planning services in Mauritius it is fair to say that it promotes the tax benefits of Mauritius' offshore sector. There are extensive sections on the potential benefits of Mauritius in Barclays' promotional materials and it is clear from these that Barclays is not just aiming to hook companies already in Mauritius, but also to bring new ones to the country. Barclays explicitly encourages companies to use Mauritius as a single point of entry into the African continent, rather than structuring their investments through other means that would better reflect the economic substance of the business.

Treaty shopping

Up until September of this year the Barclays Mauritius website was still stating that: "Mauritius has a wide network of double taxation treaties with emerging economies in Africa and Asia. These treaties offer attractive opportunities for offshore companies and international and limited life companies which are incorporated in Mauritius. These companies may operate administrative headquarters, re-invoicing centres, trading offices, or distribution outlets within the vibrant Mauritius Freeport."

This could easily be read as an invitation to go "treaty shopping", which means structuring a multinational business to take advantage of more favourable tax treaties available in jurisdictions such as Mauritius.

Re-invoicing

The reference to re-invoicing centres by Barclays is also telling. Re-invoicing is the practice of passing export and import transactions from multiple country operations through a single company, usually based in a tax haven. There are legitimate reasons for using re-invoicing such as pooling foreign exchange transaction costs and risks. But it is also well documented that re-invoicing has the potential to be used for tax avoidance.[42] While Barclays is not claiming to carry out the practice itself this statement seems to be an invitation to companies to consider Mauritius as a location where such activities are possible.

Supporting the system

As companies set up operations in Mauritius, Barclays is obviously interested in providing the banking services those businesses require. By encouraging more companies to set up in Mauritius to take advantage of its tax treaty network, Barclays is reinforcing a vicious circle, creating more pressure on African countries to conclude tax treaties with Mauritius, and more incentives for businesses to build their corporate structures around the exploitation of these treaties.

The role of Off-shore Banking services in Mauritius

The provision of banking services across multiple jurisdictions, including tax havens, is a critical part of the underlying machinery of tax avoidance by multinational companies. To illustrate this we provide below a hypothetical example of the process which a company may go through to reduce its tax bills, and the role of banking services in this.

Company A is a rapidly expanding tea company with plantations in different African countries. It has recently bought an Indian tea exporter, and feels that it has reached a stage in its growth where it wants to restructure and centralise its overseas operations. To achieve this, the company seeks to shift its banking across all its country offices to a single (global) bank, which can provide a consolidated multi-country operation including all the African countries in which the company operates. The global bank also provides (and promotes) banking services in the offshore sector.

Because the UK now exempts overseas dividend income from corporate income tax, withholding taxes incurred by Company A when it brings profits back to the UK as dividends are seen as straight costs: they aren't offset against UK corporation tax. Therefore there may be tax advantages from using one of the bank's offshore units in a jurisdiction that has a lot of tax treaties, such as Mauritius.

There is no need for Company A to have a real economic presence in Mauritius. The bank's customer relationship manager puts Company A in touch with management companies in Mauritius that can support setting up offshore subsidiaries or other business operations. Company A speaks to its tax advisers, and then plans a structure that will not only help it minimise withholding taxes, but also to book some profits in Mauritius, by re-invoicing all its tea exports via the hub. The management company sets up the appropriate companies in Mauritius, while the bank handles all the banking necessary for the re-invoicing scheme and the transfer of dividends.

By sending its profits via dividends, the company reduces the average withholding tax it pays on profits made in Africa from 15% to 7.5%. This is a pure saving, because there is no further tax to pay on these profits in the UK. When it sells on its Indian business a few years later, it doesn't pay any capital gains tax, because the company is owned via Mauritius. And a healthy 10% of the value of its sales is profit margin booked in Mauritius, where it pays just 3% tax.

There are clearly legitimate reasons for Barclays to operate in Mauritius. As a successful, growing economy the country needs domestic banking services, as well as services for companies engaged in some types of offshore activities, which do not result in loss of revenues to other African countries.

However, it is very important that the promotion of these legitimate activities does not become mixed up with promoting a level and type of offshore activity that could harm the economic prospects for millions of poor Africans.

How the use of Mauritius in a global business structure can be linked with tax dodging

As mentioned above, ActionAid has already identified the role that Mauritius played in the tax dodging activities of two multinational companies, SABMiller and Associated British Foods. In the case of SABMiller the company set up a new company, MUBEX, in Mauritius in 2008, to manage some of its centralised procurement for the region (a role previously performed in South Africa). This meant that some SABMiller breweries across Africa, including Accra Breweries in Ghana and Tanzanian Breweries, were buying supplies from MUBEX rather than directly from suppliers as before. ActionAid found that these companies' profit levels fell when they began purchasing via MUBEX, suggesting that they may have incurred greater costs as SABMiller tried to maximise the profits made in Mauritius, where they may have been taxed as low as 3%.

Another specific example of how tax havens such as Mauritius are used by companies to reduce their tax bills in developing countries is IndoFood. Indofood is an Indonesian company that set up a subsidiary company in Mauritius and then used a 'back-to-back loan' to direct money from an international investor into Indonesia.Had the loan been made directly, the investors would have needed to pay a high withholding tax on the interest payments received (which inevitably would have resulted in a higher interest rate paid by IndoFood). By directing the loan, and the interest payments in return, through the subsidiary in Mauritius, IndoFood was able to reduce its interest payments and the Indonesian Government received a lower level of revenue. This example is for an Indonesian company, but the set-up could apply to a company operating in any one of a number of African or Asian countries where similar tax treaties are in place with Mauritius. The only reason we know about this specific case is that the whole scheme fell apart when Indonesia axed the tax treaty between itself and Mauritius, and the case ended up in a UK court, thus moving out of the shadows and into the public domain.[43]

A Challenge to Barclays

There is little doubt that, while Barclays may not be directly offering tax planning services (and indeed is at pains to point this out) Barclays is heavily involved in promoting and facilitating the use of tax havens by investors in Africa which can lead to a loss of tax revenues in African countries.

There is no accusation of illegality in any of the information in this briefing but we do believe that Barclays needs to do far more to show that it is living up to the standards and principles that it sets for itself and that it is able and willing to act responsibly and to become a positive force for good in Africa. This means that Barclays has to stop promoting the opportunity for African businesses and individuals to move their money into tax havens.

We are asking Antony Jenkins, Chief Executive Officer of Barclays, to:

Live up to Barclays' corporate responsibility principles by publicly committing to:

- close down Barclays' offshore corporate
- eliminate all activities in tax havens that do not support the real economic substance of its customers' business.

Comply with the highest standards of transparency on tax matters by publishing:

- a strategy on tax matters (as already required to be shared with HMRC) which spells out how Barclays will close down these operations, and the timeframe for doing it
- details of profits, turnover, staff numbers/costs and numbers of clients, broken down by onshore and offshore activity for each subsidiary and permanent establishment, in each remaining tax haven.

Prove that Barclays intends to play a positive role in helping African countries to collect their fair share of tax by:

- demonstrating that Barclays has a constructive and fully transparent relationship with the relevant African tax authorities and actively supports the development of strong local tax collection systems
- explaining how Barclays intends to support the development of strong onshore finance sectors in the African countries in which it operates.

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