actionaid

"There is a 'way to do tax' that is responsible in its attitude to the society within which the company operates, and which is good for business."
KPMG Business School

Tax responsibility
an investor guide

About ActionAid

ActionAid is an international non-governmental organisation working in 45 countries worldwide, and our positions and recommendations reflect the experiences of our staff and partners in Africa, Asia, the Americas and Europe. Our vision is a world without poverty and injustice in which every person enjoys the right to a life with dignity. We work with poor and excluded people to eradicate poverty and injustice. In 2003 we became ActionAid International and moved our global headquarters from the UK to South Africa. Our rights-based approach, which looks at the systemic causes of poverty, forms the foundation for our development work. We play a leading role in the debate in the UK and globally around tax justice, aid effectiveness and accountability for developing countries.

Contents

The purpose of this guide

> **"There is a 'way to do tax' that is responsible in its attitude to the society within which the company operates, and which is good for business."**
> KPMG Business School[1]

This guide is aimed at investors seeking to examine corporate tax policy and practices. Tax is increasingly under the spotlight, intensifying financial, regulatory and reputational risks in this area for companies. Where tax practices are aggressive, they can also undermine the ability of governments in developing countries to provide public services, which is why international development organisations such as ActionAid, governments and international organisations are increasingly seeking a socially responsible approach to corporate tax.[2]

In this climate, investors need clear benchmarks to gauge such risks, particularly in navigating often contradictory claims by businesses, journalists, campaigners and tax authorities.[3] Clear, verifiable benchmarks would also help companies to cut through claim and counter-claim, enabling them to communicate their tax policies and practices, and the true levels of risk associated with them.

This guide is intended as a practical contribution towards defining such benchmarks across three broad areas of tax responsibility:

- a responsible tax policy (content)

- responsible management of tax policy (processes)

- responsible tax reporting (transparency).

These areas are explored in more detail in our 2011 paper on 'Tax Responsibility'.[4] This guide operationalises the principles developed in that paper.

Across these three areas we outline seven indicators of a responsible approach to tax which investors and other corporate stakeholders could use to enquire about a company's tax planning, management and practice.

This guide is in three sections. The first summarises some of the risks for companies associated with aggressive tax practices, especially in developing countries. The second section outlines three steps companies can take to reassure investors. The final section sets out seven possible criteria on tax responsibility, and provides questions that can be asked by investors to help determine a company's risk and performance against these seven criteria.

To provide examples of how these questions might be used, we've used the seven criteria to survey the FTSE100. While none of the FTSE100's responses was complete enough to enable a concerned investor to assess its tax behaviour against all seven criteria, we have been able to find useful examples under each criterion. These examples may provide a 'minimum standard' of response that can be expected from a company, and illustrate what further questions may be needed to assess risks adequately. (It should be noted that none of these examples constitutes an endorsement for a company's tax policy or practices. Some include companies about which serious concerns have been raised in relation to other areas of their tax behaviour).

Benchmarking the responsibility of a tax policy's content will inevitably be more controversial than benchmarking the management of that policy. This guide does not provide a definitive list of acceptable and unacceptable tax planning – over which there is currently no consensus between governments, investors, campaigners and some companies. Instead this guide seeks to equip investors with tools to engage with companies on acceptable levels of risk associated with tax policy and planning.

Summary

What is tax responsibility?

A responsible approach to corporate tax incorporates at least three elements:

A **A responsible tax policy**
A clear, publicly communicated tax policy, which aligns the company on a tax risk management scale; sets out the company's approach to tax negotiations; and rules out specified aggressive tax practices.

B **Managing tax planning**
Measures for ensuring that the (responsible) tax policy is implemented throughout the group: including communicating the policy, training relevant employees, setting out compliance mechanisms and providing mechanisms for identifying non-compliance.

C **Reporting on tax responsibility**
Detailed published information on where and how a company pays tax – in each jurisdiction where it operates – sufficient to ensure that company practice matches policy, and that investors can gauge risks associated with the company's tax practices.

Seven criteria to help assess tax responsibility

Tax policy

1. Who sets the policy, and who provides input?
2. Who has responsibility and how is the policy reviewed?
3. How does the content of the policy address risk?

Tax management

4. What systems are in place to implement the policy?

Reporting

5. Is the tax policy available?
6. How much tax is paid, and where?
7. Is detailed information given on subsidiaries in tax havens?

Key questions for investors to ask

A Tax policy

Key question	Indicators
1 Who provides input and who sets the policy?	- Active board-level involvement in setting, approving and reviewing tax policy - Corporate responsibility and other relevant non-financial staff involvement in setting tax policy
2 Who has responsibility and how is the policy reviewed?	- Board-level oversight of tax policy - Regular reviews of tax policy - 'Extraordinary' review of tax policy triggered when new risks emerge - Reviews include feedback regarding impact of tax practices on all countries where the company is tax resident
3 How does the content of the policy address risk?	- Policy rules out aggressive tax practices - Policy defines the level of risk acceptable in the company's tax planning - Policy includes qualitative and quantitative benchmarks - Policy provides for an assessment of tax revenue impact to accompany all major business decisions - Policy outlines criteria for tax negotiations

B Tax management

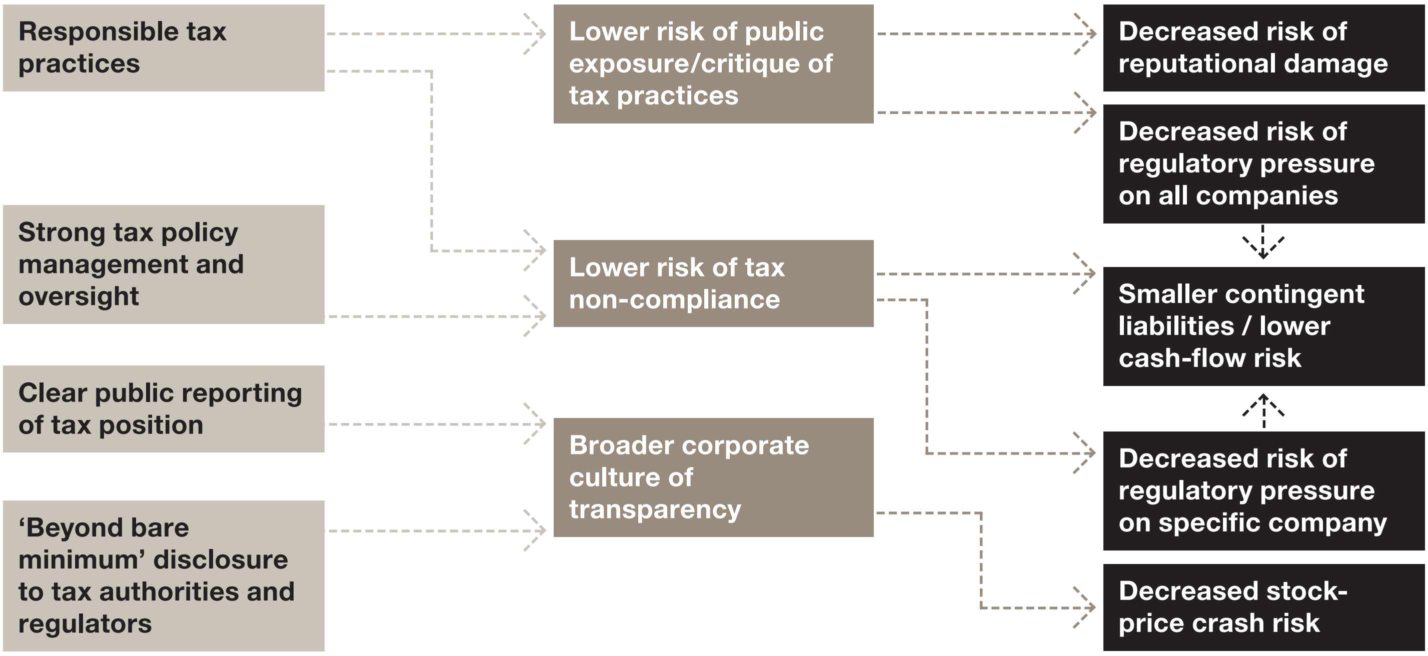
Key question	Indicators
4 What systems are in place to implement the policy and ensure compliance?	- Policy and code of conduct are communicated to employees - Criteria for performance management of staff involved in implementing the tax policy are outlined - Relevant staff are trained on how the company expects them to implement the policy - The need to address tax as a corporate responsibility issue is clearly articulated - Secure communication channels are provided for employees to seek advice or voice concerns - Procedures to remedy non-compliance have been created

C Tax reporting

Key question	Indicators
5 Is the tax policy available?	- The tax policy and details of any relevant codes of conduct are published - All tax staff are aware of the contents of the policy, including external tax advisers and auditors
6 How much tax is paid, and where?	- Depth: a breakdown of tax payments consolidated at the country level and other significant financial information to set them in context is available - Breadth: information is provided for all jurisdictions in which the company (or its subsidiaries) are tax resident. This should include a full list of subsidiaries by jurisdiction
7 Is detailed information given on subsidiaries in tax havens?	- The company structure is publicly available - Basic financial information is published for each subsidiary based in a tax haven (e.g. turnover, staffing, profits, tax paid) - Accounts are available on the company's website for every subsidiary company

The business case for tax responsibility

Figure 1: tax responsibility can mitigate both company-specific risks, and risks in the wider regulatory and public environment



Aggressive tax practices are a financial risk

At least three types of direct financial risks are associated with aggressive tax planning. Of course, regulatory and reputational risks can also result in direct financial risks for investors.

1. Stock price crash risk
The complicated, secretive measures needed for aggressive tax practices arguably encourage the hoarding of bad news until there is a tipping point, and all the bad news comes out at once, leading to a stock price crash, as with the examples of Enron and Tyco. Beyond these anecdotal examples, there is robust empirical evidence that tax avoidance is associated with US stock price crash risk.[5] The secrecy involved in aggressive tax practices may also encourage other activities that may not be in the best interests of investors, such as earnings manipulation.[6] The development of cultures of extreme secrecy within companies may provide the environment for employees and managers to commit other, fraudulent abuses, as was alleged in the case of US investment bank Bear Stearns in the years leading up to its 2008 collapse.[7]

2. Compliance risk
An aggressive tax position can increase the likelihood of an audit by tax authorities, creating substantial compliance costs as well as the risk of adjustments increasing the tax liability. For example, in Argentina, the world's four largest grain traders are the subject of an official tax investigation, the costs of which could run to hundreds of millions of dollars for the companies involved.[8] Public attacks on companies' tax affairs can also force a re-examination of tax settlements, as happened in the cases of Goldman Sachs and Vodafone in the UK, with both financial risk and reputational damage for the companies concerned.[9]

3. Cash flow risk
Aggressive tax practices can reduce certainty for a company, as they can result in significant contingent tax liabilities on the company's balance sheet. If such liabilities become due at a later date, they may then damage the company cash flow at that date.[10] Regulatory risk can also result in cashflow risk, as loopholes may be closed at a future date.[11]

Aggressive tax practices are a reputational risk

Several high-profile cases of companies alleged to have been avoiding corporation tax have led to growing public awareness in the US, EU and developing countries on this subject. This has already resulted in brand risk for some companies, as for Starbucks; and in Starbucks' case has materially increased the company's tax bill, at least in the UK.[13] In a 2012 international survey of CFOs by the international tax advisory firm Taxand, 87% of European CFOs (and 62-64% of Asian and American CFOs) believed that exposure of corporate tax planning has a detrimental impact on a company's reputation.[14]

In addition to direct brand risk, competitors are likely to take advantage of the public mood. For example, in February 2012 HMV criticised its online rivals for avoiding UK corporation tax; and Costa Coffee has promoted its 25% effective tax rate in comparison to its competitor Starbucks.[15]

Reputational risk also affects the operations of multinational companies in developing countries. For example, when Tanzanian Prime Minister Mizengo Pinda published a list of top taxpaying companies in 2011, important parliamentarians and media outlets reported the absence of a number of companies with large operations in the country who might be expected to appear on the list.[16]

"Reputational damage may lead to liabilities for external costs associated with a company's operations, greater difficulty in permitting [obtaining permits] that could lead to project delays or cancellation, or the loss of favourable tax status or other forms of government financial assistance."
Calvert Investments[17]

"Corporate taxes are a giant black box for investors… if investors learn that a company bears more risk than was known before, that could have an impact on their estimates of future cash flows and the return that investors would demand (i.e., increased tax risk should increase cost of capital), which could affect valuations."
David Zion, a Managing Director at Credit Suisse[12]

Aggressive tax practices are a regulatory risk

As public concern over aggressive tax practice increases, revenue authorities are likely to want to be seen to be focusing resources on companies with reputations for taking an aggressive tax position. This is especially relevant for the governments of developing countries, where corporation tax often constitutes a greater proportion of revenue than in developed countries. Eighty-two of the FTSE100 also operate in the developing world.

Investigating the tax practices of a multinational company can be extremely difficult even for revenue authorities with adequate capacity,[18] not least because of the international nature of profit shifting and the secrecy of tax havens. This complexity has already led some countries, including developing countries, to introduce generalised restrictions to aggressive tax practices,[19] as witnessed by the spread of general anti-avoidance rules in the UK, India and elsewhere.[20]

Since 2009, powers allowing tax authorities to engage in greater international cooperation on audits and similar measures have also been growing, for example through the expanding membership of the OECD/Council of Europe's Multilateral Convention on Mutual Administrative Assistance in Tax Matters, which gives tax authorities powers to cooperate on cross-border audits, conserve and recover tax on behalf of other authorities. Likewise, following media coverage of ActionAid's allegations against SABMiller's tax practices in Africa and Asia, tax authorities from several of these countries met in June 2011, initiating the development of a new African multilateral tax treaty whose text was finalised by a meeting of representatives from 21 African countries in August 2012. [21] This is likely to significantly increase African tax authorities' powers to scrutinise the cross-border tax affairs of UK multinationals in the future.

Developing countries' regulatory efforts on tax behaviour have been typically constrained by two contradictory impulses with regard to corporate taxation: one to ensure that potential benefits in terms of tax revenue are realised, the other to create an attractive fiscal climate to encourage foreign investment. Yet there is growing evidence that lower tax rates and incentives may not attract sufficient investment to compensate for the accompanying revenue losses, are a lower priority for foreign investors in most developing economies than other aspects of the business environment,[22] and have not been a primary factor in the success of developing countries routinely used as models of economic growth such as Rwanda.[23] Governments reviewing this evidence may be encouraged to take action against companies perceived to be employing aggressive tax practices. This is already evident in the more assertive tax position of more powerful developing countries such as Brazil and India, which may embolden others.[24]

Public outcry over the tax practices of mining companies in Zambia, for example, recently led to the announcement of a mining-specific audit programme by the new Zambian government aiming to raise an additional US$500 million-US$1 billion in revenues.[25]

Example: Corporate tax in Zambia – regulatory pressures and investor concerns

The taxation of multinational companies has become a political hot potato, not only in the UK but in a number of other countries. These include Zambia, which has seen a series of high-profile tax scandals involving the country's mining sector.

In 2008, with annual copper exports at US$2 billion and tax revenues from copper mining companies at just US$30 million, the Zambian Revenue Authority (ZRA) engaged international auditors Grant Thornton and Econ Poyry to undertake pilot tax audits of four Zambian mining companies. [26] In February 2011 the draft report of one of these audits – for the Mopani Copper Mine operated by London Stock Exchange-listed Glencore International Plc – was leaked in the Zambian media. It alleged that the company had minimised tax liabilities by undervaluing copper exports to a fellow Swiss subsidiary and inflating operational costs.[27] Glencore has denied these allegations, and has argued that the audit report was "confidential, preliminary and an incomplete draft", and "contained fundamental factual errors".[28] Nonetheless the ZRA reportedly revised the company's tax bill significantly upwards in June 2011, according to the then Zambian finance minister.[29]

Political controversy is now leading to much wider regulatory, legislative and operational pressures on multinational companies in Zambia. The Norwegian government is funding a dedicated mining taxation unit within the Zambian Revenue Authority to increase tax audit scrutiny in this sector.[30] Public calls for the reintroduction of a windfall tax on mining companies' turnovers, abolished in the 2009 budget, became a key election issue in 2011, and have continued since. And the 2013 Zambian budget introduced a new raft of tax measures for multinational companies, including increased withholding tax rates on royalties, interest payments and dividends; tightening thin capitalisation regulations on mining companies; and removing significant tax incentives previously enjoyed by multinational companies.

Meanwhile there are indications that increased tax and regulatory scrutiny of particular companies has had knock-on effects on investor confidence: for example, the draft audit findings from the Mopani Copper Mine were explicitly cited a month later in a decision by the European Investment Bank, which had previously financed the company's Zambian copper smelter, that it would refuse further financing requests from Glencore or its subsidiaries.[31]

The business case for greater openness

A company operating a responsible approach to tax will publicly provide more information than is legally required in the annual report and financial statement. Nonetheless, tax departments have sometimes argued that even a company operating a responsible approach needs to keep this information confidential. PwC presents the business case for greater transparency in the table below, and concludes that greater openness outweighs the risks. In addition to the benefits listed in the table below, public disclosure can also encourage a more prudent approach to risk management generally.

Leaders believe that the benefits of greater transparency outweigh the potential risks.

Potential benefits

- Increased awareness of the tax and economic contribution of business
- A more balanced view of tax contributions
- Demonstrable board involvement in tax strategy and governance
- Tailored communication with key stakeholder groups
- Respond to transparency initiatives and contribute to debate on tax reporting
- Longer-term reputation risk benefits
- Better-connected business decision making

Potential risks

- Conflicting interests of different stakeholder groups
- Difficulties of communicating a complex, technical area
- Scope for misunderstanding or misuse of data
- Potentially conflicting pressures of tax planning and tax transparency
- Commercial and confidentiality issues
- Resource, time and cost

PwC, 2011[32]

What does tax responsibility look like?

A workable definition of tax responsibility – or irresponsibility – is unlikely to be confined simply to a list of acceptable and unacceptable tax practices, for two reasons:

- The variety of companies' structures, business models and regulatory regimes precludes such a definitive list.
- The impact of a given tax practice is dependent on where and how it is carried out, varying according to whether it affects a developed country's well-protected tax base, or the smaller and far more vulnerable tax bases of many developing countries (see box below).

Rather, tax responsibility encompasses the three areas of a company's tax function outlined above:

A the content of its tax policy

B the development and management of that policy

C the availability of sufficient information on tax policy and practice for investors and other stakeholders to judge risks associated with a company's tax behaviour.

Every operating country matters

The core of our view of tax responsibility is that the impact and risks of tax practices cannot be adequately gauged with information focused exclusively at a global or group level.

Companies typically adopt tax strategies (and subsequent reporting) that focus on the global picture: the overall effect of their tax planning on global profits and dividends. This has broadly been confirmed by our survey of the FTSE100.

This approach disguises the risks faced in particular countries. It can also disguise abusive tax practices undertaken through intra-group transactions – such as shifting profits from developing countries to tax havens.[33] Finally, whether the risk associated with a transaction is material should be context-specific, not only related to the size of the transaction relative to the entire corporate group.

A company's subsidiary in a developing country may be relatively small compared to the global size of the corporate group, and still be a significant taxpayer in that country. For example, Barclays' African businesses account for just 9% of the group's global income; yet they are amongst the biggest businesses in each of the countries where they operate; its Kenyan subsidiary, for example, is by some measures Kenya's most valuable company, with an operating income 60% the size of the Kenyan health budget.[34] In such instances, the impact of a tax-avoiding transaction could be significant in that country, and the risks run by the company become material despite the apparently small size of the subsidiary or the transaction.

Investors can thus only appreciate the possible risks by enquiring about how the company manages risks in each country where it operates, and by examining disaggregated financial information that would reveal potentially aggressive tax practices. An example of relevant financial information would be if a company reported high profits in a tax haven that had otherwise low levels of economic activity. As this guide shows, such information can be difficult to obtain.

Tax risks also need to be considered beyond the tax policy itself, since a decision that may be consistent with a company's overall tax policy can have an unintended impact on developing countries. For example, if a company centralises procurement into a low-tax jurisdiction, it can achieve many non-tax efficiency savings. Tax efficiency may play only a small role in this decision, and tax savings may be relatively small. And yet, the tax lost to a developing country can be quite significant, and can be compounded by the loss of high-value jobs. This can increase reputational risk for the company, and also the risk of regulatory challenges.

One way to mitigate such risks is to involve the corporate responsibility team in tax planning decisions, working closely with the tax team to assess the likely impact on the tax revenues of each of the countries in which a company operates.

A

A responsible tax policy

A responsible tax policy should have two aspects – the process for creating the policy and the content of the policy. The process is perhaps easier to assess than the content, and it should involve: Board-level oversight and ownership; input from relevant staff; and regular reviews.

Board-level involvement in the governance of tax decisions is expected by revenue authorities. One element of the UK revenue authority's definition of a 'low risk' taxpayer is that the company "has clear accountabilities up to and including the board for the management of tax compliance risk and tax planning".[35]

Input to determining the tax policy should not be limited to the tax function within the company and/or the Chief Financial Officer (CFO). It should, for example, include corporate responsibility staff.

Reviews of the tax policy should take place routinely, but also when triggered by potential risks, such as major shifts in public opinion, or significant changes in tax legislation in one of the jurisdictions in which the company operates. The review should also provide an opportunity for assessing the impact of the company's overall tax position on the countries in which it operates, so that changes can be made to minimise risks.

Content of the policy should clearly align the company on a risk management scale, such as that proposed by Pricewaterhouse Coopers (PwC).[36] This positioning should be explicit – if a company adopts a conservative low-risk policy on tax, it should rule out the use of specific aggressive tax practices. It should also outline the company's approach to tax negotiations, either when arranging advanced pricing agreements or exemptions when entering a new jurisdiction, or in its ongoing revenue authority relationship. Multinationals have significant power during initial tax negotiations with a developing country. From a risk management perspective, if a business is criticised for paying very little or no tax in a given country, the reputation risk may not be very different if this is a result of negotiations with the government or of subsequent aggressive tax practices, as suggested by the controversy – well founded or not – over tax settlements with the UK's HMRC dubbed 'sweetheart deals' in the UK media.

"The challenge for boards is to determine how best to achieve the goals of legal compliance, shareholder return, and corporate responsibility. It is good practice to formalise the response to this challenge into a documented tax policy, and to keep this up-to-date through regular board-level reviews."
Henderson Global Investors[37]

B

Managing compliance with the policy

According to PwC, tax risk management is a relatively new idea in tax departments.[38] And given the complexity of multinational company group structures, having a board-approved policy is unlikely to be sufficient to ensure day-to-day compliance with that policy. In some cases, tax practice is the independent responsibility of the CFO of a subsidiary, which may result in discrepancies with the official group tax policy if that policy is not properly disseminated through the company.[39]

Mainstreaming a responsible approach to tax practice within a company should mean reviewing performance management criteria, to ensure that staff are measured against the risks faced by their planning and practices in each jurisdiction for which they have responsibility.

The FTSE4Good anti-bribery index provides an example of how to incorporate a similar policy throughout a corporate structure.[40] This index lays out criteria for managing a policy throughout the company, including communicating the policy to all employees and training relevant employees in the policy. It also requires formal compliance mechanisms, including confidentiality for staff reporting non-compliance, and remedies for non-compliance.[41]

C

Reporting on tax responsibility

Greater transparency on tax serves three purposes in reducing tax-associated risks. First, it promotes compliance with the tax policy by enabling independent verification that company practice matches policy. Second, it allows an investor to understand the basics of a company's tax position and its effects across the company's operations. Third, it can also have a positive impact on company reputation itself, by publicising responsible tax policies and practices, and demonstrating the corporate income tax paid in developing countries.

At present, however, the typical information provided in most company financial statements does not provide a breakdown of tax figures by jurisdiction. Instead it provides a consolidated tax return covering all its subsidiaries. This provides little useful information to help an investor assess whether the taxes paid in each jurisdiction are appropriate. In order to determine whether a company's responsible tax planning matches its policy, information must be provided in two dimensions:

Depth: a breakdown of different types of tax payments (and not just overall tax or 'total tax contribution'); combined with supplementary information such as turnover, profit, and staff levels, that allows a comparison of these payments with the company's economic activity in a country. This information is often available in the financial accounts of each subsidiary company, but in many countries, financial statements are not publicly accessible unless a company is listed on the stock exchange, so companies should disclose financial statements for all subsidiaries through their websites.

Breadth: information should be provided for all jurisdictions in which there is a taxable subsidiary, regardless of its function. This includes jurisdictions that contribute only a relatively small part of the global income, as these may still be material risks, as noted above.

Seven criteria for tax responsibility: surveying the FTSE100

The final part of this guide provides practical examples to show what our seven tax responsibility criteria may look like in practice, and how widespread they are amongst large multinational companies.

During 2012 we surveyed all members of the FTSE100 (as of 25 November 2011), sending questionnaires to investor relations staff in each company for feedback. We received 40 responses. For companies that have not responded, we have attempted to complete the questionnaires using information available online, in annual reports and in corporate responsibility reports. The questionnaires are available from ActionAid's website.[43] We would be pleased to provide further details about particular responses on request.

"[Businesses should] be in a position to give a reasoned justification of their approach to key tax issues such as the use of tax minimisation techniques, which is consistent with their approach to other CSR issues."
KPMG Business School[42]

1

Tax policy: who provides input?

Purpose of criterion

Given the risks involved, setting tax strategy should involve more than just a company's tax and financial management functions. It should include:

- active board-level involvement in setting, approving and reviewing tax policy
- corporate responsibility and other relevant non-financial staff involvement in setting tax policy.

Surveying the FTSE100

29 companies provided information on input to tax policy, either publicly or in response to ActionAid. Of these, 21 referenced the board or one of its sub-committees, such as an audit committee. The other companies reported the Chief Financial Officer as having final responsibility, which is board-level oversight but does not suggest the rest of the board is involved. Three companies – Burberry, Experian and Marks and Spencer – mentioned the involvement of corporate responsibility staff.

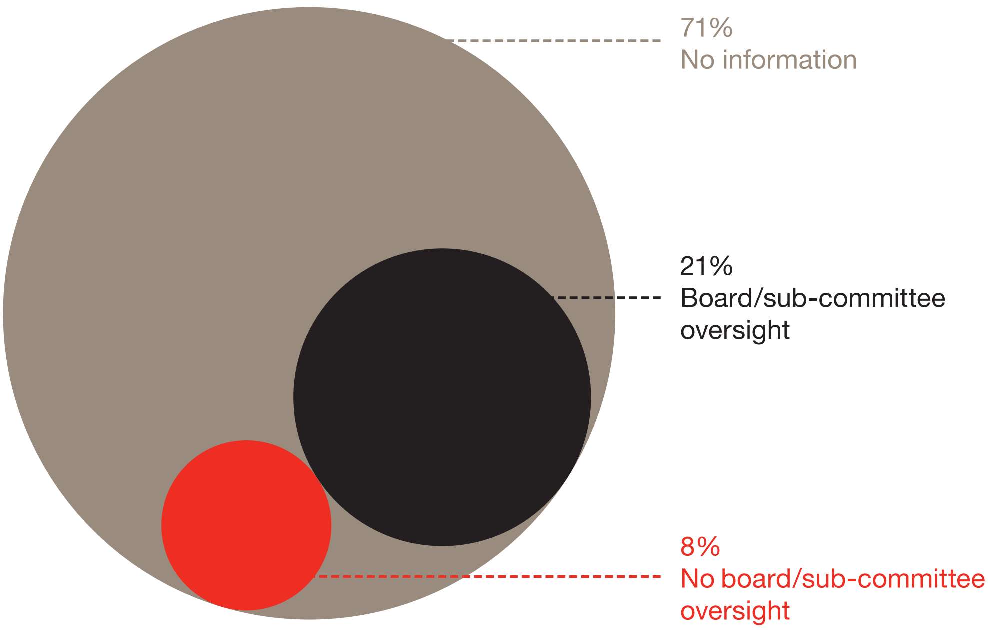
Emerging good practice

In addition to referencing the involvement of corporate responsibility staff, Burberry reported that non-executive directors – who hold legal responsibilities to ensure good corporate governance – are "responsible for monitoring all significant tax matters".[44]

Sample follow-up questions

- How are corporate responsibility staff or others involved with tax policy?
- Are they only consulted, or are they also able to challenge financial colleagues on positions taken in the tax policy?[45]

Figure 2: Board oversight of tax policy?



2

Tax policy: who has responsibility and how is the policy reviewed?

Purpose of criterion

Regular reviews with wide-ranging scope and participants are necessary to ensure the tax policy adapts to potential risks. This should include:

- board-level oversight of tax policy
- regular reviews of tax policy
- 'extraordinary' review of tax policy triggered when new risks emerge
- reviews include feedback regarding impact of tax practices on all countries where the company is tax resident.

Surveying the FTSE100

39 companies provided information on reviewing tax strategy, either publicly or in response to ActionAid. Of these, four – G4S, SABMiller, Smiths Group and Vodafone – report that the policy is also reviewed when risks emerge.[46]

Typically, tax policy review appears to be the responsibility of the audit committee, which may cover a wide range of issues, and may not contain the expertise necessary to review a tax policy. Further information would be needed about both the expertise available on the audit committee, and the nature of the review – is it simply to check compliance with the policy, or does it also have the opportunity to update the policy?

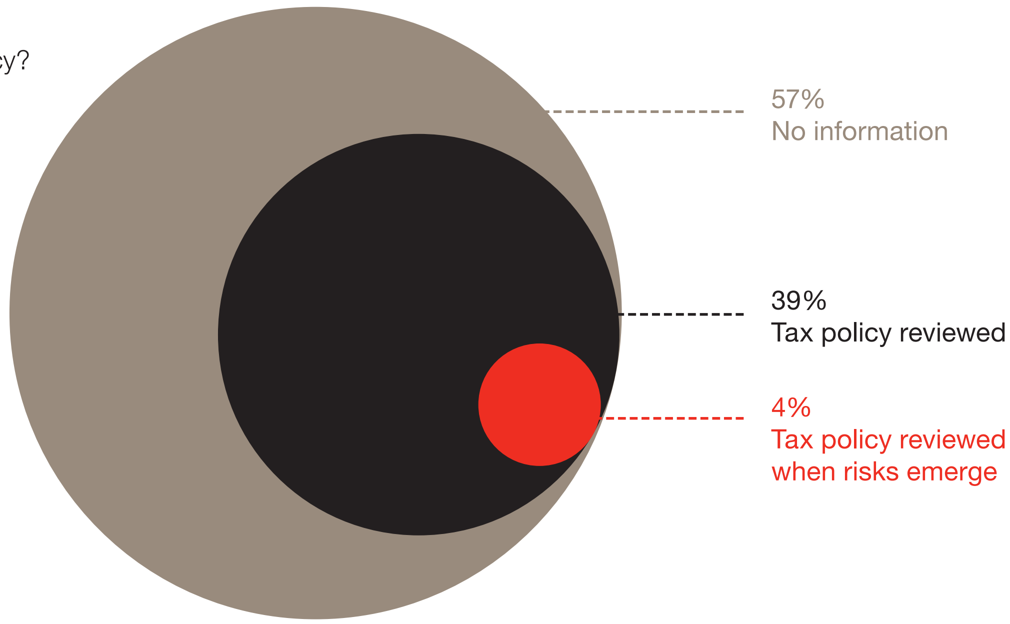
Emerging good practice

SABMiller has a specific Group Tax Risk Committee, chaired by the Chief Financial Officer, responsible for reviewing tax policy.[47] The company also provided information on what might trigger a review. These include material changes to legislation, the company's business, or tax industry developments. An investor should enquire what 'material' means in this context. It may not cover political or public opinion shifts that change the calculus of reputational risk. And as mentioned before (p11) 'material' changes may not cover changes in some developing countries, where the company may be a significant taxpayer but where changes in tax position may have a small impact on the post-tax profits of the global company.

Sample follow-up questions

- What events or conditions trigger reviews of the tax policy?
- Do these include political, legal or public-opinion changes regarding tax?
- Do they include events or changes in developing countries – where changes in tax position may have a comparatively small impact on the post-tax profits of the global company, but where the company may be responsible for a significant proportion of the government's revenues?
- What tax expertise is present in the committee or grouping responsible for reviewing the tax policy (e.g. audit committee)?

Figure 3:
Risk-responsive tax policy?



3

Tax policy: how does the content of the policy address risk?

Purpose of criterion

A tax policy should outline both the principles governing the company's approach, and how this will operate in practice, for example by detailing approved and non-approved tax practices, structures and tax negotiating positions.

A responsible tax policy should:

- rule out specified aggressive tax practices
- define the level of risk acceptable in the company's tax planning
- include qualitative and quantitative benchmarks
- provide for an assessment of tax revenue impact to accompany all major business decisions
- outline criteria for tax negotiations.[48]

Surveying the FTSE100

Only three of the companies surveyed publish a substantial tax policy or position (see also criterion 5).[49] In total, 34 companies provided some indication of their approach to tax, either publicly or in response to ActionAid. However, the quality of this information is limited.

Even from the information received, we can identify a range of positions from companies that do not publish a full policy. Old Mutual provides a clear statement that it regards tax risk as the risk involved in not paying an appropriate level of tax.[50] Imperial Tobacco explicitly aims for stability in tax payments, though it does not yet regard tax as a material issue for its formal responsibility framework.[51] Schroders states that it "does not undertake any tax planning that aims to achieve a result which we believe is contrary to the intentions of the legislature".[52] Other companies – like Legal and General – expressly seek to be in the 'low risk' category of UK revenue authorities' tax compliance risk rating.[53]

Emerging good practice

The comparatively full description of Rio Tinto's approach to tax in its annual report goes beyond a statement of legal compliance. It includes seeking good relations with tax authorities, and obtaining no significant benefit from tax havens.[54] 'Good relations' could be explained in greater detail – for example, setting standards for responding to enquiries from revenue authorities.

The policy's statement that it receives no significant benefit from tax havens would also need further clarification as to how the company defines a "significant benefit". Such elaboration would be particularly important for investors seeking to gauge tax risk given the location of 17% of Rio Tinto's subsidiaries in tax havens, whose functions are not, in most cases, disclosed (see criterion 7 below).[55]

Three further companies – Hargreaves Lansdown, Rolls Royce and Wm Morrison Supermarkets – report they do not engage in artificial tax planning.[56] This policy sends a strong signal to tax functions. Investors may wish to understand the policy in more detail, and particularly which tax planning practices are explicitly ruled out, since it is also possible to take advantage of existing non-artificial corporate structures to implement an aggressive tax practice.

Sample follow-up questions

- Where the tax policy rules out aggressive tax practices, how are such practices defined?
- Where the tax policy provides for an assessment of the tax-revenue impact/benefit of an unacceptable tax practice, what is the threshold defined for that impact/ benefit?

4

Tax management: what systems are in place to implement the policy?

Purpose of criterion

Responsibly managing a tax policy across a multinational company requires more than simply producing and promulgating the policy itself. It requires detailed procedures that regulate the tax function across the whole corporate group in accordance with the policy; that promote and incentivise compliance with the policy; and that monitor such compliance.

Responsible tax policy management should involve:

- communicating tax policy and code of conduct to employees
- outlining criteria for performance management of staff involved in implementing the tax policy
- training relevant staff on how the company expects them to implement the policy
- clearly articulating the need to address tax as a corporate responsibility issue
- providing secure communication channels for employees to seek advice or voice concerns
- creating procedures to remedy non-compliance.

Surveying the FTSE100

26 companies provided some information on how tax decisions are made across their multinational structure, either publicly or in response to ActionAid. These appear to represent a wide range of approaches. At least 15 companies appear to either delegate decision-making to national-level finance staff (sometimes with help from external consultants) or manage tax in the same way they manage other policies, which presumably involves national or subsidiary-level responsibility. Three companies reported regional-level decision making, where these 'regions' could also represent significant jurisdictions.[57] Two companies reported some global oversight of the tax function, either through head office monitoring of business units' implementation of tax policy (Old Mutual); or through an annual statement of compliance from all tax managers (Diageo).

Emerging good practice

Diageo provides a detailed description of its tax management. Its Global Tax Policy clearly identifies key staff across the group who are expected to know the details of the policy. The tax policy itself requires that the tax function should have regard for corporate responsibility, and that tax staff should communicate this to external advisers. It also requires training for employees where necessary.

Diageo requires that staff report any suspected non-compliance, but this is significantly weakened by requiring an employee to inform their line manager first. As a result, any systematic or institutional non-compliance may not be reported for fear of repercussions. By contrast, G4S has an explicit reference to whistle-blowing over tax concerns, which can be done anonymously via management or through an internal telephone hotline.[58]

Sample follow-up questions

- How is staff awareness of the tax policy monitored/ assessed?
- Are employees able to voice concerns about tax practices confidentially, without being required to go through their line managers?
- What are the specific remedies or penalties for non-compliance with the tax policy?

5

Reporting: is the tax policy available?

Purpose of criterion
Openness regarding corporate tax policy enables investors to gauge levels of tax risk within a corporate group, and can help assuage investor and public concerns should risks materialise.

As part of a transparent tax policy, companies should:

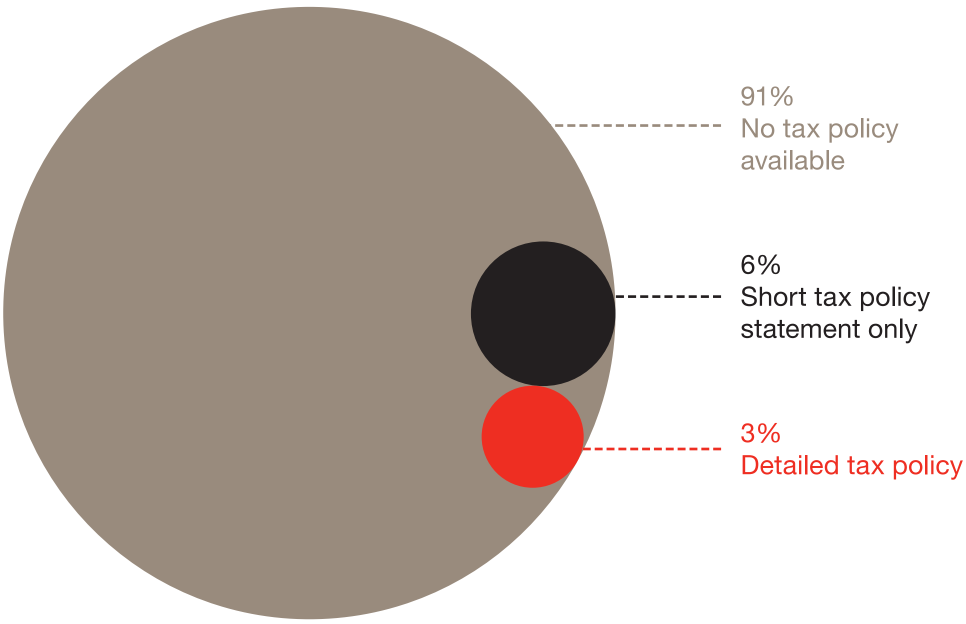
- publish the tax policy and details of any relevant codes of conduct
- ensure all tax staff are aware of the contents of the policy, including external tax advisers and auditors.

Surveying the FTSE100
Only nine companies reported on their tax policy, either publicly or in response to ActionAid. Of these, six provided only a short description of their approach to tax.[59] Perhaps these statements are regarded more as a set of principles under which the tax staff will operate, but more elaboration would help to gauge risk associated with the company's tax practices, and also help staff with the practical implementation of the policy.

Emerging good practice
Vodafone's published tax policy is especially detailed, providing several relevant documents, including an over-arching 10-point Tax Code of Conduct and a detailed Tax Risk Strategy across 12 sections. In addition, the appendix references five related documents (although none is publicly available), including a risk scale and a specific transfer pricing policy.

Sample follow-up questions
- Does the published tax policy consist of just a statement of principles, or is detailed information also published about different areas of tax policy? (For example: standards for negotiations on tax incentives, holidays and amnesties; detailed principles of conduct for tax audits.)
- Are there specific policies published for particular types of tax practice? (For example: transfer pricing, tax aspects of mergers & acquisitions, tax-efficient supply chain management, the tax-efficient management of debt and losses within the group).

Figure 4: Is the tax policy made publicly available?



6

Reporting: how much tax is paid, and where?

Purpose of criterion

The accounting standards typically adopted in annual reports and financial statements are not sufficient to give an idea of whether a company is behaving responsibly in its tax affairs. Further information should be provided for investors and other stakeholders to judge whether a given tax policy is really reflected in the company's tax position. Tax information is needed in two dimensions.

Depth

A breakdown of tax payments consolidated at the country level and other significant financial information to set them in context.

Breadth

This information should cover all jurisdictions in which the company (or its subsidiaries) are tax resident. It should also include a full list of subsidiaries by jurisdiction.

Emerging good practice

Cairn Energy is one of the companies that provides more detail, listing payments made to some governments. Investors might wish to ask further questions: in particular, only the information provided for India is broken down to indicate corporate income tax paid. Investors might enquire whether the payments listed for Bangladesh, Greenland, Tunisia and Nepal are aggregates of other taxes?

Surveying the FTSE100

25 companies provided some more detailed information on the taxes they paid, either publicly or in response to ActionAid's request. As the table below shows, the level of detail provided in these responses varied widely.

	Amounts of tax paid (increasing detail)			
Geographic (increasing detail)	Total tax contribution only	Tax contribution broken down into taxes collected/ withheld and taxes borne	Separate reporting of corporate income tax (amount and rate)	Adequate tax information plus interpretive information
Global only	2 [60]		4 [61]	
Regional	4 [62]			
Some jurisdictions disaggregated	5 [63]		7 [64] (+5 in 2 jurisdictions)[65]	
All operating jurisdictions disaggregated				

Payments to government 2010

	India	Bangladesh	Greenland	Tunisia	Nepal	Total
Payment to central government (including state owned companies)		1,667	2,525	159	218	**4,569**
Total profit oil and gas ($'000)	133,856	7,544				**141,400**
Production bonuses ($'000)	-					**-**
Corporation tax[66]	223,417					**223,417**
Payment to state/ local government (US$'000)[67]	82,677					**82,677**
Cess and royalties[68]	266,836					**266,836**
Others[69,70]	9,561				63	**9,624**
Total	**716,347**	**9,211**	**2,525**	**159**	**281**	**723,954**

Cairn Energy, 2010 Corporate Responsibility Report, p128-9 (N.B. Cairn Energy's 2011 CR Report is less detailed since it does not contain results for Cairn India, which was sold during the year to Vedanta Resources)

To assess tax payment information adequately, investors would also need contextual information to determine whether the amount of tax paid in a given jurisdiction is commensurate with the real economic activity in that jurisdiction. Centrica, for example, provides information on workforce (see below). As a result, we can quickly see that what might appear to be anomalously low tax payments (in India, Nigeria and Trinidad) may be related to the apparently small size of operations in those countries. For example, the Nigerian company has no staff so may be a non-trading entity. Likewise, no tax is paid in the Netherlands despite being an operation of 260 staff, so it would seem Netherlands is a material tax risk and investors can ask for more detail about the reasons for this apparent mismatch.

Note that none of the companies surveyed provided information on every jurisdiction in which they are located. For example, Centrica has subsidiaries in a further three jurisdictions, each of which is a tax haven.[71]

Centrica, survey response, 3 April 2012

Country of operation	2009/10 profit (US$ – million)	2009/10 Total paid in tax and royalties (US$ – million) to the country of operation	Total value of any payments and gifts to politicians and civil servants (US$)	Number of locally recruited employees	Number of total in-country workforce
United Kingdom	4,015	764	NIL	28,988	28,994
United States	152	33	NIL	3,137	3,146
Canada	133	36	NIL	2,381	2,388
Norway	42	NIL	NIL	24	30
Netherlands	59	NIL	NIL	254	260
Germany	6	NIL	NIL	18	18
Nigeria	NIL	NIL	NIL	0	0
Trinidad	NIL	NIL	NIL	3	6
India	NIL	NIL	NIL	1	2

Sample follow-up questions

- Are tax payments disaggregated into different types of taxes, and different levels (national/state/local)?
- Is information on tax payments accompanied by sufficient contextual information to determine whether the amount of tax paid in a given jurisdiction is commensurate with the real economic activity in that jurisdiction? For example, basic financial results for each jurisdiction; numbers of employees?
- Does the company produce and publish accounts of its subsidiary companies in each jurisdiction in which it operates?

7

Reporting: is detailed information given on subsidiaries in tax havens?

Purpose of criterion

While some companies' tax haven subsidiaries may represent legitimate domestic operations (for example, real sales or services provided commercially to consumers in those jurisdictions), tax haven subsidiaries are used by some companies in aggressive tax practices to shift profits from where key economic activity is taking place into a lower-tax jurisdiction. Investors should be especially concerned to receive information about these subsidiaries.

Transparent companies should:

- make the company structure publicly available
- publish basic financial information for each subsidiary based in a tax haven (e.g. turnover, staffing, profits, tax paid)
- provide accounts on the company's website for every subsidiary company.[72]

Surveying the FTSE100

Almost every FTSE100 company has subsidiaries in tax havens.[73] Fifteen companies responded to ActionAid about their tax haven subsidiaries.

Emerging good practice

Aggreko gave a statement of purpose for each tax haven subsidiary in response to our questionnaire.[74] But investors seeking an insight into tax risks would need further information about their function within the group. Dormant subsidiaries may pose no risk of profit shifting, or may be a component of a multinational aggressive tax planning structure. Likewise trading entities and holding companies in tax havens could be used for aggressive tax planning even if they have not been created for that purpose.

"For each country in which Aggreko operates, we ensure we pay the appropriate amount of tax so that we comply with the laws of the relevant country and with the group's tax policies and guidelines. For further information concerning our group tax strategy, we refer you to page 41 of our Annual Report [2011].

We assume that your view of the number of our subsidiaries located in tax havens was derived from the list published in the press on 11 October 2011.

With respect to the above, we would comment as follows:

1. Aggreko Barbados – dormant

2. Aggreko Financial Holdings (Cayman Islands) – Cayman company but UK tax resident and as such, subject to UK corporation tax.

3. Aggreko Middle East (Cyprus) – Trading entity for substantial operational depot business throughout the Middle East region. The tax rates applying to this business vary dependent upon the jurisdictions in which the trading activities take place.

4. Aggreko Hong Kong – Dormant but was a trading entity in Hong Kong and subject to Hong Kong tax.

5. Aggreko Ireland – Trading entity for substantial operating depot business in Ireland and subject to Irish tax.

6. Aggreko Singapore – Trading entity for substantial operational depot business in Singapore and subject to Singapore tax.

7. Delaware LLCs – part of the consolidated US tax return and pays US tax at the full US rate of 35%.

8. Aggreko Nederland BV – trading entity for substantial depot operations in the Netherlands and subject to Dutch tax.

9. Aggreko Euro Holdings BV – group holding company owning many European trading entities and subject to Dutch tax.

10. Aggreko American Holdings BV – group holding company owning our US sub-group of entities and subject to Dutch tax.

11. Aggreko Rest of the World Holdings BV – group holding company owning a number of our trading entities across the world and subject to Dutch tax.

12. Aggreko Investments BV – group finance and treasury company subject to Dutch tax.

13. Generatoren Koopmans – dormant entity.

Source: Aggreko, survey responses, 11 April 2011 and 24 April 2012

Sample follow-up questions

- Is information provided – either in published accounts or separately – on related party transactions involving subsidiaries in tax havens?
- What tax planning structures (if any) is each tax haven subsidiary involved in?

Conclusion

"It's to do with what our customers expect around a fair and level playing field and I suspect our customers do think both [UK and tax-haven-domiciled] companies should be treated in the same way."
Andy Street, Managing Director, John Lewis Partnership[75]

We have long believed that responsible tax practices make clear moral sense. But there is also growing evidence that they make clear business sense too. A combination of fiscal downturn, media attention and regulatory weakness has increased the financial, reputational and regulatory risks of irresponsible tax behaviour in the last two to three years. Investors risk bearing the brunt of this sea-change. Their long-term prosperity – as well as the long-term prosperity of the companies they invest in, and the economies and societies they operate in – depends upon companies and investors working together to develop responsible tax policies, tax practices and tax management and tax reporting.

Even 12 months ago, such an initiative seemed unlikely, with large companies wary of 'breaking away from the pack' on tax. Now some large UK companies – including major retailers like John Lewis and Morrisons – are themselves seeking to distinguish themselves to consumers as responsible taxpayers, and are calling for legislative action on corporate tax avoidance.[76] Investors may find that companies are far more receptive to the business case for tax responsibility than once seemed possible.

ActionAid is keen to work with investors seeking to implement some of the company engagement strategies outlined in this guide.

For further information and involvement, please contact us at:

ActionAid UK
33-39 Bowling Green Lane
London EC1R 0BJ
United Kingdom

Tel: +44 (0)20 3122 0561
Fax: +44 (0)20 7278 5667

Email: supportercare@actionaid.org
Michael.lewis@actionaid.org

Key concepts

Aggressive tax behaviour/practice. Activities designed to minimise a company's tax liability, complying with the letter of the law, but against the spirit of the law. Although they are legal activities, their ethics are the subject of significant public debate and are associated with reputational, regulatory and financial risks. ActionAid uses this term synonymously with 'tax avoidance' (see below).

Appropriate level of tax. When we use this phrase in this guide, we specifically mean the appropriate level of corporate income taxes, reflecting the economic substance of a company's operations in each jurisdiction. Accountants argue the average level of tax paid can only be appreciated over a five-year period, as various factors can influence the short-term payment of tax.

Artificial tax structures. A company or function created specifically to facilitate aggressive tax practices. However, it is possible to employ aggressive tax practices without using these artificial structures, as existing 'natural' structures can still be used for this purpose. For example, some companies locate real economic functions in tax havens – and these subsidiaries may not have been created for the main purpose of reducing tax liabilities. Yet these subsidiaries could still be used to obtain the benefit of being located in a tax haven. This would be an aggressive tax practice.

Corporate taxes borne vs Total tax contribution. The economic activity of a company generates revenue for a government in various ways. For example, companies often collect taxes on behalf of the government ('taxes collected'), either from their employees (for example PAYE), or from their consumers (for example VAT). In addition, some taxes are levied on businesses themselves ('taxes borne'). The most obvious and widely debated of these is corporation tax, but other examples include business rates, turnover taxes (in some jurisdictions), mineral royalties and capital gains taxes. Companies sometimes combine together taxes collected and borne to calculate a 'Total Tax Contribution' to a government. While we acknowledge the importance of this contribution, in this guide we focus specifically on taxes borne by businesses, and in particular corporation tax – payments made to governments on the revenue generated in that country. This focus stems from our belief that corporate profits themselves – rather than only a company's employees or consumers – should contribute to the development of the society and economy from whose markets, stability and public services the company itself benefits.

Tax avoidance vs tax evasion. Tax evasion is illegal, and breaks both the spirit and the letter of the law. Tax planning minimises tax liability but complies with the letter of the law. We believe that tax avoidance or 'aggressive' tax planning should be defined as those tax planning practices that breach the intention of the legislation, albeit respecting its letter.

Tax havens. These are jurisdictions whose tax rules and systems of regulation, generally designed to attract companies and individuals from overseas, undermine other jurisdictions' tax bases. They are generally characterised by a combination of light regulation; the preservation of corporate and banking secrecy; low or no-tax rates for foreign individuals and companies; and special tax rules for foreign residents. In Mauritius, for example, 'global business companies' pay much lower tax rates than domestic companies. Many tax havens are also known as secrecy jurisdictions, which highlights another attractive feature for some users. Although there is no universally agreed definition of a tax haven, in this report we use a relatively standard list of tax havens developed by the US Government Accountability Office,[77] adding the Netherlands and the US state of Delaware because of their widespread use in international tax planning schemes.[78]

Thin capitalisation regulations: rules intended to prevent companies avoiding tax by taking on excessive debt from related companies and reducing their own tax liability through paying excessive interest payments to those related companies. These typically take the form of limits on the ratio of 'related party debt' to equity for which a company is allowed to deduct interest payments against its tax liabilities.

Withholding tax. Not a particular type of tax, but a form of tax collection: when a tax is collected from an individual or company's income before they receive that income, usually by the entity paying the income. Typical examples inlude personal income tax collected through 'pay as you earn' (withheld by an individual's employer and remitted directly to the tax authority), and taxes on interest payments to a foreign company, withheld by the payee company.

Endnotes

1 D Williams, *Tax and corporate social responsibility*. KPMG Business School, 2007. Page 1. Available at http://bit.ly/bL6KnH (accessed 24 May 2012), p.39

2 The director of the OECD estimates that developing countries lose three times more to tax avoidance and evasion than they receive in aid. A Gurría, 'The global tax dodgers', *The Guardian*, 27 November 2009. Available at http://bit.ly/qyB0HO (accessed 24 May 2012)

3 For an example of the business response, see R Woolhouse, *Tax and British Business: Making the case*, Confederation of British Industry, 2012. Pages 9-10 are especially relevant. Available at http://bit.ly/HVippR (accessed 24 May 2012)

4 ActionAid UK, FairPensions and Fairfood International, Tax Responsibility: The business case for making tax a corporate responsibility issue (July 2011)

5 J-B Kim et al, 'Corporate Tax Avoidance and Stock Price Crash Risk: Firm-Level Analysis', *Journal of Financial Economics*, Vol. 100, pp.639-662, 2011. The paper can be downloaded from http://bit.ly/JLCXTZ (accessed 24 May 2012)

6 D Dharmapala and M Desai, *Earnings Management, Corporate Tax Shelters and Book-Tax Alignment*, HBS Finance Working Paper No. 884812, 2009. The paper can be downloaded from http://bit.ly/C8Eek (accessed 24 May 2012)

7 US Securities and Exchange Commission, *SEC Charges Two Former Bear Stearns Hedge Fund Managers With Fraud*, 19 June 2008. Available at http://1.usa.gov/LcxPXG (accessed 24 May 2012)

8 F Lawrence, 'Argentina accuses world's largest grain traders of huge tax evasion', *The Guardian*, 1 June 2011. See http://bit.ly/katz55 (accessed 24 May 2012)

9 On Goldman Sachs see National Audit Office, *Settling Large Tax Disputes* (18 June 2012), www.nao.org.uk/publications/1213/settling_large_tax_disputes.aspx

10 S Beloe et al, *Taxing Issues: Responsible Business and Tax*, SustainAbility, 2006. Page 17. Can be downloaded from http://bit.ly/jZZf5j (accessed 24 May 2012)

11 D McNair, *Tax and Sustainability: A framework for businesses and socially responsible investors*, Christian Aid, 2011. Page 2. Available at http://bit.ly/MtAjAi (accessed 24 May 2012)

12 L Hickey et al, *What IROs should know about tax*, KPMG Agenda, 2007. Available at http://bit.ly/JzCwgg (accessed 24 May 2012). A similar argument is made in: D Zion, *Accountancy Issues and Analyst Research*, Credit Suisse, 2009. Slides 48-53 are relevant. Available at http://bit.ly/JYsJ1h (accessed 24 May 2012)

13 Rosie Baker, 'Starbucks brand suffers over tax claims', *Marketing Week*, 18 October 2012. Available at http://bit.ly/RG5CsX (accessed 13 November 2012)

14 Taxand, *Global Survey 2012: Taxand the CFO: Understanding Tax Changes as Economies Worldwide Drive Efficiency.* Available at http://bit.ly/Q67EGG (accessed 14 October 2012)

15 C Dring, *HMV slams 'idiotic' offshore tax dodging,* MCV, 14 February 2012. Available at http://bit.ly/xA5Kfv (accessed 24 May 2012); 'Costa Coffee has taxing question for Starbucks', *Daily Mirror,* 24 October 2012

16 *Tanzania: Top tax-payers list faulted*, In2EastAfrice, 5 September 2011 (source: Tanzania Daily News). See http://bit.ly/KGSp04 (accessed 24 May 2012)

17 *Materiality of disclosure required by the Energy Security through Transparency Act*, Calvert Investments, 2010, page 3. See http://bit.ly/m0BpME.

18 For an example of the challenges faced by revenue authorities in developing countries, see M Moore, *Tax Inspectors Without Borders: A Seriously Good Idea*, Institute of Development Studies, 2012. Available at http://bit.ly/Lo6zl5 (accessed 24 May 2012)

19 Some countries now adopt General Anti-Avoidance Rules, which may shift the burden of proof from the overworked tax authority to the specific company it is auditing, to show that it has not aggressively mitigated its tax charge

20 For the UK, see the UK Treasury's description of the proposed General Anti-Abuse rule, available at http://bit.ly/sHJwDO (accessed 14 October 2012); for India, see Ministry of Finance, *Draft Guidelines Regarding Implementation of General Anti-Avoidance Rules (GAAR) in terms of section 101 of the Income Tax Act 1961*. Available at http://bit.ly/UXpNJt (accessed 14 October 2012). Developing countries have also introduced anti-avoidance rules when updating their tax legislation in recent years: see, for example, Section 95(1) of Zambia's Income Tax Act 2006

21 African Tax Administration Forum (ATAF), *21 African countries finalise Mutual Assistance Agreement on collecting taxes*, 2012. Available at http://bit.ly/RIfNh9 (accessed 14 October 2012)

22 Detailed econometric evidence from the World Bank has shown that when foreign investors are making decisions about investing in developing countries, tax rates only become really influential where a clement non-tax investment climate already exists: S James, *Tax and Non-Tax Incentives and Investments: Evidence and Policy Implications,* Investment Climate Advisory Services, World Bank Group, 2009

23 Analysis of the Rwandan situation can be found in P Abbott, *East African Taxation Project: Rwanda Country Case Study*, Institute of Policy Analysis and Research-Rwanda, 2011. Pages 21-22 discuss tax exemptions and incentives. Available at http://bit.ly/Lj8kAO (accessed 24 May 2012). Further analysis of the issue of tax competition can be found in TJN-A & AAI, *Tax competition in East Africa: A race to the bottom?* Tax Justice Network – Africa and ActionAid International, 2012. Available at http://bit.ly/Io0K6K (accessed 24 May 2012)

24 For example, the Indian government has been pursuing a tax claim against Vodafone since 2007. Despite a Supreme Court ruling in favour of Vodafone in January 2012, the government continued the claim through provisions in the 2012 Finance Bill. As a result, analysts are factoring the tax charge into their valuations of the company. K Rushton, 'Vodafone seeks international arbitration proceedings in India tax row', *The Telegraph*, 17 April 2012. Available at http://tgr.ph/IFSs9b (accessed 24 May 2012)

25 Reuters, *Zambia to audit miners, believes up to $1 bln owed*, Reuters, 7 February 2012. Available at http://bit.ly/yXVMoh (accessed 14 October 2012)

26 UK House of Commons, *International Development Committee, 4th Report, Tax in developing countries: Increasing resources for development*, 2012

27 See http://bit.ly/AeyjQg (accessed 23 October 2012)

28 Written evidence submitted by Glencore International Plc to the House of Commons International Development Select Committee, 20 August 2012. Available at http://bit.ly/TEbFxW (accessed 23 October 2012)

29 Chris Mfula, 'Zambia asks Glencore unit for unpaid taxes', Reuters, 6 June 2011, http://reut.rs/myp4sh (accessed 23 October 2012)

30 NORAD/Chr. Michaelsen Institute, *The Tax Systems in Mozambique, Tanzania and Zambia: capacity and constraints*, 2011. Available at http://bit.ly/Ph3tFh (accessed 23 October 2012)

31 European Investment Bank, *Mopani Copper Project*, 31 May 2011. Available at http://bit.ly/m3OoDQ (accessed 23 October 2012)

32 A Packman, J Chung, *Tax transparency: Communicating the tax companies pay*, PwC, 2011. Page 8. Available at http://bit.ly/MKkLuC (accessed 24 May 2012)

33 For example, the response of the Chief Executive of SABMiller when questioned by the International Development Committee of the UK Parliament. On 24 April 2012, he was asked about the allegations of aggressive tax planning in ActionAid's *Calling Time* report (M Hearson and Richard Brooks, op cit). His response was: "We have a number of service providing centres, which charge at arm's length rates for the services they provide. Any effect on our overall tax rate of any of these activities is absolutely *de minimis*; it is not even a rounding error. We derive no tax benefits from any of those activities whatsoever." The transcript is available at http://bit.ly/LTEHao (accessed 24 May 2012)

34 Barclays Bank of Kenya Ltd, annual report 2010

35 HMRC. *Business Risk Review (BRR): Business Risk Review Assessment indicators: Behavioural indicators.* Available at http://bit.ly/ltNNfi (acessed 24 May 2012)

36 T Elgood et al, *Tax risk management*, PricewaterhouseCoopers, 2004. Page 10. Available at http://pwc.to/KjXsGr (accessed 24 May 2012). Cited in M Hearson et al (op cit)

37 R Lake, *Tax, risk and corporate governance: Findings from a survey of the FTSE350*, Henderson Global Investors, 2005. Available at http://bit.ly/Kyyb9u accessed 24 May 2012). Cited in M Hearson et al (op cit). Page 2

38 Ibid. Page 8

39 Ibid. Page 14

40 D McNair (op cit)

41 FTSE, *Countering Bribery Criteria*, FTSE4Good, 2005. Available at http://bit.ly/6RKHzv (accessed 24 May 2012)

42 D Williams, *Tax and corporate social responsibility*. KPMG Business School, 2007. Page 1. Available at http://bit.ly/bL6KnH (accessed 24 May 2012)

43 http://www.actionaid.org.uk/101736/tax_justice_policy.html

44 Burberry's response to our survey, 20 April 2012

45 An example of questions that could be asked are given in the 2004 letter of the Australian Commissioner of Taxation (op cit)

46 These are G4S, SABMiller, Smiths Group and Vodafone. Vedanta reports that their Audit Committee receives briefings on tax issues, but does not elaborate whether these would result in changes to the tax policy

47 SABMiller's response to our survey, 20 May 2012

48 As KPMG notes: "it may be in the negotiation of the tax rules rather than in the approach to tax avoidance or planning that CSR principles have the greatest application... A commitment to 'fairness' may... give a company the incentive to concede more in negotiations than it feels that it would necessarily have had to do from commercial necessity." D Williams (op cit), page 26

49 Diageo, Rio Tinto and Vodafone

50 Old Mutual, survey response, 9 May 2012. Rolls Royce and Vodafone also report seeking certainty in tax decisions

51 Imperial Tobacco, survey response, 17 April 2012

52 Schroders, survey response, 23 April 2012. Similarly Barclays reports that it is a signatory of the UK Code of Practice for Taxation of Banks, and will regard both the spirit of UK tax law and "the intent of Parliament". Barclays plc, *Annual Report 2010*. Page 81. Available at http://bit.ly/kq7lX6 (accessed 24 May 2012)

53 Legal & General Plc, Annual Report and Accounts 2011, page 15

54 Rio Tinto Plc, Taxes paid in 2010. Page 5. Available at http://bit.ly/KPQFmB (accessed 24 May 2012)

55 M Hearson, *op. cit.*

56 Hargreaves Lansdowne, Rolls Royce and Wm Morrisons are among the companies reporting that they do not engage in artificial tax planning

57 G4S, Reed Elsevier and SABMiller

58 G4S Plc, *Corporate Social Responsibility Report 2011*. Page 29. Available at http://bit.ly/LC0BxZ (accessed 24 May 2012)

59 These are BAE, Capital Shopping Centres Group, Kazakhmys, Legal & General, Petrofac, and WPP. Diageo and Vodafone provide a long policy online, and Rio Tinto outline their strategy in some detail

60 These include British American Tobacco, Diageo and Imperial Tobacco

61 Barclays, Meggitt, Pearson and Royal Dutch Shell

62 Aggreko, Barclays, BT and HSBC

63 BHP Billiton, Rio Tinto, Shire, Vodafone and Xstrata

64 BG, BP, Cairn Energy, Centrica, Randgold, SABMiller and Vedanta

65 Fresnillo, Legal & General, Reed Elsevier, Royal Dutch Shell and SSE

66 Corporate Tax including advance tax

67 CST & VAT Sales tax payment

68 Inclusive of NCCD

69 Donations to CM fund are not available

70 Other (Cairn India) includes services tax, fringe benefit tax and donation to the Rajasthan Chief Minister's relief fund

71 Ireland, Jersey and Isle of Man. Its response to this was that the annual report "shows that overseas operations tend to increase our tax rate above the UK standard rate". The amount of revenue generated for Centrica from these subsidiaries is unclear from the annual report, as some of them may be combined with UK revenues

72 Many countries do not place registered companies' audited accounts on public record

73 M Hearson, *op. cit.*

74 Seven companies provided detailed responses to our information regarding tax haven subsidiaries: Aggreko, BAE, Burberry, Capital Shopping Centres Group, Land Securities, Schroders and SSE

75 David Batty, 'John Lewis chief calls on government to tax multinational companies properly', *Guardian*, 15 November 2012, http://bit.ly/TK6Apz (accessed 29 November 2012).

76 'Morrisons Boss Slams Foreign Rivals Over Tax', Sky News, 27 November 2012, http://bit.ly/ToDLyB (accessed 29 November 2012); Helia Ebrahimi, 'John Lewis warns Amazon's tax avoidance 'will drive UK companies out of business', *Daily Telegraph*, 14 November 2012, http://bit.ly/TFOnao (accessed 29 November 2012).

77 United States Government Accountability Office, *International Taxation: Large U.S. Corporations and Federal Contractors with Subsidiaries in Jurisdictions Listed as Tax Havens or Financial Privacy Jurisdictions*, GAO, 2008. Fifty tax havens are listed on page 12. Available at http://1.usa.gov/nZUjYR (accessed 24 May 2012)

78 This follows in the practice followed in ActionAid, *Addicted to tax havens: The secret life of the FTSE 100*, ActionAid, 2011. Endnote 17 contains an explanation for including the Netherlands. Available at http://bit.ly/qyztfi (accessed 24 May 2012)

www.actionaid.org.uk

ActionAid
Chataway House
Leach Road
Chard
Somerset
TA20 1FR

Phone: 01460 23 8000
email: supportercare@actionaid.org

February 2013
Registered charity number: 274467