Tax avoidance by mining companies in developing countries

An analysis of potential Dutch policy initiatives

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23 December 2016 – for publication

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About this report

This report is the result of a research project commissioned to Profundo, in collaboration with OKC, by the Ministry of Foreign Affairs of the Netherlands. The research project was overseen by a steering committee with representatives of the Dutch Ministries of Foreign Affairs and Finance.

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The Offshore Knowledge Centre investigates integrity and fraud in financial transactions, providing research, consultancy services and training to financial institutions and governments. We also provide expertise in the field of tax evasion, tax avoidance and money laundering. More information can be found at www.okcnl.nl.

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This report was researched and written by Jan Willem van Gelder and Joeri de Wilde (Profundo) and Jan van Koningsveld and Joras Ferwerda (Offshore Kenniscentrum). Correct citation of this document: Van Gelder, J.W., J. de Wilde, J. van Koningsveld and J. Ferwerda (2016, November), *Tax avoidance by mining companies in developing countries - An analysis of potential Dutch policy initiatives,* Amsterdam, The Netherlands: Profundo.

Front page cover photograph: Gary Whitton.

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Table of contents

Summary 1

Introduction 5

Chapter 1 Methodology 7

1.1 Research questions 7
1.2 Research method 8
1.2.1 Selection of countries and natural resources 8
1.2.2 Determining risk indicators 8
1.2.3 Analysis of company structures 9
1.2.4 Risk-based policy analysis 9
1.2.5 Conclusions and recommendations 9
1.2.6 Limitations of this research project 9

Chapter 2 Selection of countries and mining companies 11

2.1 Selection of countries 11
2.2 Democratic Republic of the Congo 12
2.3 Ghana 13
2.4 Indonesia 13
2.5 Mongolia 14
2.6 Zambia 15

Chapter 3 Indicators for tax avoidance 16

3.1 Introduction 16
3.2 Indicators related to the corporate structure 17
3.3 Indicators related to the mining commodities and trade flows 18
3.4 Indicators about the financial statements, payments and flows 19
3.5 Indicators about tax arrangements and tax returns 22
3.6 Miscellaneous indicators 24
3.7 The use and importance of the indicators 24
3.8 Involvement of the Netherlands 25
3.9 Conclusion 27

Chapter 4 Analysis of international, European and Dutch tax initiatives 28

4.1 Introduction 28
4.2 International initiatives 28
4.2.1 Tax Information and Exchange Agreements 28
4.2.2 Base Erosion and Profit Shifting (BEPS) action plans 29
4.2.3 Inclusive Framework for the implementation of BEPS 31
4.2.4 Automatic data-exchange through the Common Reporting Standard (CRS) 32
4.2.5 Country-by-Country reporting 33
4.3 Initiatives in the EU 33
4.3.1 EU Anti-Tax Avoidance Directive (ATAD) 33
4.3.2 Corporate tax reform package 35
4.3.3 The 4th Anti-Money Laundering directive 36

4.4 **Initiatives in the Netherlands** 37
4.4.1 Renegotiation of Double Taxation Agreements 37
4.4.2 Substance-requirements 38
4.4.3 Information exchange 40
4.4.4 Trust and company service providers 42
4.4.5 Technical assistance programmes 43
4.4.6 Parliamentary inquiry on tax avoidance 44
4.5 **Other relevant information** 44
4.5.1 Bilateral Investment Treaties 44
Chapter 5 Conclusions and recommendations 45
5.1 **Conclusions** 45
5.2 **Recommendations** 49
Appendix 1 Overview of international mining companies operating in the selected countries 56
Appendix 2 List of interviewed persons 63

List of figures

Figure 1 Comparing bilateral tax agreements 23
Figure 2 Dutch holding company in the structure of a mining group 25
Figure 3 Dutch financing company in the structure of a mining group 26

List of tables

Table 1 Indicators by type of company 26
Table 2 Overview of indicators 27
Table 3 Double Taxation Agreements with five selected countries 37
Table 4 Overview of ATR's and APA's for the years 2011-2015 41
Table 5 Bilateral Investment Treaties with five selected countries 44
Table 6 Overview of international mining companies operating in the selected countries 56

Summary

Despite the fact that some developing countries are rich in mineral resources, a potential source of large revenues, they often fail to develop sufficiently in order to improve the welfare and prosperity of their population. This is in part because the mining companies that profit from these resources do not always pay their fair share of taxes in mining countries, by using international tax avoidance structures. According to a report released in 2015 by the *High Level Panel on Illicit Financial Flows* from Africa, headed by the former South African president Thabo Mbeki, "aggressive tax avoidance" plays an important role in depriving African countries of the resources needed for social services, infrastructure and investments.

The Netherlands could be involved in this tax avoidance, as many international mining groups have established holding and financing companies in the Netherlands, through which they invest in developing countries. This research project, undertaken by Profundo for the Dutch Ministry of Foreign Affairs, in collaboration with the Offshore Kenniscentrum (OKC), studies this issue further and explores potential policy initiatives the Dutch government could take to address the issue.

Research objective

This research project aims to analyse potential Dutch policy initiatives to address tax avoidance by mining companies in developing countries. These initiatives should stimulate developing countries to retain more government revenues from the activities of mining companies in their countries. Government revenues are currently eroded by tax avoidance strategies of mining companies. While this is not illegal, tax avoidance is increasingly seen as unethical and in violation of standards on corporate social responsibility, such as the OECD Guidelines for Multinational Enterprises. As many international initiatives are addressing tax avoidance and tax evasion, this report investigates how the opportunities offered by these initiatives can be utilized in an optimal way.

Research approach

This study follows three paths to answer the main research question. The first path aims to collect concrete information on the level and forms of involvement, of Dutch holding and financing companies, in tax avoidance strategies of international mining groups operating in developing countries. Five developing countries are selected - DR Congo, Ghana, Indonesia, Mongolia and Zambia - the mining sector contributes very significantly to the GDP and export earnings of these countries. We identify all mining companies, 128 in total, which are active in exploring and mining two to four of the most important mining resources in these five countries. In each country, the selected resources account for at least 50% of the total mining output. The table below shows the five selected countries, the selected resources and the number of mining companies producing or exploring the selected resources in each country.

Countries	Selected resources	Mining companies
DR Congo	Cobalt and Copper	28
Ghana	Bauxite, Gold, Manganese	21
Indonesia	Coal, Copper, Gold, Nickel	24
Mongolia	Coal, Copper, Gold	38
Zambia	Cobalt and Copper	17
Total		**128**

We analyse the corporate ownership structures of these 128 mining companies and identify whether and how Dutch financing and holding companies play a role in owning and financing these companies.

The second path consists of a comprehensive literature review, case studies and interviews with fourteen experts. This results in a list of 28 risk indicators which could point to tax avoidance, which are compared with the findings on the selected mining companies to assess if and how the Netherlands could be involved in such practices.

The third path is an analysis of recent policy initiatives on tax avoidance at the international, European and Dutch level. This analysis aims to assess whether these initiatives offer opportunities to help developing countries to increase tax revenues from mining activities in their country. Identifying shortcomings or potential intensifications in on-going initiatives, we suggest potential policy initiatives for the Dutch government.

Main findings

Of the 128 mining companies active in producing the most important mining commodities in the five selected countries, 34% (i.e. 43 companies) is directly or indirectly owned or financed by Dutch financing and holding companies. We identify a total of 38 Dutch financing and holding companies, belonging to 11 international mining groups, owning and financing these 43 mining companies. This means that the Netherlands plays a relatively large role in the corporate structures of the mining companies active in these five developing countries.

Comparing the available information on the 38 Dutch financing and holding companies to our list of 28 risk indicators for tax avoidance, we found high scores for most indicators for which the required information was available. The shareholdings and outstanding loans of the companies differ in size, but in many cases are quite significant: 12 financing and holding companies report total assets above € 1 billion. Related to these holding and financing activities, we find for seven of the selected corporate groups interest and/or dividend payments between their Dutch subsidiaries and subsidiaries in developing countries. Such international interest and/or dividend payments are governed by the conditions included in the Dutch bilateral tax treaties.

Nevertheless, most holding and financing subsidiaries report (almost) no employees. We find employment data for 35 of the 38 holding and financing companies; 31 of these 35 companies have no employees at all; the other four have between 2 and 31 employees. Nine out of 11 mining groups do not have any employees in the Netherlands related to their mining operations, indicating a weak economic nexus with the Netherlands.

The mining groups and their Dutch subsidiaries also qualify on other risk indicators. At least nine out of 11 mining groups own one or more offshore companies incorporated in a tax haven in the corporate group structure. Nine of the mining groups with Dutch subsidiaries are managed and/or domiciled by a Dutch trust and company service provider (TCSP). None of the researched mining groups report financial indicators on a country-by-country basis. Furthermore, three out of the 11 corporate groups use the Dutch legal structure “cooperative company” and four corporate groups are not transparent at all about their ultimate beneficial owner(s).

For nine corporate groups we find that the establishment of a Dutch intermediate holding or financing company offers the mining group the opportunity to benefit from Dutch bilateral tax agreements. Four of the 11 international mining groups indicate that benefiting from the Dutch bilateral tax agreements is an important reason why they have set up intermediate holding and financing companies in the Netherlands. For two corporate groups we find an advance tax ruling with the local government in the mining country. For four mining groups we found recent negative media attention related to tax avoidance, money laundering and similar offences.

We had no access to the relevant tax filings of the 11 international mining groups in Netherlands, nor in the developing countries, as tax authorities are legally required to guarantee the confidentiality of the data provided to them in tax filings. Therefore we have no definitive proof that any of these 11 mining groups are avoiding taxes due in one of the developing countries. This lack of data also makes it impossible to check if these companies meet the Dutch substance requirements.

Despite this obvious limitation, we conclude that the 11 mining groups match many of our tax avoidance risk indicators. Our research thus points to a high risk that several of the 11 international mining groups have set up holding and financing companies in the Netherlands with the purpose of avoiding corporate income tax and/or withholding taxes to be paid in the five developing countries. The Netherlands runs the risk that its wide network of tax treaties (DTAs) is being abused by international mining groups which have no actual activities in the Netherlands.

Additionally, in several cases the Bilateral Investment Treaties (BITs) which the Netherlands has concluded with various developing countries, to protect investments by Dutch companies in these countries, seem to provide an incentive to international mining companies to set up Dutch holding and financing companies. Similarly to the Dutch tax treaties (DTAs), the Dutch BITs also seem to be abused by international mining groups which have no actual activities in the Netherlands. The relative importance of investment guarantees in relation to tax avoidance opportunities differs from case to case and needs further research.

Huge progress has been made recently in the fight against international tax avoidance with a large number of measures proposed by the OECD (the so-called BEPS action plans) and the EU. The Netherlands is is implementing these measures, while many developing countries are also implementing the BEPS proposals. These policy measures will clearly increase the opportunities for developing countries to combat the detrimental effects of international tax avoidance, by mining groups and other corporate groups, on their government revenues. But similar to other major policy developments, much will depend on the capacity and resources made available to utilize these opportunities. Enforcement capacity and resources are likely to become a limiting factor as tax regulations are complex and implemented differently in different countries; many international corporate groups are engaged in international tax avoidance strategies; the structures they have set up are difficult to understand; and the enforcement capacity of tax authorities in developing countries is usually limited.

Recommendations

Based on the findings of this research project, we recommend the Dutch government to take some complementary steps to ensure that the opportunities offered by the anti-tax avoidance measures proposed by the OECD and EU are utilized to the maximum, to support developing countries in generating higher government revenues from the mining activities in their countries. Specifically, the following recommendations are made:

- **Recommendation 1: Improve transparency regarding the involvement of Dutch companies in mining activities in developing countries**

  The Dutch government and other stakeholders have insufficient insight into the number and activities of Dutch financing and holding companies involved in mining activities in developing countries, as well as the financial flows moving through these companies. These companies are not registered as such in the company register and their financial reporting is minimal. Better registration and reporting is vital for good research and governance, for the Netherlands but also for developing countries that have to rely on this information. The Netherlands could introduce specific registration codes in the company register and increase financial reporting requirements for these companies. And the public register of Ultimate Beneficial Owners(UBOs) which the Netherlands are planning to set up should be accessible for tax authorities in developing countries and provide them all relevant data.

- **Recommendation 2: Preventing unintended use of tax and investment treaties**

  To reduce the abuse of Dutch tax treaties by international (mining) groups, the Dutch government should start a dialogue with Dutch trust and company service providers (TCSP), the international (mining) groups and their tax advisers pointing out their corporate social responsibility. The Netherlands should evaluate its present list of ten substance requirements, and should consider introducing as a substance requirement a minimum number of employees in the Netherlands working for the relevant business segment of the corporate group (e.g. the corporate group's mining activities). Also, the Netherlands could promote a study on which substance requirements are effective and practical while promoting an international harmonization of such substance requirements to guarantee a level playing field.

  As the Dutch interest is broader than just tax revenues for the Netherlands, substance requirements (making sure that the company is really economically active in the Netherlands) should be introduced for all foreign-owned financing and holding companies. At present holding companies are excluded from this requirement. Also, the Dutch Tax Offices and Customs Authorities should not rely on self-reporting by financing and holding companies, but should actively investigate if all holding and financing companies set up by foreign (mining) groups in the Netherlands meet the Dutch substance

requirements. At present the self-reporting is only checked for a small sample of companies. Substance requirements are investigated actively if holding and financing companies request an Advance Tax Ruling (ATR) or Advance Pricing Agreement (APA) ruling, but this is only requested by a minority of all foreign-owned financing and holding companies. The outcomes of these investigations should be shared with tax authorities in developing countries.

- **Recommendation 3: Strengthen capacity of tax authorities and legislators in developing countries**

  The Netherlands could intensify collaboration with the governments of developing countries with a mining industry, to design smart tax-avoidance policies and to strengthen the capacity to implement and execute these policies. This could take the form of providing relevant information, training officials, setting up a knowledge centre, assisting in negotiations, supporting anti-avoidance regulations and setting up a network with automatic data exchange. Some of the OECD and EU measures could be a good starting point to develop specific regulations which are suited to the needs of developing countries (e.g. limiting interest deductions, introduction of GAAR and Country-by-Country reporting).

- **Recommendation 4: Undertake further research**

  This exploratory study is just an important first step. An additional study could develop an early warning and detection tool for developing countries and the Netherlands to better predict and detect tax avoidance. An additional study on physical flows (i.e. trade in mining commodities) would help to understand other ways in which the Netherlands could be involved in tax avoidance practices.

  To get a better overview of the mining sector worldwide and its tax avoidance practices, it would be important to broaden the view and for instance start with a research into the top-25 mining groups in the world, looking at all their mining operations worldwide.

Introduction

Despite the fact that some developing countries are rich in mineral resources, a potential source of large revenues, they often fail to develop sufficiently in order to improve the welfare and prosperity of their population. This is in part because the mining companies that profit from these resources do not always pay their fair amount of taxes in these mining countries. By setting up international corporate structures which make optimal uses of existing tax treaties and differences in tax regimes, they can avoid taxes and minimize their global tax payments.

Such practices are labelled as "aggressive tax avoidance", in a report released in 2015 by the *High Level Panel on Illicit Financial Flows from Africa* of the *African Union (AU)* and the *UN Economic Commission for Africa (UNECA). The High-Level Panel* was headed by the former South African president Thabo Mbeki. According to the report, Africa is losing more than US$ 50 billion every year in *illicit financial flows* - defined "as money illegally earned, transferred or used". While tax avoidance is not illegal - different from tax evasion - the report argues that "aggressive tax avoidance" should also be seen in the same light, as it deprives African countries of the resources needed for social services, infrastructure and investments.[1]

Elaborate literature explaining how companies can avoid paying taxes in developing countries, by establishing holding and financing companies in different jurisdictions is available. It is well known that many international mining companies have established holding and financing companies in the Netherlands. This could mean that the Netherlands is implicated, but there is no complete overview of the extent to which the Netherlands actually plays a role in tax avoidance practices by international mining groups. To what extent is there for example a structural involvement of Dutch companies, and would it be worthwhile to engage in a dialogue with these companies?

As long as this understanding is missing, it will also remain unclear to what extent Dutch policy initiatives, in collaboration and dialogue with Dutch companies, can ensure that developing countries can retain more tax from economic activities of mining companies. This research, conducted by Profundo in collaboration with the Offshore Kenniscentrum (OKC) for the Ministry of Foreign Affairs, attempts to find answers to these questions.

The contents of this report are as follows:

- Chapter 1 describes the methodology followed for this research project;
- Chapter 2 summarises the process of selection of the five countries of focus for this research project and, within the countries of focus, the selected mining commodities as well as the most relevant mining companies producing the specified resources;
- Chapter 3 discusses the indicators of tax avoidance, as derived from case studies, scientific literature and other research reports;
- Chapter 4 provides a risk-based analysis of policy initiatives to combat tax avoidance on the global, European and Dutch levels, to assess whether these initiatives could be effective in combatting the forms of tax avoidance; and
- Chapter 5 draws conclusions and provides recommendations.

This research could not have been successful without the help of a number of people and institutions. Firstly, we would like to thank the members of the steering committee which includes representatives of both the Ministry of Foreign Affairs and the Ministry of Finance for the pleasant cooperation and their enthusiasm and willingness to think along and make contacts where necessary. We also appreciated our helpful discussions about specific problems we faced and the constructive feedback to earlier versions of this report. Secondly, we have to thank the respondents that were willing to cooperate with this research project. Specifically, we would like to thank mr. dr. W. Kuiper, expert on international tax law, dr. F. Weyzig, senior policy advisor at

1 High Level Panel on Illicit Financial Flows from Africa (2015, February), "Illicit Financial Flows", Commissioned by the African Union (AU) and the UN Economic Commission for Africa (UNECA).

Oxfam Novib and mr. H.P. Baldewsing and mr. L.F. Kosters of the International Bureau of Fiscal Documentation (IBFD).

Chapter 1 Methodology

1.1 Research questions

This research project aims to analyse potential Dutch policy initiatives to address tax avoidance by mining companies in developing countries. The main research question for this project is:

> How can the Dutch government, in collaboration with Dutch companies and within the framework of existing legislation and initiatives in this field, stimulate that developing countries retain more tax revenues from the activities of mining companies in their country?

The following definitions are important for a thorough understanding of this research question:

- *Dutch companies:* three groups of Dutch companies are hereby important:
  - holding companies and other subsidiaries of the foreign mining companies;
  - active traders, refineries and other buyers of natural resources;
  - Dutch financial institutions that provide loans to mining companies.
- *Tax revenues:* all government revenues from taxes from business income, dividends, royalties and interest, including specific mining taxes and fees;
- *Stimulation within the context of current initiatives in this field:* this research focuses on policy initiatives that the Dutch government can take independently within the framework of current legislation and within the implementation of new international initiatives aimed at preventing and combating tax evasion and tax avoidance by multinational companies;
- *Developing countries:* this research focuses in particular on the countries with which the Netherlands maintains a partnership in the context of development cooperation. For practical reasons, this research project is limited to mining companies operating in five developing countries (see section 1.2.1);
- *Tax avoidance:* According to the OECD, tax avoidance is a "term that is difficult to define but which is generally used to describe the arrangement of a taxpayer's affairs that is intended to reduce his tax liability and that although the arrangement could be strictly legal it is usually in contradiction with the intent of the law it purports to follow."[2] This research project focuses on possible forms of international tax avoidance - i.e. involving different tax regimes - by mining companies. While tax avoidance is not illegal - different from tax evasion - it is increasingly seen as unethical and in violation of standards on corporate social responsibility, such as the OECD Guidelines for Multinational Enterprises and the ISO 26000 guidelines.
- *Tax havens:* As definitions of tax havens differ between various sources, this research project has chosen to use the *Financial Secrecy Index* as composed by the *Tax Justice Network* to indicate whether or not a jurisdiction can be considered a tax haven. We consider the top-25 jurisdictions in the list to be tax havens.[3]

The main research question is further divided into six sub-questions:

1. In which ways do mining companies avoid taxes in developing countries?
2. What kind of risk indicators can demonstrate the involvement of foreign companies in tax avoidance by mining companies in developing countries?
3. Which Dutch companies have financial and/or ownership relations with mining activities in developing countries?
4. For which (or which type of) Dutch companies related to mining activities in developing countries the risk indicators show a possible involvement in tax avoidance?

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2 OECD (n.d.), "Glossary of Tax terms", online: http://www.oecd.org/ctp/glossaryoftaxterms.htm, viewed in December 2016.

3 Tax Justice Network (n.d.), "Financial Secrecy Index – 2015 Results", online: http://www.financialsecrecyindex.com/introduction/fsi-2015-results, viewed in December 2016.

5. Which existing legislation and/or new international initiatives aimed at preventing tax evasion and tax avoidance could have the potential to encourage developing countries to receive more tax revenues from the activities of mining companies in their country?
6. What further research, based on additional sources, could help answer the main and sub-questions more completely and accurately?

1.2 Research method

In order to answer the research question a research method consisting of five stages was formulated. The following sections describe each stage of this research method, discussing what kind of information was searched for, what sources were used retrieving this information and what results were expected.

1.2.1 Selection of countries and natural resources

The first stage consisted of the selection of five developing countries and natural resources. This selection process was based on five criteria:

- The developing country's mining sector accounts for a significant percentage of the GDP;
- The developing country is a partner of the Dutch government in the context of development cooperation;[4]
- The developing country has a tax treaty with the Netherlands, but doesn't have tax treaties or has less beneficial tax treaties with important countries of origins of mining companies, i.e. South Africa, Canada, Russia, Australia and the United Kingdom;
- The developing country has been approached by the Netherlands with a view to amend the existing tax treaty in order to incorporate anti-abuse clauses;[5]
- There is relatively a lot of financial information available on the developing country related to tax payments and export flows within the mining sector, mostly through the Extractive Industries Transparency Initiative (EITI).[6]

For each of the selected countries a thorough analysis of data from the World Bank, USGS and government organisations was conducted in order to find the most important natural resources and most important mining companies. After that, a quick scan of the Dutch chamber of commerce register and Dutch trade statistics (CBS) was conducted to determine for which of these countries significant relations with Dutch companies were suspected. On the basis of this information a selection of the five most significant countries was made, with a selection of two to four natural resources per country. The selection of the countries and natural resources was approved by the Ministry of Foreign Affairs.

1.2.2 Determining risk indicators

The second stage of the research intended to develop a critical and coherent literature study based upon scientific literature, case studies and other research reports in the field of tax avoidance by (mining) companies in developing countries. The aim of the study was to identify widely used techniques of tax avoidance. Since the following research stages needed risk indicators that were visible in the data that was going to be analysed, the aim was to identify these types of risk indicators.

Furthermore, based on the literature study, a list of experts was identified for interviews (see Appendix 2).

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4 Rijksoverheid (n.d.), "Meerjarige Strategische Plannen (MJSP) 2014-2017", online: https://www.rijksoverheid.nl/onderwerpen/ontwikkelingssamenwerking/documenten/rapporten/2014/02/05/meerjarige-strategische-plannen-mjsp-2014-2017, viewed in December 2016.

5 Ministerie van Financiën (2015, 19 november), "Brief aan de Eerste Kamer met Antwoorden op schriftelijke vragen over appreciatie uitkomst BEPS rapport en vooruitblik Nederlands fiscaal vestigingsklimaat".

6 Extractive Industries Transparency Initiative (n.d.), "Home", online: www.eiti.org, viewed in December 2016.

1.2.3 Analysis of company structures

After collecting national concession data and data from market research, a list of active mining companies operating in the production of the selected natural resources was produced for each of the five selected countries identified (see Appendix 1). Each of these mining companies was then examined to determine whether there were relations with the Netherlands within the 2013-2016 period through, for example, holding or financing companies. Where such relations were found, analyses of the capital structures and company group structures of the mining companies were developed, and the relations between the mining companies and the Dutch companies were further explored. By using annual reports, EITI reports and the Orbis Database, data was collected concerning the corporate structure of the groups to which the mining companies belong. These sources were also used to find the turnover, profit and tax payments of the various subsidiaries, as well as the financial flows (dividends, interest and royalties) between the relevant mining companies, paying special attention to the role of Dutch subsidiaries.

The cases were analysed in order to identify methods and patterns. Based on the risk indicators formulated at stage 1.2.2, this stage assessed whether there is a risk of Dutch involvement in involvement in tax avoidance by the mining groups involved.

1.2.4 Risk-based policy analysis

The fourth stage looked into the ways in which the Dutch government, in collaboration with Dutch companies and within the framework of current initiatives in this field, can help developing countries retain more tax revenues from the activities of mining companies in their country. The policy analysis included in this stage does not pretend to represent all possibilities; rather, it provides a range of possible ways to address the risks. This is achieved by focusing on policy initiatives that the Dutch government could take independently in the context of current legislation and within the framework of the implementation of existing and new international initiatives, aimed at preventing and combatting tax evasion and tax avoidance by multinational companies.

For each of the possible policy steps that may be taken by the Dutch government, the expected effectiveness in addressing the identified risks was assessed. This assessment also discussed whether and to what extent this effectiveness depends on implementation of similar policies by developing countries and/or other countries.

Finally, interviews were conducted with 10 to 15 domestic and foreign experts (see Appendix 2) to discuss the identified risk indicators of tax avoidance and the results of the policy analysis.

1.2.5 Conclusions and recommendations

Based upon the first four phases, the fifth and final stage consisted of concluding what effective policy initiatives the Dutch government could take, in collaboration with Dutch companies and within the context of existing initiatives in this field, to ensure that developing countries can retain higher tax revenues from the activities of mining companies in their country. This stage also examined what kind of further research, based on additional sources of information, could provide more comprehensive and accurate answers to the main and sub research questions.

1.2.6 Limitations of this research project

This research project is designed as an exploratory study. This is reflected in the relatively limited time frame for this research. Moreover, this study is limited by the fact that we were unable to gain access to data from the Tax Offices and Customs Authorities in the Netherlands, the selected developing countries and relevant third countries. This is because tax authorities are legally required to guarantee the confidentiality of the data provided to them in tax filings. Furthermore, we did not have access to the administration of relevant Dutch trust and company service providers (TCSP).

The scope of this research project also does not encompass all possible ways in which mining operations in developing countries might avoid taxes, nor all Dutch relationships with these mining operations. The main focus of this research project lies on the corporate structures of relevant mining groups and possible financial flows between Dutch entities and mining operations in five selected developing countries. These could have possible impacts on corporate income taxes and withholding taxes paid by mining operations in the selected developing countries. Other forms of taxation or government revenue generation are not researched. As this project focuses on the relevant mining corporate structures of mining groups in the five developing countries, it might not be representative for all activities of financing and holding companies in the Netherlands. Physical flows of mining commodities to the Netherlands are also not included in the scope of this research project.

The research project focuses on possible forms of international tax avoidance by mining companies and not on tax evasion by mining companies. Crucial for tax evasion is that laws are violated, which is not the case for tax avoidance. While tax avoidance is not illegal, it is increasingly seen as unethical and in violation of standards on corporate social responsibility. The OECD Guidelines for Multinational Enterprises for instance has a specific chapter on responsible tax behaviour by corporations, which starts with: "It is important that enterprises contribute to the public finances of host countries by making timely payment of their tax liabilities. In particular, enterprises should comply with both the letter and spirit of the tax laws and regulations of the countries in which they operate."[7] Similar criteria are included in the ISO 26000 Guidelines on Social Responsibility.[8]

In some cases, when actual laws are violated, tax avoidance might turn into tax evasion. When this is the case is determined in the court room and the taxonomy can be fuzzy, with a grey area between the two concepts. In this research project we focus on various forms of tax avoidance, not on tax evasion.

We do not intend to provide a full overview of all relevant tax regulations and initiatives, which would be a full study in and of itself. We provide in Chapter 4 a broad overview of relevant tax initiatives because the aim of this research project is to come to policy advice, taking into account already existing initiatives. This means we focus on those initiatives that are particularly relevant for the mining sector in the five selected developing countries and its relation with the Netherlands and on those phenomena we encountered in our research project. Currently there are many developments in this policy field, our analysis is up to date until the end of November 2016.

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7 OECD (2011, September), "OECD Guidelines for Multinational Enterprises - 2011 version", online: http://www.oecd.org/daf/inv/mne/48004323.pdf

8 ISO (n.d.), "ISO 26000 - Social responsibility", online: http://www.iso.org/iso/home/standards/iso26000.htm, viewed in December 2016.

Chapter 2 Selection of countries and mining companies

2.1 Selection of countries

To select five developing countries of focus for this research project, the following five criteria were taken into account:

1. The developing country's mining sector accounts for a significant percentage of the GDP;
2. The developing country is a partner of the Dutch government in the context of development cooperation;[9]
3. The developing country has a tax treaty with the Netherlands, but does not have tax treaties or has less beneficial tax treaties with important countries of origins of mining companies, i.e. South Africa, Canada, Russia, Australia and the United Kingdom;
4. The developing country has been approached by the Netherlands with a view to amend the existing tax treaty in order to incorporate anti-abuse clauses;[10]
5. There is relatively sufficient financial information available on the developing country related to tax payments and export flows within the mining sector, mostly through the Extractive Industries Transparency Initiative (EITI).[11]

After the country selection, a thorough analysis of data from the World Bank, USGS and EITI was conducted in order to find the most important natural resources for each of the selected countries. When making a selection of two to four natural resources for each country, the aim was to select sufficient different natural resources so that at least half of all mining companies active in each country were included in the research. This led to the following selection of developing countries and natural resources:

- **Democratic Republic of the Congo: cobalt and copper** (section 2.2);
- **Ghana: bauxite, gold and manganese** (section 2.3);
- **Indonesia: coal, copper, gold and nickel** (section 2.4;
- **Mongolia: coal, copper and gold** (section 2.5);
- **Zambia: cobalt and copper** (section 2.6).

The criteria were considered in an integrated and proportional way, which means that not each individual criterion applies to the five countries selected. The Democratic Republic of the Congo does not qualify on criteria 3 and 4 of the five criteria mentioned above. Ghana qualifies on all of the criteria. Indonesia does not qualify on criteria 3, and Mongolia does not qualify on criteria 2 and 3. Finally, Zambia does not qualify on criteria 2. The final selection of developing countries was made by the steering committee.

The following sections provide a brief description of the mining sector of each of the selected developing countries. It also discusses the amount of identified mining companies active in exploring/mining the selected natural resources and from which countries these mining companies mainly originate. Furthermore, each section briefly discusses the tax regime in the mining sector and the relevant tax treaties signed by the selected country. Appendix 1 provides a detailed overview of all the mining companies operating in the selected countries and active in mining sectors of the selected natural resources.

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9 Rijksoverheid (n.d.), "Meerjarige Strategische Plannen (MJSP) 2014-2017", online: https://www.rijksoverheid.nl/onderwerpen/ontwikkelingssamenwerking/documenten/rapporten/2014/02/05/meerjarige-strategische-plannen-mjsp-2014-2017, viewed in December 2016.

10 Ministerie van Financiën (2015, 19 november), "Brief aan de Eerste Kamer met Antwoorden op schriftelijke vragen over appreciatie uitkomst BEPS rapport en vooruitblik Nederlands fiscaal vestigingsklimaat".

11 Extractive Industries Transparency Initiative (2016), "Home", online: www.eiti.org, viewed in December 2016.

2.2 Democratic Republic of the Congo

The Democratic Republic of the Congo (DRC) is rich in mineral resources with an estimated US$ 24 trillion worth of untapped deposits of raw mineral ores.[12] It holds a large part of the global reserves of the following minerals: Colombo-tantalite (80%), cobalt (45% to 60%), diamonds (30%) and copper (3% to 10%).[13] It also plays a globally significant role in the world's production of a number of minerals: in 2012, the country's share of the world's cobalt production amounted to 55%; industrial diamond, 21%; tantalum, 12%; gem-quality diamond, 5%; copper, 3%; and tin, 2%. Moreover, petroleum products play a significant role in the domestic economy, accounting for 26% of the total revenue from the extractive industry in 2013.[14] Finally, according to the EITI, the extractive sector accounted for 98% of total Congolese export revenues in 2013, with copper and cobalt accounting for 68% and 17% of the value of Congolese exports respectively and petroleum products accounting for 8%.[15] In 2014, the total extractive industry accounted for approximately 22.1% of the GDP and in 2013 the mining sector accounted for about 12% of the GDP.[16]

The mining sector in the DRC is regulated by the Mining Code 2002, specified below:[17]

- Mining companies are taxed at 30%, compared to the 35% general corporate tax rate;
- A 0% tax rate applies to exports;
- The surface area of mining is taxed, with increasing rates per year, additionally to an annual fee based on the number of squares held;
- Mining companies are required to pay a mining royalty from the starting date of exploitation;
- Mining permit holders are fully exempted from custom duties and other taxes on exports related to their mining project.

The DRC's total tax revenues accounted for 13.6% of the total fiscal government revenues. The DRC has signed two tax treaties, with Belgium and South Africa respectively. These treaties are, however, not yet being applied by the Congolese Government.[18] In this report, research on the DRC focuses on the sectors of cobalt and copper, within which 22 operating companies have been identified, mostly headquartered in Australia, Canada, China, India, Netherlands, Singapore, South Africa, Switzerland, the United Arab Emirates, the United Kingdom and the United States (see Appendix 1).

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12 United Nations Environment Programme (2011, October 10), "UNEP Study Confirms DR Congo's Potential as Environmental Powerhouse but Warns of Critical Threats", online: http://www.unep.org/newscentre/Default.aspx?DocumentID=2656&ArticleID=8890.

13 Martins, N., Leigh, C., Steward, J. and D. Andersson (2015), Natural Resources in G7+ Countries, Africa: G7+, p. 34; Brininstool, M. (2015, February), Copper, United States: USGS, p. 49.

14 Yager, T.R. (2014, June), 2012 Minerals Yearbook – Congo (Kinshasa) [Advance release], United States: U.S. Geological Survey, p. 11.1; Martins, N., Leigh, C., Steward, J. and D. Andersson (2015), Natural Resources in G7+ Countries, Africa: G7+, p. 34; Extractive Industries Transparency Initiative (2015, July), Rapport EITI-DRC 2013, DRC: Extractive Industries Transparency Initiative, p. 7.

15 Extractive Industries Transparency Initiative (2015, July), Rapport EITI-DRC 2013, DRC: Extractive Industries Transparency Initiative, p. 22, 23.

16 UN Data (n.d.), "National Account – Mining and Quarrying sector", online: http://data.un.org/Explorer.aspx?d=SNA, viewed in April 2016; IBFD (n.d.), "Country key features: Congo, Dem. Rep.," Tax Research Platform, online: https://ibfd.org, viewed in August 2016.

17 IBFD (n.d.), "Country key features: Congo, Dem. Rep.," Tax Research Platform, online: https://ibfd.org, viewed in August 2016; KPMG (2014), Congo, Dem. Rep.: Country Mining Guide, p. 14-15.

18 KPMG (2016, May), DRC - Fiscal Guide 2015/2016, p. 10.

2.3 Ghana

In 2013, Ghana was among the world's top 10 producers of gold and among the world's top 15 producers of rough diamond.[19] Gold mining remains the highest contributor in the mining sector, with large-scale gold mining accounting for over 80% by value of the total income from the sector. The other important minerals are diamond, bauxite and manganese.[20] In 2013, gold accounted for about 96% of the nonfuel mineral revenue generated by the members of the Ghana Chamber of Mines. Manganese accounted for 2.8% and bauxite and diamond for less than 1% each.[21] The majority of Ghana's diamond production was from small-scale and artisanal miners.[22] In 2014, the total extractive industry accounted for approximately 7.7% of the GDP.[23]

The mining sector in Ghana is subject to the following (tax) regulations:[24]

- Mining companies are subject to a number of taxes: a general corporate tax rate of 35%, which is significantly higher than the standard 25% corporate tax rate, capital gains tax of 15%, withholding tax rate of 15% and capital allowances of 20% for five years;
- Mining companies are required to pay a 5% royalty on their total revenues;
- An additional 5% temporary levy was imposed on the profits of mining companies as of 2013, to expire in December 2014;
- Mining permit holders are exempted from paying customs and import duties on any equipment for their mining operations.

Ghana has tax treaties with Belgium, Denmark, France, Germany, Italy, the Netherlands, South Africa, Switzerland and the United Kingdom. In 2013, the mining sector contributed 19% of total tax revenues.[25] In this report, research on Ghana focuses on the sectors of bauxite, gold and manganese, within which 17 operating companies have been identified. These companies originate from Australia, Canada, China, South Africa, Singapore, the United Kingdom and the United States (see Appendix 1).

2.4 Indonesia

Indonesia is rich in minerals and among the top 10 countries in the world for proven reserves of copper, nickel, tin, bauxite and gold. The total mineral export value more than tripled from US$ 3 billion to US$ 11.2 billion between 2001 and 2013, driven by historically high commodity prices and increasing production. In

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19 Bermúdez-Lugo, O. (2016, April), 2013 Minerals Yearbook – Ghana [Advance release], United States: U.S. Geological Survey, p. 20.1.

20 Ministry of Finance – Ghana Extractive Industries Transparency Initiative (Gheiti) (2015, December), Final Gheiti Report On The Mining Sector- 2014, p. 6.

21 Bermúdez-Lugo, O. (2016, April), 2013 Minerals Yearbook – Ghana [Advance release], United States: U.S. Geological Survey, p. 20.1.

22 Bermúdez-Lugo, O. (2014, November), 2012 Minerals Yearbook – Ghana [Advance release], United States: U.S. Geological Survey, p. 20.3.

23 UN Data (n.d.), "National Account – Mining and Quarrying sector", online: http://data.un.org/Explorer.aspx?d=SNA, viewed in April 2016.

24 IBFD (n.d.), "Country key features: Ghana," *Tax Research Platform*, online: https://ibfd.org, viewed in August 2016; KPMG (2014), *Ghana: Country Mining Guide*, p. 10; KPMG (2014), *Ghana: Fiscal Guide*, p. 2-6.

25 IBFD (n.d.), "Country key features: Ghana," Tax Research Platform, online: https://ibfd.org, viewed in August 2016; International Council of Mining and Minerals (2015), Mining in Ghana: What Future Can We Expect, p. 23; World Bank (n.d.), "Tax Revenue (% of GDP); Ghana," online: http://data.worldbank.org/indicator/GC.TAX.TOTL.GD.ZS?locations=GH, viewed in August 2016; KPMG (2016, May), Ghana - Fiscal Guide 2015/2016, p. 6.

2013, mineral exports constituted 6.2% of total exports in 2013 with copper, nickel, tin, iron and bauxite as the largest contributors, during which time Indonesia was ranked within the world's five leading producers of copper and nickel, and among the 10 largest producers of gold.[26] The value of exported mineral commodities in 2013 included US$ 24.4 million of coal; US$ 15.7 million of natural gas (of which about US$ 10.6 million was liquefied natural gas); US$ 12.2 million of crude petroleum; US$ 3.0 million of copper ore, US$ 1.7 million of nickel ore; and US$ 1.4 million of bauxite.[27] In 2013, the total extractive industry accounted for approximately 11.2% of the GDP and in 2014 the mining industry accounted for about 9% of the GDP.[28]

The Indonesian mining sector is regulated as follows:[29]

- Since 2014, the Indonesian government has imposed a ban on exports of unprocessed minerals and a significant export duty on mineral concentrates;
- Mining companies are subject to the general corporate tax rate of 25%;
- Mining companies that are listed on the Indonesian Stock Exchange and meet certain criteria are eligible for a 5% tax reduction.

In 2012, total tax revenues accounted for 11.4% of the GDP.[30] Indonesia holds double tax treaties with over 50 countries, including the Netherlands and most of the countries of origin of the mining companies mentioned below.[31] In this report, research on Indonesia focuses on the sectors of coal, copper, gold and nickel. Within these sectors, 17 mining companies were identified, of which the majority originates from Indonesia, and the remaining part originates mostly from Australia, Brazil, China, Japan, South Korea, the United Kingdom and the United States (see Appendix 1).

2.5 Mongolia

Mongolia has large demonstrated reserves of coal, copper and fluorspar. Mineralised systems with copper, gold, molybdenum, tin, and tungsten are common in Mongolia.[32] The mining sector is a major contributor to the national economy, representing 18.5% of Mongolia's GDP in 2014.[33] Minerals and crude oil accounted for 88% of exports in 2013. Major exports include copper, gold, molybdenum, coal, iron ore and fluorspar concentrates.[34] In 2012, tax revenues accounted for 15.3% of the GDP. The mining sector is subject to a

26 The World Bank (2014, April), Indonesia Economic Quarterly, March 2014, p. 19; Wacaster, S. (2015, December), 2013 Minerals Yearbook – Indonesia [Advance release], United States: U.S. Geological Survey, p. 12.1.

27 Wacaster, S. (2015, December), 2013 Minerals Yearbook – Indonesia [Advance release], United States: U.S. Geological Survey, p. 12.2.

28 UN Data (n.d.), "National Account – Mining and Quarrying sector", online: http://data.un.org/Explorer.aspx?d=SNA, viewed in August 2016; IBFD (n.d.), "Country key features: Indonesia," Tax Research Platform, online: https://ibfd.org, viewed in August 2016.

29 IBFD (n.d.), "Country key features: Indonesia," Tax Research Platform, online: https://ibfd.org, viewed in August 2016; KPMG (2015), Investing in Indonesia, p. 64; KPMG (2011, November), Indonesian Tax Treaties Update.

30 World Bank (n.d.), "Tax Revenue (% of GDP); Indonesia," online: http://data.worldbank.org/indicator/GC.TAX.TOTL.GD.ZS?locations=ID, viewed in August 2016.

31 IBFD (n.d.), "Country key features: Indonesia," Tax Research Platform, online: https://ibfd.org, viewed in August 2016; KPMG (2015), Investing in Indonesia, p. 64; KPMG (2011, November), Indonesian Tax Treaties Update.

32 Shi, L. (2016, April), 2013 Minerals Yearbook – Mongolia [Advance release], United States: U.S. Geological Survey, p. 18.1.

33 OECD (2015, October), Anti-Corruption Reforms in Mongolia, p. 11.

34 Shi, L. (2016, April), 2013 Minerals Yearbook – Mongolia [Advance release], United States: U.S. Geological Survey, p. 18.1.

general corporate tax rate system, which is progressive: the tax rate begins at 10% on income up to MNT 3 billion, and 25% on income in excess of this amount.[35]

Mongolia holds tax treaties for the avoidance of double taxation with 29 countries, including a number of the countries of origin of the mining companies mentioned below. The agreement between Mongolia and the Netherlands was terminated as of January 2014.[36] In this report, research on Mongolia focuses on the sectors of coal, copper and gold. Within these sectors, 33 mining companies were identified, of which the majority originates from Australia, Canada, China, Russia, South Africa, the United Kingdom and the United States (see Appendix 1).

2.6 Zambia

In 2013, copper mining and refining were the dominant components of Zambia's mineral industry, which was valued at 14.4% of GDP.[37] Zambia was estimated to rank eighth in the world in the production of copper ore and ninth in the production of cobalt ore. In 2012, Zambia also was an internationally significant producer of semiprecious gemstones.[38] In addition to copper and cobalt, Zambia's mineral resources include gold, gemstones and various industrial minerals.[39] In 2012, the mining sector comprised 80% of the country's total exports and comprised 32% of its total tax revenue. Tax revenues accounted for 16.1% of the GDP in 2011.

The Zambian mining sector is regulated as follows:[40]

- Mining companies operating in industrial minerals are subject to a variable profit tax;
- Mining companies in other minerals are not subject to an income tax but have to pay a royalty (varying per mineral category from 6-20%);
- Mineral processing is taxed at 30% compared to the 35% general corporate tax rate;
- Mining equipment and related expenditures are entirely deductible from profits before tax;
- Exemptions on all customs and duties and VAT apply to equipment/machinery for mining companies.

As of 2014, Zambia held tax treaties with 20 countries, including Canada, the Netherlands and the United Kingdom.[41] In this report, research on Zambia focuses on the sectors of cobalt and copper. Within these sectors, 17 mining companies were identified, of which the majority originates from Australia, Brazil, the British Virgin Islands, Canada, China, South Africa, Switzerland, the United Kingdom and the United States (see Appendix 1).

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35 IBFD (n.d.), "Country key features: Mongolia," Tax Research Platform, online: https://ibfd.org, viewed in August 2016; World Bank (n.d.), "Tax Revenue (% of GDP); Mongolia," online: http://data.worldbank.org/indicator/GC.TAX.TOTL.GD.ZS?locations=MN, viewed in August 2016.

36 Government of Mongolia (n.d.), "Tax treaties", online: http://en.mta.mn/pages/26, viewed in August 2016.

37 World Bank (n.d.), "Tax Revenue (% of GDP); Zambia," online: http://data.worldbank.org/indicator/GC.TAX.TOTL.GD.ZS?locations=ZM, viewed in August 2016.

38 Mobbs, P.M. (2014, July), 2012 Minerals Yearbook – Zambia [Advance release], United States: U.S. Geological Survey, p. 44.1; Extractive Industries Transparency Initiative (n.d.), "Zambia", online: https://eiti.org/Zambia, viewed in May 2016.

39 Extractive Industries Transparency Initiative (n.d.), "Zambia", online: https://eiti.org/Zambia, viewed in May 2016.

40 IBFD (n.d.), "Country key features: Zambia," Tax Research Platform, online: https://ibfd.org, viewed in August 2016; KPMG (2013), Zambia: Country Mining Guide, p.11-13; KPMG (2014), Zambia: Fiscal Guide, p. 2-5.

41 IBFD (n.d.), "Country key features: Zambia," Tax Research Platform, online: https://ibfd.org, viewed in August 2016; KPMG (2014), Zambia: Fiscal Guide, p. 5; A new treaty with the Netherlands was signed in 2015.

Chapter 3 Indicators for tax avoidance

3.1 Introduction

In this chapter, we give an overview of indicators for tax avoidance by (mining) companies, with a special focus on developing countries. For this study we are primarily interested in to what extent we can see these indicators in the corporate structures of mining companies that were researched. In the long run, this list can be the basis for setting up an early warning system or detection tool for law enforcement agencies to strengthen the fight against tax avoidance (see section 3.7 for a more elaborate description of how such a system or tool would look like).

While tax avoidance is not illegal, it is increasingly seen as unethical and in violation of standards on corporate social responsibility, such as the OECD Guidelines for Multinational Enterprises. In some cases, when actual laws are violated, tax avoidance might be labelled as tax evasion as well. When tax avoidance turns into tax evasion is determined in the court room and the taxonomy can be fuzzy, with a grey area between the two concepts. To develop the list of indicators, we have therefore focused on various forms of tax avoidance.

We derive the indicators from an analysis of scientific literature and other research reports. We also add to this overview a number of indicators that we derive from interviews with experts and analysing Dutch cases from the literature. In this chapter we report, as a first step, all relevant indicators without knowledge of their importance and applicability.

Although there is considerable attention for tax avoidance in the literature and in the public debate, the number of publications about indicators for this behaviour is rather limited, especially in the scientific literature. There is no publication giving a complete literature overview and listing all the relevant indicators. This chapter tries to fill this void. This list of relevant indicators is primarily based on international research reports, mostly published by NGOs, as can be seen in the table in the appendix on the type and number of sources for the indicators. Case studies are generally the basis for these research reports. A complete empirical analysis with a sufficient number of observations to draw general conclusions is often missing. For scientific studies this is standard practice, but unfortunately their number is rather limited and they are often very focused on one specific indicator.

A lack of data hampers scientific studies on this topic. To estimate which factors influence tax avoidance, the degree of tax avoidance needs to be measured or estimated first. These estimation procedures are based on the financial information that the companies report (to the companies house, tax offices and/or shareholders, hence not all public information). How well these estimation procedures perform is debatable.[42]

We have therefore supplemented the list of indicators by analysing a number of Dutch (court) cases and derived potential indicators from them. Furthermore, we interviewed experts on tax avoidance and asked them what they would consider good indicators for this behaviour (see Appendix 2).

Note that indicators have to be regarded in the context and relation with other indicators. Generally, an individual indicator can be a simple legitimate characteristic. However, the idea is that a combination of different indicators in a specific context can indicate an increased probability that tax avoidance takes place. Indicators should be seen as a tool to detect tax avoidance. Further research is needed to determine the importance of each indicator and the most relevant combinations of indicators.

42 See e.g. Frank et al. 2009 p.471-472.

3.2 Indicators related to the corporate structure

There is a lot of attention in the literature for the international corporate structures of companies that avoid taxation. The attention is mostly devoted to the choice of which (offshore) entities within the corporate structure are located in which countries and which consequences this has on the tax payments in the different countries and for the corporate structure as a whole.[43] Below we shortly describe the relevant indicators and list the sources for these indicators.

1. **A subsidiary located in a tax haven**

   The first indicator occurs when one or more subsidiaries of the mining company, or the ultimate holding company, are legally incorporated in a tax haven.[44] In addition, a shareholder or owner of the mining group can be located in a tax haven. Note that tax haven is not a legal term and is not clearly defined, see section 1.1 for a definition.

   Several research reports and criminal cases show that offshore companies located in tax havens are frequently used or abused for tax avoidance purposes and as a tool to commit financial economic crimes such as tax fraud, corruption and money laundering.[45]

2. **A Dutch holding or financing company**

   This indicator refers mostly to a situation in which a Dutch company (mostly a company with limited liability, a B.V.) is placed in the corporate structure somewhere between a local mining company and the ultimate, foreign holding company of the mining group. This structure can be used to channel dividend payments through the Dutch (holding) entity to lower the overall tax burden of the mining group.[46] But this structure can also be used to channel payments of interests and management fees, in order to lower the overall tax burden of the mining group. [47]

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43 See e.g. Van Os, R; McGauran K. en Römgens I. (2013) Private gain – Public Loss: mailbox companies, tax avoidance and human rights, SOMO; Curtis, M. (2015) Improving South Africa's mining revenues and transparency: The need for government action; and Weyzig, F. (2013) Taxation and development: effects of Dutch tax policy on taxation of multinationals in developing countries, dissertation.

44 Curtis, M. (2015) Improving South Africa's mining revenues and transparency: The need for government action; Curtis, M. (2013) Malawi's Mining Opportunity: Increasing Revenues, Improving Legislation; Van Os, R; McGauran K. en Römgens I. (2013) Private gain – Public Loss: mailbox companies, tax avoidance and human rights, SOMO; and own research such as the case described in the appendix)

45 Koningsveld, T. J. van. (2015). De offshore wereld ontmaskerd. Zeist: Uitgeverij Kerckebosch; OECD, 2001; Offshore Leaks, 2013; Panama Papers, 2015.

46 Actionaid (2015) An Extractive Affair: How one Australian mining company's tax dealings are costing the world's poorest country millions; Eurodad (2015) Fifty Shades of Tax Dodging: The EU's role in supporting an unjust global tax system; Van Os, R; McGauran K. en Römgens I. (2013) Private gain – Public Loss: mailbox companies, tax avoidance and human rights, SOMO

47 Actionaid (2015), "An Extractive Affair: How one Australian mining company's tax dealings are costing the world's poorest country millions".

3. **A Dutch cooperative company**

   At this moment, there are already almost 2,000 Dutch cooperatives used in international holding structures by foreign-owned corporate groups. In a letter to the Dutch parliament, the State Secretary of Finance announced in September 2016 that cooperative companies will no longer be exempted from Dutch dividend tax payments if one member of the cooperative owns more than 5% of the shares.[48]

4. **Trust or Company Services Providers acting as director**

   Trust or Company Services Providers (TCSP) provide different kinds of services such as acting as a director of a company or granting domicile. This shifts some tasks to the TSCP, but also masks who is the 'real' director or shareholder of the company. We see this primarily for offshore companies. Boyke Baldewsing of the IBFD mentioned in the interview we had with him, that this could be a good indicator for tax avoidance.

3.3 Indicators related to the mining commodities and trade flows

Manipulating and misreporting the volumes and values of physical assets - minerals and other mining commodities in case of the mining industry - offers various opportunities for tax avoidance. This could be based on overvaluing or undervaluing of the price of exported minerals and other goods and services to shift the profits within the corporate structure[49], which is usually called "transfer pricing". A more correct terminology is "using unrealistic transfer prices".

Mineral reserves can also be undervalued already in the exploration phase (before the mine is constructed or put into operation), for instance by reporting that the minerals are of a lower grade to reduce the tax burden with a beneficial tax ruling.[50] After mining has started, the actual production volumes and values can be misreported,[51] for instance to prevent capital gain taxes.[52] There are thus various ways to lower profits (and profit-related taxes) in the mining country, by misreporting the price, quality or quantity of the minerals.

5. **Under reporting exports**

   Profits can be moved to entities in countries with lower applicable tax rates by under reporting exports.[53] There are two possibilities: under reporting exports between entities within the same corporate structure and between entities that do not belong to the same corporate structure. In the former, the gross profit of the corporate structure stays the same, but the net profits go up when profits are shifted to lower tax

48 Ministerie van Financiën (2016, September 20), "Internationaal fiscaal (verdrags)beleid - Brief van de Staatssecretaris van Financiën", Tweede Kamer, vergaderjaar 2016–2017, 25 087, nr. 131.

49 See e.g. Weyzig, F. (2013) Taxation and development: effects of Dutch tax policy on taxation of multinationals in developing countries, dissertation and Open Society Institute of South Africa (OSISA), Third World Network Africa, Tax Justice Network Africa, Action Aid International and Christian Aid (2009) Breaking the curse: How transparent Taxation and fair taxes Can Turn Africa's Mineral Wealth into Development.

50 This method was mentioned in our interview with Charles Goredema.

51 Le Billion, P. (2011) Extractive sectors and illicit financial flows: What role for revenue governance initiatives?

52 This was mentioned is our interview with Boyke Baldewsing.

53 Kar, D. & Spanjers J. (2015) Illicit Financial Flows from Developing Countries: 2004-2013, Global Financial Integrity; Le Billion, P. (2011) Extractive sectors and illicit financial flows: What role for revenue governance initiatives?; Weyzig, F. (2013) Taxation and development: effects of Dutch tax policy on taxation of multinationals in developing countries, dissertation; Curtis, M. (2015) Improving South Africa's mining revenues and transparency: The need for government action; Curtis, M. (2013) Malawi's Mining Opportunity: Increasing Revenues, Improving Legislation; Open Society Institute of South Africa (OSISA), Third World Network Africa, Tax Justice Network Africa, Action Aid International and Christian Aid (2009) Breaking the curse: How transparent Taxation and fair taxes Can Turn Africa's Mineral Wealth into Development.

jurisdictions. In the latter, the gross and net profits of the corporate structure go down, while the profits of the external trading partner go up. This can be advantageous to the owners of the corporate structure, when there is an indirect (ownership) relation with the trading partner and the trading partner is located in a jurisdiction which has a lower profit tax rate.[54]

6. **Over reporting imports**

   The goal and methodology here is in essence the same as for under reporting exports: shifting profits to related entities in jurisdictions with lower applicable tax rates.[55]

7. **Under reporting production**

   By reporting the production to be lower than the actual amount the revenues and profits on paper decrease in the country where the minerals are harvested, lowering the tax burden of the corporate structure.[56] This strategy can occur in combination with smuggling activities.[57]

8. **Under valuing the quality of the minerals**

   Under valuing the quality of the minerals can be especially important in the start-up phase when the (potential) mining company negotiates a tax ruling with a local government that is unaware of the actual value of the minerals. This asymmetric access to information can give the mining company the opportunity to negotiate a tax ruling with a much lower tax burden than should be the case.[58]

3.4 Indicators about the financial statements, payments and flows

The financial flows (and its reporting) determine the amount of profit that is made in each jurisdiction. Profits can be shifted by detaching the financial reporting from the actual economic activities. The literature describes all kinds of well-tried methods to make this happen. Profits can be shifted with for instance patent payments, royalty payments, interest payments and management fees within the corporate structure. A relevant typology that can be mentioned here is for instance 'thin capitalization': a local mining company is financed with a surplus of debt financing (instead of using equity) so that the high interest payments to the parent company (or any other entity within the corporate structure) lowers the profits in the mining country. This eventually lowers the overall tax burden.[59] It is hard to detect such behaviour, especially when financial details are not reported per jurisdiction but only for the corporate structure as a whole. Creating this lack of

54 Le Billion, P. (2011) Extractive sectors and illicit financial flows: What role for revenue governance initiatives?

55 Open Society Institute of South Africa (OSISA), Third World Network Africa, Tax Justice Network Africa, Action Aid International and Christian Aid (2009) Breaking the curse: How transparent Taxation and fair taxes Can Turn Africa's Mineral Wealth into Development; Kar, D. & Spanjers J. (2015) Illicit Financial Flows from Developing Countries: 2004-2013, Global Financial Integrity; Curtis, M. (2015) Improving South Africa's mining revenues and transparency: The need for government action; Weyzig, F. (2013) Taxation and development: effects of Dutch tax policy on taxation of multinationals in developing countries, dissertation.

56 Le Billion, P. (2011) Extractive sectors and illicit financial flows: What role for revenue governance initiatives?

57 This was mentioned in our interview with Charles Goredema.

58 This was mentioned in our interview with Charles Goredema.

59 See e.g. Actionaid (2015) An Extractive Affair: How one Australian mining company's tax dealings are costing the world's poorest country millions.

transparency by not reporting per jurisdiction is therefore in itself also an indicator.[60]

9. **Payments for patents to a jurisdiction with a lower profit tax**

   Profits in the mining country can be shifted to a related entity in a jurisdiction where a lower tax rate applies, by letting the local mining company pay considerable amounts of royalties to the related entity for the use of certain patents on products or production technologies.[61]

10. **Other royalty payments to a jurisdiction with a lower profit tax**

    This indicator is comparable to indicator 9, but the royalty payments are now for the use of brand names and other forms of intellectual property which are managed by a related company located in a jurisdiction with a lower profit tax.[62]

11. **Intra-group loans and interest payments**

    Intra-group loans results in interest payments between different entities belonging to the same corporate structure. Providing intra-group loans may be used to shift costs from an entity in a jurisdiction where the profit tax is relatively high to an entity in a jurisdictions with a lower income tax rate. This type of tax avoidance strategy is in particular likely to occur when the interest rate applied on the intra-group loan is clearly below or above the market rate. Or when 'thin capitalization' is applied, which means that the local mining company is being financed with relatively more debt (intra-group loans) and less equity than which is common business practice.[63]

12. **Redirected dividend payments**

    All companies in the corporate structure will normally pay part of their profits as dividends to the ultimate parent company, via the hierarchical structure of the group (dividend payments to the holding company of a business segment, which pays dividends to the ultimate holding company). These dividends constitute the disposable profit of the ultimate parent company, which can be used either for investments or for dividends to the shareholders. If the dividend payments in the corporate structure do not follow hierarchical lines but are redirected via entities in countries such as the Netherlands, which combine a participation exemption with a beneficial network of tax treaties, tax avoidance could possibly occur. The same applies when the redirected dividend payments do not reach the ultimate parent company, but are collected by a related entity in a jurisdiction which has relatively low income taxes. This entity could then reinvest the collected dividends, on behalf of the parent company.[64]

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60 Open Society Institute of South Africa (OSISA), Third World Network Africa, Tax Justice Network Africa, Action Aid International and Christian Aid (2009) Breaking the curse: How transparent Taxation and fair taxes Can Turn Africa's Mineral Wealth into Development and Curtis, M. (2015) Improving South Africa's mining revenues and transparency: The need for government action.

61 Eurodad (2015) Fifty Shades of Tax Dodging: The EU's role in supporting an unjust global tax system.

62 Weyzig, F. (2013) Taxation and development: effects of Dutch tax policy on taxation of multinationals in developing countries, dissertation.

63 Weyzig, F. (2013) Taxation and development: effects of Dutch tax policy on taxation of multinationals in developing countries, dissertation; Actionaid (2015) An Extractive Affair: How one Australian mining company's tax dealings are costing the world's poorest country millions and our own case study as reported in the appendix.

64 European Commission (2016) Commission Staff Working Document COM(2016) 23 final.

13. **Payments to local government (officials)**

    Mining companies can influence local government officials with fee payments to negotiate better deals and reduce the tax burden.[65] These payments may relate to corruption. According to a recent study the extractive industry is the most vulnerable sector for corruption.[66]

14. **Management fee payments to a jurisdiction with a lower profit tax**

    Profits can be lowered in the mining country by paying management fees to a related entity registered in a jurisdiction with a lower profit tax rate.

15. **No country by country reporting**

    Standard practice in the financial reporting of international corporate groups is to consolidate the financial data of all entities in the corporate structure. As this practice hides tax avoidance behaviour, additional country-by-country reporting is quickly emerging as the new standard, especially in the extractives industries (EITI). Therefore, not reporting on a country-by-country basis could be an indication of possible tax avoidance behaviour.[67]

    Responding to the growing call from various stakeholders, some mining companies are already voluntary reporting on a country-by-country basis on their revenues, profits and tax payments. This makes it relevant to check if the researched mining companies are doing so as well. A good example of such a company is the UK-based company Anglo-American. For a number of years, this globally diversified mining company has already voluntarily provided information about its tax payments on a country-by-country basis.[68]

16. **A relatively limited number of employees**

    Entities within a corporate structure that do not employ many employees but that still have a relatively high turnover deserve additional attention, because these so-called shell companies (the company is a shell without contents) can be useful for tax avoidance purposes.

17. **Accelerated depreciation of assets**

    The local mining company can make sure that for years the reported profits are non-positive by accelerating depreciation of its assets.[69]

18. **Many immaterial assets**

    A local mining company can reduce its tax burden by attracting a high amount of immaterial assets (mining rights) and use the depreciation thereof to reduce taxable profits.

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65 Curtis, M. (2015) Improving South Africa’s mining revenues and transparency: The need for government action.

66 TRACE International (2016, March), “Global Enforcement Report 2015”.

67 Open Society Institute of South Africa (OSISA), Third World Network Africa, Tax Justice Network Africa, Action Aid International and Christian Aid (2009) Breaking the curse: How transparent Taxation and fair taxes Can Turn Africa’s Mineral Wealth into Development and Curtis, M. (2015) Improving South Africa’s mining revenues and transparency: The need for government action.

68 Anglo American (2016, April 21), Tax and Economic Contribution Report 2015: Driving Change, Defining Our Future, p. 7.

69 Open Society Institute of South Africa (OSISA), Third World Network Africa, Tax Justice Network Africa, Action Aid International and Christian Aid (2009) Breaking the curse: How transparent Taxation and fair taxes Can Turn Africa’s Mineral Wealth into Development.

3.5 Indicators about tax arrangements and tax returns

The former indicators are mostly related to lowering the tax base (so-called base erosion), but the actual tax payments themselves can also be manipulated. This can be done directly with tax fraud; reporting a lower profit/turn-over. This can be indirectly visible (or at least indicated) by a tax return that has amounts that are too nicely rounded (indicating that they are not calculated by a natural process).[70] Another way this can become visible is when the amounts in the tax return differ from the financial details reported to the shareholders[71] and/or customs. Agreements with (local) governments can directly influence the tax payments. These can be existing (bilateral) tax agreements such as double taxation agreements, but these can also be specific tax rules determined for a specific mining project. Tax rulings for specific mining projects have the additional risk that when they are based on information provided by the mining company, this creates the incentive for the mining company to manipulate this information.[72]

19. **A difference between the reported and taxed income**

    The difference between what companies report to the tax office and their shareholders is increasing. Companies that increase the reported income to shareholders (legitimately or illegitimately) more often report lower fiscal profits to the tax office due to (legitimate or illegitimate) tax planning.[73] One could also consider other institutions that receive information, such as banks and customs.

20. **Via intermediate holding companies the corporate group could benefit from bilateral tax agreements**

    Generally, a bilateral tax agreement is meant to avoid double taxation. When a bilateral tax treaty (or double taxation agreement) exists between the country where the mining takes place and the country of origin of the mining group, the total tax burden of the mining group is reduced. When such a bilateral tax treaty does not exist, mining groups can adjust their corporate structure to profit from bilateral tax agreements existing between the mining country and other countries. The mining group could do so by setting up an intermediate holding company in a country in which it has no other activities, but which does hold a bilateral tax agreement with the developing country in which the actual operations take place. If the country of origin of the mining group does not have a tax agreement with the mining country, or a less favourable tax agreement, establishing an intermediate holding company in a third country which has a more favourable bilateral tax agreement can be a good indication of potential tax avoidance.[74]

    The research method used to check this indicator is shown in Figure 1. The terms of the bilateral tax agreement between the Netherlands and the country of the local mining company, represented by the purple arrow, are compared with the terms of the bilateral tax agreement between the country of the parent company and the country of the local mining company, represented by the orange arrow. If the terms of the agreement represented by the purple arrow are more beneficial than the terms of the agreement represented by the orange arrow, or if there is no bilateral tax agreement at all between the country of the parent company and the country of the local mining company, corporate groups could potentially profit from this difference. This could be an indicator for potential tax avoidance.

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70 Jaskiewicz, D. (2015) Tax evasion 'red flags' can act as warning of greater fraud, Blackhawk Intelligence.

71 Frank, M., Lynch, L., Rego, S. (2009) Tax reporting aggressiveness and its relation to aggressive financial reporting. The Accounting Review.

72 Mentioned in our interview with Charles Goredema.

73 Frank, M., Lynch, L., Rego, S. (2009) Tax reporting aggressiveness and its relation to aggressive financial reporting. The Accounting Review.

74 Tweede Kamer (2013), "Evaluatie van eventueel verdragsmisbruik; BEPS action 6; treaty abuse and treaty shopping is one of the most important concerns of the BEPS", Tweede Kamer, vergaderjaar 2013-2014, 25 087, nr. 61.

The occurrence of tax avoidance is even more likely if the bilateral tax agreement between the country of the parent company and the Netherlands, represented by the green arrow, is also more beneficial than the agreement between the country of the parent company and the country of the local mining company (the orange arrow). In that case, the Netherlands could be used as an intermediate country to lower the tax burden. Even if there is no more beneficial agreement between the country of the parent company and the Netherlands (the green arrow), the Netherlands could still be used for tax avoidance, because as long as the Dutch holding company does not transfer its profits to the parent company, no additional taxes are levied.

Figure 1 Comparing bilateral tax agreements

21. **Tax efficiency reasons are indicated for the corporate structure**

A corporate group sometimes explains its choice for the countries in which it sets up intermediate holding and financing companies in its annual report, in a prospectus, in a stock exchange filing or in a letter to the researchers of this report. When the reasons mentioned by the corporate group include "tax planning purposes" or "tax efficiency reasons",, this is a very strong indicator for tax avoidance.

22. **Advance tax ruling in the mining country**

The existence of a specific advance tax ruling between the mining group and the tax authorities in the developing country, can be an indicator for tax avoidance.[75] The mining group can, especially in the negotiation phase (before the mine is developed), make favourable tax arrangements with local government officials due to a (financial) power imbalance and asymmetric information. This can give international mining groups an advantage, resulting in a more favourable tax ruling, over local companies.[76]

23. **Nicely rounded tax return in the mining country**

When the tax return of the mining company in a developing country is filled with nicely rounded amounts, this can indicate manipulated amounts that were not derived from a natural calculation process.[77]

75 Boerrild, T; Kohonen, M.; Sarin R. (2015) Getting to good: Towards Responsible Corporate Tax behaviour, Oxfam.

76 Mentioned in our interview with Charles Goredema.

77 Jaskiewicz, D. (2015) Tax evasion 'red flags' can act as warning of greater fraud, Blackhawk Intelligence.

3.6 Miscellaneous indicators

Some indicators are hard to classify in the four former mentioned categories. One can hide The Ultimate Beneficial Owner (UBO) by separating the legal ownership from the actual ownership. By doing this, one can make it appear as if certain financial flows are not within the corporate structure, while they are in fact within it. This lack of transparency is in itself an indicator for tax avoidance. This is especially important since many of the earlier mentioned indicators specify money flows within the corporate structure; we have to be aware of the fact that the actual corporate structure can be bigger than it appears on paper. In addition, we categorized the most intuitive indicator – negative media attention – as miscellaneous.

24. **Unknown Ultimate Beneficial Owner (UBO)**

    To hide tax avoidance behaviour one needs a lack of transparency. Hiding the ultimate beneficial owner is an indicator for this behaviour.[78]

25. **Pressure from hedge funds**

    Companies that experience pressure from hedge funds avoid taxes more (often).[79]

26. **Strong separation of ownership and control**

    Concentrating ownership and control of the company with the same people leads to more risk averse leadership, which avoids taxation less (often).[80]

27. **Negative media attention**

    Negative media attention is an intuitive indicator for tax avoidance practices.[81]

28. **Owner or manager evades or avoids taxes**

    When the owners and managers of a company avoid or evade personal (income) taxes, the chances increase that the company they own or manage will avoid corporate taxes.[82]

3.7 The use and importance of the indicators

The list of 28 indicators presented in the preceding sections might not be exhaustive. Moreover, the importance of the indicators is not determined yet. It could even be that some indicators are only relevant in combination with other indicators. We can therefore only see this overview as a first step towards a better understanding of corporate tax avoidance practices. This first step could lead to the eventual development of an early warning system or a detection system. One can imagine that once we have a good understanding of how tax avoidance schemes are set up and which indicators are relevant to detect them, that we can use this information to check during the setting up of corporate structures whether additional attention is needed. We can also use the knowledge of relevant indicators to detect tax avoidance schemes ex post. Law

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78 Eurodad (2015) Fifty Shades of Tax Dodging: The EU's role in supporting an unjust global tax system; Curtis, M. (2015) Improving South Africa's mining revenues and transparency: The need for government action.

79 Cheng, C., Huang, H., Li, Y., Stanfield, J. (2012) The effect of hedge fund activism on corporate tax avoidance. The Accounting Review.

80 Badertscher et al. (2013) The separation of ownership and control and corporate tax avoidance, Journal of Accounting and Economics

81 Mentioned in our interview with Charles Goredema.

82 Chyz, J. A. (2013). Personally tax aggressive executives and corporate tax sheltering. Journal of Accounting and Economics, 56(2), 311-328.

enforcement agencies and tax offices can use such results to measure which companies or transactions have an increased chance of being related to tax avoidance and thereby focus on conducting targeted investigations. From a strategic point of view, such results may give law enforcement agencies and tax offices an incentive and a tool to switch from reactive investigation to proactive, information-based investigation. Additionally, it may help law enforcement agencies and tax offices utilize their resources in a more effective way, thereby increasing their overall effectiveness in dealing with tax avoidance. In similar research fields, econometric studies are successfully used to come to a first estimation of the importance of different indicators and the development of an early warning system and detection tool.[83]

3.8 Involvement of the Netherlands

Because of economies scale, technological developments and other reasons, most mining companies active in developing countries are not locally owned. Most mining companies are subsidiaries of foreign parent companies. As the Netherlands does not have a strong mining sector, this foreign parent company is never a Dutch company. It is a large mining company located in a third country.

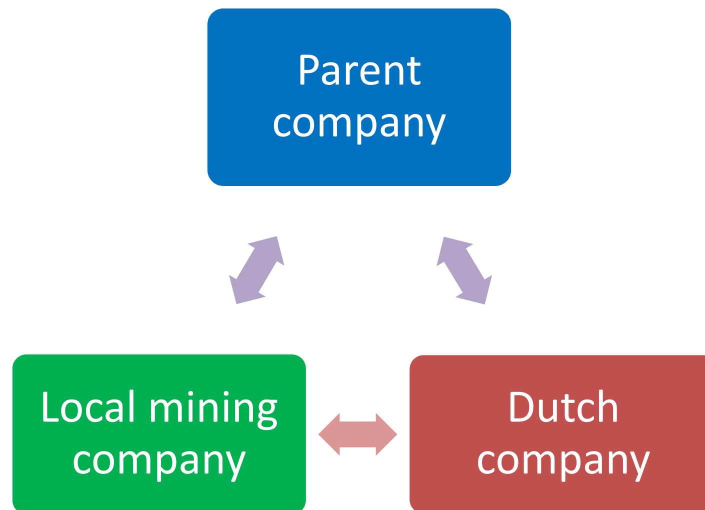
From the evidence gathered, it is clear that Dutch companies are often involved in mining activities in developing countries in an indirect, intermediate way. In all corporate structures encountered, we normally deal with at least three types of companies: the local mining company, the Dutch company and the parent company. The Dutch company can be a holding for the shares of the local mining company. Figure 2 shows this graphically, with ownership from right to left and dividend flows from left to right.

Figure 2 Dutch holding company in the structure of a mining group

However, the Dutch company can also be a third party for the ownership relation between the parent company and the local mining company. The role of the Dutch company focuses then on finance, licencing, management, sales, etc. Figure 3 represents this situation with lilac arrows for the ownership and dividend relation, while the bottom arrow represents a relation focussed on finance, licencing, management, sales, etc.

83 See Unger and Ferwerda (2011) for a study on indicators for money laundering in the real estate sector and Ferwerda, Deleanu and Unger (2016) for a study on indicators for corruption in public procurement.

Figure 3 Dutch financing company in the structure of a mining group



We classified all the indicators based on these general structures. Table 1 indicates how the indicators are related to the type of company in the structure.

Table 1 Indicators by type of company

No.	Short name of the indicator	Local mining company	Dutch entity	Parent company
1	Tax haven in corporate structure	X	X	X
2	Dutch company in the corporate structure	X	X	X
3	Dutch cooperative company in the corporate structure		X	
4	Trust company as director	X	X	
5	Under reporting exports	X		X
6	Over reporting imports	X		X
7	Under reporting production	X		
8	Undervalue quality minerals	X		
9	Patent payments	X	X	
10	Royalty payments	X	X	
11	Interest payments	X	X	
12	Dividend payments	X	X	
13	Payments to local officials	X		
14	Management fee payments	X		X
15	No country by country reporting			X
16	Relatively little/no employees		X	
17	Accelerated deduction	X		

No.	Short name of the indicator	Local mining company	Dutch entity	Parent company
18	increased depreciation assets	X		
19	Difference between reported and taxable income			X
20	Via intermediate holding companies the corporate group could benefit from bilateral tax agreements	X	X	X
21	Tax efficiency reasons are indicated for the corporate structure	X	X	X
22	Advance tax ruling in mining country	X		
23	Rounded tax return	X		
24	Unknown UBO	X		X
25	Pressure by hedge funds			X
26	Separation of ownership and control			X
27	Negative media attention	X	X	X
28	Owner/manager avoids/evades taxes			X

3.9 Conclusion

This chapter has provided an overview of the indicators mentioned in the literature (scientific and research reports) and distracted by us from interviews and court case studies. Table 2 shows that most of the indicators refer to financial statements, payments and tax returns.

Table 2 Overview of indicators

Group	Description	Number of indicators
1	Corporate structure	4
2	Minerals & trade flows	4
3	Financial statements, payments and flows	10
4	Tax arrangements and tax returns	5
5	Miscellaneous	5
Total		**28**

Chapter 4 Analysis of international, European and Dutch tax initiatives

4.1 Introduction

As this research project aims to identify potential Dutch policy initiatives within the framework of existing legislation and initiatives in this field, this chapter will give a broad overview of existing legislation and recent policy initiatives. We do not aim to describe a full overview of all the tax initiatives, but restrict our focus to those initiatives that are particularly relevant for the for the mining sector in the developing countries and its relation with the Netherlands.

The government income of developing countries with a large mining sector can be strongly affected by tax avoidance practices of mining companies. On an international level, there already exist treaties, laws and regulations with regard to these subjects in a general sense. In addition, there are (international) initiatives that can lead to further multilateral and bilateral treaties. There are currently no treaties etc., which specifically cover mining activities. In this chapter shall be discussed the international treaties and initiatives from 2009 onward in the area of tax avoidance and related matters.

Due to the increasing internationalization of the economy, and more income is generated overseas it can be channelled abroad or back again without the tax authorities knowing about it. Tax authorities have therefore a considerable interest in being able to determine which persons and companies can be 'linked' to foreign entities, capital and bank accounts. Therefore, it is of great importance that tax authorities exchange information internationally. The point of departure must be for the tax inspector in the developing country to have sufficient legal possibilities to obtain information domestically, while abroad ensuring the correctness and completeness of the tax returns submitted by the mining companies. The information requirements may vary by country. That depends on several factors such as the local tax legislation and the establishment of the tax return form. In addition to the necessity of having a formal base to ask for information, the tax authority also may have a need for specific information that is not normally available in the country from where it is requested. . This can relate to elements of income, deductible expenses and other matters.

In this chapter it will be reviewed whether and to what extent the Dutch government has the ability to develop some independent policy to achieve the increase of tax income for developing countries from mining activities. We will review all discussed initiatives critically and compare them with each other. Where possible, we will point out shortcomings, contradictions and/or blind spots.

4.2 International initiatives

The battle against tax avoidance and tax evasion is, since 2012, high on the political agenda of various international organisations. The international initiatives addressing tax avoidance are mostly aimed at multinational enterprises and 'High Net Worth' individuals. The most important international initiatives are discussed here.

4.2.1 Tax Information and Exchange Agreements

The year 2009 can be regarded as a 'game changer' in the international battle against tax avoidance. Before 2009, the OECD was already engaged tackling in tax avoidance.[84] Following on from two major international tax fraud cases, the G20 took over the initiative of the OECD in April 2009, and declared it would be taking a harder stand against countries with banking secrecy by publishing a list of countries that do not comply with the international norm of international exchange of data on tax-related issues.

84 OECD (1998, May), "Harmful Tax Competition - An Emerging Global Issue".

Under pressure from the G20 and the OECD, many of these countries signed a Tax Information and Exchange Agreement (TIEA). A TIEA can be described as a specific tax treaty between two countries aimed at the exchange of information concerning tax cases. These TIEAs are based on the model treaty of the OECD and are therefore mostly of a similar set-up. An important limitation is that it only concerns information-exchange upon request, therefore not automatically.

4.2.2 Base Erosion and Profit Shifting (BEPS) action plans

Base erosion and profit shifting (BEPS) is a technical term referring to the negative effect of multinational companies' tax avoidance strategies on national tax bases. BEPS can be the result of companies using unrealistic transfer prices for their international intra-group transactions, and a range of other international tax avoidance techniques such as thin capitalisation and hybrid mismatch arrangements. BEPS is said to be an "attempt by the world's major economies to try to rewrite the rules on corporate taxation to address the widespread perception that the corporations don't pay their fair share of taxes".[85] In recent years, a number of cases were reported showing that gaps and mismatches in the current international tax rules could make profits "disappear" for tax purposes, or allow the shifting of profits to no or low-tax locations where the business has little or no economic activity. [86]

In 2013, OECD and G20 governments took the initiative for the BEPS Project. The goal was very ambitious: to revise the rules to align them to developments in the world economy, and to ensure that profits are taxed where economic activities are carried out and value is created.

On 5 October 2015, the OECD released the final version of BEPS. It contains 15 BEPS Action Plans. The G20 endorsed the Action Plans in November 2015 further to the rapport of 2013. However, the launch of the final recommendations does not mean that the book on BEPS can now be closed. The final version of BEPS makes a distinction between "minimum standards", "recommendations" and "common approaches/ best practices". All OECD and G20 countries have committed to a consistent implementation of minimum standards. This concerns especially Actions 5 (Harmful tax practices), 6 (Treaty Shopping), 13 (Country by Country Reporting), and 14 (Improve Dispute Resolution). The interesting question is now whether all countries, both OECD members and non-OECD members alike, will uniformly transpose the OECD's recommendations and best practices/common approaches into domestic law and / or bilateral treaties, whether some countries will not move at all or whether some countries will introduce rules that substantially deviate from the OECD's recommendations. The answer on this question will become clear in the near future.

As mentioned above, the BEPS Package consists of 15 Action Plans. These 15 BEPS Action Plans can be broken down into three major categories:

1. **General action on BEPS**

- **In summary, we can distinguish the following general actions on BEPS:Addressing the tax challenges of the digital economy**

  Technically speaking, this first action is one of the hardest. The Plan calls for a review of different business models and a better understanding of the generation of value in the digital sector. The action point is the production of an OECD report identifying the relevant issues raised by digital businesses and "possible actions" to address them.

85 Mansori, K. (2014, October 24), "What Is This 'BEPS' Thing, and Should I Care?", MINA Economics.

86 Some interesting examples are found in the so-called "Lux-leaks", a number of cases reported in international press whereby the importance and use of Luxembourg in international tax avoidance was explained.

- **Neutralising the effects of hybrid mismatch arrangements**

  The action on hybrids is explained by reference to the use of such instruments to achieve unintended double non-taxation or long-term tax deferral, by ensuring that dual resident entities are not used to obtain tax treaty benefits unduly. The action includes work on the Model Treaty, where provisions are to be developed to prevent undue benefits under treaties for such hybrid arrangements, and recommendations for domestic law change, primarily in relation to deductibility.

- **Strengthening CFC rules**

  The OECD proposes to develop uniform Controlled Foreign Company (CFC) rules to counter BEPS in a more comprehensive manner, with the aim to ensure taxpayers would have a much reduced incentive to shift profits into a low tax jurisdiction. The action point is to develop recommendations regarding the uniform design of CFC rules which could then be considered by the sovereign states.

- **Limiting base erosion through interest deductions and other financial payments**

  The focus here is on the BEPS concerns the excessive deductible payments, such as interest and other financial payments, in both inbound and outbound investment scenarios. The action point is to develop best practice recommendations for the design of rules to prevent BEPS, for example through the use of related-party and third-party debt to achieve excessive interest deductions or to finance the production of exempt or deferred income. In this respect, guidance on how to ensure realistic transfer prices being used by international corporate groups needs to be developed in relation to the pricing of related party financial transactions.

- **Countering harmful tax practices more effectively, taking into account transparency and substance**

  This action point is concerned with the actions of countries, not of corporations. The focus is to develop more effective solutions towards the goal of countering harmful tax regimes, taking into account factors such as transparency and substance.

  There are three major elements to this work. First, there will be a review of member country regimes, to be completed within one year. Second, a strategy is to be developed to expand participation in this area to non-OECD members. Third, and more challenging, it is proposed that revised criteria on harmful tax practices should also be developed.

2. **Tax treaty action on BEPS**

With regards to tax treaty actions, the BEPS Action Plans list the following:

- **Prevention of treaty abuse**

  The BEPS Action Plan identifies a series of possible measures to ensure that taxpayers cannot inappropriately use bilateral treaties to achieve a position of double non-taxation in relation to any particular activity. The action is to develop best practice anti-abuse clauses for use within treaties and best practice anti-avoidance rules which jurisdictions can implement via their domestic tax systems. As far as provisions in tax treaties are concerned, focus is on anti-treaty shopping clauses such as a limitation-on-benefits-provision and a Principal Purpose Test (PPT). In addition, abuse of the tie-breaker rule for determining treaty residence and abuse of permanent establishments situated in third states should be mentioned in this respect.

- **Make dispute resolution mechanisms more effective**

  Difficulties currently experienced in resolving bilateral treaty-related disputes between jurisdictions over taxing rights were highlighted in the initial BEPS discussion. Many, but not all bilateral treaties include a mutual agreement procedure (MAP) based on the OECD Model Treaty. Even when there is, it often requires only that the competent authorities use their best efforts to reach agreement. Reasons for unresolved double taxation range from restrictions imposed by domestic law on the tax administration's ability to compromise, to stalemates on economic issues such as valuations. The action is to agree ways

of resolving disputes where a mutual agreement procedure does not work or is not applied.

- **Multilateral convention**

  In November 2016 more than 100 jurisdictions concluded negotiations on a multilateral convention that will swiftly implement a series of tax treaty measures to update international tax rules and lessen the opportunities for tax avoidance by multinational enterprises. The new instrument will transpose results from the OECD/G20 Base Erosion and Profit Shifting Project (BEPS) into more than 2,000 tax treaties worldwide. A signing ceremony will be held in June 2017 in Paris.

  The Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (generally referred to as the MLI) will implement minimum standards to counter treaty abuse and to improve dispute resolution mechanisms while providing flexibility to accommodate specific tax treaty policies. It will also allow governments to strengthen their tax treaties with other tax treaty measures developed in the OECD/G20 BEPS Project.[87] The State Secretary of Finance informed the Dutch Parliament in October 2016 that the jurisdictions participating in the negotiations have the intention to sign the *MLI* in the first half of 2017.[88]

3. **Permanent Establishments**

The BEPS Action Plan mentions the following as far as Permanent Establishments (PE) are concerned:

- **Artificial avoidance of the permanent establishment status**

  The Action Plan identifies two specific areas of concern: commissionaire arrangements and businesses that artificially fragment their operations among multiple group entities to qualify for the exceptions to PE-status for preparatory and auxiliary activities.

  Therefore, the OECD will work on amending the dependent agent test in Article 5(5) and the provisions dealing with preparatory and auxiliary activities in Article 5(4) of the Model Treaty. Work on these issues will also address the related profit attribution issues.

  Finally, with regards to data and transparency, the BEPS Action Plan proposes to require taxpayers to disclose their aggressive tax avoidance arrangements. The Action Plan aims to look into best practices on mandatory disclosure rules for aggressive or abusive tax arrangements or structures, by reference to those where jurisdictions already have such regimes.

4.2.3 Inclusive Framework for the implementation of BEPS

In order to implement the BEPS recommendations, OECD members and G20 countries have developed an Inclusive Framework which allows interested countries and jurisdictions to cooperate on developing standards on BEPS related issues and reviewing and monitoring the implementation of the whole BEPS Package.

Countries and jurisdictions interested in joining the framework are required to commit to the comprehensive BEPS Package and its consistent implementation. Members of the framework will work on an equal footing to tackle tax avoidance, to improve the coherence of international tax rules, and to ensure a more transparent tax environment. The members will determine the governance, structure and the programme of work, together with the subsidiary bodies that will carry out the work. The work programme will focus on the implementation of BEPS and on developing standards on remaining BEPS-issues, in particular by:

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87 OECD (2016, 24 November), "Countries adopt multilateral convention to close tax treaty loopholes and improve functioning of international tax system"

88 Ministerie van Financiën (2016, October 28), "Internationaal fiscaal (verdrags)beleid - Brief van de Staatssecretaris van Financiën", Tweede Kamer, vergaderjaar 2016–2017, 25 087, nr. 135.

- developing standards in respect of remaining BEPS issues;
- reviewing the implementation of agreed minimum standards through an effective monitoring system;
- monitoring BEPS issues, including tax challenges raised by the digital economy; and
- facilitating the implementation processes of the members by providing further guidance by supporting development of toolkits supporting low-capacity developing countries.

In the framework of this study, it is important to point out the initiative to give technical assistance to developing countries in implementing the BEPS package.[89]

4.2.4 Automatic data-exchange through the Common Reporting Standard (CRS)

The international exchange of data for tax purposes through the Common Reporting Standard (CRS) is regarded internationally as the new international norm to effectively counter tax avoidance and fraud. The Netherlands' government expects much of the CRS in the battle against tax avoidance and will be among the first countries to start with automatic data-exchange in 2017.[90]

However, there is still a considerable lack of clarity about the span and the effect of the automatic data exchanges in practice, since this initiative has not been applied yet. In 2017 the first exchange of data should happen. So, it is premature to draw conclusions at this point in time.

Inspired by the American FATCA-legislation, the G20 submitted a request to the OECD to develop a standard model that will arrange automatic data exchange globally. For this, the CRS (Common Reporting Standard) was developed. The CRS is the standard for the identification of accountholders that live or have their seat abroad, and for the annual exchange of data about financial accounts between countries that have concluded an agreement thereto. The Netherlands participates therein with the other EU-member states.

Currently more than 95 countries joined the CRS or have promised to join it in the short term. The plan is that all countries of the world shall join. As a result banks must know upon the opening of an account by a new customer, whether the concerned person resides fiscally in the Netherlands or (in addition also) in another country/countries, and for the United States whether the person is an American national. For representatives of legal persons, the bank must know whether they have their seat in the Netherlands or fiscally also in another country/countries. In certain instances, also data of the ultimate beneficial owners must be stated.

With regards to fiscal residency or determining the fiscal seat of a business, one must realise, that each country has its own laws that determine when an organization has its fiscal seat, this could lead to extra research into an organisations' interested parties or beneficiaries.[91]

Next to the CRS, the House of Representatives in November 2016 adopted a law to automatically exchange information on tax rulings with other countries.[92]

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89 OECD (2015, June 23) "The BEPS report and the engagement with developing countries".

90 Ministerie van Financiën (2016, May 18), "Panama Papers - Brief van de Minister en Staatssecretaris van Financiën", Tweede Kamer, vergaderjaar 2015–2016, 34 451, nr. 2

91 OECD (n.d.), "Rules governing tax residence", online: http://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/tax-residency/, viewed in December 2016.

92 Tweede Kamer (2016, November 17), "Stemming Wet uitwisseling inlichtingen over rulings", Handelingen TK 2016-2017, 24.

4.2.5 Country-by-Country reporting

In the framework of BEPS, the OECD published in June 2015 its final report with regards to Action 13 on 'Transfer Pricing Documentation and Country-by-Country Reporting'. Multinational enterprises will be obliged to report relevant financial data annually for each jurisdiction in which they are active, also referred to as Country-by-Country (CbCr) reporting. This could allow tax offices in developing countries to get an insight into the corporate and financial structure of companies operating in their country. This could reveal that companies that do not report any profits in their country do report profits in e.g. tax havens either.

The OECD report proposes a standard template for Country-by-Country Reporting requirements, which should be implemented by OECD member states for fiscal years beginning on or after 1 January 2016. The reporting requirements apply to multinational enterprises with annual consolidated group revenue equal to or exceeding EUR 750 million. These are required to provide annually and for each tax jurisdiction in which they do business the amount of revenue, profit before income tax and income tax paid and accrued. It also requires multinationals to report their number of employees, stated capital, retained earnings and tangible assets in each tax jurisdiction. Finally, it requires multinationals to identify each entity within the group doing business in a particular tax jurisdiction and to provide an indication of the business activities each entity engages in.[93]

The Netherlands has implemented the OECD standard in national legislation. Dutch subsidiaries of multinational companies now have to report annually to the Dutch Tax and Customs Administration about their global tax profit distribution and the amounts of tax paid in each country. Also a graph of the structure of the multinational group needs to be submitted.[94]

The Netherlands endeavours to go beyond the BEPS requirements with respect to CbCr and to make the reports of multinational corporations public.[95] This would make the information readily available for developing countries as well.

4.3 Initiatives in the EU

4.3.1 EU Anti-Tax Avoidance Directive (ATAD)

The EU Anti-Tax Avoidance Directive (ATAD) translates some of the action points of the Base Erosion and Profit Shifting (BEPS) package of the OECD into an EU directive. [96] To counter the shifting of profits to countries with lower tax rates, the European Commission wants to forbid this and to oblige the enterprises to pay taxes in the countries where the profit is realised. On 20 June 2016 the EU-member states reached an agreement on measures needed to prevent tax avoidance by multinationals.[97] The directive is part of the Anti-Tax Avoidance Package. The directive prescribes that the member states must have implemented most measures no later than on 1 January 2019 in their national legislation. By this implementation, differences emerge within the tax laws of the 28 member states that possibly can give cause again to new forms of tax planning.

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93 OECD/G20 Base Erosion and Profit Shifting Project (2015, 8 June), "Transfer Pricing Documentation and Country-by-Country Reporting - Action 13: 2015 Final Report", online: http://dx.doi.org/10.1787/9789264241480-en

94 Ministerie van Financiën (2015, December 30), "Regeling van de Staatssecretaris van Financiën van 30 december 2015, nr. DB/2015/462M, houdende voorschriften ter verdere uitwerking van de aanvullende documentatieverplichtingen voor multinationale ondernemingen (Regeling aanvullende documentatieverplichtingen verrekenprijzen)", Staatscourant 2015, nr. 47457.

95 Ministerie van Veiligheid en Justitie (2016, October 19), "Internationaal fiscaal (verdrags)beleid - Brief van de Minister van Veiligheid en Justitie, Tweede Kamer, vergaderjaar 2016–2017, 25 087, nr. 134.

96 Vakstudie Nieuws (2016, July 14).

97 European Commission (2016, June 21), "Fair Taxation: Commission welcomes agreement reached by Member States on new rules to tackle tax avoidance", Press Release IP/16/1886.

The directive is not yet perfect and contains a number of weak spots but is nevertheless seen as a historic step forward in the battle against tax avoidance practices. Below the measures will be described and analysed briefly.

- **BEPS areas covered in the EU Directive**
  - Hybrid mismatches

    In article 2 and 9 of the directive, a specific anti-abuse clause has been included to battle hybrid structures. International enterprises can use differences in tax systems to benefit twice from tax deductions or not to pay tax in the one country over income that can be used in the other country as expenditure for the reduction of the profit tax. That latter happens for instance with internal company financing, whereby that financing is regarded by the one country as external capital, of which the paid interest may be deducted, while in the other country there is an instance of own capital, of which the dividend distribution remains untaxed (for instance in the case of profit sharing bonds).

    The directive provides that the member state where the recipient party has its seat, will have to follow the definition and categorization of the member state where the distributing party has its seat. In this manner, an enterprise will only be eligible for a fiscal benefit in one country, for instance a deduction, or an exemption. However, it cannot be clearly seen how these stipulations can prevent profit drainage in developing countries, without these countries modify their legislation self and also applying it in practice.
  - Interest restrictions

    This measure is intended to discourage internal loan constructions within a group of companies. This will be done my making interest payments no longer deductible anymore (in full) when these are more than 30% of the (EBITDA) profit of the enterprise (see article 4 directive).

    Within the EU interest payments of large international enterprises are often deductible from the profit. By loaning plan-wise within the enterprise between subsidiaries, an enterprise can arrange because of it that it pays taxes as little as possible. The enterprise will then borrow money from a subsidiary in a country where income from interest is taxed little or not at all, to a subsidiary where interest payments are deductible. In this manner, the tax levy will often be decreased considerably for the enterprises. With the directive, the EU tries to make an end hereto, by making the interest deduction dependent on the profit (EBITDA) of the enterprise. A number of exceptions to this main rule are possible. In the first place, the first EUR 3 million of interest will be deductible each time. Furthermore, member states can allow full deduction of the interest, if the tax subject is a stand-alone enterprise.

    The Netherlands also already knows of a series of limitations around the deduction of interest in the corporate tax.[98]
  - Controlled Foreign Company (CFC) measures

    A Controlled Foreign Company (CFC) is a foreign enterprise in which a tax subject enterprise has directly or indirectly a substantial interest, in the case of the directive, an interest of more than 50%. The measure is aimed against international enterprises that move so-called passive income to countries with a low tax rate. Interest, royalties and dividends are examples of passive income. When multinationals in the future channel such income to low-tax countries, then the EU-member state in which the parent company of the group has its residence, must levy tax according to the rate applicable in that country.

98 See for example article 10a and 13,L Dutch Law on Corporate Tax.

The Dutch NGO Tax Justice Netherlands has requested that this measure also apply in developing countries.[99] However, in its present form, the effect of the measure for developing countries is very limited, because it cannot be seen how the measure will indeed render effect for developing countries, as long as the proceeds of taxes from CFC-provisions do not benefit developing countries. In this respect, it should not be overlooked that CFC is primarily an anti-avoidance measure which is mainly of interest to capital exporting countries.

- **Issues in the EU Directive not covered in BEPS**
  - Exit taxation

    International enterprises can make use of assets such as intellectual property or patents to avoid taxes in high taxed countries. These assets can then be allocated to countries with a low or zero-rate. Thus, the enterprise has only to pay taxes on the income from these assets in the countries with the low rate, in spite of almost no economic activity taking place. In article 5 of the Directive a mandatory exit-levy clause has been included.

    The exit tax will be levied over the value of an enterprise or a part of the enterprise that is moved from the countries in which that value has been created. This will prevent a country, which for instance has development costs for intellectual property missing out on the tax income from the same intellectual property, because an enterprise allocates this in a tax haven.

    Contrary to the other measures, implementation of this measure must be before January 1, 2020.

  - General Anti-Abuse Rule (GAAR)

    Article 6 of the ATAD directive makes it possible to address aggressive tax planning, when none of the other rules are applicable. After the acceptance of the directive, new ways to avoid tax will be investigated, and in spite of that this undoubtedly new constructions shall be set-up. The General Anti-Abuse Rule (GAAR) will therefore serve as a fall back for when there is an instance of tax avoidance but whereby one cannot fall back on the accepted rules. The intention is that tax authorities may neglect 'artificial constructions' and may levy tax on the basis of actual economic activity. A construction will be qualified as artificial when 'no valid commercial reasons are present, which reflect the economic reality'.

    At present, Dutch law does not contain a General Anti-Abuse Rule of this type. However, the *fraus legis* doctrine as developed (but not codified) by the Supreme Court the Dutch cabinet, aims to fill this gap.

4.3.2 Corporate tax reform package

At the end of October 2016, the European Commission proposed a so-called 'Corporate tax reform package' to provide a more modern and fairer tax system for business, to close loopholes between EU countries and non-EU countries, and to provide new dispute resolution rules to relieve problems for businesses with double taxation in different EU Member States. The package consists of four directives covering the following three topics:

- Two directives on the introduction of a Common Corporate Tax Base (CCTB) and a Common Consolidated Corporate Tax Base (CCCTB) which will overhaul the way in which companies are taxed in the Single Market, to ensure a fairer, more competitive and more growth-friendly corporate tax system. The CCTB and CCCTB directives also contain important new elements to improve their anti-tax avoidance and growth-promoting capacities.

99 Tax Justice Netherlands (2016, June 8), "Letter to the Dutch Government".

- A directive to introduce an improved system to resolve double taxation disputes in the EU. Double taxation is a major obstacle for businesses, creating uncertainty, unnecessary costs and cash-flow problems. Under the proposal, current dispute resolution mechanisms will be adjusted, to better meet the needs of businesses. In particular, a wider range of cases will be covered and Member States will have clear deadlines to agree on binding solutions to cases of double taxation.
- A directive to extend the rules against hybrid mismatches as provided for in the ATAD, to stop companies from exploiting loopholes, known as hybrid mismatches, between Member States' and non-EU countries' tax systems to escape taxation.[100]

In November 2016, the Dutch Minister of Foreign Affairs informed the Dutch parliament in a letter on the about the position of the Dutch Government with regard to the *Corporate tax reform package*.[101]

4.3.3 The 4th Anti-Money Laundering directive

Another development that is of importance for the battle against tax avoidance, concerns the introduction of the European 4th Anti-Money Laundering directive (AMLD4). The directive was published on 5 June 2015; member states must have implemented this directive no later than 26 June 2017 in their own legislation. A key element of this directive is the introduction of the obligation for financial institutions, trust and company service providers, attorneys, and other service providers to investigate their clients and to report unusual transactions. The client investigation stipulations are more than in the past, for instance if there is an increased risk regarding money laundering or tax evasion.

Also all member states are obliged to set up a register with information about the Ultimate Beneficial Owners (UBOs) of companies and other legal entities (UBO-register).[102] The main purpose of this UBO-register is to combat money laundering and tax avoidance. This will be achieved by making transparent who owns or controls a corporate or other legal entity, or a trust or similar legal arrangement. Up-to-date and accurate information over the Ultimate Beneficial Owners (UBO) of companies will help detecting tax avoiders who hide their identity behind a network of legal (offshore) structures.

The scope of this directive remains for now limited to European countries and to non-European countries that have expressed the intention to participate in the gathering and exchange of UBO-information. For developing countries, it could be of interest if they can verify data about the UBOs of companies operating in the EU. The AMLD4 does not require the member states to make their UBO-register publicly accessible. The Minister of Finance in February 2016 announced that the Netherlands is planning to set up a public UBO-register, managed by the Dutch company register. However, only limited UBO-data will be available to the public and to foreign authorities.[103] The Dutch Parliament adopted a motion in May 2016 asking the government to take into account the accessibility, costs and user-friendliness of the UBO-register for journalists, researchers and relevant NGOs, but this motion does not refer to relevant authorities in developing countries.[104]

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100 European Commission (2016, October 25), "Commission proposes major corporate tax reform for the EU", online: http://europa.eu/rapid/press-release_IP-16-3471_en.htm

101 Ministerie van Buitenlandse Zaken (2016, November 18), "Brief over EU-voorstellen: Pakket vennootschapsbelasting COM (2016) 683, 685, 686 en 687", Tweede Kamer, vergaderjaar 2016–2017, 34 604, nr. 2-4.

102 Ministerie van Financiën (2016, February 10), "Kamerbrief over de contouren van UBO-register", Tweede Kamer, vergaderjaar 2015–2016, 31 477, nr. 10.

103 Ministerie van Financiën (2016, February 10), "Kamerbrief over de contouren van UBO-register", Tweede Kamer, vergaderjaar 2015-2016, 31 477, nr. 10.

104 Tweede Kamer (2016, May 17), "Motie van de leden Grashoff en Groot", Tweede Kamer, vergaderjaar 2015–2016, 31 477, nr. 15.

In July 2016 the European Commission (EC) proposed to further reinforce EU rules on anti-money laundering to counter terrorist financing and increase transparency about who really owns companies and trusts. On this second topic, the EC proposed to change the AMLD4 in order to make public certain information collected in the UBO-registers, to interconnect the UBO-registers of the different member states and to extend the information available to tax authorities. The EC proposes that existing, as well as new, bank accounts should be subject to due diligence controls. This will prevent accounts that are potentially used for illicit activities from escaping detection. Passive companies and trusts, such as those highlighted in the Panama Papers, will also be subject to greater scrutiny and tighter rules.[105] These proposals have not yet been adopted by the European Union.

4.4 Initiatives in the Netherlands

4.4.1 Renegotiation of Double Taxation Agreements

In response to publications highlighting potential abuse of Double Taxation Agreements (DTAs) by corporate groups, the Netherlands in 2013 started to review the treaties with 23 developing countries. Important points of focus are the provisions on the (automatic) exchange of information and the inclusion of a specific anti-abuse rule provision, tailor-made for each partner country. A recent example of possible improvements is the protocol of change to the treaties with Ethiopia and Indonesia. In both instances the change concerns a mitigated form of "Limitation on benefits", stating that the benefits of the treaty are declared not applicable if the (U)BO is not residing in the Netherlands or the other treaty country.[106]

Table 3 shows the status of the Double Taxation Agreements with the five selected developing countries and the status of the renegotiation process.

Table 3 Double Taxation Agreements with five selected countries

Country	Entry into force latest DTA	Status	Renegotiation
DR Congo	No DTA	No DTA	No renegotiation
Ghana	12 November 2008	In force	Agreement
Indonesia	31 December 2003	In force	Agreement
Mongolia	17 October 2003	Terminated 1 January 2014	No renegotiation
Zambia	9 November 1982	In force	Agreement

Source: Ministerie van Financiën (2015, November 19), Antwoorden op schriftelijke vragen over appreciatie uitkomst BEPS-rapport en vooruitblik Nederlands fiscaal vestigingsklimaat, p. 15; De Verdragenbank (n.d.), online: https://verdragenbank.overheid.nl/nl/Verdrag/Details/011613, viewed in November 2016.

105 European Commission (2016, July 5), "Proposal for a Directive of the European Parliament and of the Council amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and amending Directive 2009/101/EC", COM(2016) 450 final; European Commission (2016, July 5), "Press release - Commission strengthens transparency rules to tackle terrorism financing, tax avoidance and money laundering.

106 Ministerie van Financiën (2015, November 19), Antwoorden op schriftelijke vragen over appreciatie uitkomst BEPS-rapport en vooruitblik Nederlands fiscaal vestigingsklimaat.

As indicated in Table 3, the existing Double Taxation Agreement with Mongolia was terminated in 2013, as the government of Mongolia was concerned about the abuse by Dutch foreign-owned holding companies of the reduced withholding tax on dividend as part of the DTA.[107]

4.4.2 Substance-requirements

On 30 August 2013, in a letter to the Parliament, the State Secretary of Finance and the Minister for International Trade and Development Cooperation announced several steps to avoid abuse of Dutch tax treaties.[108] Part of these measures deal with the introduction of substance requirements for foreign-owned financing and holding companies:

- In June 2014 two regulations came into force with regard to financing and holding companies applying for an Advance Tax Ruling (ATR) or an Advance Pricing Arrangement (APA), both giving certainty in advance on how the Dutch Tax and Customs Administration would evaluate their tax position. The new regulations stipulate that to be eligible for an ATR or APA, financing and holding companies do need to meet Dutch substance requirements. If a financing or holding company does not meet these requirements, the ATR or APA request is not processed further by the Tax and Customs Administration and the relevant foreign tax authorities are informed about this decision.[109]

  The substance requirements included in the regulation are:

  1. At least half of the total number of statutory and decision-making directors of the tax subject resides or is actually having its seat in the Netherlands;
  2. The directors residing in or having their seat in the Netherlands have the disposition over the required professional knowledge to execute their tasks properly, to which tasks belong at least the resolution over transactions to be concluded by the tax subject, as well as ensuring a good processing of the concluded transactions;
  3. The tax subject has the disposition over qualified personnel for the adequate execution and registration of the transactions to be concluded by the tax subject;
  4. The board resolutions are taken in the Netherlands;
  5. The most important bank accounts of the tax subject will be maintained in the Netherlands;
  6. The bookkeeping is maintained in the Netherlands;
  7. The address of the seat of business of the tax subject is in the Netherlands;
  8. The tax subject is, insofar known to the tax subject, not regarded by another country as a fiscal resident;
  9. The tax subject runs a real risk with regards to monetary loans or legal relations;
  10. The tax subject has equity which is at least commensurate with the functions executed by the tax subject. For instance, the private limited liability company is not mainly financed with debt.

107 Ministerie van Financiën (2013, March 30), "Brief van de Staatssecretaris van Financiën over International fiscaal (verdrags)beleid", Tweede Kamer, vergaderjaar 2012–2013, 25 087, nr. 49.

108 Ministerie van Buitenlandse Zaken (2013, August 30), "Internationaal fiscaal (verdrags)beleid - Brief van de Minister voor Buitenlandse Handel en Ontwikkelingssamenwerking en Staatssecretaris van Financiën", Tweede Kamer, vergaderjaar 2012–2013, 25 087, nr. 60

109 Directoraat-Generaal voor de Belastingdienst, Cluster Fiscaliteit (2014, June 13), "Besluit van 3 juni 2014, DGB 2014/3101", Staatscourant, 2014, nr. 15957; "Besluit van 3 juni 2014, DGB 2014/3098", Staatscourant, 2014, nr. 15955.

- The same substance requirements were introduced for all service-providing companies ("dienstverleningslichamen"). This category includes financing companies, but not holding companies. Article 3a of the *Uitvoeringsbesluit* for the Dutch *Law on the international provision of assistance in the levy of taxes (WIB)* was changed, to introduce an obligation for service-providing companies to fill in an extra form annually, together with their tax return form, indicating if they meet the same ten substance requirements as listed above.[110] To check if these forms are filled in correctly, in 2014 a random sample of 84 financing companies was selected, of which 76 were actually researched by the Tax and Customs Administration.[111]
- Also, the Netherlands has changed Article 8c of the *Law on corporate income tax (Wet Vpb)*, to exclude from the profit calculation all interest and royalties paid to, or received from, other companies belonging to the same corporate group, if the Dutch holding or financing company does not carry any real risks. As indicator that the Dutch company is carrying risks, a total equity with a value of EUR 2 million or an equity equalling 1% of the total outstanding loans, is accepted.[112]

In December 2014, the Dutch Court of Audit (Algemene Rekenkamer) concluded in a study that "the substance requirements, in so far they deal with being present in the Netherlands, can usually be met fairly easily in practice by hiring the services of a trust and company service provider. A visible presence with own employees in the Netherlands is not required in that case."[113]

In response to this report of the Court of Audit, the House of Representatives in October 2016 adopted a motion asking the government to research further the options to strengthen the Dutch substance requirements.[114] The State Secretary of Finance responded in November 2016 with a letter discussing three possible policy options to strengthen substance requirements:[115]

- Exchange more information with foreign tax authorities about foreign-owned Dutch holding and financing companies. This could be done by changing article 3a in the *Uitvoeringsbesluit* (see above) to let holding companies meet substance requirements as well and/or to raise the substance requirements for holding and financing companies;
- Raising the substance requirements when certainty in advance is requested by a holding or financing company (ATR and APA rulings). The letter mentions three concrete options to raise substance requirements:
    - a minimal cost level as an indicator for a real presence in the Netherlands;
    - a minimum number of employees; and
    - a higher level of equity (15% at present).

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110 Ministerie van Financiën (2016, September 6), Wijziging van de Wet op de internationale bijstandsverlening bij de heffing van belastingen in verband met de automatische uitwisseling van inlichtingen over grensoverschrijdende rulings en verrekenprijsafspraken (Wet uitwisseling inlichtingen over rulings).

111 Tweede Kamer (2015, March 4), "Lijst van Vragen en Antwoorden over rapport Algemene Rekenkamer", Tweede Kamer, vergaderjaar 2014–2015, 25 087, nr. 84.

112 Maxius (n.d.), "Artikel 8c Wet op de vennootschapsbelasting 1969", online: http://maxius.nl/wet-op-de-vennootschapsbelasting-1969/artikel8c/, viewed in December 2016.

113 Algemene Rekenkamer (2014, December 5), "Belastingontwijking - Een verdiepend onderzoek naar belastingontwijking in relatie tot de fiscale regels en het verdragennetwerk", p. 84.

114 Tweede Kamer (2016, October 6), "Motie van de leden Grashoff en Groot over substance-eisen", Tweede Kamer, vergaderjaar 2016-2017, 34 550, nr. 43.

115 Ministerie van Financiën (2016, November 4), "Brief over motie substance-eisen", Tweede Kamer, vergaderjaar 2016-2017, 25 087, nr. 136.

- Raising the minimum equity required as an indicator that the Dutch company is carrying risks in Article 8c of the *Wet Vpb* (see above).

In a follow-up discussion on this letter with the Dutch parliament, the State Secretary of Finance announced that he had no intention to actually implement one of these options. [116] Another motion was then proposed by some members of parliament, asking the State Secretary of Finance to further elaborate his options in concrete policy proposals.[117]

4.4.3 Information exchange

To avoid abuse of Double Taxation Agreements, it is important that tax authorities in different countries exchange information on international transactions of goods, services and capital. This international information exchange will help the respective tax authorities to make a proper assessment of the taxes to be paid in each country by international corporate groups. In the relationship between the Netherlands and the five selected countries, there are various regulations and mechanisms which promote information exchange:

- The Double Taxation Agreements which are in force with three out of the five selected countries (Ghana, Indonesia and Zambia) have information exchange provisions. In the process of renegotiation of all tax treaties, these information exchange agreements are improved. New DTAs have already been agreed with Ghana, Zambia and Indonesia. The Netherlands also aims to renew its DTAs with Mongolia (see Table 3).
- The international *Convention on Mutual Administrative Assistance in Tax Matters (WABB)* obliges signatories to exchange tax-relevant information. The Netherlands has signed the WABB convention and has implemented it in Dutch *Law on the international provision of assistance in the levy of taxes (WIB).* Among the five selected countries, Ghana and Indonesia have signed the WABB convention, making them entitled to exchange tax-relevant information with the Netherlands.[118]

The information exchange governed by the DTAs and the WIB, is mainly "on request": the Dutch Tax and Customs Administration responds to requests by foreign tax authorities for information on specific companies. But more recently, two developments promote spontaneous, pro-active information provision by the Dutch Tax and Customs Administration to foreign counterparts:

- In June 2014 two new regulations came into force with regard to financing and holding companies applying for an Advance Tax Ruling (ATR) or an Advance Pricing Agreement (APA), which would give certainty in advance on how the Dutch Tax and Customs Administration would evaluate their tax position. The new regulations stipulate that to be eligible for an ATR or APA, financing and holding companies do need to meet Dutch substance requirements (see section 0). If a financing or holding company does not meet these requirements, the ATR request is not processed further by the Dutch Tax and Customs Administration and the relevant foreign tax authorities are informed about this decision. [119]

  Table 4 shows the accepted and declined requests for ATR's and APA's for the years 2011-2015. Besides actual declined requests, the category declined requests also includes revoked requests or requests that were not taken into consideration in the first place.[120]

116 Tweede Kamer (2016, November 18), "Verslag van een wetgevingsoverleg over Wijziging van enkele belastingwetten en enige andere wetten (Belastingplan 2017)", Tweede Kamer, vergaderjaar 2016-2017, 34 552, nr. 70.

117 Tweede Kamer (2016, November 16), "Motie van de leden Grashoff en Groot over substance-eisen", Tweede Kamer, vergaderjaar 2016-2017, 34 552, nr. 64.

118 Overheid.nl (n.d.), "Verdrag inzake wederzijdse administratieve bijstand in belastingzaken", online: https://verdragenbank.overheid.nl/nl/Treaty/Details/002221.html, viewed in November 2016.

119 Directoraat-Generaal voor de Belastingdienst, Cluster Fiscaliteit (2014, June 13), "Besluit van 3 juni 2014, DGB 2014/3101", Staatscourant, 2014-15957; "Besluit van 3 juni 2014, DGB 2014/3098", Staatscourant, 2014-15955.

120 Ministerie van Financiën (2016, November 4), "18e Halfjaarsrapportage Belastingdienst", p. 10.

Table 4 Overview of ATR's and APA's for the years 2011-2015

Status	Type	2011	2012	2013	2014	2015
Accepted requests	APA's	248	247	228	203	236
	ATR's	408	468	441	429	406
	Total	656	715	669	632	642
Declined requests	APA's	71	74	72	61	61
	ATR's	109	89	111	96	130
	Total	180	163	183	157	191
Total accepted and declined		**836**	**878**	**852**	**789**	**833**

Source: Ministerie van Financiën (2016, November 4), 18e Halfjaarsrapportage Belastingdienst, p. 9-10.

As can be derived from Table 4, the average total accepted and declined APA and ATR requests for the years 2011-2015 was 838. This number of companies is being examined more intensively by the Dutch Tax and Customs Administration if they meet substance requirements (see section 0). Since June 2014 information is exchanged with other countries if the investigated companies do not meet these requirements. Based on this annual average, we estimate that around 2,000 financing and holding companies are examined more intensively since June 2014.

According to a study by SEO in 2013, a total of 23,500 financing and holding companies are managed by Trust and Company Service Providers (TSCP) in the Netherlands. According to the Dutch Central Bank (DNB) there are 12,000 Special Financial Institutions (BFI) in the Netherlands.[121] The 2,000 financing and holding companies for which substance requirements are checked actively, thus constitute an estimated 9% to 17% of the total, depending on the definition. Other holding companies are not investigated, for other financing companies only a sample is taken to check their self-reporting.

These investigations in 2014 led 15 times to an exchange of information on substance requirements regarding financing and holding companies with foreign tax authorities.[122]

- The OECD *Common Reporting Standard (CRS)* is recently integrated in the Dutch *Law on the international provision of assistance in the levy of taxes (WIB)*. This part of the law entered into force on 1 January 2016 and obliges financial institutions (especially banks) in the Netherlands to know and register of all their accountholders, both private and business customers, where they reside or have their seat for tax purposes. This data should be provided to the Tax and Customs Administration. The reports may in principle only be used for an analysis of the transfer prices used in international transactions between companies belonging to the same multinational corporate group. If an accountholder has stated a fiscal residency in another CRS-country, then the Tax and Customs Administration shall pass on this data to the concerned country. If someone has stated a fiscal residency in a country that does not take part in the CRS and which also has no tax treaty with the Netherlands, then the Tax and Customs Administration is not allowed to pass on those data to the concerned country.

  As of September 2017, the Dutch Tax and Customs Administration is going to exchange this data with countries who have implemented the CRS in their legislation. At the moment this is limited to a group of

121 Ministerie van Buitenlandse Zaken (2013, August 30), "Internationaal fiscaal (verdrags)beleid - Brief van de Minister voor Buitenlandse Handel en Ontwikkelingssamenwerking en Staatssecretaris van Financiën", Tweede Kamer, vergaderjaar 2012–2013, 25 087, nr. 60.

122 Tweede Kamer (2015, March 4), "Lijst van Vragen en Antwoorden over rapport Algemene Rekenkamer", Tweede Kamer, vergaderjaar 2014–2015, 25 087, nr. 84.

50 countries.[123] Our five selected countries are not yet among those, as they have not yet implemented CRS in their legislation.[124] Two countries, Ghana and Indonesia, are in the process of implementing CRS however. They will start with automatic exchange of information with other CRS-countries in September 2018. If and when the other three countries will implement CRS in their legislation is not clear.

Based on the above information exchange regulations, the Dutch Tax and Customs Administration exchanged data with a large number of countries during 2015. This exchange of information was both on request and spontaneously. Of the five countries selected for this research, information has only been exchanged with Ghana and Indonesia: Ghana spontaneously received information from the Dutch Tax and Customs Administration once, and Indonesia received information from the Dutch Tax and Customs Administration 17 times on request and nine times spontaneously. The data does not show which companies were involved.[125]

The relative small number of spontaneous exchanges of information can be explained to some extent by the fact that the Dutch Tax and Customs Administration is only actively checking if foreign-owned financing and holding companies meet the substance requirements when they apply for an ATR or APA. If a company does not meet the requirements, information is not exchanged spontaneously with the relevant foreign tax authority. However, for the majority of foreign-owned financing and holding companies the Dutch Tax and Customs Administration is not actively checking if they meet substance requirements, although this is obligatory for the financing companies according to Article 3a of the *Uitvoeringsbesluit*. As a consequence, no spontaneous information exchange takes place on the majority of the Dutch foreign-owned holding and financing companies. This was confirmed in an interview with three representatives of the Dutch Ministry of Finance and the Dutch Tax and Customs Administration.[126]

4.4.4 Trust and company service providers

Trust and company service providers (TCSP) render services to their client companies and fulfil an important gatekeeper role in the prevention of tax avoidance by the foreign-owned holding and financing companies falling under their management. In the Netherlands, in 2004 a *Law on the supervision of trust and company service providers (Wtt)* has been introduced. This law aims to let TSCP play an important role as gatekeepers of the Dutch financial and legal system. In line with the European anti-money laundering directives (AMLD 3 and soon AMLD4), TSCP need to make sure that they avoid criminals making use of the Dutch financial system for money laundering or the financing of terrorism, to prevent Dutch or foreign laws are contravened or socially unacceptable behaviour is facilitated.

To this end, TSCP need to investigate their clients and their motives to demand trust services in the Netherlands. The TSCP are expected to understand the relevant part of the corporate group structure of the client, the origin and destination of the financial flows of their clients and the identity of their Ultimate Beneficial Owners (UBO). [127]

To play their role as gatekeepers in a meaningful way, TSCP should set up their company structure and

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123 Rijksoverheid (2014, October 29), "Belastingdienst gaat automatisch informatie uitwisselen om internationale belastingontduiking aan te pakken", online: https://www.rijksoverheid.nl/actueel/nieuws/2014/10/29/belastingdienst-gaat-automatisch-informatie-uitwisselen-om-internationale-belastingontduiking-aan-te-pakken, viewed in November 2016.

124 OECD (2016, November 24), "Automatic Exchange Portal", online: http://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/crs-by-jurisdiction/#d.en.345489, viewed in November 2016.

125 Ministerie van Financiën (2016), BI Directe Belastingen 2015.

126 Ministerie van Financiën (2016, July 13), "Interview with two civil servants".

127 De Nederlandsche Bank (n.d.), "Wet toezicht trustkantoren (Wtt)", online: http://www.toezicht.dnb.nl/4/6/50-204758.jsp, viewed in December 2016.

management in such a way that they are able to manage integrity risks. As a consequence, the law sets requirements for the operation and organization of the TSCP, and it tests the directors of the trust and company service providers on their trustworthiness and knowledge and professionalism. Only if trust and company service providers meet these requirements, do they get a permit from the Dutch Central Bank.[128]

In May 2016 the Ministry of Finance started an internet consultation about a draft proposal of law with regard to the supervision of trust and company service providers. One of the proposals concerns a possible ban of the provision of services to specific corporate structures. Furthermore, the proposal demands TCSP to investigate their (potential clients) even more thoroughly, to gain a better knowledge of their clients and their motives to seek the services of a TSCP. The norms concerning the management of TCSP are strengthened and the Dutch central bank (DNB) will get more instruments to supervise TSCP.[129] At the time of writing of this report the results of the internet consultation were not made public.

4.4.5 Technical assistance programmes

The Netherlands already provides technical assistance to tax authorities in developing countries via various channels. Dutch bilateral assistance is provided through inter-ministerial cooperation, based on a covenant that the Ministry of Foreign Affairs concluded with the Ministry of Finance and the Dutch Tax and Customs Administration. The covenant makes it possible for specialists from these organisations to offer hands-on experience in tax and customs matters. One of the projects is the training which Dutch tax inspectors provide to colleagues in Ghana in the framework of the OECD/UNDP-programme Tax Inspectors Without Borders. These trainings aim to improve the skills in controlling tax declarations of companies through on-the job-training.

The Ministry of Foreign Affairs has also entered into a contract with the International Bureau of Fiscal Documentation (IBFD) in Amsterdam for additional tailor-made assistance. Under this contract the IBFD has amongst other things developed specific training courses in the maintenance of tax treaties and in dealing with offshore entities used for international tax planning, tax avoidance and tax evasion, as well as for illicit activities and money laundering. Besides this, the Netherlands also supports technical assistance by international organisations, such as the African Tax Administration Forum (ATAF), the OECD and the IMF, including the IMF Managing Natural Resource Wealth-Topical Trust Fund.

It is expected that developing countries' total need for tax policy-related technical assistance will outstrip current funding availability of different donors. It is in the light of this that the Netherlands, together with Germany, the UK and the US, proposed the Addis Tax Initiative (ATI) at the Financing for Development Conference in July 2015. The Initiative's key commitment is the doubling of capacity building efforts in developing countries to increase domestic revenue mobilisation. One of the objectives is improved taxation and management of revenue from natural resources, including concessions and contract negotiations. As of today, the ATI brings together more than 30 partners, including 20 donor countries, 14 developing countries and ten international organisations. The Netherlands intends at least to double its available means for tax policy-related technical assistance in the forthcoming years.

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128 Overheid.nl (n.d.), "Wet toezicht trustkantoren", online: http://wetten.overheid.nl/BWBR0016189/2015-01-01, viewed in December 2016.

129 Tweede Kamer (2016, February 3), "Internationaal fiscaal (verdrags)beleid / Belastingdienst - Verslag van een schriftelijk overleg, Tweede Kamer, vergaderjaar 2015–2016, 25 087, nr. 114.

4.4.6 Parliamentary inquiry on tax avoidance

In response to ongoing discussions on the role of the Netherlands in international tax avoidance, the House of Representatives decided in November 2016 to start a parliamentary inquiry on tax arrangements. The aim is to get more clarity on how companies are involved in unwanted tax practices. The hearings will focus among others on the channelling of capital flows through Dutch financing and holding companies without noteworthy real economic activities in the Netherlands. Attention will also be paid to the role Dutch trust and company service providers play in these structures.[130] The hearings were first planned to take place in December 2016, but are now postponed and rescheduled to take place after the Dutch elections in March 2017.[131]

4.5 Other relevant information

4.5.1 Bilateral Investment Treaties

Another set of important treaties between the Netherlands and the selected mining countries, are the Bilateral Investment Treaties which protect the investments of Dutch companies in the respective countries. The BITs grant these investments a number of guarantees, which typically include fair and equitable treatment, protection from expropriation, free transfer of means and full protection and security. The existence of these BITs between the Netherlands and the mining countries, might also provide an incentive for foreign mining companies to set up one or more holding subsidiaries in the Netherlands to hold their investments in one or more of these mining countries. Table 5 provides an overview of the BITs which the Netherlands has concluded with the five selected mining countries.

Table 5 Bilateral Investment Treaties with five selected countries

Partner	Date of signature	Date of entry into force	Status
DR Congo	-	-	No treaty
Ghana	31 March 1989	1 July 1991	In force
Indonesia	6 April 1994	1 July 1995	Terminated as of 30 June 2015
Mongolia	9 March 1995	1 June 1996	In force
Zambia	30 April 2003	1 March 2014	In force

Source: UNCTAD – Investment Policy Hub (n.d.), "IIAs by economy – Netherlands – Bilateral Investment Treaties (BITs)", online: http://investmentpolicyhub.unctad.org/IIA/CountryBits/148#iiaInnerMenu, viewed in October 2016.

130 Tweede Kamer (2016, October 5), "Voorstel voor een parlementaire ondervraging naar fiscale constructies - Brief van het Presidium", Tweede Kamer, vergaderjaar 2016–2017, 34 566, nr. 2.

131 Financieel Dagblad (2016, December 14), Valse start voor Parlementair onderzoek Panama-praktijken, online: https://fd.nl/economie-politiek/1179620/valse-start-voor-parlementair-onderzoek-panama-praktijken, viewed in December 2016.

Chapter 5 Conclusions and recommendations

5.1 Conclusions

This exploratory study analysed which policy options the Dutch government could take to support developing countries to increase government revenues from the activities of mining companies in their country. We divided this main question into the following six sub-questions:

- How do mining companies avoid taxes in developing countries?
- Which risk indicators can indicate tax avoidance by mining companies in developing countries?
- Which Dutch companies have a financial or ownership relation with mining activities in developing countries?
- For which of these Dutch companies do the risk indicators indicate potential tax avoidance?
- Which regulations and new international initiatives in the field of tax avoidance can foster developing countries to gain more tax revenue from the activities of mining companies in their country?
- Which further research could help to answer the questions of this study more precise or more complete?

We can draw the following conclusions on these different research questions:

- **How do mining companies avoid taxes in developing countries?**

  International operating mining companies are using various strategies and structures to avoid taxes in developing countries. In this study, we focus especially on corporate income taxes and withholding taxes. As regards corporate income taxes, mining companies can use various strategies to reduce or underreport their taxable income in developing countries. Often these strategies have an international dimension in common, as they aim to shift income away from developing countries to related entities in other (low tax) jurisdictions. This can be done by claiming substantial and, sometimes, artificial deductible expenses (e.g. high interest payments on loans granted by related companies in low-tax countries or too high prices for goods and services supplied to subsidiaries in developing countries). For the mining group as a whole this is attractive as the payments received from the mining subsidiaries are often not taxed (or subject to tax at a very low rate) in the countries of residence of the recipient group companies.

  With respect to withholding taxes, mining companies can make creative use of existing double taxation treaties in order to reduce the withholding taxes they have to pay in the developing countries on various international financial flows (e.g. dividends, interest and royalties). Very often, the recipients of such financial flows are flow-through companies which facilitate the tax exempt or low taxed repatriation or other transfers of these financial flows to companies established in tax havens or low tax countries. As regards to dividend flow-through payments, these intermediate holding companies often make use of favourable conditions for application of a participation exemption which is available to holding companies as a general feature of the corporate tax law in the countries of residence of such holding companies.

  International financial flows, aiming to optimize the use of existing tax treaties and aiming to shift income to jurisdictions where lower rates apply to corporate income (profit) taxes and to withholding taxes, thus play an important role with respect to both forms of tax avoidance (avoiding income taxes and avoiding withholding taxes) by mining companies operating in developing countries.

  It should be emphasized that this study focuses on tax avoidance strategies and not on tax evasion. While tax avoidance is not illegal, it is increasingly seen as unethical and in violation of standards on corporate social responsibility, such as the OECD Guidelines for Multinational Enterprises. Tax evasion is illegal, as actual laws are violated. When tax avoidance turns into tax evasion is determined in the court room and the taxonomy can be fuzzy, with a grey area between the two concepts. In this research project we have focused on the various forms of tax avoidance, not on tax evasion.

- **Which risk indicators can indicate tax avoidance by mining companies in developing countries?**

  Based on an extensive literature review and interviews with various experts, this study produces a list of 28 relevant indicators for tax avoidance by mining companies active in developing countries. The list can help various stakeholders, including tax inspectors in developing countries, to detect possible tax avoidance. We have analysed which indicators apply to the local mining company active in a developing country, which indicators apply to the foreign parent company of the mining group and which indicators apply to intermediate financial and holding companies set up by mining groups in jurisdictions such as the Netherlands.

  It would be worthwhile to develop the list of indicators further into an early-warning or detection system as we specify in paragraph 3.7. Most of the indicators focus on financial statements, payments and flows. Also, most indicators refer to the way the corporate structure is set up and to the financial reporting, while refer to the actual mining activities to a much lesser extent.

- **Which Dutch companies have a financial or ownership relation with mining activities in developing countries?**

  International mining groups with mining operations in developing countries, very frequently use the Netherlands as a transfer country for their investments and financing activities in these developing countries. This research project focussed on five developing countries - DR Congo, Ghana, Indonesia, Mongolia and Zambia - in which the mining sector contributes very significantly to the GDP and export earnings. We identified all mining companies, 128 in total, which are active in exploring and mining the two to four most important mining commodities in these five countries. In each country, the selected commodities account for at least 50% of total mining output.

  International mining groups, originating from various countries across the world, own most of the mining companies active in these five developing countries. To manage and finance their investments in developing countries, these mining groups usually set up complicated corporate structures consisting of various layers of subsidiaries in the country of origin, the mining countries and/or various intermediate countries. One of the most important intermediate countries in this respect is the Netherlands.

  After in-depth research into the ownership structures of all 128 mining companies active in producing the most important mining commodities in the five selected developing countries, we conclude that 34% (i.e. 43 companies) is directly or indirectly owned or financed by Dutch financing and holding companies. We identified a total of 38 Dutch financing and holding companies, belonging to 11 international mining groups, which own and finance those 43 mining companies in developing countries. This means that the Netherlands plays a relative large role in the corporate structures of the mining companies active in these five developing countries.

  For 35 of the 38 financing and holding companies we can identify the purpose for which they were set up: 33 are (also) active in holding shares in other group companies; 22 are (also) active in financing other group companies and one company also has some other activities. Based on this analysis we conclude that international mining groups are thus using the Netherlands mainly to set up holding and financing subsidiaries to own and finance mining companies in developing countries. This makes the Netherlands an important stakeholder in the development of the mining sectors of these countries.

- **For which of these Dutch companies do the risk indicators indicate potential tax avoidance?**

  The 38 Dutch financing and holding companies all meet risk indicator 2, as the mining group has a Dutch company in its corporate structure. The shareholdings and outstanding loans of the companies differ in size, but in many cases are quite significant. Twelve financing and holding companies report total assets above EUR 1 billion, up to EUR 38 billion. Related to these holding and financing activities, we found for seven of the selected corporate groups interest and/or dividend payments between their Dutch subsidiaries and subsidiaries in developing countries (risk indicators 11 and 12). Such international interest and/or dividend payments are governed by the conditions set in the Dutch bilateral tax treaties.

In contrast to these high asset volumes and the incoming flows of dividends and interest related to the holding and financing activities, most holding and financing subsidiaries report (almost) no employees (risk indicator 16). We found employment data for 35 out of the 38 holding and financing companies. Of these, 31 have no employees at all. The other four have two, three, six and 31 employees, respectively. Besides these four subsidiaries with employees, we did not find any other Dutch subsidiaries with employees within the corporate groups that had any relation with the investigated mining activities. Nine out of 11 mining groups do not have any employees in the Netherlands related to their mining operations.

The mining groups and their Dutch subsidiaries also qualify on other risk indicators. At least nine out of 11 mining groups have incorporated one or more subsidiaries in a tax haven (indicator 1). For nine of the mining groups, (a number of) their Dutch subsidiaries are managed and/or domiciled by a trust and company service provider (indicator 4).

None of the researched mining groups report, in advance of legislation on the topic, financial indicators on a country-by-country basis (indicator 15). Furthermore, three out of the eleven corporate groups use the Dutch legal form "cooperative company" (indicator 3), and four corporate groups are not transparent at all about their ultimate beneficial owner(s) (indicator 23). For nine corporate groups we found that the establishment of a Dutch intermediate holding or financing company (between the country of origin and the country where the mining takes place) offers the mining group the opportunity to benefit from the Dutch bilateral tax agreements (indicator 20).

Four of the 11 international mining groups indicate that benefiting from the Dutch bilateral tax agreements is an important reason why they have set up intermediate holding and financing companies in the Netherlands (indicator 21).

For two corporate groups we found an advance tax ruling with the local government (indicator 22). Finally, for four mining groups we found recent negative media attention related to tax avoidance, money laundering and similar offences (indicator 27).

Although we had no access to the relevant tax filings in the Netherlands nor in the developing countries, which would be necessary to prove tax avoidance taking place, we conclude that many of our tax avoidance indicators are matched by the 11 international mining groups we researched. Therefore we have no definitive proof that any of these 11 mining groups is avoiding taxes due in one of the developing countries. It was also not possible to check if these companies meet the Dutch substance requirements.

Despite this obvious limitation, we conclude that the 11 mining groups match many of our tax avoidance indicators. Our research thus points to a high risk that several of the 11 international mining groups have set up holding and financing companies in the Netherlands with the main purpose of avoiding corporate income and/or withholding taxes to be paid to the governments of the five developing countries. The Netherlands runs the risk that its investment climate which favours international investments - including its wide network of tax treaties (DTAs), its participation exemption rules and other regulations - is being abused by international mining groups which have no actual activities in the Netherlands.

Apart from supporting tax avoidance practices, one other reason is found why the 11 international mining groups have set up holding and financing companies in the Netherlands to own and finance mining companies in developing countries. In several cases the Bilateral Investment Treaties (BITs) which the Netherlands has concluded with various developing countries to protect investments by Dutch companies in these countries, seems to have provided an incentive to international mining companies to set up such Dutch holding and financing companies. Similarly to the Dutch tax treaties (DTAs), the Dutch BITs also seem to be abused by international mining groups which have no actual activities in the Netherlands. The relative importance of investment guarantees in relation to tax avoidance opportunities, differs from case to case and needs further research.

- **Which regulations and new international initiatives in the field of tax avoidance can foster developing countries to gain more tax revenue from the activities of mining companies in their country?**

  Since the financial crisis broke out in 2007, tax avoidance by multinationals is high on the political and social agenda. Incidents around the tax strategies of some multinational companies and the publication of the Offshore Leaks, the LuxLeaks and the Panama Papers stimulate policy makers to come with adequate responses.

  As a result, huge progress has been made recently in the fight against international tax avoidance. The BEPS (Base Erosion and Profit Shifting) initiative of the G20 and the OECD resulted in global recommendations to prevent profit shifting and tax base erosion. All member states of the OECD will adopt these measures in the coming years. The European Union anti-tax avoidance directive builds on the OECD BEPS recommendations and consists of five measures the EU member states have to implement by January 1, 2019.[132]

  While developing countries are not member states of the OECD nor of the EU, they have opportunities to profit from these developments. Both the OECD and the EU support for instance the automatic international exchange of data through the Common Reporting Standard (CRS), which can be adopted by non OECD-countries as well to help them identify tax avoidance practices. Another development spearheaded by the OECD is the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS, which was agreed between more than hundred countries in November 2016. The convention will implement minimum standards to counter treaty abuse and to improve dispute resolution mechanisms (see section 4.2.2). Furthermore, through the Inclusive Framework, the OECD is offering assistance to interested developing countries with the implementation of the comprehensive BEPS package (see section 4.2.3).

  Although some of the measures to combat tax avoidance proposed recently by the OECD (the so-called BEPS action plans) and EU will contribute to solve this issue, it is questionable whether these measure will completely eliminate the problem.

  These policy measures will clearly increase the opportunities for developing countries to combat the detrimental effects of international tax avoidance, by mining groups and other corporate groups, on their government revenues. But similar to other major policy developments, much will depend on the capacity and resources made available to utilize these opportunities. Enforcement capacity and resources are likely to become a limiting factor as tax regulations are complex and implemented differently in different countries; many international corporate groups are engaged in international tax avoidance strategies; the structures they have set up are difficult to understand; and the enforcement capacity of tax authorities in developing countries is usually limited.

132 For the exit taxation the date is 1 January 2020.

- **Which further research could help to answer the questions of this study more precise or more complete?**

  In section 5.2.4 we list our recommendations for further research, which could improve answers to the questions this study has addressed.

5.2 Recommendations

Tax avoidance by multinational corporate groups is an international issue, which needs concerted actions by all governments and other stakeholders involved. In this light, many international policy initiatives have been undertaken in the past few years - such as the OECD BEPS action plan and the EU directives derived from this - which will clearly increase the opportunities for developing countries to combat the detrimental effects of international tax avoidance, by mining groups and other corporate groups, on their government revenues. Additional policy initiatives could still be useful. But similar to major policy developments in other fields, much will also depend on the capacity and resources made available to utilize the opportunities offered by these policy developments.

In this context we focus the recommendations derived from this study on complementary steps making capacity and resources available to ensure that the opportunities offered by the anti-tax avoidance measures proposed by the OECD and EU are supporting developing countries to generate higher government revenues from the mining activities in their countries. While acknowledging that efforts by many different countries are needed, our recommendations aim to identify practical steps which the Dutch government could take alongside the current OECD- and EU-led initiatives. We have divided the recommendations in those that can be addressed by the Dutch government alone, and those that require intensive collaboration with the governments of developing countries with a mining industry.

5.2.1 Recommendation 1: Improve transparency regarding the involvement of Dutch companies in mining activities in developing countries

While this study shows that many international mining groups which have activities in developing countries have organized these activities through financing and holding companies in the Netherlands, at present nor the Dutch Tax and Customs Administration nor the Dutch Company Register have insight into the nature and extent of the number of Dutch financing and holding companies involved in such mining activities in developing countries. The company register only has insight into the number of financial holding companies registered under SIC code 6420 (activities of holding companies). As of July 2016, 309,006 holding companies are registered in the Netherlands. How many of these belong to the corporate structures of international mining groups with activities in developing countries, is not known.

According to a study by SEO in 2013, a total of 23,500 financing and holding companies are managed by Trust and Company Service Providers (TSCP) in the Netherlands. The Dutch Central Bank (DNB) uses the figure of 12,000 Special Financial Institutions (BFI) in the Netherlands, a category which includes foreign-owned holding and financing companies.[133] But for both figures it is unclear which percentage is owned by foreign mining groups.

Our study shows that Dutch financing and holding companies play an important role for international mining companies operating in the selected countries. Of the 128 identified mining companies in the five selected countries, 34% (i.e. 43 companies) is directly or indirectly owned or financed by the 38 identified Dutch financing and holding companies. Given this important role of the Netherlands in this area, effective policy development and implementation in the Netherlands and in developing countries would need more transparency on the relevant holding and financing companies and their specific activities, such as receiving and paying dividends, interest and royalties.

133 Ministerie van Buitenlandse Zaken (2013, August 30), "Internationaal fiscaal (verdrags)beleid - Brief van de Minister voor Buitenlandse Handel en Ontwikkelingssamenwerking en Staatssecretaris van Financiën", Tweede Kamer, vergaderjaar 2012–2013, 25 087, nr. 60..

The Dutch government is already taking steps to increase transparency on foreign-owned financing and holding companies located in the Netherlands, especially by committing to implement the Common Reporting System Standard (CRS) of the OECD already in 2017, as one of the first countries. Developing countries could join the CRS and profit from a better information exchange, a.o. with the Netherlands.

Additionally, the Dutch government could take several steps to increase transparency around the number of international (mining) groups that have set up financing and holding companies in the Netherlands and on the financial flows moving through these companies. This would make it feasible for stakeholders, including tax authorities in developing countries, to identify, investigate and act upon potential abuse of tax treaties between the Netherlands and other countries. This would also make it possible to develop and implement targeted policies and to assess whether these policies are effective.

Concretely, the Dutch government could:

- Introduce registration codes in the Dutch company register, to register the country of origin and the industrial sector of the foreign parents of Dutch financing and holding companies. This would make it possible to select companies based on the sector and the country of origin of their ultimate parent company;
- Increase financial reporting requirements for companies classified as "holding and financing companies" in the Dutch company register. Such companies should submit annually an overview of all their shareholdings, a balance sheet as well as a profit and loss account. This profit and loss account should detail all dividends, interest and royalties paid and received.
- Make a separate registration in the company register of all Commanditaire Vennootschappen (CVs) and Vennootschappen onder Firma (VoFs) obligatory. It should not be possible that financing and holding companies avoid registration by choosing the juridical form of a CV or a VoF.
- Set up a public UBO-register which is accessible for tax authorities in developing countries and provides them all relevant data. The Netherlands is already planning to set up a public UBO-register, as part of the implementation of the 4th Anti-Money Laundering Directive of the European Union, but only limited data will become available for the public and for foreign authorities. As the Dutch company register will very likely host this UBO-register, there should be a close integration between the data in the company register and the UBO-register.
- Promote at the EU- and OECD-levels that other countries take similar steps, such as more reporting requirements for all holding and financing companies and a public UBO-register which is accessible and useful for various stakeholders, including tax authorities in developing countries.

5.2.2 Recommendation 2: Preventing abuse of tax and investment treaties

The Netherlands has already taken some actions to stop and prevent the unintended use of its tax climate by international mining groups. The Dutch government is renegotiating tax treaties with developing countries to introduce anti-abuse clauses. Supporting this development, the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (to be signed in 2017) will implement minimum standards to counter treaty abuse in all existing Dutch tax treaties.

The Dutch Tax and Customs Administration also has formulated "substance" requirements for foreign-owned Dutch holding and financing companies. If holding and financing companies applying for an Advance Tax Ruling (ATR) with the Dutch Tax and Customs Administration do not meet the substance requirements, the ATR is not processed and the relevant foreign tax authorities are informed. Also, the Dutch government has committed to implementing the Common Reporting Standard (CRS) of the OECD already in 2017, as one of the first countries. Developing countries could adopt the CRS and profit from a better information exchange, among others with the Netherlands.

Additionally, the Dutch government could take several further steps to prevent abuse of Dutch tax treaties by international (mining) groups which have set up financing and holding companies in the Netherlands. Concretely, the Dutch government could do the following:

- Align the tasks of the Dutch Tax and Customs Administration with broader policies and interests of the Dutch government, as the Dutch interest is broader than just generating tax revenues for the Netherlands. The Dutch Tax and Customs Administration at present focuses its attention on checking if financing and holding companies set up by international mining groups in the Netherlands pay their taxes due in the Netherlands. It is, however, a policy objective to reduce improper use of Dutch tax treaties, both to support revenue generation by developing countries and to protect the reputation of the Netherlands. This policy objective should become more prominent in the tasks of the Dutch Tax and Customs Administration, leading to an active identification of the abuse of Dutch tax treaties by international (mining) groups - also when taxes are paid properly in the Netherlands.
- The Dutch Tax and Customs Administration should actively investigate and prevent the abuse of Dutch tax and investment treaties, by investigating if all holding and financing companies set up by foreign mining groups in the Netherlands meet the Dutch substance requirements. Since June 2014, all foreign-owned financing companies must report if they meet a list of ten substance requirements. We have found no evidence, however, that this reporting is checked actively by the Dutch Tax and Customs Administration. This requirement does not apply to all foreign-owned holding companies

  Based on separate regulations, substance requirements are checked actively by the Dutch Tax and Customs Administration if holding and financing companies request an Advance Tax Ruling (ATR) or Advance Pricing Agreement (APA). If a financing or holding company does not meet the substance requirements, its ATR or APA request is not processed further and the relevant foreign tax authorities are informed. How often such active data sharing takes place is not clear, however, as the Dutch Tax and Customs Administration could not provide recent data. Furthermore, an ATR or APA is only requested by a minority of all foreign-owned holding and financing companies: around 1,600 companies in the past two years, on an estimated total of 23,500 holding and financing companies managed by Dutch Trust and Service Company Providers.[134]

  We therefore recommend introducing substance requirements for all foreign-owned holding companies as well, not just for holding companies requesting an ATR or APA. The State Secretary of Finance in November 2016 mentioned in a letter to the Parliament that the reporting requirement on substance requirements, which already exists for financing companies, could be extended to holding companies.

  Secondly, the Dutch Tax and Customs Administration should not rely on self-reporting by foreign-owned financing and holding companies to assess if they meet substance requirements, with only a small random sample being checked actively. The Tax and Customs Administration should investigate actively all holding and financing companies set up by foreign (mining) groups in the Netherlands, to assess if they meet the Dutch substance requirements. If a company does not meet the Dutch substance requirements, the relevant foreign tax authorities should be informed.

- In response to the report of the Dutch Court of Audit - which concluded that the Dutch substance requirements can easily be met by hiring a Dutch trust and company service provider - and the motion adopted recently by the House of Representatives calling for the strengthening of Dutch substance requirements, we recommend to carefully evaluate if the present list of ten requirements is actually efficient and effective in identifying potential abuse of Dutch tax treaties. The State Secretary of Finance mentioned in November 2016 in a letter to the Parliament that a minimum number of employees could possibly be introduced as a requirement for holding and financing companies which request an Advance Tax Ruling (ATR) or Advance Pricing Agreement (APA).

134 Of these 23,500 financing and holding companies, around 12,000 qualify as Special Financing Institutions (BFI).

We suggest investigating if this requirement could be introduced for the relevant business segment of the corporate group: all the subsidiaries in the Netherlands that are involved in this business segment taken together. This means the total number of all employees working for the Dutch subsidiaries related to the corporate group's mining activities. This specific focus on only the relevant business segment of the group avoids that companies can claim that certain Dutch subsidiaries that do have employees but are operating in a different business segment should also be considered for this suggested substance requirement. In this study we identified 38 relevant Dutch holding and financing companies for 11 international mining groups. We found employment data for 35 of these, of which 31 have no employees at all. Nine out of 11 mining groups do not have any employees in the Netherlands related to their mining operations.

The absence of employees for a holding or financing company owning or financing a multi-million dollar mining operation in a developing country, is only possible when the actual management of this holding or financing company is carried out by a related company - another company belonging to the same mining group. If this related company is not operating in the Netherlands, one should conclude that the mining group is not actually carrying out economic activities in the Netherlands. The total number of employees belonging to the same business segment of the corporate group could therefore be an effective substance requirement.

- Another important issue is that substance requirements have not been formulated on an international level. The Netherlands pioneered in this field by creating a list of ten criteria. The Netherlands should promote an international study on which substance requirements are effective and practical and promote an international harmonization of such substance requirements to guarantee a level playing field.
- The Dutch Tax and Customs Administration could, in cooperation with its counterparts in developing countries, actively bring cases forward to the fiscal courts, to build jurisprudence on when Dutch tax treaties are abused, in line with General Anti-Abuse Rules and the *fraus legis* principle.
- Similarly, financing and holding companies set up in the Netherlands by international (mining) groups that do not meet substance requirements and/or are abusing of Dutch tax treaties should be denied access to juridical options stemming from the Bilateral Investment Treaties, which the Netherlands has concluded with other countries.
- The Dutch government could start a dialogue with trust and company service providers and tax advisers on how they could strengthen Dutch efforts to avoid the abuse of Dutch tax treaties.
- The Dutch government could also start a dialogue with the parent companies of international mining groups on how they should implement their corporate social responsibility by paying the taxes due in the countries were they operate, as recommended by the OECD Guidelines for Multinational Companies as well as the ISO 26000 guidelines.

5.2.3 Recommendation 3: Strengthen capacity of tax authorities and legislators in developing countries

On the other hand, the Netherland could intensify collaboration with the governments of developing countries with a mining industry to create and implement their own anti-tax avoidance strategies. This collaboration should look both at designing smart regulations and at strengthening the capacity to implement these regulations. Also in this field, some steps have been taken, such as the Dutch participation in the *Tax Inspectors Without Borders* programme set up by the OECD. However, much more could be done to effectively help developing countries to generate more government revenues from the mining activities in their countries. Apart from participating in multilateral technical assistance programmes, more bilateral technical assistance should also be considered.

We elaborate our recommendations regarding both approaches further in section 5.2.2 (Preventing unintended use of tax treaties) and section 6.2.3. (Strengthening the capacity of tax authorities and legislators in developing countries).The Dutch government could support tax authorities and legislators in developing countries to increase the government income derived from the mining activities in their countries. Concretely, the Dutch government could:

- Strengthen the African Legal Support Facility (ALSF), which was set up in 2010 to assist African countries with negotiating complex commercial agreements in the mining, energy and infrastructure sectors. The Netherlands is one of its supporting partners. The support of the Dutch Ministry of Foreign Affairs (EUR 5 million) is targeted at:
  - Assisting African governments in the negotiation of complex commercial transactions relating to the extractive industries, infrastructure, and commercial debt;
  - Assisting African governments in commercial disputes relating to vulture funds, and
  - Capacity building for African lawyers (both government and private) in the areas above.
- Support the design and implementation by developing countries of specific national anti-avoidance rules in their local tax laws against erosion of their tax base, combined with high withholding taxes. We identified 18 Dutch financing companies owned by international mining groups which are active in financing other group companies. So, in line with the BEPS (action 4) and EU directive (article 4) the Dutch government could help the authorities of developing countries to create rules to prevent the erosion of the tax base by 'excessive' interest payments.
- Continue and reinforce the current policy developments in the field of revising existing tax treaties with developing countries, to introduce anti-abuse clauses, information exchange clauses and specifically developed main-purpose test and/or LOB rules to combat tax avoidances schemes whose sole or predominant purpose is to achieve treaty benefits.
- Stimulate developing countries to adopt Country-by-Country reporting requirements to increase the transparency of multinational enterprises operating in their country. The OECD proposal on CbC reporting suggests a threshold of EUR 750 million, meaning all companies with a revenue below EUR 750 million are exempt from this regulation. Such a threshold might be rather high and could be lowered.
- Develop a customized tax return form which includes the right questions, to provide a better information position for tax inspectors in developing countries.
- Improve trainings, in cooperation with the IBFD and others, to train tax authorities in developing countries on how to:
  - identify the UBOs of mining companies active in the country;
  - unravel and interpret international flows of dividends, interest and royalties between the different international subsidiaries of international mining groups active in the country;
  - understanding the role and function of offshore companies in tax structures
  - request for information from foreign tax authorities;
  - assess if international mining groups make unintended use of the tax treaties the country has concluded with the Netherlands and other countries;
- Foster that developing countries adhere to the network of automatic data exchange, e.g join the Common Reporting Standard (CRS).
- Set up an international Mining Taxation Knowledge Centre (MTKC) which can help authorities (legislators and tax inspectors) with relevant information and standard documents in different area like:
  - analysis of tax-avoidance structures used;
  - information on tax havens;
  - where and how to get information on offshore companies;
  - standard questionnaires;
  - tax avoidance indicators;
  - making an information request;
  - prices of minerals and inputs.

- Build capacity and infrastructure to assess the quantities and value of minerals, as well inputs and services imported, to prevent tax avoidance through over- and under-invoicing;
- Increase the capacity of (Dutch) tax inspectors available for the Tax Inspectors without Borders programme set up by the OECD. In this programme, foreign tax inspectors work together with local tax inspectors in developing countries to assess concrete tax filings. The programme has potential to improve in-depth training on the job, but suffers because of a lack of foreign capacity and a limited demand from developing countries because of regulatory problems around having foreigners involved in assessing tax files.

5.2.4 Recommendation 4: Undertake further research

Given the limited time and budget available, this research project has not been able to cover all aspects of how the Netherlands can foster developing countries to raise more government revenues from the mining sector in their country. Further research could lead to a better understanding and additional recommendations. In particular, the following research topics deserve further attention:

- While this study focussed on the financial flows related to mining that are passing through the Netherlands, we recommend an additional study on the physical flows of mining commodities to and from the Netherlands. It could be possible that practices like underpricing or over-reporting mining exports from developing countries, which are clearly linked to tax avoidance, could play a role in the Dutch imports. A recent UNCTAD report concludes: "At the partner level, the Netherlands presents the most peculiar case, with systematic export over invoicing in trade with all the countries in the sample and for all the products. In other words, exports registered as going to the Netherlands cannot be traced in the Netherlands' bilateral trade data." [135]
- If the researchers could get access to additional information from the tax office, the customs and the relevant trust companies managing the financing and holding companies, we would be able to do a more in-depth study into the relevant financial flows through the Netherlands.
- Additional research would be needed to quantify how much government income in different developing countries are missing because of different tax avoidance strategies, skilful negotiations on licenses and contracts, as well as other strategies of international (mining). A case study could be undertaken on one developing country into the most important elements of their capital flight. For this country, it should be mapped:
  - how their "business model" is structured regarding the exploitation of mining companies by foreign enterprises (concession fee, taxes (including a system with higher concession fees and lower taxes, which would reduce the chance of tax avoidance and abuse;
  - structures and countries used for tax avoidance;
  - main sources of taxes;
  - main capital and trade flows;
  - availability of relevant data
  - local laws and regulation;
  - capacity and knowledge;
  - opportunities for specialization of the entire chain of enforcement (supervision, detection and prosecution).

Such research could clarify which actions, by the government of developing countries as well as other stakeholders, would need to be prioritized. Due to a lack of data, different research projects come to very different prioritizations. To come to a reliable estimate, the cooperation of the tax authorities in at least one developing country would be required.

135 Ndikumana, L. (2016, July), "Trade Misinvoicing in Primary Commodities in Developing Countries: The cases of Chile, Cote d'Ivoire, Nigeria, South Africa and Zambia", UNCTAD, p. 4.

- It is recommended to extend this research project to more developing countries than the five selected. A fruitful approach would be to concentrate on the top-25 mining groups in the world, which account for most of the mining activities in developing countries. For each group we could then analyse in which developing countries they have mining operations and which tax avoidance structures seem to be used. This could give a better insight into the relative importance of the different international routes available to international mining groups for dividend, interest and royalties payments. It could also show what the impact would be if the "Dutch route" would be no longer available or attractive. This research could yield recommendations on how to develop an internationally coordinated strategy to prevent the unintended use by international (mining) groups of the tax treaties concluded by developing countries.
- It would also be very useful to develop a screening tool based on the indicators listed in Chapter 3. Comparable to existing early warning systems and detection tools on money laundering and on corruption, one could develop a similar tool for tax avoidance as specified in Chapter 3.7. Law enforcement agencies and tax offices could use the tool to assess which companies or transactions have an increased chance of being related to tax avoidance and thereby focus their investigations. From a strategic point of view, such results may give law enforcement agencies and tax offices an incentive and a tool to switch from reactive investigation to proactive, information-based investigation. Additionally, it may help law enforcement agencies and tax offices to utilize their resources in a more effective way, because they can focus their investigative power on the most suspicious cases, thereby increasing their overall effectiveness in dealing with tax avoidance.

Appendix 1 Overview of international mining companies operating in the selected countries

Table 6 provides an overview of the international mining companies operating in the five selected countries. The companies are sorted by the selected country in which they are located.

Table 6 Overview of international mining companies operating in the selected countries

Selected country	Companies	Country of origin of international company	Location	Commodity	Size indicator
DRC	African Minerals (Barbados) Ltd. (Ivanhoe Mines Ltd., 95%)	Canada	Mutshatsha	Copper, cobalt	-
DRC	Anvil Mining Congo SARL (Mawson West Ltd., 90%)	Australia	Dikulushi Mine	Copper	20,000
DRC	Boss Mining SPRL [Eurasian Natural Resources Corp. Plc, 70%, and Générale des Carrières et des Mines (Gécamines), 30%)	United Kingdom	Mukondo Mountain Mine	Copper, cobalt	40,000/ 10,000
DRC	Central Africa Resources SPRL (Trafigura Beheer BV)	Netherlands	-	Copper, cobalt	-
DRC	Chemaf SPRL (Shalina Resources Ltd.)	United Arab Emirates	Etoile Mine	Copper, cobalt	31,500/ 2,400
DRC	Compagnie Miniere de Sakania SPRL SPRL (Eurasian Resources Group)	United Kingdom	-	Copper, cobalt	-
DRC	Congo Cobalt Corporation SPRL (Eurasian Resources Group)	United Kingdom	-	Cobalt	-
DRC	Congo Dong Fang International Mining sprl	China	Mines in Katanga Province	Copper, cobalt	33,000/ 1,900
DRC	Frontier SPRL (ENRC Congo BV)	United Kingdom / Netherlands		Copper	
DRC	Katanga Mining Ltd. (Glencore International AG, 75.2%, and Générale des Carrières et des Mines (Gécamines), 24.8%)	Switzerland	KOV and KTO Mines, Luilu plant	Copper, cobalt	190,000/ 8,000
DRC	Kinsenda Copper Co (Metorex Group, 77% (subsidiary of Jinchuan Group))	China	Sakania	Copper, cobalt	-
DRC	Kipushi Corp. (Ivanhoe Mines Ltd., 68%, Gecamines, 32%)	Canada	Kipushi	Copper, cobalt	-
DRC	La Compagnie Miniere de Musonoie Global, COMMUS (Great Mountain Enterprise Ltd., 34.9%, Tongxiang Huayou Investment Co Ltd., 24.5%)	Singapore, China	Mutshatsha	Copper, cobalt	-
DRC	La Congolaise de Mines et de Développement (Comide SPRL) (Eurasian Resources Group)	United Kingdom	-	Copper, Cobalt	-
DRC	La Société pour le Traitement du Terril de Lubumbashi (STL) [OM Group Inc., 55%; Enterprise Générale Malta Forrest SPRL (EGMF), 25%; and Générale des Carrières et des Mines (Gécamines), 20%]	United States	Big Hill tailings treatment plant at Lubumbashi	Copper, cobalt	3,000/ 5,000
DRC	Luna Mining SPRL (Trafigura Beheer)	Netherlands	-	Copper, cobalt	-

Selected country	Companies	Country of origin of international company	Location	Commodity	Size indicator
DRC	MMG Ltd.	China	Kinsevere Mine, Mutoshi Mine, Kinsevere plant	Copper, Refined copper	76,500/ 60,000
DRC	Mutanda Mining SPRL (Glencore International AG, 69%, and Fleurette Group, 31%)	Switzerland	Mutanda Mine, Mutanda plant	Copper, cobalt	110,000/ 23,000
DRC	Ruashi Mining SPRL (Metorex Group, 75% (subsidiary of Jinchuan Group))	South Africa, China	Ruashi Mine, Ruashi plant	Copper, cobalt	36,000/ 5,000
DRC	Rubamin SPRL	India	Plant in Likasi	Blister copper	20,000
DRC	Sase Mining (Tiger Resources Ltd., 100%)	Australia	Haut Katanga	Copper	-
DRC	Shituru Mining Corp. (ECCH 72.5%, government 27.5%)	China	Likasi	Copper	-
DRC	Société d'Explotation de Kipoyi (Tiger Resources Ltd., 60%, Gecamines, 40%)	Australia	Haut Katanga	Copper	35,000
DRC	Société Kamoto Cooper Company (Katanga Mining Ltd. (Glencore), 80%, Gecamines, 20%)	Switzerland	Kolwezi – Dilala, Tilwezembe	Copper, cobalt	-
DRC	Société Miniere du Katanga (Kalyan Ltd. 50% and Shukrana Ltd. 50%)	India	Kasenga, Plant near Lubumbashi	Copper, cobalt	-
DRC	Swanmines SPRL (Eurasian Resources Group)	United Kingdom	-	Copper, cobalt	-
DRC	Tenke Fungurume Mining SARL (Freeport McMoran Copper & Gold Inc., 56%; Lundin Mining Corp., 24%; and Générale des Carrières et des Mines (Gécamines), 20%)	United States, Canada	Tenke Fungurume Mine	Copper ore, cobalt ore	195,000/ 15,000
DRC	Treatment of Kingamyambo Tailings Company ('Metalkol') (Eurasian Resources Group)	United Kingdom	-	Copper, cobalt	-
Ghana	Abosso Goldfields Ltd (Gold Fields SA, 90%, Government, 10%)	South Africa	Demang Min, Western Region	Gold	6,000
Ghana	Adamus Resources Ltd (Endeavour Mining Corp, 90%, Government, 10%)	Canada (Cayman Islands)	Nkroful, Western Region	Gold	3,100
Ghana	AngloGold Ashanti Ltd	South Africa	Obuasi, Ashanti Region; Iduaprim, Western Region	Gold	17,000/ 8,000
Ghana	Azumah Resources Ltd.	Australia	Upper West Region	Gold	-
Ghana	Birim Goldfields Ltd. (Goldcrest Resources Ltd.)	Canada, United Kingdom	-	Gold	-
Ghana	Chirano Gold Mines Ltd. (Kingross Mining Ltd., 90%, Government, 10%)	Canada	Chirano, Western Region	Gold	9,000
Ghana	Ghana Bauxite Company Ltd., (Bosai Minerals Group Co Ltd., 80%, Government, 20%)	China	Awaso, Western Region	Bauxite	830
Ghana	Ghana Manganese Co. Ltd., (Consolidated Minerals Ltd., 90%, Government, 10%)	Australia	Nsuta-Wassaw, Western Region	Manganese	1,500
Ghana	Gold Fields Ghana Exploration Ltd (Gold Fields Ltd., 90%, Government, 10%)	South Africa	-	Gold	-

Selected country	Companies	Country of origin of international company	Location	Commodity	Size indicator
Ghana	Gold Fields Ghana Ltd. (Gold Fields Ltd., 90%, Government, 10%)	South Africa	Tarkwa, Western Region	Gold	21,800
Ghana	Golden Star (Bogoso/Prestea) Ltd., (Golden Star Resources Ltd., 90%, Government, 10%)	Canada	Bogoso/Prestea	Gold	7,300
Ghana	Golden Star (Wassa) Ltd. (GSWL), (Golden Star Resources Ltd., 90%, Government, 10%)	Canada	Wassa Mine, Father Brown Mine	Gold	7,000/ 3,000
Ghana	Keegan Resources Ghana (Asanko Gold Inc., 90%, Government, 10%)	Canada	-	Gold	-
Ghana	Mensin Gold Bibiani Ltd. (Resolute Mining Ltd.)	Australia	Bibiani Mine, Northwest Region	Gold	3,400
Ghana	Moydow Ltd (Newmont Mining Corp.)	United States	-	Gold	-
Ghana	Newmont Ghana Gold Ltd (Newmont Mining Corp.)	United States	-	Gold	-
Ghana	Newmont Golden Ridge Ltd	United States	-	Gold	-
Ghana	Owere Mines Limited (Signature Metals Ltd., 70% (subsidiary of Liongold Corp.))	Australia, Singapore	-	Gold	-
Ghana	Pelangio Ahafo (Pelangio Exploration Inc.)	Canada	-	Gold	-
Ghana	Perseus Mining (Ghana) Ltd., (Perseus Mining Ltd., 90%, Government, 10%)	Australia	Ayanfuri, Central Region	Gold	7,200
Indonesia	Archipelago Resources Plc. (95%)	United Kingdom	Tok Tindung, North Sulawesi	Gold	5
Indonesia	Aurora Gold Ltd. (100%)	Australia	Balikpapan, Central Kalimantan	Gold	60
Indonesia	G-Resources Group Ltd.	China	Martabe, North Sumatra	Gold	8
Indonesia	PT Adaro Indonesia (New Hope Corp., 50%, PT Asminco Bara Utama, 40%, Mission Energy, 10%)	Australia	Paringin and Tutupan, south Kalimantan	Coal	35,000
Indonesia	PT Arutmin CBM (Bumi Resources)	Indonesia	-	Coal	-
Indonesia	PT Arutmin Indonesia (PT Bumi Resources Tbk, 80% and Bakrie Group, 20%)	Indonesia	Mulia, Senakin, and Satui, South Kalimantan, and Asam-Asam, East Kalimantan	Coal	20,000
Indonesia	PT Berau Coal (PT United Tractor, 60%, PT Armadian, 30%, Nissho Iwai, 10%)	Indonesia	Berau, East Kalimantan	Coal	13,000
Indonesia	PT Freeport Indonesia Co. (Freeport-McMoRan Copper & Gold Inc., 81%, Government 9.36%, Others 9.36%)	United States	Estberg and Grasberg, Papua	Copper, gold	800/ 110
Indonesia	PT Indo Muro Kencana (Straits Resources Ltd.)	Australia	Balikpapan, central Kalimantan	Gold	4

Selected country	Companies	Country of origin of international company	Location	Commodity	Size indicator
Indonesia	PT Kaltim Prima CBM (BUMI Resources)	Indonesia	-	Coal	-
Indonesia	PT Kaltim Prima Coal Co. (Bumi Resources Tbk)	Indonesia	East Kutai Regency, East Kalimantan	Coal	36,000
Indonesia	PT Kideco Jaya Agung (Samtan Co. Ltd.)	South Korea	Pasir, East Kalimantan	Coal	12,000
Indonesia	PT Kutai Bara Nusantara (Bumi Resources)	Indonesia	-	Coal	-
Indonesia	PT Newmont Nusa Tenggara (Newmont Mining Corp., 45%, Sumitomo Corp., 35%, PT Pukuafu Indah, 20%)	United States, Japan	Sumbawa Island, West Nusa Tenggara	Copper, gold	300/ 16
Indonesia	PT Newmont Pacific Nusantara (Newmont Mining Corp.)	United States	-	Gold	-
Indonesia	PT Nusa Halmahera (PT Newcrest Mining Ltd., 82% and PT Aneka Tambang Tbk, 17%)	Australia	Halahera Island, Maluku	Gold	24
Indonesia	PT Peabody Mining Services (Peabody Energy Corp.)	United States	-	Gold	-
Indonesia	PT Peabody Coaltrade Indonesia (Peabody Energy Corp.)	United States	-	Gold	-
Indonesia	PT Pendopo Energi Batubara (Bumi Resources)	Indonesia	-	Coal	-
Indonesia	PT Prima Lirang Mining (Billiton BV, 90% and PT Prima Maluku Indah, 10%)	Australia	Lerokis, Wetar Island	Gold	3
Indonesia	PT Smelting Co. (Mitsubishi Materials Corp., 60%, PT Freeport Indonesia CO., 25%)	Japan, United States	Gresik, East Java	Copper	270
Indonesia	PT Vale Indonesia Tbk (Vale Canada Ltd., 60%, Sumitomo Metal Mining Co. Ltd., 20%)	Brazil, Japan	Soroako, South Sulawesi	Nickel	138
Indonesia	PT Yiwan Mining (China Nickel Resource Holdings Co. Ltd., 80%)	China	Mekarsari, West Java	Nickel	3,000
Indonesia	Sumatra Copper & Gold Plc	Australia	Tembang, West Sumatra	Gold	-
Mongolia	Altan Rio Minerals Ltd	Canada	-	Copper, gold	-
Mongolia	Asia Coal Ltd (Formerly Nubrands Group Holdings Ltd)	China	-	Coal	-
Mongolia	Aspire Mining Ltd.	Australia	-	Coal	-
Mongolia	Blina Minerals NL	Australia	-	Copper, gold	-
Mongolia	Centerra Gold Inc	Canada	-	Gold	-
Mongolia	Desert Eagle Resources Ltd. (formerly Garrison International Ltd.)	Canada	-	Cold	-
Mongolia	East Asia Minerals Corp.	Canada	-	Copper, gold	
Mongolia	Entree Gold Inc.	Canada	-	Copper, gold	
Mongolia	Erdene Resource Development Corp.	Canada	-	Copper, gold	

Selected country	Companies	Country of origin of international company	Location	Commodity	Size indicator
Mongolia	Erdenet Mining Corp. (Mongolia-Russia Joint Venture), 51% and Strand Holdings Ltd., 49%)	South Africa	Erdmin solvent extraction-electrowinning copper plant	Copper	3
Mongolia	Ereen Zuun Mod UUL Ltd (Central Asia Metals Ltd)	United Kingdom	-	Gold	-
Mongolia	Golden Cross Company Ltd. (General Mining Corp Ltd.)	Australia	-	Copper, gold	-
Mongolia	Gravi Mag LLC (Peabody Energy Corp.)	United States	-	Coal	-
Mongolia	Handgait Mon Resources Ltd (Central Asia Metals Ltd)	United Kingdom	-	Gold	-
Mongolia	Hunnu Coal Ptd Ltd. (Banpu Minerals Pte. Ltd.)	Australia, Singapore		Coal	
Mongolia	Kincora Copper Ltd.	Canada	-	Copper, gold	-
Mongolia	Meritus Minerals Ltd.	Canada	-	Gold	-
Mongolia	Modun Resources Ltd.	Australia	-	Coal	-
Mongolia	Mongolia Energy Corp.	China	-	Coal	
Mongolia	Mongolian Mining Corp.	China	Ukhaa Khudag Mine and Baruun naran mine, South Gobi region	Coal	11,600
Mongolia	Mongolian Resource Corp. Ltd., (90%)	Australia	Blue Eyes processing plant, Tov Aimag	Gold	-
Mongolia	MUC Resources LLC	United States	-	Coal	-
Mongolia	North Asia Resources Holdings Ltd.	China	Khar Yamaat placer mine, near Ulaanbaatar	Gold	-
Mongolia	Origo Partners Plc. (Kincora Group)	China, United Kingdom	-	Copper, gold	-
Mongolia	Peabody Gobi LLC (Peabody Energy Corp.)	United States	-	Coal	-
Mongolia	Peabody-Winsway Resources LLC (Peabody Energy Corp.)	United States	-	Coal	-
Mongolia	Prophecy Coal Corp.	Canada	-	Coal	-
Mongolia	Rio Tinto Mongolian Development Center LLC (Rio Tinto)	Australia, United Kingdom	-	Copper, gold	-
Mongolia	Rojo Resources (Formerly Lucky Strike Resources Ltd.)	Canada	-	Coal	-
Mongolia	Samsung Corp., 51%, and Erdenet Mining Corp. (Mongolia-Russia Joint Venture), 49%	South Korea, Mongolia, Russia	Erdenet Ovoo, Orkhon Aimag	Copper	140
Mongolia	SouthGobi Resources Ltd. (Turquoise Hill Resources Ltd., 56% and China Investment Corp., 16%)	Canada, China	Ovoot Tolgoi Mine, South Gobi region	Coal	4,600

Selected country	Companies	Country of origin of international company	Location	Commodity	Size indicator
Mongolia	Terra Energy LLC (Formerly Guildford Coal Ltd.)	United States	Baruun Noyon Uul (BNU) mine, South Gobi region	Coal	3,000
Mongolia	Trafigura Mongolia LLC (Trafigura Beheer)	Netherlands	-	-	-
Mongolia	Oyu Tolgoi LLC (Turquoise Hill Resources Ltd., 66%, Government, 34%)	Canada	Oyu Tolgoi Mine, South Gobi Region	Copper, gold	-
Mongolia	Voyager Resources Ltd.	Australia	-	Copper	-
Mongolia	Winsway Coking Coal	China	-	Coal	-
Mongolia	Xanadu Mines Ltd.	Australia	-	Copper & Gold	-
Mongolia	Zinjin Mining Group Co. Ltd., 70%	China	Nari Tolgoi mine, Tov Aimag	Gold	-
Zambia	Albidon Ltd.	Australia	Munali nickel mine	Cobalt, Copper	1,200,000 ore, which yields about 1,700 copper and 500 cobalt co-product
Zambia	Central Africa Resources Ltd (Trafigura Beheer)	Netherlands	-	-	-
Zambia	Chambishi Copper Smelter Company, Ltd. (China Nonferrous Metal Mining Group Co Ltd., 60%, and Yunnan Copper Industry Group Co. Ltd., 40%)	China	Chambishi copper smelter	Cobalt, Copper	150,000 copper anode (blister copper)
Zambia	Chambishi Metals Plc. (Eurasian Natural Resources Corporation plc, ENRC, 90%, and Zambia Consolidated Copper Mines Investments Holdings Plc., ZCCM-IH, 10%)	United Kingdom	Chambishi cobalt plant	Cobalt, Copper	27,000 copper cathode, 3,400 cobalt metal
Zambia	Chibuluma Mines Plc. (Metorex Ltd., 85% (subsidiary of Jinchuan Group), and Zambia Consolidated Copper Mines Investments Holdings Plc, ZCCM-IH, 15%)	China	Chibuluma South Mine, about 12 kilometers west of Kitwe	Cobalt, Copper	600,000 ore, which yields about 18,000 copper in concentrate
Zambia	CMCZ Ltd (Trafigura Beheer BV)	Netherlands	-	-	-
Zambia	CNMC Luanshya Copper Mines Plc.	China	Baluba Center underground mine	Cobalt, Copper	1,500,000 ore
Zambia	CNMC Luanshya Copper Mines Plc. (NFC Africa Mining Plc., 100%)	China	Mulyashi leach plant	Cobalt, Copper	40,000 copper cathode
Zambia	First Quantum Mining and Operations Ltd. (First Quantum Minerals Ltd.)	Canada	Bwana Mkubwa solvent extraction-electrowinning plant	Cobalt, Copper	52,000 copper cathode
Zambia	Joint venture of African Rainbow Minerals Ltd., 40%, Vale S.A., 40%, and Zambia Consolidated Copper Mines Investments Holdings Plc (ZCCM-IH), 20%	South Africa, Brazil	Lubambe Copper mine	Cobalt, Copper	2,500,000 ore, which yields about 45,000 copper in concentrate

Selected country	Companies	Country of origin of international company	Location	Commodity	Size indicator
Zambia	Kansanshi Mining Plc. (Kansanshi Holdings Ltd., 79.4%, and Zambia Consolidated Copper Mines Investments Holdings Plc., ZCCM-IH, 20.6%)	Canada	Kansanshi Mine, north of Solwezi	Cobalt, Copper	12,000,000 sulfide ore, 7,200,000 oxide ore, 6,500,000 mixed ore
Zambia	Konkola Copper Mines Plc. (KCM) (Vedanta Resources Plc., 79.4%, and Zambia Consolidated Copper Mines Investments Holdings Plc. ZCCM-IH, 20.6%)	United Kingdom	-	Cobalt, Copper	9,700,000 ore, 380,000 copper cathode, 311,000 copper anode (blister copper), 3,000 copper-cobalt alloy
Zambia	Lumwana Mining Company Ltd. (Barrick Gold Corp.)	Canada	Lumwana Mine (Chimiwungo and Malundwe pits)	Cobalt, Copper	21,000,000 ore
Zambia	Mkushi Copper Joint Venture Ltd. (Elephant Copper Ltd.)	British Virgin Islands	Mkushi heap leach	Cobalt, Copper	-
Zambia	Mopani Copper Mines Plc. (Carlisa Investments Corp., 90% (a joint venture of Glencore International Plc., 81.2%, and First Quantum Minerals Ltd., 18.8%.), and Zambia Consolidated Copper Mines Investments Holdings Plc., ZCCM-IH, 10%)	Switzerland, Canada	-	Cobalt, Copper	8,000,000 ore, 200,000 copper anode, 290,000 copper cathode, 2,800 cobalt meta
Zambia	NFC Africa Mining Plc (China Nonferrous Metal Mining Group Co Ltd., 85%, and Zambia Consolidated Copper Mines Investments Holdings Plc., ZCCM-IH, 15%)	China	Chambishi main mine	Cobalt, Copper	3,135,000 ore
Zambia	Sable Zinc Kabwe Ltd. (Glencore International Plc.)	Switzerland	Sable copper leach and electrowinning plant at Kabwe	Cobalt, Copper	14,000 copper cathode, 600 cobalt carbonate.
Zambia	Sino-Metals Leach Zambia Ltd. (China Nonferrous Metals Mining Group Co Ltd., Sino-Africa Mining Investments Ltd., NFC Africa Mining Plc, and China Hainan Construction Co. Ltd.)	China	Chambishi	Cobalt, Copper	8,000 copper cathode

* Annual capacity in metric tons unless otherwise specified.

Sources: Yager, T.R. (2014, June), 2012 Minerals Yearbook – Congo (Kinshasa) [Advance release], United States: U.S. Geological Survey, p. 11.8 – 11.10; Extractive Industries Transparency Initiative (2015, July), Rapport EITI-DRC 2013, DRC: Extractive Industries Transparency Initiative, p. 131-177; Ministry of Finance - Ghana Extractive Industries transparency Initiative (Gheiti) (2015, December), Final Gheiti Report On The Mining Sector- 2014, p. 41, 53-56, 77; International Council on Mining and Metals (2015, July), Mining in Ghana – What future can we expect?, p. 18; The Ghana Chamber of Mines (n.d.), "Our Members", online: http://ghanachamberofmines.org/en/our-members.php, viewed in May 2016; Bermúdez-Lugo, O. (2016, April), 2013 Minerals Yearbook – Ghana [Advance release], United States: U.S. Geological Survey, p. 20.4; Wacaster, S. (2015, December), 2013 Minerals Yearbook – Indonesia [Advance release], United States: U.S. Geological Survey, p. 12.6, 12.7; Indonesia Extractive Industries Transparency Initiative (2013, April), Indonesia's 1st EITI Reconciler's Report 2009, p. 78-79; Coordinating Ministry For Economic Affairs Of The Republic Of Indonesia (2015, November), Indonesia EITI Report 2012 – 2013 Reconciliation Report, p. 14; Shi, L. (2016, April), 2013 Minerals Yearbook – Mongolia [Advance release], United States: U.S. Geological Survey, p. 18.4-18.5; Mineral Resources Authority Mongolia (n.d.), Geology and mining industry Information brochure, p. 37-40; Mobbs, P.M. (2014, July), 2012 Minerals Yearbook – Zambia [Advance release], United States: U.S. Geological Survey, p. 44.7-44.9; KPMG (2013, August), Zambia - Country mining Guide, p. 27-28.

Appendix 2 List of interviewed persons

	Name	First name	Expertise	Organisation	Date
1.	Weyzig	Francis	Tax expert & policy advisor	Oxfam Novib	September 17, 2016
2.	Michielse	Geerten	International Tax	IMF	June 16, 2016
3.	Munyandi	Kennedy	Africa expert	IBFD	September 17, 2016
4.	Koster	Bart	International Treaty expert	IBFD	August 17, 2016
5.	Baldewsing	Boyke	Researcher International taxation	IBFD	August 17, 2016
6.	Römgens	Indra	Researcher	SOMO	April 28, 2016
7.	McGauran	Katrin	Researcher	SOMO	April 28, 2016
8.	Anema	Wiebe	Senior Policy Advisor	Ministry of Foreign Affairs	August 17, 2016 (skype)
9.	Employee		Dutch taxation	Ministry of Finance	July 13, 2016
10.	Employee		International affairs	Ministry of Finance	July 13, 2016
11.	Goredema	Charles	Africa expert	Former ISS (Institute for Security Studies)	June 21, 2016 (skype)
12.	Dahldeck	Anders	Policy advisor	Action Aid UK	June 24, 2016 (skype)
13.	Verbraak	Gijs	Policy advisor mining	Action Aid	May 24, 2016
14.	Reus	Henk	Company Registry Netherlands	Chamber of commerce	March 1, 2016 and August 18, 2016

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