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IOB evaluation

A taxing issue

Evaluation of the Dutch government's policy on strengthening developing countries' tax systems (2012-2020)

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Preface

Following the financial crisis around 2010 and the growing media attention surrounding the tax practices and ethics of multinational enterprises (MNEs), the OECD/G20 set out to devise international rules to prevent base erosion and profit shifting activities by MNEs. This BEPS project also explicitly signalled issues and challenges faced by developing countries: both their need to increase tax revenues to foster long-term development as well as their inability to address issues of tax avoidance by multinationals because of their capacity constraints.

The Dutch government recognised the risks of BEPS and supported this OECD/G20 initiative. The Netherlands also strove to act unilaterally to protect the tax base in developing countries, which resulted in plans for bilateral capacity development support to developing countries to promote well-functioning tax systems and tax authorities. Recognising the coherence aspects of the policies and activities under these three topics, in 2016 the Dutch Cabinet's Agenda on Policy Coherence for Development (PCD agenda) was introduced, which includes the policy goal 'countering tax avoidance/evasion' under the overarching goal of 'Increased government revenues in developing countries, especially low-income and partner countries'.

This report presents the results of IOB's evaluation of the policies and activities concerning three topics on the PCD agenda: 1) international agreements on countering tax avoidance, 2) capacity development (CD) with the aim to strengthen administrative capacity relating to taxation in developing countries, and 3) a decrease in MNEs' use of the Netherlands' tax system as a conduit for tax avoidance.

The evaluation concludes that during the past decade, the introduction of the PCD agenda and its goals and activities has been accompanied by structural changes in Dutch policy: more importance is attached to the interests of developing countries regarding issues of international taxation. Expenditures on capacity development have increased considerably and the interests of developing countries are now increasingly being incorporated into international negotiations on tax standards and in domestic legislation. Nevertheless, with respect to all three topics, recommendations are made to increase relevance, effectiveness and/or coherence. For example, the actual or likely effects of the measures introduced by the Netherlands to counter tax avoidance by MNEs, i.e. the inclusion of anti-abuse clauses in tax treaties and the introduction of conditional withholding taxes, have so far been limited; there are still opportunities for tax avoidance and the measures introduced have not yet proved to be effective.

This evaluation was conducted by IOB policy researcher Joep Schenk and supported by IOB policy researcher Stephanie Bouman and intern Linda de Jonge. It is partly based on research commissioned for the purpose of the evaluation: 1) a report by Craig West on the relevance of the BEPS standards for developing countries; 2) a network analysis by the CPB Netherlands Bureau for Economic Policy Analysis to estimate tax revenue losses in developing countries and the role of the Netherlands therein; and 3) interviews and an analysis of international literature to support the CPB analysis, both conducted by SEO.
SEO was also responsible for drafting three country case studies on Ghana, Kenya, Uganda.

An external reference group chaired by Otto Genee (IOB) provided invaluable advice on the report. This group consisted of Geert Holterman, Nils Langemeijer and Sebastiaan Wijsman (Ministry of Foreign Affairs), Khalid Amezoug, Kristy Jonas, Alex Israel and Esmée Rouwet (Ministry of Finance), Esmé Berkhout and Francis Weyzig (Oxfam Novib), Irma Mosquera Valderrama (University of Leiden) and Dirk Jan Sinke (VNO NCW). The internal peer review was conducted by IOB policy researchers Peter Henk Eshuis and Caspar Lobbrecht. We would like to thank the members of both groups for their support and feedback in all phases of the study.

We also thank the embassies in the research countries for their cooperation, and other experts and stakeholders for their input during the interviews. This evaluation is part of a series that will inform the overall policy review of budget article 1 for Foreign Trade and Development Cooperation, expected later in 2021.

Final responsibility for this report rests solely with IOB.

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Contents

Glossary

Anti-abuse clause: clauses included in tax treaties containing measures to prevent treaty abuse
Arbitration: out-of-court method for dispute settlement
Commissionaire arrangement: a person (the agent) concludes contracts for the sale of products in a certain jurisdiction in its own name. However, the sale is made on behalf of an overseas principal (typically an enterprise) that also owns the products and fulfils the contract.
Conduit company: a company through which flows of money are channelled but which does not carry out any real trading activities
Controlled foreign company rules: anti-abuse legislation under which income from a low-taxed subsidiary is taxed at shareholder level, even if no dividend has been paid
Country-by-country reporting: legislation under which large MNEs are required to prepare a country-by-country report using aggregate data on the global allocation of income, profit, taxes paid and economic activity among the tax jurisdictions in which it operates.
Dividend: a sum of money paid regularly by a company to its shareholders out of its profits or reserves.
Exchange of information (spontaneous/on request): the mutual exchange of information between tax authorities
Foreign Direct Investment: FDI stock is the value of the share of their capital and reserves (including retained profits) attributable to the parent enterprise, plus the net indebtedness of affiliates to the parent enterprise.
Hybrid mismatches: a contradiction in qualification between two legal systems that allows a tax advantage to be obtained by internationally operating companies.
Informal capital doctrine: doctrine on the basis of which benefits arising in the shareholder sphere are not included in the taxable profits but are (re)qualified as part of the capital sphere
Innovation box: special rate box within the Dutch corporate income tax, wherein all profits from innovative activities are taxed at a low rate
Intellectual property: a category of property that includes intangible creations of the human intellect
Interest: compensation that has to be paid for loaning money
Limitation on benefits rule: anti-abuse provision that stipulates specific requirements that a taxpayer must meet in order to claim benefits from a treaty
Limitation on interest deductions: legislation limiting the deductibility of interest in whole or in part
Main purpose test: anti-abuse provision that denies access to treaty benefits when a transaction has been entered into or a legal relationship exists whose main purpose is to obtain a treaty benefit
Mandatory disclosure: the obligation of intermediaries and/or taxpayers to report potentially aggressive cross-border tax arrangements to the tax authorities
Multilateral instrument: an instrument that enables two countries, if they agree to this, to amend tax treaties to combat tax avoidance, without the need for new negotiations
Mutual agreement procedure: a means through which competent authorities consult to resolve disputes regarding the application of double taxation treaties

Participation dividend: dividend payed to the recipient company when it holds directly or indirectly at least a certain share of the capital or of the voting power, as the case may be, of the company distributing dividends.
Participation exemption: an exemption for a shareholder in a company to pay tax on dividends received and potential capital gains arising from selling shares
Permanent establishment: a fixed place of business that generally gives rise to liability to income tax or value-added tax in a particular jurisdiction
Principal purpose test: anti-abuse provision that denies access to treaty benefits when a transaction has been entered into or a legal relationship exists in which one or more of the principal purposes is to obtain a treaty benefit
Residence taxation: the levying of tax on income regardless of where this has arisen on the basis of nationality or place of residence
Royalties: compensation paid for the use of intellectual property
Source taxation: taxation by the source country on outgoing payments such as interest, royalties and dividends levied at the recipient
Special purpose entities: a subsidiary company formed to undertake a specific business purpose or activity and commonly used in certain structured finance applications, such as asset securitisation, joint ventures, property deals, or to isolate parent company assets, operations or risks
Substance requirements: requirements a taxpayer must meet to demonstrate that there is no tax abuse
Tax avoidance: using legal methods to reduce the tax liability of an individual or company
Tax evasion: illegal evasion of tax, often by taxpayers deliberately misrepresenting the true state of their affairs to the tax authorities
Tax incentives: an aspect of a country's tax regime designed to incentivise or encourage a particular economic activity by reducing the tax owed by a company in that country
Tax ruling: an agreement between a taxpayer and the tax authorities in which it is agreed in advance how certain structures or transactions qualify under the law
Tax ruling: an agreement between a taxpayer and the tax authorities in which it is agreed in advance how certain structures or transactions qualify under the law
Taxation of capital gains: taxation on the profit made from selling certain types of assets, such as stock investments or real estate property
Taxation of indirect transfers: taxation of a deemed transfer of a company interest, which shall occur upon any transfer of the ownership of, or voting rights associated with, the equity or other ownership interests in such company
Technical assistance: non-financial assistance provided by local or international specialists. It can take the form of sharing information and expertise, instruction, skills training, transmission of working knowledge, and consulting services and may also involve the transfer of technical data
Transfer pricing: price setting based on certain methods for goods and services traded between controlled (or related) legal entities within an enterprise
Treaty shopping: typically, an attempt by a person or entity to indirectly access the benefits of a tax treaty between two jurisdictions without being a resident or having a real economic establishment in of one of those jurisdictions
Withholding tax: the withholding of tax due

List of acronyms and abbreviations

AEOI	Automatic exchange of information
AFRITAC	African Regional Technical Assistance Centre
ALP	Arm's length principle
APA	Advance pricing agreement
ATAD	Anti-tax Avoidance Directive
ATAF	African Tax Administration Forum
ATI	Addis Tax Initiative
ATR	Advance tax ruling
BEPS	Base erosion and profit shifting
BNC	*Beoordeling nieuwe commissievoorstellen*
CATA	Commonwealth Association of Tax Administrators
CbCR	Country-by-country reporting
CCCTB	Common Consolidated Corporate Tax Base
CD	Capacity development
CFA	OECD Committee on Fiscal Affairs
CFC	Controlled foreign company
CIAT	Inter-American Centre of Tax Administrations
CIT	Corporate income tax
COMESA	Common Market for Eastern and Southern Africa
CPB	CPB Netherlands Bureau for Economic Policy Analysis
CREDAF	Centre de rencontre des administrations fiscales
CTD	USAID Collecting Taxes Database
D2B	Develop2Build programme
DAC	OECD Development Assistance Committee
DDE	Sustainable Economic Development
DFID	Department for International Development, UK
DNB	*De Nederlandsche Bank*
DRIVE	Development related infrastructure investment vehicle
DRM	Domestic resource mobilisation
DWG	G20 Development Working Group
EAC	East African Community
EBITDA	Earnings before interest, taxes, depreciation and amortization
ECOFIN	*Raad Economische en Financiële Zaken*
ECOWAS	Economic Community of West African States
EC	European Commission
EOI	Exchange of information
EOIR	Exchange of information on request
EU	European Union
FDI	Foreign direct investment
FHTP	Forum for Harmful Tax Practice
FMO	Entrepreneurial Development Bank, Netherlands
GAAR	General anti-abuse rule
GDP	Gross domestic product

GIZ	German development agency
GRA	Ghana revenue authority
GRD	Government revenue dataset
HNWI	High net worth individuals
IBFD	International Bureau of Fiscal Documentation
ICAI	Independent Commission for Aid Impact
IFB	OECD/G20 Inclusive Framework on BEPS
IGAD	Intergovernmental Authority on Development
IMF	International Monetary Fund
IOB	Policy and Operations Evaluation Department of the Dutch MFA
IP	Intellectual property
ISORA	International Survey on Revenue Administration
KRA	Kenya Revenue Authority
LoB	Limitations on benefits
MAP	Mutual agreement procedure
MCAA	Multilateral Convention on Mutual Assistance in Tax Matters amended by the 2010 Protocol
MFA	Ministry of Foreign Affairs, Netherlands
MFPED	Ministry of Finance, Uganda
MLI	Multilateral instrument
MNE	Multinational enterprise
MNRW	Managing Natural Resource Wealth
MoF	Ministry of Finance, Netherlands
MPT	Main purpose test
NFV (2011)	2011 Memorandum on Fiscal Treaty Policy (*Notitie Fiscaal Verdragsbeleid*)
NFV (2020)	2020 Memorandum on Fiscal Treaty Policy (*Notitie Fiscaal Verdragsbeleid*)
NGO	Non-governmental organisation
NTCA	National Tax and Customs Administration
ODA	Official development assistance
OECD	Organisation for Economic Cooperation and Development
ORET	*Ontwikkelingsrelevante Export Transacties*
ORIO	Facility for Infrastructure Development
PCD	Policy coherence for development
PCT	Platform for Collaboration on Tax
PE	Permanent establishment
POA	Performance outcome area
PPT	Principal purpose test
PwC	PricewaterhouseCoopers
R&D	Research and development
RMTF	Revenue Mobilization Thematic Fund
RMU	Risk management unit
RRA	Rwanda Revenue Authority
RVO	Netherlands Enterprise Agency
SADC	Southern African Development Community
SDG	Sustainable development goal

SEATINI	Southern and Eastern Africa Trade Information and Negotiations Institute
SGIF	Steering Group of the Inclusive Framework
SEO	*Stichting Economisch Onderzoek*
SOMO	Centre for Research on Multinational Corporations
SSA	Sub-Saharan Africa
SPE	Special purpose entity
TADAT	Tax Administration Diagnostic Assessment Tool
TF	OECD Informal Task Force on Tax and Development
TIEAs	Tax information exchange agreements
TIWB	Tax Inspectors Without Borders
ToC	Theory of change
ToR	Terms of reference
TP	Transfer pricing
TPA	Tax Policy and Administration
TPAF	Tax Policy Assessment Framework
TTF	Thematic Trust Fund
UN	United Nations
URA	Uganda Revenue Authority
VNG	The Association of Netherlands Municipalities
WABB	Mutual Administrative Assistance in Tax Matters Treaty
WB	The World Bank
WIDER	World Institute for Development Economics Research
WP	Working party

Policy recommendations

Introduction

Around 2010, following the financial crisis and the growing media attention for the tax practices and ethics of multinational enterprises (MNEs), the G20 started to discuss the issue of international taxation, with the specific aim of preventing base erosion and profit shifting (BEPS) that provided tax avoidance opportunities for multinationals. This OECD/G20-led initiative also explicitly signalled issues and challenges faced by developing countries, both their need to increase tax revenues to foster long-term development as well as their inability to address issues of tax avoidance by multinationals due to their capacity constraints.

The Dutch government recognised the risks of BEPS and supported this OECD/G20 initiative. The initiative, together with capacity development provided by the Netherlands to improve tax systems in developing countries and unilateral measures introduced by the Netherlands to counter tax avoidance were the three topics that formed the Action Agenda on Policy Coherence for Development (PCD agenda), launched in 2016. In 2018, countering tax avoidance by MNEs and improving domestic resource mobilisation in developing countries were added as the twin goals of the PCD agenda.

The evaluation reported here set out to assess the policies and activities leading up to and included in the PCD agenda under these goals, for the period 2012-2020. The main question to be answered is:

How coherent and relevant are Dutch government policies and activities on strengthening tax systems in developing countries, and what are their effects?

The policy recommendations derived from the evaluation are presented below.
The conclusions and findings from which these recommendations are derived are presented in the synthesis of this evaluation report. The recommendations are presented for the three sub-goals of the PCD agenda separately and for the coherence between them.

The three sub-goals of the PCD agenda are:

1. Improved international standards on taxation of real economic activities. Working within the framework of the OECD and the EU, the Dutch government aims to i) design international standards to counter tax evasion and avoidance which take account of the interests of developing countries and ii) the resulting adjustments made to its own tax policies.
2. A decrease in the use of the Netherlands as a conduit for tax avoidance in other countries, including developing countries. It is the Dutch government's policy to strive to include anti-abuse clauses in tax treaties with developing countries and to take extra measures against financial flows to low-tax jurisdictions.
3. Providing structural capacity building for good tax policies and tax collection in developing countries.

Sub-goal 1: International standards on countering tax avoidance by MNEs

Do not assume that priorities of developing countries relating to international standards against tax avoidance are similar to those of more developed countries
If the Netherlands is to live up to the goal of contributing to international standards against tax avoidance that are in the interest of developing countries, it should not automatically assume that the priorities of developing countries for the OECD BEPS actions are similar to those of developed countries. During the period reviewed, the Netherlands financially supported activities by ATAF and the OECD to identify these priorities and although they showed some discrepancy with those of developed countries, the Netherlands insisted that they were similar and that it did not need to change its own position.

In general, the inclusion of the priority issues of developing countries in the BEPS actions was limited to those that overlap with those of developed countries. Despite the substantial overlap, especially with respect to limiting interest deductions, preventing tax treaty abuse and transfer pricing issues – (all of which are considered to be important developing countries) – neither tax incentives nor the taxation of indirect transfers were included in the BEPS actions.

In ongoing and future negotiations it is therefore necessary for the Netherlands to test this assumption about developing countries' priorities, especially in relation to the BEPS 2.0 project, which addresses the discussion on source versus residence taxation in a digitising economy – an issue of particular importance to developing countries.

Actively identify priorities of developing countries relating to standards against tax avoidance, making use of the channels already in place
To test whether the priorities of developing and developed countries are similar, the priorities must be identified using the four channels already available: i) the round table with representations from the MoF, MFA, NGOs and employer organisations, ii) the OECD Informal Task Force on Tax and Development; iii) the UN Committee of Experts on International Cooperation in Tax Matters and iv) available literature regularly published by international organisations.

These identified priorities should be assessed and incorporated in the Dutch stance in international negotiations. This process should be made more transparent by reporting on i) the Dutch position, ii) developing countries' priorities that have been identified and how they were identified and iii) the extent to which the priorities are taken into account and why.

Sub-goal 2: decrease MNEs' use of the Netherlands' tax system as a tax avoidance conduit

Expand the scope of articles in tax treaties that should be taken into consideration in Dutch tax treaty policy towards developing countries and consider updating the NFV 2020 accordingly

The articles in bilateral tax treaties between the Netherlands and developing countries on dividend, interest and royalty withholding taxes and the article on permanent establishment (PE) all contain thresholds, exemptions and/or definitions which limit or expand their scope. In general, developing countries try to limit exemptions to withholding taxes and to broaden the definitions of these taxes, while the Netherlands strives for the opposite result, which can partly negate the tax revenue effects of higher withholding tax rates.

With respect to withholding taxes on dividend payments, the ownership stake threshold to which the lowered participation dividend rate applies is part of the negotiation. The withholding tax on interest payments generally includes exemptions for government institutions and government-related institutions. For royalty payments, the scope of intellectual property rights applied in the treaty is negotiated: for example, lower withholding tax rates can be agreed for the use of licensed agricultural technology. These thresholds, exemptions and definitions potentially limit the effect of higher withholding tax rates agreed on in treaties with developing countries.

As the same holds for the articles defining the scope of the capital gains tax and business profits, the Netherlands should acknowledge their importance in relation to tax collection by developing countries and be explicit about how it envisions applying these articles during tax treaty negotiations with developing countries.

Include an analysis of the expected effects on treaty shopping before concluding a tax treaty with a developing country, to ensure that developing countries will not be worse off

The timeline of withholding taxes based on all tax treaties of eight developing countries investigated for this evaluation reveals that in recent decades there has been a consistent downward trend in withholding tax rates for all payment categories, dividend, interest and royalty payments. The decreasing trend in withholding tax rates can potentially increase the risk of tax revenue losses in developing countries because the Netherlands uses a benchmark treaty as an upper limit on its negotiation result. Concluding a tax treaty with the Netherlands can provide multinationals with opportunities to use the other strengths of the Dutch fiscal climate, e.g. its extensive tax treaty network and the general absence of withholding tax rates on payments flowing through the Netherlands. For example, even if the treaty has the same interest withholding tax rate as its benchmark treaty, it may still be optimal to route the payment through the Netherlands because it does not levy a withholding tax on interest payments to a particular residence or conduit country (if that country is not a low-tax jurisdiction).

To take account of these potential effects on withholding tax revenues in developing countries, a network analysis (by the CPB or similar) should be used to verify that the negotiated treaty does not make the developing country worse off in terms of withholding tax revenues. This is irrespective of the fact that the NFV 2020 states that the Netherlands is willing to accept a higher level of withholding taxes than in the benchmark treaty if the developing country can demonstrate that it has changed its policy with respect to the level of the withholding tax rates it is seeking during negotiations; it is still unclear what this provision in the NFV 2020 means in practice.

Be more realistic with respect to developing countries' capacity to address tax avoidance by multinationals
Given the slow pace at which developing countries are including and invoking anti-abuse clauses in their tax treaties with the Netherlands, expectations about their capacity to address tax avoidance should be tempered. It is unlikely that including these clauses will be enough to prevent tax avoidance via the Netherlands.

To date, none of the nine developing countries with an active anti-abuse clause in their tax treaty with the Netherlands has informed the MoF that it has invoked this clause. The other treaty party does have the option to invoke the clauses without informing the MoF, which could lead to a mutual agreement procedure (MAP) case/consultation. In that case, the multinational taxpayer objects and invokes the MAP article in the tax treaty to start negotiations with the tax authority to resolve the issue. However, so far this has not occurred either.

Additional actions the Netherlands could take to prevent treaty abuse by MNEs operating in developing countries should therefore be considered.

Sub-goal 3: Structural capacity building for good tax policies and tax collection in developing countries (with a focus on low-income and lower-middle income countries)

Clearly define the criteria for providing capacity development support and apply them consistently
Government letters to Parliament reviewed for this evaluation yielded several criteria mentioned by the Netherlands in relation to providing CD support: the quality of the tax authority of the recipient country, the size and complexity of the economy, a willingness to reform and the expertise of the implementing parties IBFD and the NTCA. CD regarding DRM was to be accompanied by CD in public finance management to reduce the risk of corruption and fraud. The Netherlands intended to provide CD to all 23 developing countries which were offered the opportunity to include anti-abuse clauses in their tax treaties.

In practice, support is mostly limited to the 15 partner countries mentioned in the 2013 policy document 'A World to Gain' and is the result of a largely demand-driven process, although somewhat limited to an extensive list of possible topics that reflects the expertise of the implementing parties NTCA, IBFD and VNG. Especially relevant from a coherence perspective are criteria related to development partner countries and countries with which the Netherlands has a tax treaty. Therefore, these criteria should be reassessed to specify which support will be provided to which countries, why and for how long, as this will help improve the relevance and sustainability of CD support. To ensure CD is sufficiently aimed at the issues most relevant for developing countries, tools like TADAT should be used more consistently to distinguish between and select CD programmes at national level.

Consider bilateral capacity development support only when its added value has been clearly identified and embedded in a broader G2G relationship
The bilateral CD support provided by the Netherlands via the programmes of the NTCA and IBFD (and the VNG) is expected to operate in identified niches and complement the comprehensive programmes of larger multilateral institutions or bilateral donors active in the supported countries that are often embedded in public finance reform programmes. So far, the added value of these bilateral CD programmes has not been clearly defined and substantiated. The added value should be stated more clearly and should be based on the expected effects on taxation. In addition, the Netherlands could argue for bilateral CD support if longer-term programmes are expected to play a role in broader bilateral efforts to strengthen the enabling environment for the private sector and economic diplomacy by the embassies in these countries. In view of the small budgets of the bilateral programmes that were active in 24 different countries in the evaluation period, it would also be advisable to restrict support to a select number of countries.

Improve insight into the effects of the capacity development activities by formulating a monitoring and evaluation policy
The available reports on CD activities do not specify the effects of the interventions. More insight into the effects of bilateral support, combined with specifying the circumstances under which CD support is expected to be relevant would make it easier to determine to what extent the expectations have been met. As the bilateral CD support is fragmented and small, a monitoring and evaluation policy should be limited in scope. A first step could be identifying participants for training and workshops and following them to analyse whether how they use their improved skills is in line with the support provided. A second step could then be to analyse how much they apply the knowledge they have acquired in practice.

Coherence of policies and activities under the three sub-goals

Improve the transparency of and increase the role of the MFA with respect to deciding on the stance adopted by the Netherlands on issues of international taxation that involve developing countries
The available policy documents on the stance the Netherlands has adopted for negotiations on international taxation and treaty negotiations provided limited insight into how the interests of developing countries were included. There should be greater transparency on the decision making, i.e. how the information collected on the interests of developing countries is assessed and used to inform and guide the Netherlands' negotiation stance. This could be achieved by involving the MFA and informing stakeholders, including the House of Representatives, more consistently on the stance the Netherlands intends to take during negotiations and why. This analysis should also be included in mandates and/or reports on the negotiation of international standards and tax treaties. For the MFA to play a more prominent role and contribute more meaningfully to discussions, it will need to have additional fiscal expertise.

Improve and monitor the indicators for the three sub-goals of the PCD agenda
Most of the indicators used in the annual report on the progress made with respect to the PCD agenda are either too general or too difficult to monitor to produce meaningful and credible information for guiding policy and allowing assessment by Parliament. For example, indicators for the sub-goal on decreasing MNEs' use of the Netherlands' tax system as a tax avoidance conduit are limited to the inclusion of anti-abuse clauses in tax treaties with developing countries and the introduction of a conditional withholding tax on dividend, interest and royalty payments flowing through the Netherlands. These indicators do not measure actual results, yet this is necessary because these actions are no guarantee that the goal of decreasing tax avoidance has been achieved. Recently, the MoF announced it has begun monitoring the effects of the conditional withholding tax.

The indicators should therefore be made more meaningful, i.e. they should measure progress towards achieving the goals specified in the PCD agenda. They should not be restricted to, for example, the inclusion of anti-abuse clauses in tax treaties but should also investigate their invocation and impact on fighting tax avoidance and the negative effects of the conduit role of the Netherlands.

At the same time, the indicators should be more realistic and their scope restricted to measuring progress towards achieving these goals instead of only considering the impact of the goals if this is difficult to measure and/or attribute to Dutch interventions, as is the case for tax-to-GDP ratios in developing countries. The reconstructed ToC used in this evaluation could be used and refined to specify which results are expected at what level; the indicators can then be designed accordingly.

Synthesis

Introduction

Around 2010, in the wake of the financial crisis and the growing media attention for the tax practices and morals of multinational enterprises (MNEs), the G20 started to discuss the issue of international taxation. In a statement issued in 2012, they referred to 'the need to prevent base erosion and profit shifting'. This message was reiterated at the G20 meeting of finance ministers later in 2012, when it was stated that 'We also welcome the work that the OECD is undertaking into the problem of base erosion and profit shifting'.

The rationale for embarking on this initiative was the perception that international tax rules had not kept pace with globalisation and digitalisation in the world economy. Domestic rules for international taxation and internationally agreed standards were perceived to be grounded in an economic environment characterised by less economic integration across borders, rather than in an environment of global taxpayers, i.e. multinationals operating in multiple countries. Mismatches between domestic tax legislations provide opportunities for MNEs to use base erosion and profit shifting (BEPS) to reduce their tax liability.

The OECD/G20-led initiative also explicitly signalled issues and challenges developing countries face: both their need to increase tax revenues to foster long-term development as well as their inability to address issues of tax avoidance by multinationals due to their capacity constraints. Recognising the risk of BEPS, the Dutch government supported the initiative. The Netherlands also acknowledged that the presence of certain shell companies (specifically, letterbox companies, called (*brievenbusmaatschappijen* in Dutch) within its borders was at odds with the spirit of Dutch tax laws and tax treaties with third countries, and therefore the Netherlands should also act unilaterally to protect the tax base in developing countries.

In 2013 the MFA and MoF introduced their plans for bilateral capacity development support to promote well-functioning tax systems and tax authorities in developing countries. This was considered necessary to ensure these countries would have sufficient financial means to fuel development and decrease their dependency on aid.

In recognition of the need for the policies and activities under these three topics to be coherent[1], in 2016 they were brought together as the three sub-goals in the PCD agenda.
In 2018, countering tax avoidance by MNEs and improving domestic resource mobilisation in developing countries were added as the twin goals of these policies and activities.

[1] 1) development of international standards against tax avoidance within the OECD; 2) capacity development programmes financed by the Netherlands and 3) unilateral measures taken by the Dutch government to decrease tax avoidance via the Netherlands.

As stated earlier, this evaluation set out to assess the policies and activities leading up to and included in the PCD agenda under these goals, for the period 2012-2020. The main question addressed was:

How coherent and relevant are Dutch government policies and activities on strengthening tax systems in developing countries, and what are their effects?

The conclusions and findings are presented below, starting with the overall conclusions that answer the main research question. This is followed by more detailed findings and conclusions on each individual sub-goal of the PCD agenda and on the coherence between these three sub-goals.

The findings in this evaluation are based on reports commissioned for this evaluation and additional research by the IOB researchers. SEO contributed to this evaluation by conducting three country case studies, additional interviews and desk research on other aspects of the PCD agenda. The CPB was responsible for the network analysis used to estimate tax revenue losses in developing countries and the role of the Netherlands therein. Independent consultant Craig West wrote a study on the relevance of the BEPS standards for developing countries.

Conclusions

The introduction of the PCD agenda and its goals and activities in the last decade show how Dutch policy has changed: greater importance is now attached to the interests of developing countries with respect to issues of taxation (domestic and international). Expenditures on CD have increased considerably and the interests of developing countries are now taken more into account in international negotiations on tax standards and in domestic legislation, specifically in the NFV 2011 and 2020. Nevertheless, recommendations are made to increase the relevance, effectiveness and/or coherence of all sub-goals.

The Netherlands is implementing international standards against tax avoidance well, especially the BEPS actions, but also ATADs I and II and the MLI. It consistently opts for ambitious implementation, going further than other developed countries in some cases. Adoption of the BEPS Actions and the MLI is limited in developing countries, partly because these do not address all their priorities and partly because of the complexity of the actions, combined with developing countries' lack of resources. For these reasons, the BEPS actions have limited relevance for developing countries, although some benefit might be forthcoming from implementation by other countries. The Netherlands has considered it unnecessary to identify the priorities of developing countries, assuming they would be similar to those of developed countries, and although developing countries have been supported financially by the Netherlands to participate, these countries' contribution to the design of the BEPS actions has been limited to consultation. Both factors help explain the limited relevance of the actions for developing countries. To date, there is no evidence that international standards against tax avoidance are effective.

To decrease the use of the Netherlands as a conduit for tax avoidance, anti-abuse clauses have been included in tax treaties with developing countries and through the introduction of a conditional withholding tax. The PCD agenda does not explicitly mention the opportunities that the Dutch fiscal system presents for tax avoidance by MNEs operating in developing countries, especially those opportunities inherent in its tax treaties with these countries. The Netherlands recognises that it is in the interests of developing countries to increase their tax revenue and therefore it shows some flexibility in applying its standard criteria for tax treaty negotiations, most importantly its willingness to accept non-zero withholding tax rates. During tax treaty negotiations, the Netherlands adheres to the flexibilities it considers to be in the interest of developing countries, but at the same time it restricts the scope of these flexibilities. It also restricts the scope by applying a benchmark treaty between a developing country and a third country as an upper limit on the negotiation result, although the changes in the NFV 2020 make it possible for the Netherlands to deviate from this too.

Although it can therefore be concluded that the Netherlands is willing to accommodate the interests of developing countries to a certain extent, the Netherlands does not always recognise that this might provide opportunities for tax avoidance. The use of a benchmark treaty may provide additional opportunities for treaty shopping because it opens the way for MNEs to exploit other attractive aspects of the Dutch fiscal system.

During the period evaluated, the Netherlands also showed willingness to renegotiate existing tax treaties with developing countries, initially to include anti-abuse clauses, but also with respect to other articles. However, despite several attempts, this offer was not taken up enthusiastically by developing countries: anti-abuse clauses are active in only nine of the 23 developing countries that received the offer in 2013, but so far, these clauses have not been invoked. The CPB network analysis revealed that tax treaties with the Netherlands could result in significant potential losses of tax revenue in developing countries. The introduction of conditional withholding taxes is expected to have only limited effects on these opportunities for tax avoidance because in most cases it would be relatively easy for MNEs to switch from the Netherlands to other conduit countries.

For the reasons mentioned above, so far the actual and anticipated effects of the measures expected to contribute to countering tax avoidance by MNEs operating in developing countries have been limited; there are still opportunities for tax avoidance and the measures introduced have not yet proved to be effective in countering them. Despite their indisputable relevance, on their own the measures are unlikely to be sufficient to counter tax avoidance effectively.

CD programmes supported by the Netherlands potentially have an important role in improving the capacity of developing countries, as they could contribute both to better implementation of international standards and to countering tax avoidance. The bilateral CD programmes are relatively small and are spread over 24 countries, which limits their effectiveness and sustainability. They have not been shown to have substantially more added value than the larger multilateral programmes that are ongoing in developing countries as well.

The relevance of CD programmes is based on several predetermined criteria that in practice are limited to the list of development partner countries and the expertise of the implementing partners the NTCA and IBFD. For a significant proportion of the portfolio of bilateral CD activities, the evaluation team was able to find a link (albeit sometimes implicit) between the BEPS project and the negotiation and enforcement of tax treaties. The effectiveness of these bilateral CD activities could not be assessed, however, because the available evaluation reports do not convincingly attribute effects to these interventions. Nevertheless, most of the evaluation reports are positive about the quality of CD offered and its effects.

The evaluation team used the PCD agenda to analyse the coherence between the policies and activities of the MoF and MFA intended to achieve the two goals of improving DRM in developing countries and countering tax avoidance by MNEs. Indicators used in the PCD agenda, such as tax-to-GDP ratios or the inclusion of anti-abuse clauses in tax treaties, do not provide credible and meaningful information on the progress towards achieving the goals. It is too difficult to attribute changes in tax-to-GDP ratios to CD support received from the Netherlands and including anti-abuse clauses in a treaty does not automatically guarantee tax avoidance will diminish.

This evaluation shows that coherence between the sub-goals of the PCD agenda is not guaranteed. Certain examples of discrepancies between the two goals of the PCD agenda were identified: for example, whereas CD activities focus on issues of international taxation, a focus on domestic taxation issues can be a more efficient way to improve DRM. Additionally, the MoF and MFA do not share responsibility for all items on the PCD agenda. As a result, the involvement of the MFA in formulating policy on topics that involve developing countries is limited: for example, it does not discuss tax treaty negotiations and the development of international standards to counter tax avoidance with the MoF. And because the criteria guiding them in theory and practice differ, the two ministries also have different expectations about how CD programmes should be used.

Estimation of tax revenue lost in developing countries due to tax avoidance by multinationals

Tax revenue losses due to tax avoidance are substantial in developing countries but because of methodological constraints, the estimates have a large degree of uncertainty
Developing countries depend for a relatively large share on revenue from corporate income tax (CIT). The relative size of CIT revenues in OECD and African countries is roughly similar, at around 3% of GDP, but total tax revenues amount to almost 35% of GDP in OECD countries and around 16% of GDP in Africa. This indicates that the relative importance of the CIT is on average around 20% of government tax revenues in African countries but less than 10% in OECD countries.

Tax revenue losses due to BEPS are difficult to estimate due to severe methodological and data constraints. Best estimates therefore vary greatly between studies. Country-specific estimates are scarce and suffer from the same constraints but show tax revenue losses of around 1% to 3% of GDP for most developing countries. This suggests CIT revenues could potentially be doubled if tax avoidance by MNEs were halted. It is also very difficult to quantify the part played by the Netherlands in these potential tax revenue losses from tax avoidance, therefore no reliable estimate is available.

Sub-goal 1: International standards on countering tax avoidance by MNEs

The PCD agenda states the goal under this sub-goal as improved international standards on taxation of real economic activities. The Dutch government aims to work within the EU and OECD to design international standards to counter tax evasion and avoidance which take account of the interests of developing countries and to adjust Dutch tax policies accordingly.

The Netherlands is performing well with respect to the implementation of the OECD BEPS standards and EU directives against tax avoidance (ATAD I & II)
The OECD/G20 BEPS project, an international initiative to design multilateral standards to counter tax avoidance, published its final reports in 2015, resulting in 15 actions.[2] Participating countries were encouraged to implement these 15 BEPS actions and had to commit to implementing the so-called 'minimum standards', which consist of four actions from this list. The Netherlands has implemented all 15 of these actions to the extent possible[3]; alternative options are available for the implementation of some of the actions.

The OECD Inclusive Framework on BEPS (IFB) launched in 2016 enables all interested countries, including non-OECD countries and jurisdictions, to join in and support the implementation of the BEPS actions in participating countries. The IFB provides, amongst other things, a peer review of the implementation and impact of the whole BEPS package and specifically of the BEPS minimum standards. After addressing several recommendations related to action 5, Dutch tax policy is now considered to be in line with the minimum standards of these four actions. The way the minimum standards are being implemented in the Netherlands is similar to that in various OECD countries.

Three of the 15 actions not designated as minimum standards have been implemented via EU legislation. The EU anti-tax avoidance directives (ATAD I and II) translate these into European legislation. Although ATAD I applies only to EU Member States, non-EU countries, including developing countries, are expected to comply too, because these countries, with which the EU has external relations, are expected to practise 'good fiscal governance'.

[2] See section 4.1.1 for the list of BEPS actions.

[3] On Action 1, which discusses the consequences of the digitalisation of the world economy on taxation, no progress had been made by 2015. This is an ongoing discussion in the OECD under the 'BEPS 2.0' project. Action 11 pertains to efforts by the OECD to increase insight into the scale and economic impact of BEPS.

ATAD II contains several additional measures against tax avoidance and came into effect in 2020. It extends the scope of measures applied solely to EU Member States in ATAD I to apply to third countries too. There are some discrepancies between EU Member States in how these EU directives are being implemented. Generally, the Netherlands is less prone to opting out from certain provisions than other EU Member States, except in the case of the CFC rules, where the Netherlands has opted for a more limited scope than several other EU Member States.

A further three actions have been included in the Multilateral Instrument (MLI), a multilateral tax treaty that automatically includes these three actions in an existing tax treaty if both countries agree to include them. In general, the Netherlands has adopted a more generous stance than other developed countries, most of which tend to exclude many more of the possible articles in the MLI.[4]

Implementation of the OECD BEPS actions by developing countries is limited
Of the 77 countries classified by the UN as low- or lower-middle income countries, 28 have joined the IFB so far, 14 of which have signed the MLI (and six of these have ratified it). According to the OECD peer reviews, implementation of the OECD BEPS minimum standards has so far been somewhat limited in developing countries, with the exception of Indonesia.

The reasons identified for the fact that both the participation of developing countries in the IFB and their implementation of the BEPS actions is limited relate to 1) the BEPS project not addressing all priority issues of developing countries; 2) many developing countries lacking capacity and knowledge relating to issues of international taxation. For these reasons, it is not necessarily attractive for developing countries to join in and implement the actions. Findings from two of the country studies indicate that the spirit of the BEPS project is generally supported and some of the measures have been translated into domestic legislation independently.

Not all developing countries' priorities for countering tax avoidance are addressed in the OECD BEPS project
Although from the outset it was recognised that BEPS issues are relevant for developing countries too, several priority issues are not addressed in the BEPS actions. In general, the inclusion of the priority issues of developing countries is limited to those that overlap with those of developed countries. The priority issues of developing countries were identified by international organisations (notably the IMF, UN and OECD) during the process of developing the actions. The African Tax Administration Forum (ATAF), a regional organisation representing several African countries during the BEPS project, also identified those priorities. There is substantial overlap between these lists of priorities, especially on limiting interest deductions, preventing tax treaty abuse and transfer pricing issues.

[4] See annex 3 for the options the MLI offers and the choices made by the Netherlands and other OECD countries.

The only time the Netherlands addressed the priorities of developing countries was in 2015, in a policy response to the presentation of the final reports of the OECD BEPS project that included the list of actions. Therefore, its identification of priorities was limited to describing the importance of the resulting BEPS actions for developing countries and did not include an *ex ante* identification process and actually consulting these countries.

Issues also considered to be important for developing countries but not included in the BEPS actions are tax incentives and the taxation of indirect transfers. Tax incentives are tax breaks offered by governments to MNEs to attract foreign direct investment (FDI). These lead to erosion of the tax base, but governments can feel obliged to offer them due to competition for FDI. Taxation of indirect transfers relates to instances where capital gains tax is avoided by selling shares in a company owning a particular asset instead of selling the asset directly; the latter is often taxable under rules specified in bilateral tax treaties by the source country (the country receiving the FDI, in this case a developing country), while the former is generally taxable in the residence country of the FDI.

Also voiced on several occasions by developing countries during the BEPS project was the wish for a more general discussion on source versus residence taxation, instead of limiting the focus to BEPS issues, i.e. eliminating mismatches between tax legislations of different jurisdictions. This more fundamental discussion is currently being addressed in the ongoing BEPS 2.0 project in the IFB.

A further issue with the resulting list of BEPS actions is that they have increased the complexity of administering already highly technical issues, further stretching the limited capacity in developing countries. The complexity of BEPS actions combined with developing countries' inadequate capacity in terms of specialised staff and knowledge means that the consequences of joining the IFB and implementing the BEPS actions are not immediately clear and require further analysis – for which capacity is scarce.

Despite being active in several forums where priorities of developing countries in countering tax avoidance were discussed, the Netherlands did not consider it necessary to identify them

Several channels for identifying the priorities of developing countries with respect to the BEPS project were available for the Netherlands to consider while developing its negotiation stance: 1) a recurring round table which discusses issues related to international taxation and the interests of developing countries and in which MFA, MoF and representatives of Dutch civil society and employer organisations participate; 2) the OECD Informal Task Force on Tax and Development (TF) – which comprises governments from OECD and developing countries, NGOs, international institutions and international business organisations and has been co-chaired by the Netherlands since 2010 – worked on practical proposals for developing countries relating to information exchange, transfer pricing, country-by-country reporting and capacity building; 3) the UN Committee of Experts on International Cooperation in Tax Matters, in which the Netherlands is an observer country and which is a forum for developed and developing countries to discuss tax issues beyond and complementary to the OECD processes and in which an MoF staff member has been a member in a personal capacity since 2017; 4) available literature drafted by international organisations that elaborates on these priorities and has been summarised in this evaluation.

Despite investigating these channels, it remains largely unclear which, if any, priorities of developing countries were identified by the Netherlands. The interests of developing countries are seldom mentioned in the documentation consulted for this evaluation and when they are, this tends to be in the context of the need to assist developing countries with implementation of the BEPS actions. The Netherlands has also consistently maintained that any standards developed should be easy to implement by developing countries. It has generally considered the priorities of developing countries as being identical to those of developed countries and therefore not needing much effort to be identified.

The influence of developing countries in designing the OECD BEPS standards was limited
During the drafting of the BEPS actions from 2013 to 2015, developing countries were consulted in four regional consultations and four thematic global forums organised by the OECD with the goal of identifying and including developing countries' interests in the BEPS project. Starting in January 2015, when the list of 15 actions had already been finalised, 14 developing countries and several regional representative organisations such as the ATAF and the Inter-American Centre of Tax Administrations participated in the Committee of Fiscal Affairs (CFA) of the OECD and several of its working groups responsible for drafting the BEPS actions.

After the introduction of the IFB in 2016, all developing countries were able to join the IFB on an equal footing, although barriers to full participation remain due to high participation costs in terms of money and capacity. The IFB's role with respect to the 15 BEPS actions is mostly limited to the implementation and monitoring of the actions decided on before 2015. Ongoing discussions in the BEPS 2.0 project are also addressed in the IFB. The Netherlands was in favour of direct participation of developing countries (which it also supported financially) and of restricting participation in the CFA and IFB to countries that fully commit to the BEPS actions (i.e. implement at least the minimum standards).

Sub-goal 2: Decrease MNEs' use of the Netherlands' tax system as a tax avoidance conduit

The PCD agenda specifies the aim of this sub-goal as decreasing the use of the Netherlands as a conduit for tax avoidance in other countries, including developing countries. To achieve this aim, the Dutch government strives to include anti-abuse clauses in tax treaties with developing countries and to take extra measures against financial flows to low-tax jurisdictions.

The Netherlands accommodates the positions of developing countries during tax treaty negotiations, but does not expand the scope of the treaty to cover all their interests
The Memorandum on Fiscal Treaty Policy 2011 (NFV 2011) summarises all aspects of Dutch fiscal treaty policy and includes a section on the Dutch stance on developing countries. It makes clear that in order to support developing countries' fiscal development, the

Netherlands is willing to diverge from standard Dutch tax treaty policy by allowing them more taxation rights. It notes that this requires some flexibility and so: i) non-zero withholding taxes on payments to the parent company established in the Netherlands are acceptable, ii) the definition of permanent establishment (PE) can be somewhat broadened and iii) anti-abuse clauses are offered for inclusion in bilateral tax treaties. Later, this flexibility also became possible exclusively or additionally via the MLI. The Netherlands has generally adhered to these options for flexibility during tax treaty negotiations with developing countries.

During tax treaty negotiations, the Netherlands follows the OECD Model Tax Convention on Income and on Capital, which prescribes certain articles and offers comments on their application. Developing countries generally adhere to the UN Model Double Taxation Convention between Developed and Developing Countries, which tends to favour source countries.

Although there is substantial overlap between these model treaties, there are differences. These are visible in the documented tax treaty negotiations, which revealed that several of the preferences brought up by developing countries were not included in the final treaty because they were unacceptable to the Netherlands. The preferences related to demands for higher withholding taxes, a withholding tax on technical services payments and a broader definition of the PE to include services. However, acceptance of the latter element was added in the NFV 2020, to augment the elements carried over from its predecessor the NFV 2011. It is therefore expected that this broader definition of the PE will be included more often in future tax treaties with developing countries.

Other aspects of tax treaties not specified in the NFV 2011 and NFV 2020 in relation to developing countries are the exemptions and the definitions of concepts related to withholding taxes on dividend, interest and royalty payments. These were brought up by developing countries during tax treaty negotiations with the Netherlands, however. In general, developing countries try to limit exemptions to withholding taxes and to broaden their definitions, while the Netherlands strives for the opposite result, which can partly negate the tax revenue effects of higher withholding tax rates. With respect to withholding taxes on dividend payments, the ownership stake threshold above which the lowered participation dividend rate applies is part of the negotiation. The withholding tax on interest payments generally includes exemptions for government institutions and government-related institutions, whereas for royalty payments the scope of intellectual property rights applied in the treaty is negotiated: for example, lower withholding tax rates can be agreed on the use of licensed agricultural technology.

The positions adopted by developing countries and the Netherlands usually diverge in relation to two other articles pertaining to aspects of the scope of tax treaties: one establishes the coverage of capital gains tax and the other the treatment of business profits. Developing countries prefer some type of source taxation on capital gains on the sale of shares, whereas the Netherlands tries to restrict this right as much as possible; its standpoint is that source taxation on the sale of shares is unacceptable whereas source taxation on the sale of shares in immovable property may be acceptable if sufficient exemptions can be agreed on.

The treaty article on business profits pertains to the profits that can be attributed to the PE in the source country. The Netherlands prefers profit allocation based on activities and added value, whereas developing countries focus more on the domestic sales that can be attributed to a PE.

The use of a benchmark treaty by the Netherlands during treaty negotiations can accelerate an ongoing trend of lower withholding tax rates and provide more tax avoidance opportunities
The Netherlands is generally unwilling to fully accommodate the position taken by a developing countries during tax treaty negotiations because it strives for a level playing field for Dutch investors compared to other foreign (and local) investors in the treaty partner country. It therefore takes a benchmark treaty (i.e. an existing tax treaty between the developing country with which the Netherlands is negotiating and another developed country) to serve as an upper limit for its negotiation result.

The timeline for the withholding taxes in all the tax treaties concluded by the eight developing countries sampled for this evaluation reveal that in recent decades the trend in withholding tax rates for all payment categories, dividend, interest and royalty payment has been consistently downwards. This implies that if another developed country is able to negotiate lower withholding taxes, the Netherlands is likely to follow by demanding similar low rates, which potentially triggers further tax revenue losses because it opens the possibility of using other attractive aspects of the Dutch fiscal system, e.g. its large treaty network and absent withholding taxes in most cases (though the Netherlands has introduced conditional withholding taxes on conduit payments flowing through the Netherlands to low-tax jurisdictions). That this possibility has been exploited by the Netherlands can be seen from the fact that most of the withholding taxes negotiated by the Netherlands in the tax treaties scrutinised for this evaluation are below the trend.

The NFV 2020 states that the Netherlands is willing to accept a higher level of withholding tax than in the benchmark treaty if the other country is able to demonstrate that it has changed its policy in this respect. What this means in practice is still unclear, however.

Potential tax revenue losses by developing countries due to treaty shopping by multinationals using the Dutch tax system are substantial
A comparison of the withholding tax rates in tax treaties concluded between the Netherlands and eight developing countries were compared with those in treaties the developing countries had concluded with other high and upper-middle income countries revealed that for five of the developing countries, the Netherlands is among the few countries to have concluded tax treaties with the lowest withholding tax rates on dividend qualifying companies' payments. In Uganda, the Netherlands is the only country to have agreed a 0% withholding tax rate. In the other four countries, the Netherlands is usually among the countries with the lowest withholding tax rate for interest and royalty payments. Only in a few cases is the Netherlands not among the countries to have concluded tax treaties at the lowest rate: notable are the two most recently concluded treaties with Zambia and Malawi (both signed in 2015).

A CPB network analysis of the current Dutch tax treaty network estimated the potential for lowering tax payments when multinationals route their FDI via the Netherlands, called 'treaty shopping'. It compared direct and all possible indirect routes of dividend, interest and royalty payments from the subsidiary company in the source country, in this case a developing country, to the parent company in the residence country. The tax 'distances' were constructed from the tax rates of the domestic corporate income tax, the non-resident withholding taxes on dividend, interest and royalty payments from source to residence country and the double tax relief systems in bilateral tax treaties. The network analysis simulated the potential for withholding tax revenue losses in six developing countries and specified the country 'responsible' to be the first stop en route to the residence country where the payments are headed.

The results show that the potential for treaty shopping is significant and in several cases the Netherlands is either one of the major channels or is the sole important channel for facilitating treaty shopping from developing countries. The role played by the Netherlands is especially prominent for dividend payments from Uganda and Indonesia and for interest payments from Indonesia and Bangladesh. In these cases, potential withholding tax revenue losses for these countries range from around 25% compared to the situation with only direct tax routes in the latter three countries, to 100% in the case of dividend payments from Uganda. According to the CPB analysis, Dutch tax treaties provide few opportunities for tax avoidance in the case of royalty payments.

The potential effect of the introduction by the Netherlands of a conditional withholding tax on dividend, interest and royalty payments on treaty shopping is limited, partly because other conduit countries take over

In 2018, a conditional withholding tax to low-tax and uncooperative jurisdictions was introduced by the Netherlands on dividend, interest and royalty payments flowing through the Netherlands to the beneficial owners established in low-tax jurisdictions or countries included on an EU list of uncooperative tax jurisdictions. Although the plan to introduce a conditional withholding tax on dividend payments was cancelled in 2018, it was reinstated later that year and will be implemented from 2024 onwards. The conditional withholding tax on interest and royalty payments took effect from 1 January 2021. The percentage withholding tax applied is 25%.

A scenario analysis using the results of the CPB network analysis to model the effects of the Netherlands' application of a conditional withholding tax on dividend, interest and royalty payments revealed the effects of such a tax on treaty shopping via the Netherlands. The analysis assumed a 21.7% conditional withholding tax on dividend, interest and royalty payments was applied to low-tax jurisdictions. The results, which revealed to what extent treaty shopping using the Dutch tax treaty network would continue and showed that other countries would become more attractive as a conduit for payments to low-tax jurisdictions, can be assumed to apply to a 25% conditional withholding tax. The Netherlands does not have a tax treaty with most low-tax jurisdictions and hence there are no reduced withholding tax rates with these countries, therefore the general dividend withholding tax rate of 15% is applicable on dividend payments, which is not attractive for optimal tax avoidance routes and therefore they do not exist. The results for developing countries' lost revenue from the dividend withholding tax are therefore almost identical to to those for the baseline scenario, although the Netherlands' share as the first intermediary country in the conduit route was slightly smaller for most of the developing countries included in the analysis and in one case was much lower.

The analysis found that the withholding tax revenue lost by developing countries on outgoing interest payments remains the same as in the baseline scenario, but the part the Netherlands played in this is smaller and is partly substituted by other conduit countries. For two of the developing countries, Bangladesh and Uganda, even when there is a conditional withholding tax on the payments flowing through the Netherlands, the treaty with the Netherlands remains an important channel for the tax revenue loss. For two other developing countries, Ethiopia and Indonesia, the Dutch share falls considerably.

Due to inaction by developing countries, anti-abuse clauses are only active in tax treaties with nine developing countries, and have so far not been invoked
Having recognised the risk of treaty shopping, in 2013 the Netherlands offered to include anti-abuse clauses in its tax treaties with 23 developing countries; the offer was later repeated. So far, only nine developing countries have taken up the offer; the remaining countries have either not responded to requests by the Netherlands or have not signed and/or ratified the negotiated tax treaty or the MLI. Bilateral negotiations offer the opportunity to negotiate other aspects of a tax treaty too (e.g. the withholding tax rates and the definition of the PE). Despite the willingness shown by the Netherlands to expand the scope of negotiations from the inclusion of anti-abuse clauses to include these other aspects too, developing countries seem reluctant to agree, although negotiations are ongoing.

So far, none of the nine developing countries with active anti-abuse clauses in their bilateral tax treaties has informed the MoF that they have invoked these clauses. There is a second option: the other treaty party invokes the clauses without informing the MoF, which leads to a mutual agreement procedure (MAP) case/consultation if the multinational taxpayer objects and invokes the MAP article in the tax treaty to start negotiations with the tax authority to resolve the issue. So far, this has not occurred either.

A third option is that tax authorities in developing countries suspect a potential harmful tax structure and request additional information from the tax authorities in the Netherlands. Information can only be exchanged (either spontaneously or on request) with developing countries if there is a legal basis and a working relationship with the tax authority in the developing country. Of the 11[5] developing countries in our sample, in five there is no legal basis for exchange of information and for three others no contact has been established with the tax authorities despite multiple requests by the Netherlands. Of the remaining three, in the case of Liberia there is only a legal basis for exchange of information on request, but no information has been exchanged so far. The last exchange with Ghana occurred in 2018. This leaves only Uganda, where information has been exchanged more regularly.

[5] See annex 1 for an explanation of the country samples used.

If a legal basis and working relationship have been established, the Netherlands is legally obliged to exchange information spontaneously (i.e. without waiting for a request from the other party) only if substance requirements have not been met by SPEs residing in the Netherlands. These substance requirements include at least €100,000 paid as wages to staff annually and the presence of an office space in the Netherlands for at least 24 months. In the period 2014–2018, information was shared in 165 cases, 12 of which involved a developing country. Information may also be exchanged spontaneously even if there is no legal obligation to do so, but there are no clear criteria for doing so. This does not mean that anti-abuse clauses cannot be invoked by a developing country, as this can be done without making use of the option to request information. If substance requirements have not been met but information cannot be shared with another country for the reasons described above, no further action is taken by the Netherlands.

Sub-goal 3: Structural capacity building for good tax policies and tax collection in developing countries (with a focus on low-income and lower-middle income countries)

The aim of this sub-goal is to provide structural capacity building for good tax policies and tax collection in developing countries. One sub-goal specified in the PCD agenda is the Dutch government's aim to implement the Addis Tax Initiative (ATI) goal of more than doubling expenditures on capacity development (CD) in 2020 compared to 2015, giving special attention to CD in focus regions.

Expenditures on Dutch capacity development programmes have increased considerably but remain relatively small compared to expenditures by other donors
Bilateral and multilateral CD is provided by the Netherlands to help increase the tax revenues of governments in developing countries. Bilateral CD started around 2013 and is provided by experts from the Netherlands Tax and Customs Administration (NTCA) and consultants from IBFD and the Association of Dutch Municipalities (VNG). The initial goal was to provide at least five developing countries with support for their tax authorities and customs services, the latter because of the relative importance of customs duties for developing countries. Support would be demand-driven and aimed at improving tax legislation and its implementation and enforcement in relation to both domestic and international taxation issues. Multilateral CD is provided by ATAF, the OECD, IMF, the UN and the World Bank.

In 2015, the ATI was launched, also on the initiative of the Netherlands, as part of the UN Finance for Development conference. ATI included a pledge by 18 donors, including the Netherlands, to double expenditures on CD on domestic resource mobilisation (DRM) no later than 2020. Expenditures by the Netherlands on the 24 CD programmes related to DRM in the period 2010–2020 totalled around €40 million.

Annual expenditures have increased considerably from around €1 million in 2010 to €8 million in 2019 and €6 million in 2020, although these are still low compared to certain other OECD DAC countries both in absolute and relative (as share of GDP) terms; on average, expenditures by the Netherlands account for 1.5% of total expenditures on DRM by all OECD DAC countries, which makes the Netherlands a relatively small donor.

In the period 2010–2020, multilateral contributions, which account for around €20 million of the total budget were mostly part of larger trust funds which operate relatively large programmes in multiple countries. Bilateral activities accounted for around €13 million, which was spent on ten programmes in 23 countries. Average expenditures per country per year were therefore small, around €50,000. The remaining budget was spent on a consortium of Dutch NGOs, as part of the MFA's Dialogue and Dissent programme to strengthen the voice of civil society in developing countries on matters of taxation.

The selection of bilateral capacity development activities does not always comply with predetermined criteria

According to various letters to Parliament, the selection of countries and activities for bilateral support should have been based on, among other things, criteria on the quality of the tax authority of the recipient country, the size and complexity of the economy, the tax authority's willingness to reform and the expertise of the implementing parties IBFD and the NTCA. CD regarding DRM was to be accompanied by CD on public finance management, to reduce the risk of corruption and fraud. The Netherlands intended to provide CD to all 23 developing countries to which it had offered to include anti-abuse clauses in its tax treaties with them. Not all of them were considered ready to receive this assistance, however.

In practice, the support given is mostly limited to the 15 partner countries specified in the 2013 memorandum *'A World to Gain'* and is the result of a largely demand-driven process, although is somewhat limited to an extensive list of possible topics that reflect the expertise of the implementing parties NTCA, IBFD and VNG. The additional value of bilateral CD activities is justified on the grounds that the implementing organisations operate in a 'niche' because they possess practical knowledge which multilateral organisations are said to lack. This assumption has not been substantiated, however.

Tools to analyse the relevance of suggested activities are available but are generally limited to specific aspects of tax systems, generally excluding tax policy and instead focusing on tax administrations. Their use is mainly limited to the Tax Administration Diagnostic Assessment Tool (TADAT). TADAT helps to identify the priorities of developing countries with respect to the quality of their tax systems, but because categories are defined rather broadly, they are of limited use in the practical guidance of design and targeting of activities. Scoping missions are generally used to fill this gap. The available evaluation reports suggest that the bilateral and multilateral activities supported are relevant.

Although relatively small in terms of its financial and human resources, the Netherlands plays an active role in multilateral trust funds and initiatives such as ATI. The Netherlands is credited for putting the topic of policy coherence on the agenda.

The evaluation team did not further investigate the extent to which the Netherlands affected the functioning of the supported multilateral funds.

There is little robust evidence on the effectiveness of CD activities aimed at implementing OECD BEPS standards or bilateral tax treaties
Although the objectives of the CD activities were broader, part of the CD provided by the Netherlands was expected to contribute to developing countries' implementation of BEPS actions and the negotiation and enforcement of anti-abuse clauses in tax treaties concluded with the Netherlands. The two most important providers of bilateral CD are the NTCA and IBFD. The NCTA programmes provided 24 activities to six partner countries; 20 of these activities were linked to domestic taxation and four to international taxation issues. For three of the interventions, the evaluation team was able to find a link (albeit sometimes implicit) to the implementation of hte BEPS actions. The IBFD provided a total of 38 activities to nine partner countries, of which only one was linked to domestic taxation and the other 37 related to international taxation. A link (explicit or implicit) to BEPS could be made for 11 of the interventions; 12 interventions had to do with treaty enforcement and/or negotiations. The activities provided by VNG, a consortium of Dutch NGOs, GIZ and the Capabuild foundation had a national focus.

The available evaluation reports of multilateral programmes are generally positive about the quality of Dutch CD support and its effects. However, due to the difficulty of attributing effects to the activities undertaken, this evidence is not strong (the same is true for attributing effects to bilateral programmes). It is therefore unclear whether CD made a difference in implementing OECD BEPS standards or the negotiation and enforcement of bilateral tax treaties, especially anti-abuse clauses. The limited implementation of these standards and the fact that so far the Netherlands has not received any formal requests from any of the partner countries for information about the application of anti-abuse clauses in bilateral tax treaties with developing countries suggest that training or a workshop may be insufficient to to encourage use of the anti-abuse clauses.

Coherence of policies and activities under the three sub-goals

This section describes the recommendations and conclusions about the coherence between the three sub-goals elaborated on earlier.

The PCD agenda's two goals on taxation do not overlap in all respects
The two goals of the PCD agenda – improving DRM in developing countries and countering tax avoidance – do not overlap fully. Developing countries generally prioritise taxation of domestic taxpayers; rules to counter tax avoidance by multinationals are generally much more complex and require a significant investment in well-trained personnel. Because developing countries have only limited means, their needs for CD are therefore more basic. In international negotiations on standards against tax avoidance, developing countries consistently advocate for rules that are simple and relatively easy to apply.

Their reluctance to commit to the OECD BEPS project is partly due to the complexity of the resulting BEPS standards.

Another example of the discrepancy between the PCD agenda's two goals is the measures introduced by the Netherlands to reduce its role as a conduit for tax avoidance. One such measure is the introduction of conditional withholding taxes, which have limited effect on DRM in developing countries. The network analysis showed that in most cases, there are other options to using the Netherlands as a conduit country and therefore measures introduced by the Netherlands are unlikely to increase corporate tax revenues much in developing countries. Complying with one goal therefore does not necessarily mean the other goal will also be achieved. This limitation is well understood by the Netherlands, which consistently strives to enforce binding international standards against tax avoidance.

The PCD agenda is not yet a coherent policy agenda shared fully between the Ministries of Finance and Foreign Affairs

No information was available on progress towards achieving the indicators specified in the PCD agenda because they are not systematically monitored, partly because of their nature: in most cases they are either too general or are too difficult to credibly attribute to Dutch interventions.[6] For example, indicators for the sub-goal on decreasing MNEs' use of the Netherlands' tax system as a conduit for tax avoidance are limited to the inclusion of anti-abuse clauses in tax treaties with developing countries and the introduction of a conditional withholding tax on dividend, interest and royalty payments flowing through the Netherlands. These indicators do not measure actual results, yet this is necessary because these actions are no guarantee that the goal of decreasing tax avoidance has actually been achieved. Recently, however, the MoF has announced it is monitoring the effects of the conditional withholding tax.

The indicators for the sub-goal on structural capacity building for good tax policies and tax collection in developing countries are 1) CD expenditures by the Netherlands, 2) tax-to-GDP ratios and 3) tax revenue in developing countries resulting from CD programmes supported by the Netherlands. The second and third indicators are very difficult to attribute to Dutch support and therefore very unlikely to produce credible information.

The introduction of the PCD agenda in 2016 marked a shift towards more awareness of the importance of coherence between the policies and activities of different ministries. Nevertheless, some issues with respect to coherence in implementing the interventions and activities were identified in this evaluation. A lack of coherence was mostly observed between the interventions and activities of the MoF and the MFA. Commitments of the MoF made in Parliament while discussing the Netherlands' policy on fiscal treaties with respect to supporting CD for developing countries with which the Netherlands intends to sign a tax treaty or offer anti-abuse clauses have little impact on the CD programmes of the MFA, which uses its own criteria to assess the relevance of CD activities.

[6] See section 1.1 for the full list of indicators.

Another challenge from the CD activities arises because CD experts paid by the MFA are not allowed to advise developing countries on ongoing or planned negotiations with the Netherlands. A conflict of interest could arise in practice (and in one case did arise, when an expert mentioned being more reluctant to advise developing countries because this could harm the interests of the Netherlands).

MoF is responsible for the contributions from and positions of the Netherlands in international forums (the OECD and EU) that discuss standards to counter tax avoidance. The MFA (which is more able to voice the concerns of developing countries) has limited influence on the process. MFA delegates participate in the round table that discusses the priorities of developing countries with respect to international tax issues, but the influence of this round table in shaping the MoF's stance is unknown. There is regular contact between MoF and MFA, for example when the MoF requests the MFA for input to guide policy documents such as the NFV that are discussed in the Council of Ministers. However, current affairs are not discussed, nor are mandates, instructions or annotations shared, for example in preparation for upcoming meetings in the OECD or treaty negotiations with developing countries. MFA is often only briefed on the outcomes afterwards.

For policy to be formulated jointly, the MFA would have to improve its fiscal expertise because it currently lacks such expertise to contribute to these, sometimes technical, discussions.

Dutch embassies no longer support the application of tax exemptions in G2G ODA activities, but in several cases exemptions based on domestic legislation are still applied

Late 2015, the MFA announced that from 2016 it would refrain from asking for tax exemptions on import levies and custom duties and VAT for all new government-to-government activities (G2G) financed from ODA. Based on the most recent available information in 2018, the Netherlands was one of only five European donor countries that abandoned some tax exemptions.

Out of the eight countries that have participated in the survey investigating the commitment to abandon tax exemptions, the responses from most of the Dutch embassies reveal that some sort of tax exemption on ODA activities is made available by the recipient governments. The exemption is based either on a general exemption for ODA (G2G or otherwise) activities or decided on case by case. With the exception of one case in Zambia, Dutch embassies in the eight countries generally no longer assist companies in claiming these exemptions.

All nine activities financed from infrastructure development programmes administered by RVO (six ORIO and three DRIVE) in the sample of developing countries with commitments made after 2016 (but in the case of ORIO based on grant agreements signed earlier) made use of tax exemptions; in two DRIVE activities, however, these were limited to exemption from VAT only. Activities financed from ORIO with commitments made before 2016 fell under a transition period in which exemptions could continue to be used. Recipient governments are asked to clarify the tax treatment of DRIVE (and similar) activities, which is then applied.

1

Introduction

Around 2010, in the wake of the financial crisis and growing media attention for the tax practices and morale of multinational enterprises (MNEs) the G20 started to discuss the issue of international taxation. In a statement issued in 2012, they referred to 'the need to prevent base erosion and profit shifting'. This message was reiterated by the G20 meeting of finance ministers later in 2012, when it was stated that 'We also welcome the work that the OECD is undertaking into the problem of base erosion and profit shifting and look forward to a report about progress of the work at our next meeting'.[7]

The rationale for embarking on this initiative was the perception that international tax rules had not kept pace with globalisation and digitalisation in the world economy. Domestic rules for international taxation and internationally agreed standards were perceived to be grounded in an economic environment characterised by less economic integration across borders, rather than in an environment of global taxpayers, i.e. multinationals operating in multiple countries. Increasing interactions in domestic tax legislation give rise to so-called base erosion and profit shifting (BEPS) opportunities for MNEs to lower their tax liability.[8]

The OECD/G20-led initiative also explicitly signalled issues and challenges developing countries faced, both their need to increase tax revenues to foster long-term development and their inability to address issues of tax avoidance by multinationals due to capacity constraints.[9] Recognising the risk of BEPS, the Dutch government supported this OECD/G20 initiative. The Netherlands also acknowledged that the presence of certain shell companies (specifically, letterbox companies, called *brievenbusmaatschappijen* in Dutch) within its borders was at odds with the spirit of Dutch tax laws and tax treaties with third countries, and that therefore the Netherlands should also act unilaterally to protect the tax base in developing countries.[10]

Around the same time, the Dutch ministries of Foreign Affairs and Finance introduced their plans for bilateral capacity development (CD) support to promote well-functioning tax systems and tax authorities in developing countries. This was considered necessary to ensure these countries would have sufficient financial means to foster development and to decrease their dependency on aid.[11]

In recognition of the need for the policies and activities under these three topics to be coherent, in 2016[12] the Dutch Cabinet's Agenda on Policy Coherence for Development (PCD) was introduced. It includes the policy goal 'countering tax avoidance/evasion' under the overarching goal 'Increased government revenues in developing countries, especially low-income and partner countries'. These goals include policies of the Dutch ministries of Foreign Affairs and of Finance intended to strengthen tax systems in developing countries, grouped under three sub-goals: 1) international agreements on countering tax avoidance,

7 (OECD, 2013b, p. 14); (G20, 2012, p. 8); 2012 G20 Finance Communiqué, November (utoronto.ca).
8 (OECD, 2013b, p. 5).
9 (OECD, 2013b, pp. 13, 87).
10 (Ministry of Finance, 2013f, pp. 1, 2).
11 (Ministry of Foreign Affairs & Ministry of Finance, 2013b, p. 1).
12 (Ministry of Foreign Affairs, 2016c) This agenda combines PCD initiatives, some of which started earlier than 2016.

2) capacity development (CD) the strengthening of administrative capacity in taxation in developing countries, and 3) the reduction of MNEs' use of the Netherlands' tax system as a conduit for tax avoidance.[13]

In any country, tax revenues are generated by the domestic taxation system: a legal system for assessing and collecting taxes. Its effectiveness is determined by domestic factors (political considerations, the economy and tax base and administrative capacity) and a multitude of external factors (the taxation policies of third countries, tax planning behaviour of multinational companies, multilateral rules, illicit financial flows, conditionality of international financial institutions, etc.). Government tax revenues in developing countries are generally much lower than in developed countries (although similar to developed countries at a similar stage of development[14]), compromising the ability of governments to provide sufficient services.[15] The underdeveloped tax systems and large informal sector in developing countries lead to an overreliance on the taxation of national and multinational corporations, which are generally easier to tax. At the same time, developing countries are generally more exposed to tax avoidance practices by MNEs, partly because of their underdeveloped tax system.[16]

The Netherlands is often mentioned as a being a conduit country for tax avoidance activities by MNEs because of its attractive fiscal climate. It serves as a conduit country with one of the largest stocks of foreign direct investment (FDI) worldwide and is a large investor in several developing countries. This highlights the importance of Dutch fiscal policies for developing countries.

With the PCD agenda in mind, this evaluation evaluates Dutch policies and activities under the three sub-goals intended to help strengthen tax systems in developing countries. with a focus on the coherence, relevance and effects of these policies and activities. The main research question guiding this evaluation was: **How coherent and relevant are Dutch government policies and activities to strengthen tax systems in developing countries, and what are their effects?**

1.1 Reading guide

The remainder of the Introduction elaborates on the evaluation's research questions and methodology. Chapter 2 describes the main international and domestic policies and initiatives related to the three sub-goals in the period evaluated. Chapter 3 presents evidence on the scale of tax avoidance by MNEs, based on a literature review. Each of the following three chapters deals with one of the sub-goals of the PCD: sub-goal 1 on international standards to counter tax avoidance (chapter 4), the actions taken by the Netherlands to reduce its role as a conduit country under sub-goal 3 (chapter 5) and the CD activities financed

[13] (Ministry of Foreign Affairs, 2016a); (Ministry of Foreign Affairs, 2018a)
[14] (Besly, T. & Persson, T., 2014, p. 119)
[15] (IMF, 2018, p. 5); (IMF, 2019a, p. 4)
[16] (Johannesen, Torslov, T., & Wier, L., 2017, pp. 18, 19); (Crivelli, E., de Mooij, R.A., & Keen, M., 2015, p. 23)

by the Netherlands – sub-goal 2 of the PCD (chapter 6). The final chapter (7) of the evaluation draws conclusions on the coherence of the policies and activities under the PCD.

Each chapter ends with a paragraph summarising the findings relating to a given research question. The conclusions and recommendations of the entire evaluation are presented in chapter 7.

For reasons of readability, the references cited in the main text have sometimes been grouped and footnoted at the end of the paragraph in question, rather than positioned immediately after the assertion(s) they refer to.

1.2 Delimitation

This evaluation is part of a policy review that covers the entire policy article 1 of the budget for Foreign Trade and Development Cooperation, which will be published in 2021.

Included in this evaluation are activities and policies of the ministries of Foreign Affairs and Finance that are part of the policy goal of the PCD 'Increased government revenues in developing countries, especially low-income and partner countries'. CD programmes included under sub-goal 2 are financed from Chapter XVII of the Government Budget, the budget for Foreign Trade and Development Cooperation[17] as part of budget line 1.3 'private sector development in developing countries', part of policy article 1 'sustainable economic development, trade and investments'. Chapter IX of the Government Budget, the budget of the MoF, mentions that ministry's policies on international fiscal policy related to sub-goals 1 and 3 of the PCD under policy article 3.1 on taxes.

The evaluation covers the period 2012–2020. It includes policies and activities related to policy coherence for development in taxation that had already been implemented before the introduction of the PCD agenda in 2016.[18]

The geographical scope of the evaluation was mostly limited to 13 partner developing countries where Dutch bilateral CD on tax issues was active during all or part of the research period: Bangladesh, Burundi, Ethiopia, Ghana, Indonesia, Kenya, Liberia, Malawi, Palestinian Territories, Rwanda, Tanzania, Uganda and Zambia. As explained in annex 1, the availability of information sources differs between countries, so the findings pertain to a non-random sample of developing countries, mostly limited to sub-Saharan African countries, and therefore do not necessarily apply to all developing countries.

[17] MFA's budget is divided into two chapters: Chapter V on Foreign Affairs (BZ) and Chapter XVII on Foreign Trade and Development Cooperation (BHOS).

[18] The implications of Dutch tax policies for developing countries had already been identified as an issue prior to 2016. For example, in (Ministry of Foreign Affairs, 2012).

Although policies on tax evasion are often mentioned concomitantly with tax avoidance, they were excluded from this evaluation because tax evasion is essentially an enforcement issue whereas avoidance is much broader and involves tax rules and standards (domestic and international), with intended and unintended implications for tax systems in developing countries. Tax evasion is illegal but tax avoidance is not. The OECD's Glossary of Tax Terms defines tax avoidance as '… arrangement of a taxpayer's affairs that is intended to reduce his [sic] 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'. It includes legal artificial tax structures designed by corporations to limit their effective tax rates by using loopholes in and mismatches between domestic tax systems.[19]

1.3 Theory of change and research questions

The three sub-goals, activities and indicators related to the Cabinet's policy goal of increasing government revenue in developing countries, as stated in the annex of the policy letter on PCD, are shown in Table 1 below.[20]

Table 1 The PCD agenda[21]

Policy goal: Increased government revenues in developing countries, especially in low-income and partner countries (SDG 17.1)		
Sub-goals:	**Activities:**	**Indicators:**
Sub-goal 1: Improved international agreement on taxation of real economic activities	Within the EU and OECD Inclusive Framework on BEPS, the Dutch government aims to achieve international standards countering tax evasion and avoidance which take account of the interests of developing countries, and is adjusting its own tax policies accordingly	• Implementation of international standards by the Netherlands (and other countries) • The number of uncooperative tax jurisdictions

[19] (Ministry of Foreign Affairs, 2017a).
[20] (Ministry of Foreign Affairs, 2016c); (Ministry of Foreign Affairs, 2018d); (Ministry of Foreign Affairs, 2018b).
[21] Translated from (Ministry of Foreign Affairs, 2018d).

Table 1 The PCD agenda[21]		
Policy goal: Increased government revenues in developing countries, especially in low-income and partner countries (SDG 17.1)		
Sub-goals:	**Activities:**	**Indicators:**
Sub-goal 2: Structural capacity building for good tax policies and tax collection in developing countries (focus on low-income and lower-middle income countries)	The Dutch government is implementing the Addis Tax Initiative (ATI) goal of more than doubling CD by 2020 compared to 2015. Special attention given to CD in focus regions	• Total Dutch CD expenditures compared to 2015 • Tax/GDP ratios in low-income countries and focus countries (contributing to SDG 17.1.1) • Tax revenue resulting from CD programmes • Stability of the tax system and knowledge revenue service
Sub-goal 3: Decreasing the use of the Netherlands as a conduit for tax avoidance in other countries, including developing countries	The Dutch government has continued to include anti-abuse clauses in tax treaties and intends to take additional measures against financial flows to low-tax jurisdictions	• The number of Dutch tax treaties with anti-abuse clauses • Introducing withholding taxes on dividend, interest and royalties[22]

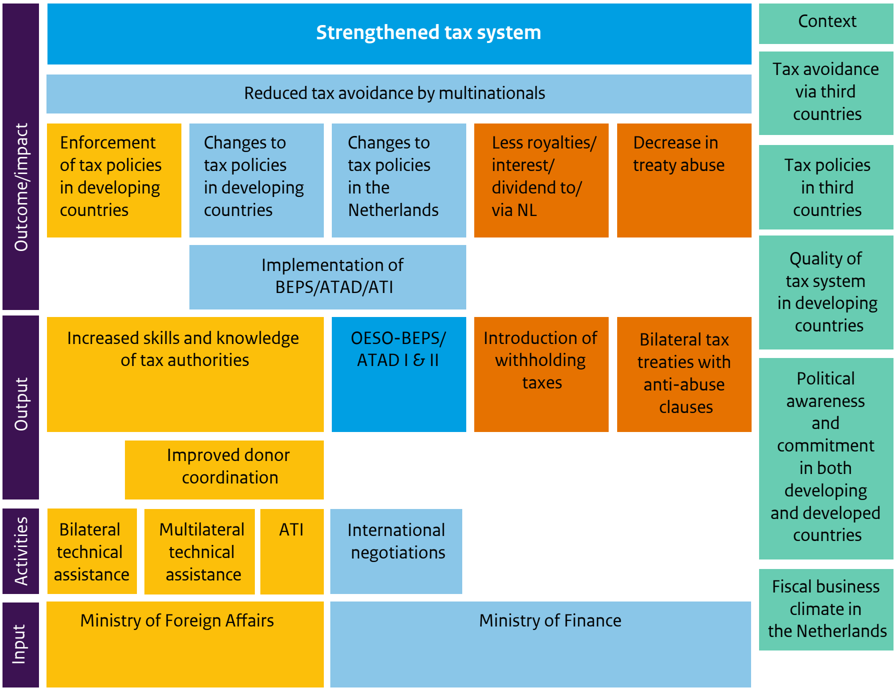
These goals were to be achieved through: 1) participation in international initiatives to design rules to counter tax avoidance while taking account of the interests of developing countries, 2) CD to improve developing countries' administrative capacity in taxation, and 3) changes to Dutch tax policies and treaties that affect corporate tax revenues in developing countries. Sub-goals 1 and 3 are the primary responsibility of the MoF, whereas CD activities are implemented by the NTCA, which contributes in kind, or by MFA, which finances implementers.

Based on the PCD agenda and using information from policy and project documents, a simplified theory of change (ToC) was reconstructed (Figure 1). In it, the three sub-goals of the policy goal 'Increased government revenues in developing countries' are specified: 1) international standards to counter tax avoidance (grey), 2) CD to improve tax legislation and enforcement (orange) and 3) measures to reduce tax avoidance via the Netherlands (red).

[22] In 2018, the proposed conditional withholding tax on dividend was not implemented because, contrary to earlier proposals, the general tax on dividends remained in place. In 2020, it was decided to introduce a withholding tax on dividends to low-tax jurisdictions from 2024 onwards.

The ToC starts with the inputs/activities at the bottom and works upwards to the expected outcomes/impacts at the top. The elements in blue relate to more than one of the sub-goals and show the substantial overlap between them. For example, anti-abuse clauses lead to reduced tax avoidance if sufficient capacity to enforce them is available in developing countries and if developed countries provide sufficient information on MNEs to enable a judgement to be made about possible treaty abuse. The context factors listed on the right-hand side of the figure actually or potentially affect policy formulation and effectiveness and were therefore taken into account in this evaluation.

Figure 1 Simplified reconstructed Theory of Change[23]



The ToC was used to identify the assumptions essential for achieving the goals of strengthening tax systems in developing countries. These assumptions were grouped under the three sub-goals, followed by the research questions that test these assumptions. See the evaluation matrix in annex 1.

The main research question guiding this evaluation is: **How coherent and relevant are Dutch government policies and activities to strengthen tax systems in developing countries, and what are their effects?**

[23] The figure is limited to international aspects of taxation, but CD programmes are broader and also cover aspects of domestic taxation (for example, property tax)

The sub-research questions follow the sub-goals of the agenda on PCD and include two broader, additional questions:

1) What is the best estimate of tax revenue lost by developing countries due to tax avoidance by multinationals and what part did the Netherlands play in the tax avoidance?
2) How coherent are Dutch policies and activities to counter tax avoidance in developing countries?

Sub-goal 1: Improved international standards on taxation of real economic activities

3) Has the Netherlands succeeded in including developing countries and their priorities in discussions on international standards on countering tax avoidance?
4) To what extent have the interests of developing countries been considered by the Netherlands when implementing recommendations of international discussions on countering tax avoidance?

Sub-goal 2: Capacity development

5) Which CD activities are supported by the Netherlands and to what extent do they address the priorities of developing countries?
6) To what extent have CD activities supported by the Netherlands aided implementation of the OECD/G20 BEPS standards and the negotiation and enforcement of tax treaties in developing countries?

Sub-goal 3: decrease MNEs' use of the Netherlands' tax system as a conduit for tax avoidance
7) Are anti-abuse clauses and the introduction of withholding taxes on royalties and interest able to counter tax avoidance by multinationals from developing countries via the Netherlands?

1.4 Methodology

The methods used to answer these research questions are summarised below (for more details, see annex 1).

A **policy reconstruction** based on 1) Government letters to Parliament and minutes of parliamentary debates, 2) minutes of OECD meetings in the Committee of Fiscal Affairs (CFA) and Inclusive Framework on BEPS (IFB) in which the OECD/G20 BEPS framework was discussed,[24] 3) instructions for MoF delegates attending OECD meetings (CFA and IFB), 4) mandates and reports of negotiations on bilateral tax treaties between the Netherlands and five developing countries[25] and 5) project documents and evaluations of CD activities financed by the Netherlands.

24 These minutes are confidential and therefore information on the stance of individual countries other than the Netherlands cannot be disclosed.

25 MoF was willing to share the mandate and report(s) for concluded negotiations only. Thus the information was available for only five tax treaties with developing countries.

To describe the Dutch policies related to the PCD agenda, the information from the policy documents listed above was supplemented with information obtained from interviews. For a list of interviewees, see annex 1. Most of the interviews were conducted during the three **country case studies** commissioned for this evaluation, which were executed by SEO and published separately for Kenya, Ghana and Uganda. The case studies yielded more insight into the position of governments and other stakeholders in these countries on issues of international tax standards, bilateral tax treaties with the Netherlands and the relevance and effects of CD support provided by the Netherlands. Because of the travel restrictions during the COVID-19 pandemic, all interviews were online.

An **overview of CD activities** based on project documents and available evaluations provided additional information on their relevance and effects. Together, the policy reconstruction, country case studies and overview of CD activities answer research questions 3 to 6.

Two **literature studies**. The first, also by SEO, was to answer research question 1 on estimating tax revenue lost in developing countries due to tax avoidance. The second, by consultant Craig West, was to provide additional information on the priorities of developing countries in international taxation included under research question 4.

Finally, an **econometric analysis**, by the Bureau for Economic Policy Analysis (CPB) yielded answers for part of research question 7. The analysis was supplemented with quantitative information on the Dutch tax treaty network and FDI and income flows.

Whereas several of the studies mentioned here were commissioned by IOB as part of this evaluation, the final report is based on the judgement of the IOB researchers and hence not all the conclusions of the sub-studies are necessarily shared or included in this final report, although they are generally largely similar.

2 Policy reconstruction

This section summarises the main relevant policy documents and parliamentary debates. More detailed information on the topics addressed here is provided in the thematic chapters of this report that present the three sub-goals. Although the period evaluated is 2012–2020, the NFV 2011[26] has also been included because of its importance for explaining treaty policy towards developing countries in this period.

The NFV 2011 summarises all aspects of Dutch fiscal treaty policy and includes a section on the Dutch stance towards developing countries. It states that in order to support developing countries in their fiscal development, the Netherlands is willing to diverge from standard[27] Dutch tax treaty policy by allowing more taxation rights to developing countries in bilateral treaties to avoid double taxation, as long as the interests of Dutch taxpayers are not disproportionately damaged. In addition, the developing country is offered CD to improve taxation of domestic and international taxpayers. Over time, these activities should reduce reliance on corporate taxation, such as relatively high withholding taxes on transfer of dividend, royalty and interest payments and management fees from daughter companies in developing countries to the holding/mother company in the Netherlands.[28]

Following the publication of NFV 2011, debate in Parliament centred on whether the Netherlands should negotiate tax treaties with developing countries at all. Members of Parliament claimed that these treaties were not in the interest of developing countries and have limited economic importance for the Netherlands. The question arose of what such treaties – if any were to be concluded – should look like. It was suggested to use the UN model treaty (a model tax treaty generally favoured by developing countries) or at least to consent to relatively high withholding taxes.[29] In response, the State Secretary for Finance indicated that if withholding taxes in existing tax treaties with developing countries were considered too low, he would be open to renegotiating them, in addition to including anti-abuse clauses. However, this would be done at the request of either the treaty partner or a third party; the State Secretary for Finance was not willing to check all tax treaties separately. He further noted that the number of tax treaties with developing countries was limited and not all treaties included withholding taxes lower than the domestic rates.[30]

In response to further questions during parliamentary debates in 2012 on whether the Netherlands should conclude tax treaties with developing countries at all, the State Secretary for Finance noted that this would run counter to the principles of proportionality and subsidiarity; all cross-border activities would suffer due to the small risk of treaty abuse. The risk of treaty abuse should be dealt with by using the proper instruments (as explained in the NFV 2011). Unilateral measures introduced by the Netherlands to reduce these risks were no substitute for a tax treaty, which is best positioned to connect two tax systems and provides legal certainty and administrative cooperation.

[26] (Ministry of Finance, 2011b)

[27] 'Standard' refers to Dutch tax treaty policy towards non-developing countries; for more detail, see the chapter on sub-goal 3.

[28] (Ministry of Finance, 2011c, pp. 20, 21, 77, 79, 80)

[29] (Ministry of Finance, 2011f, pp. 6, 10, 15, 16); (Ministry of Finance, 2011h, p. 3)

[30] (Ministry of Finance, 2011f, p. 20); (Ministry of Finance, 2011e, p. 5);

In this respect it was also mentioned that some developing countries (Kenya and Ethiopia, for example) had approached the Netherlands with a request to conclude a tax treaty.[31]

In the years leading up to the NFV 2011, the problem of insufficient tax revenues for developing countries was also seen in terms of policy coherence. It was realised that undesirable illegal financial flows could not be countered unless the international tax climate improved, and that the flows could not be countered without improved domestic legislation, policy and implementation in the developing countries themselves.

Dutch CD efforts to address tax legislation, policy and implementation in developing countries were explained in detail in various letters to Parliament in 2013 and 2014,[32] in which it was noted that bilateral and multilateral CD would be provided by experts from NTCA and the IBFD in order to help increase tax revenues of developing country governments. The goal was to provide support to at least five developing countries, both to the tax authorities and customs services (the latter because customs duties are an important source of revenue for developing countries). Support would be demand-driven and could be aimed at improving tax legislation and its implementation and enforcement, related to both domestic and international taxation issues. Multilateral CD was being provided by (and would later be expanded) the ATAF, the OECD and the IMF. In a parliamentary debate on measures against tax havens, CD was related to the ability of developing countries to enforce tax legislation in order to counter tax avoidance. Therefore, the Dutch government intended to offer CD to its 15 partner countries and countries with which the Netherlands intended to conclude a tax treaty.[33]

In response to a report published by IBFD[34] comparing several tax treaties concluded between developing countries and the Netherlands with other treaties concluded by these countries, the MoF and MFA expressed their intention to offer all developing countries with which the Netherlands had concluded a tax treaty a course on treaty maintenance. Furthermore, these 23 developing countries were to be approached about the inclusion of anti-abuse clauses in their tax treaties with the Netherlands.[35]

A subsequent parliamentary debate on this initiative also revolved around the question of where the responsibility of the Netherlands ends with respect to including the interests of developing countries during tax treaty negotiations. This was a recurrent issue in multiple debates throughout the research period. In this context, some members of Parliament criticised the recently concluded tax treaty with Ethiopia in which no anti-abuse clause was initially included. Even though Ethiopia was the party that proposed concluding a treaty and did not mention the inclusion of an anti-abuse clause during the negotiations,

31 (Ministry of Finance, 2012a, pp. 4, 5, 6)
32 (Ministry of Foreign Affairs & Ministry of Finance, 2013a); (Ministry of Foreign Affairs & Ministry of Finance, 2014)
33 (Ministry of Foreign Affairs & Ministry of Finance, 2013a, pp. 1, 2); (Ministry of Finance, 2013e, pp. 5, 21); (House of Representatives, 2013, pp. 20, 21)
34 (IBFD, 2013)
35 (Ministry of Finance, 2013e, pp. 2, 3, 21, 24)

the members of Parliament felt that a tax treaty should always include an anti-abuse clause. The State Secretary for Finance, however, was of the opinion that developing countries were capable of deciding for themselves which clauses they wished to include.[36]

From 2014 onwards, attention was increasingly paid to international initiatives aiming to counter tax avoidance and strengthen tax systems in developing countries. These initiatives were addressed in several letters to Parliament.

A letter to Parliament from late 2014[37] stated that the countries participating in the OECD BEPS project (the international initiative to design standards to counter tax avoidance which started around 2013) would result in an agreement in 2015. Part of the CD provided by the Netherlands was expected to contribute to the implementation of the resulting BEPS recommendations by developing countries and the enforcement of anti-abuse clauses in the tax treaties they had concluded with the Netherlands. During BEPS negotiations in 2014, developing countries were consulted, and starting in January 2015, 14 developing countries and several regional representative organisations such as ATAF and CIAT participated in the CFA of the OECD and several of its working groups. As a result, BEPS standards reflect the priorities of developing countries as well, although in 2015, the State Secretary for Finance noted that these did not differ significantly from those of developed countries.[38] The aim of the Netherlands was for the BEPS project to yield recommendations that were practical and in the interests of developing countries.[39]

With the Netherlands as one of the initiators, in 2015 the ATI was launched as part of the UN Finance for Development conference. The initiative included a pledge by 18 donors, including the Netherlands, to double expenditures on CD for tax policies no later than 2020. This CD was aimed at strengthening tax systems, as well as supporting domestic and local tax authorities, partly based on implementation of the new OECD BEPS standards.[40] A letter to Parliament in anticipation of the launch of the ATI stated that CD was aimed at implementation of the BEPS standards, international initiatives on exchange of information and South–South cooperation. Countries that showed willingness to reform their tax systems were eligible for help.[41]

In 2016, the Multilateral Instrument (MLI), one of the BEPS standards, was launched: a multilateral treaty intended to provide a fast and efficient way of updating bilateral tax treaties by including anti-abuse clauses and other BEPS treaty-related actions. The MLI includes three of the BEPS standards[42], which were already part of Dutch tax treaty policy and therefore – according to the State Secretary for Finance – were not new.

[36] (Ministry of Finance, 2013a, p. 20)
[37] (Ministry of Finance, 2014f, p. 2)
[38] (Ministry of Finance, 2015c, p. 5); (Ministry of Finance, 2015f, p. 2)
[39] (Ministry of Foreign Affairs & Ministry of Finance, 2015a, p. 5); (Ministry of Finance, 2014f, p. 2)
[40] (Ministry of Finance, 2015f, p. 2)
[41] (Ministry of Foreign Affairs & Ministry of Finance, 2015a, p. 5)
[42] The MLI includes action 6 on countering treaty abuse, action 7 avoidance of PE status and action 14 on mutual agreement procedures on tax-related disputes.

The MLI provides the means to implement existing policy more efficiently. All existing and new treaties would be brought under the MLI, although negotiations of a tax treaty that had already started could include the BEPS standards this way. In a letter to Parliament on the implementation of the MLI in 2017, it was further explained that the inclusion of anti-abuse clauses was offered to all treaty partners simultaneously via the MLI, with the exception of nine countries for which anti-abuse clauses would be included in tax treaty negotiations with the Netherlands. The remaining 81 bilateral tax treaties of the Netherlands were part of the MLI. At some point in 2017, 44 treaty partners had accepted the Netherlands' offer to include anti-abuse clauses via the MLI.[43]

In 2016, the OECD Inclusive Framework on BEPS (IFB)[44] was launched, which was also supported by the Netherlands. Its five aims are (1) allow interested countries and jurisdictions to work on an equal footing with OECD/G20 member countries on developing standards on BEPS-related issues; (2) review and monitor the implementation and impact of the whole BEPS package and, specifically, the BEPS minimum standards; (3) gather data for monitoring other aspects of implementation; (4) finalise the remaining technical work to address BEPS challenges; and (5) monitor outstanding and emerging base BEPS issues.[45]

Also in 2016, in a letter to Parliament[46] on policy coherence for development, the Minister of Foreign Trade and Development Cooperation announced an Action Plan on Policy Coherence for Development. It too contained actions related to strengthening tax systems in developing countries. This action plan and subsequent annual policy documents on policy coherence for development gave details on several measures the Netherlands was taking to reduce tax avoidance (and evasion) and increase tax revenues in developing countries. The following measures were initially mentioned: 1) improving tax legislation and tax authorities in developing countries; 2) increasing the expertise of fiscal policy makers and of tax and customs administrations; 3) renegotiating tax treaties with developing countries bilaterally or via the MLI to prevent abuse; 4) Dutch implementation of the OECD BEPS standards, including an efficient multilateral monitoring process which includes developing countries and allows for additional measures to be taken if necessary within the EU or other initiatives; 5) implementing measures from other international initiatives to counter tax avoidance (and evasion) in developing countries; 6) not claiming tax exemptions on government-to-government Official Development Assistance (ODA) activities from 2016 onwards.[47]

The EU anti-tax avoidance directives (ATAD I and II[48]) translate several OECD BEPS standards into European legislation. Although ATAD I only applies to EU Member States, developing countries were expected to benefit too, as explained in a letter to Parliament in 2016.

[43] (Ministry of Finance, 2016h, pp. 3, 4, 6); (Ministry of Finance, 2017e, p. 2)
[44] (OECD, 2017b)
[45] (SEO, 2021, p. 53)
[46] (Ministry of Foreign Affairs, 2016b)
[47] (Ministry of Foreign Affairs, 2017e, p. 8); (Ministry of Foreign Affairs, 2016b, pp. 5, 6, 15, 16); (Ministry of Foreign Affairs, 2018b); (Ministry of Finance, 2019f) (Ministry of Foreign Affairs, 2020a)
[48] https://ec.europa.eu/taxation_customs/business/company-tax/anti-tax-avoidance-package/anti-tax-avoidance-directive_en

ATAD II, which came into effect in 2020, contains several additional measures against tax avoidance: some measures applied to EU Member States only in ATAD I now apply to third countries too.[49]

In 2018, a conditional withholding tax on dividend, interest and royalty payments to low-tax jurisdictions or countries included on an EU list of uncooperative tax jurisdictions was introduced by the Dutch government. It was intended to prevent tax avoidance via conduit structures (*shell companies*) that use the Dutch tax system. In a parliamentary debate, the State Secretary for Finance explicitly linked the conditional withholding tax on dividend, interest and royalty payments to tax avoidance in developing countries. Although a conditional withholding tax on dividend payments was later cancelled[50], a letter to Parliament in 2020 regarding further measures to counter tax avoidance again mentioned that a conditional withholding tax on dividend payments would be implemented from 2024 onwards.[51]

In 2020, a new Memorandum on Fiscal Treaty Policy was published: NFV 2020. An update was considered necessary due to developments in the approach to countering tax avoidance and to address the special fiscal position of developing countries. NFV 2020 specifically mentions the OECD BEPS project and the update of the OECD and UN model tax treaties in 2017. It notes that changes in domestic legislation will be translated into treaty policy: for example, conditional withholding taxes on interest and royalty payments will be introduced by 2021. The BEPS standards have become an important part of Dutch fiscal treaty policy; most treaty-related recommendations have been accepted by the Netherlands.[52]

Just as in its predecessor (NFV 2011), in NFV 2020, developing countries are addressed separately. The NFV 2020 states that developing countries rely to a relatively large extent on corporate taxation, which is why the Netherlands should take this into account ‘even more than in the past’ when applying its fiscal treaty policy to developing countries. In addition to the measures already included in the NFV 2011 (most importantly the acceptance of withholding taxes by partner countries), the inclusion of anti-abuse clauses is regarded as a *conditio sine qua non* for negotiating a tax treaty. Furthermore, a withholding tax on technical service fees has been added as acceptable in negotiations with developing countries.[53]

Very recent MoF documents on the progress made on including anti-abuse clauses in treaties concluded with the 23 developing countries approached in 2013 reveal that agreement has been reached with 14 countries either bilaterally or through the MLI; six treaty partners have ratified the (amended) bilateral treaty while two of them plus three additional treaty partners have ratified the MLI and concluded the treaty with the Netherlands,

[49] (Ministry of Finance, 2016b, pp. 3, 4, 13, 14); (Ministry of Finance, 2019c, p. 2)
[50] The conditional withholding tax on dividend payments was to have been implemented simultaneously with the abolition of the general dividend tax. When it was decided in 2018 that the latter tax would not be abolished the introduction of the conditional withholding tax was cancelled
[51] (Ministry of Foreign Affairs, 2018e, p. 8); (Ministry of Finance, 2018a, p. 9); (Ministry of Finance, 2020b, p. 1)
[52] (Ministry of Finance, 2020c, p. 2,4)
[53] (Ministry of Finance, 2020c, pp. 2, 3)

which means that anti-abuse clauses are currently operational in treaties with nine countries.[54]

Ongoing discussions in the IFB, the 'BEPS 2.0 project' under pillar 2 deal with, amongst others, harmonising the tax rate by introducing a minimum rate at which MNEs are expected to be taxed. If the rate is below the minimum, another country is permitted to tax these profits to the minimum level. Pillar 1 discusses the ratio between source and residence taxation by allocating more taxing rights to source countries, even without physical presence.[55] Negotiations are continuing in the IFB on the basis of the blueprints agreed on in an IFB meeting in October 2020, which specify for both pillars what the status of the discussions is, i.e. where consensus has been reached and what the different viewpoints are for the remaining issues.[56]

A proposal made by the G7[57] in July 2021 and to be discussed in the IFB advocates a minimum CIT rate of 15%. If a source country's CIT is below this rate, the residence country of the MNE would be allowed to levy an additional tax of up to 15% on profits earned there. The G7 proposal also advocates allocating the source country the right to tax 20% of all profits exceeding the 10% profit margin. The reallocation would be based on the number of consumers and users in the source country.

There has been criticism of the supposed benefits for developing countries of the pillar 1 proposal. The scope of the reallocation of profits is expected to be limited because it will take effect only above a 10% profit margin and only for the largest multinationals. The proposal is expected to increase complexity and generate relatively little additional revenue.[58] The minimum tax rate of 15% proposed under pillar 2 may limit the policy space for developing countries and bring them little extra revenue because few headquarters of MNEs are located there.

[54] Anti-abuse clauses in the bilateral treaty with Pakistan will enter into force via the MLI on 01-01-2022 with respect to withholding taxes and on 01-10-2021 with respect to other other taxes. Because this has already been agreed, this treaty was included in the nine mentioned. (Ministry of Foreign Affairs, 2020b, p. 2); (Ministry of Finance, 2020c, p. 32) (Ministry of Finance, 2021, pp. 7, 8)

[55] (Commissie ter Haar, 2020, p. 79)

[56] (Ministry of Finance, 2020e, p. 2); (Ministry of Finance, 2020f, p. 2)

[57] https://www.gov.uk/government/publications/g7-finance-ministers-meeting-june-2021-communique/g7-finance-ministers-and-central-bank-governors-communique

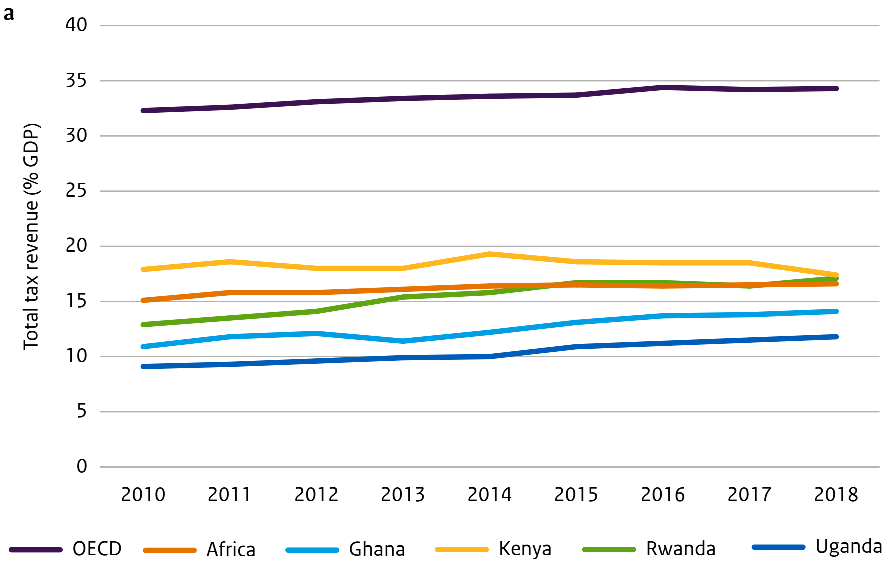
[58] https://www.ataftax.org/atafs-revised-pillar-one-proposals-to-the-inclusive-framework-adds-to-g7-deal-to-stop-global-corporate-tax-avoidance

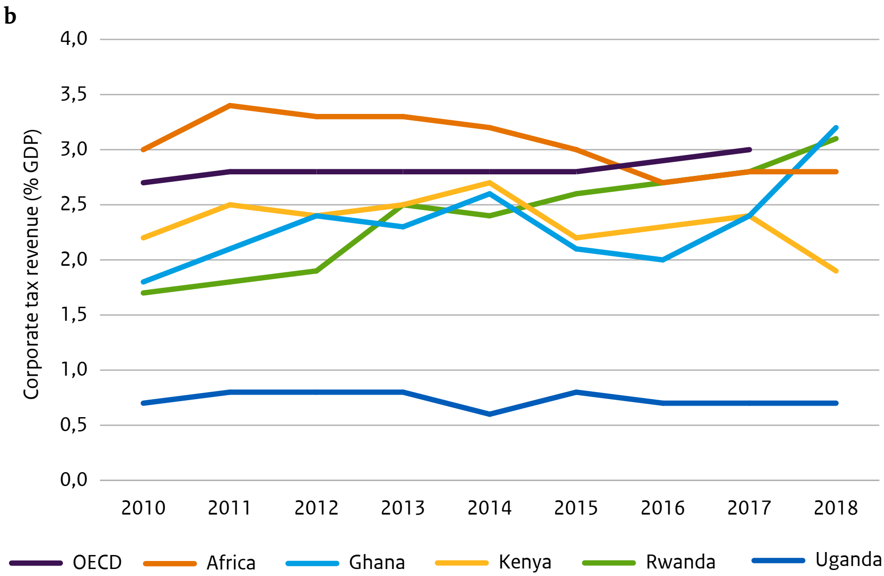
3

What is the best estimate of tax revenue lost by developing countries due to tax avoidance by multinationals and what part did the Netherlands play in the tax avoidance?

This chapter starts with an illustration of tax revenues, specifically the importance of corporate taxation in developing countries. The available evidence on the magnitude of tax avoidance by MNEs from developing countries is then presented. Lastly, the part played by the Netherlands as a conduit for FDI in African countries is highlighted.

Figure 2 *Total tax revenues (a) and corporate income tax revenues (b) as share of GDP in OECD countries, Africa and four African countries (Ghana, Kenya, Rwanda, Uganda)*





Source: OECD.stat revenue statistics (OECD, 2019b)

Figures 2a and 2b show that the CIT revenues in OECD and African countries are roughly similar, at around 3% of GDP, while total tax revenues are almost 35% in OECD countries and around 16% of GDP in Africa. This indicates the relative importance of the CIT: on average, it accounts for 20% of government tax revenues in African countries but less than 10% in OECD countries.

This dependency of government revenues on corporate contributions increases when other sources of government revenue are included in addition to the CIT, notably labour and social contributions and trade taxes. Half of these corporate contributions consist of CIT, the other half of trade taxes, labour and social contributions and other taxes. UNCTAD estimated that in 2012, foreign affiliates of MNEs accounted for around 10% of government revenue in developing countries and for about 14% in Africa.[59] The relatively large dependency of African countries on the CIT and other contributions from the corporate sector (domestic and international) makes them especially vulnerable to tax avoidance practices by MNEs.

Estimate of tax revenue loss
A review by SEO[60] has identified several mechanisms for tax avoidance by MNEs, which are summarised below. Broadly speaking, they affect either the tax base (through hybrid mismatches, intellectual property rights regimes, treaty shopping, avoidance of PE status) or the tax rate (controlled foreign company schemes, debt shifting, transfer mispricing). It has been argued that the mechanisms especially relevant for developing economies are treaty shopping, avoidance of PE status, debt shifting and transfer mispricing. The Netherlands fiscal system can facilitate such mechanisms – for instance, through the extensive Dutch treaty network, provisions in CIT and dividend withholding tax such as the participation exemption, the Dutch policy on withholding taxes and exemptions, the practice of tax rulings on the interpretation of the tax code, and the tax treatment of certain legal structures (e.g. limited partnerships etc.). Beyond such features of the tax system, the fact that the Netherlands has long been an attractive conduit for foreign capital reinforces the part the Netherlands plays in facilitating international capital flows through its tax system.

There have been attempts to quantify the revenue loss associated with tax avoidance by MNEs. However, as a result of differences in methodology, there is no consensus figure for the global costs of tax avoidance. Most studies do not provide an estimate of aggregate tax revenue losses based on all known channels of tax avoidance.[61] Estimations based on macro-data have calculated global losses to be as much as $500–650 billion, while studies based on micro-data estimates costs are orders of magnitude smaller. Given the limitations of both approaches, it is impossible to identify a single best estimate. The same holds for the estimated costs for non-OECD economies: they range from as high as $200 billion annual tax revenue losses to very much lower.

Global estimates of the revenue lost to non-OECD countries include large countries (China,

[59] (UNCTAD, 2015, pp. 185, 187)
[60] (SEO, 2021d)
[61] (Lejour, A., 2020, p. 41)

for example), which could lead to the relative importance of tax avoidance being misinterpreted at country level. Only few sources of country-specific estimates are available, three of which provide a general estimation of the cost of profit shifting[62]; their estimates are summarised in Table 2 for the focus countries in this evaluation.

Table 2 IMF, GRD and WIDER estimates of tax revenue losses due to BEPS for 11 developing countries for 2013 and 2015

Country	IMF billion (2013)	GRD billion (2013)	WIDER billion (2015)	IMF % GDP (2013)	GRD % GDP (2013)	WIDER % GDP (2015)
Burundi	0.07	0.06		2.7	2.34	
Ethiopia	1.28	1.11		2.7	2.34	
Ghana	0.39	0.34		0.86	0.75	
Indonesia	7.48	6.48		0.86	0.75	
Kenya	1.22	1.06		2.7	2.34	
Liberia	0.02	0.02		0.9	0.78	
Malawi	0.10	0.09	0.1	2.7	2.34	0.17
Rwanda	0.21	0.18		2.7	2.34	
Tanzania	0.86	0.75	0.13	2.7	2.34	0.29
Uganda	0.61	0.53	0.21	2.7	2.34	0.76
Zambia	1.13	0.98		5.1	4.42	

Although because of significant data and methodological challenges[63] the estimates are purely illustrative, they show that tax revenue losses due to BEPS can be significant for developing countries.

The part played by the Netherlands

Three estimations are available for ascertaining the part the Netherlands has played as a conduit country: two are country-specific and one is an estimation of global tax revenues. Synthesising the literature, Lejour (2020)[64] estimates worldwide losses due to avoidance using Dutch entities to be $25 billion per annum . His estimate is based on taking the average of several empirical estimates of global revenue loss and then calculating the Dutch contribution by applying the share of Dutch FDI to global FDI. He does not estimate how much of this 25 billion is related to Sub-Saharan Africa (SSA) economies, but assuming the distribution is proportional to the distribution of FDI flows to/from the Netherlands, probably around 1% of this amount is related to SSA economies. Note that this calculation essentially combines disparate sources that all employ different methodologies and data. This implies unquantified but probably large margins of uncertainty.
Two country-specific estimates for tax revenue losses that are attributable to the Netherlands

62 (WIDER, 2017); (Crivelli, E. et al., 2015); (WIDER, 2018)
63 Summarised in (SEO, 2021d, pp. 9, 10)
64 (Lejour, A., 2020)

are annual tax revenue losses of €183 million for Nigeria and €127 million for South Africa,[65] but they are also subject to the caveats mentioned earlier. Specifying the part played by the Netherlands in facilitating tax avoidance by MNEs, especially with respect to country-specific estimates for developing countries, therefore remains problematic.

There is anecdotal evidence of specific cases of alleged tax avoidance in developing countries taking place via the Netherlands.[66] These cases illustrate the potential for avoiding tax by using the fiscal system in the Netherlands but are not sufficient for an aggregated estimate. Nevertheless, even though it proved impossible to calculate a reliable quantitative estimate, in the next chapter, the attractive elements of the Dutch fiscal system that provide opportunities for tax avoidance structures will be elucidated qualitatively.

[65] (Torslov, T., Wier, L., & Zucman, G., 2020)
[66] (Oxfam Novib, 2019, p. 15); (Oxfam Novib, 2020)

4

Improved international standards on taxation of real economic activities

This chapter deals with sub-goal 1 of the PCD agenda, which seeks to improve international standards on taxation of real economic activities by developing international standards countering tax avoidance which take account of the interests of developing countries. These standards are negotiated in the OECD and at European level. The Netherlands then adjusts its own tax policies accordingly.

After an introduction to Dutch international corporate tax policy and the Dutch reaction to the standards developed in the OECD and EU, this chapter discusses the priorities of developing countries in the negotiations about standards, to analyse to what extent they were included in the standards developed. The second research question is then used to analyse how the Netherlands identified these needs of developing countries and attempted to include them in in the negotiations, and whether it supported the direct involvement of developing countries in the process of developing the standards.

Two main research questions are answered in this chapter:

To what extent have the interests of developing countries been considered by the Netherlands when implementing recommendations of international discussions on countering tax avoidance?

This question has been broken down into two sub-questions:

- What is the Dutch position on international standards against tax avoidance developed by the OECD and EU?
- What are the priorities of developing countries with respect to BEPS by multinationals?

Has the Netherlands succeeded in including developing countries and their priorities in discussions on international agreements on countering tax avoidance?

This question has been broken down into of three sub-questions:

- Which needs and priorities of developing countries with respect to the OECD/G20 BEPS discussions were identified by the Netherlands, and how?
- How did the Netherlands take these needs and priorities into account in developing and defending its stance during the OECD/G20 BEPS discussions and the formulation of ATAD I and II in the EU?
- At which stages and to what extent were developing countries able to influence the process of the OECD/G20 BEPS as a result of activities supported by the Netherlands?

4.1 To what extent have the interests of developing countries been considered by the Netherlands when implementing standards of international discussions on countering tax avoidance?

Section 4.1 starts with an overview of the development of the main characteristics of Dutch international corporate tax policy during the period evaluated, with a focus on the stance of the Netherlands with respect to the standards developed in the OECD/G20 BEPS project and related EU legislation to counter tax avoidance or aggressive tax planning by multinationals. The subsequent section (4.1.2) analyses the relevance of these standards for developing countries. Combining this information yields more insight into the extent to which the stance of the Netherlands and its implementation of international standards is in line with the priorities of developing countries.

4.1.1 What is the Dutch position on international standards against tax avoidance developed by the OECD and EU?

Dutch corporate tax policy
An SEO report from 2013[67] and a report in 2014 by the Netherlands Court of Audit (*Algemene Rekenkamer*)[68] summarise the strengths of the Dutch tax system in attracting and facilitating international capital flows, including conduit activities. The Netherlands Court of Audit concludes that although Dutch corporate fiscal policy is generally similar to that of other EU countries, specific elements make it attractive for tax planning purposes and tax avoidance by multinational companies. A more recent advisory report on the taxation of multinationals, comparing aspects of the Dutch fiscal climate with other EU countries, arrives at the same conclusion.[69]

The nominal CIT rate of the Netherlands is not particularly high or low compared to that of other EU countries.[70] However, the tax base over which the tax is levied is also important for the effective tax rate. For example, the innovation box lowers the tax base for profits derived from patents after deducting R&D expenses. Other countries have similar policies but with differing scopes and tax rates. In its 2013 report, SEO concluded that Dutch policy was generally more attractive than the policies of several other EU countries. The innovation box has since been changed as a result of domestic and international discussion.[71]

[67] (Ministry of Foreign Affairs & Ministry of Finance, 2013c)
[68] (Ministry of Finance, 2014g)
[69] (Ministry of Finance, 2014g, pp. 2, 3); (Commissie ter Haar, 2020, pp. 36, 37, 39, 40, 41)
[70] (Ministry of Foreign Affairs & Ministry of Finance, 2013c, p. 59); https://taxfoundation.org/corporate-tax-rates-europe-2019/
[71] See annex 3 and (Ministry of Finance, 2014g, pp. 21, 22); (Ministry of Foreign Affairs & Ministry of Finance, 2013c, pp. 60, 61)

The participation exemption applicable to dividend payments received by the parent company also lowers the effective tax rate in the Netherlands. Here, dividend received from an affiliate abroad is exempted from CIT because it is already taxed in the source country. Although most other EU countries have some sort of participation exemption, the scope differs between countries: for example, in the Netherlands, capital gains are also covered by the exemption.[72]

Currently the Netherlands does not levy withholding taxes on outgoing interest and royalty payments, with the exception of payments to low-tax jurisdictions or the countries on an EU list of uncooperative tax jurisdictions. These payments have been taxed at a 25% rate since 1 January 2021.

A 15% withholding tax rate on dividends has been applied since 2007 (previously, the rate was 25%). From 2024 onwards a 25% rate will be applied to the same group of countries and jurisdictions as those to which the conditional withholding tax on interest and royalties is applied.[73] EU directives forbid the application of withholding taxes on payments of dividends, interest and royalties within the EU in most cases. In combination with the lowering of withholding tax rates in bilateral tax treaties with third countries, this treatment of outgoing payments makes the Netherlands an attractive country for conduit activities by multinational companies. Several other EU countries treat outgoing payments in a similar way, but the Dutch system remains generally quite attractive, especially in combination with the Netherlands' extensive tax treaty network.[74]

The final factor that contributes to the attractiveness of the Dutch fiscal climate are the tax rulings that companies can conclude with the Dutch tax authority to obtain certainty about how certain payments or structures will be taxed in the Netherlands.[75] The historical development of the Dutch policy on taxation shows that tax planning by MNEs is a by-product of the Dutch aim of reducing tax borders for international business. The Netherlands started early by developing a tax treaty network, one of its main aims being consistently to reduce withholding taxes by partner countries on outgoing dividend, interest and royalty payments of affiliates to their parent company established in the Netherlands. Specific characteristics of the Dutch tax climate, such as the broad participation exemption and the 'informal capital' doctrine[76] resulted in specialised tax planning instruments being developed by a growing tax services sector. As a result, the economic importance of the tax planning sector grew, further increasing the attractiveness of the Netherlands for MNEs to establish their headquarters here.[77] A new bill is currently under consideration that aims to change the practice of informal capital structures in light of advice from the advisory commission on corporate taxation.[78]

[72] (Ministry of Finance, 2014g, pp. 23, 24)
[73] This additional conditional withholding tax of dividend was deemed necessary because the current dividend withholding tax is still considered to present opportunities for tax avoidance. See chapter 5 for a more detailed discussion on withholding taxes.
[74] (Ministry of Foreign Affairs & Ministry of Finance, 2013c, pp. 61, 62)
[75] (Ministry of Finance, 2014g, pp. 29, 30)
[76] Since 1 july 2019, tax rulings are no longer allowed in informal capital situations. (House of Representatives, 2020, p. 1)
[77] (Vleggeert & Vording, 2019, pp. 22, 23); (Ministry of Foreign Affairs & Ministry of Finance, 2013c, p. 118)
[78] (Commissie ter Haar, 2020, p. 14)

The attractiveness of the Dutch international tax system is recognised and defended by the Dutch government, as specified in letters to Parliament commenting on the progress and proposals of the OECD/G20 BEPS project in 2014 and 2015 (see box [79]) and earlier in reaction to the 2013 SEO report[80] and another report published by IBFD[81].

Reaction to the BEPS recommendations
A reaction by the Dutch Cabinet[82] to the resulting recommendations concerning the 15 BEPS actions distinguished between them by their perceived effects on countering tax avoidance and the risk of harm to well-intentioned companies. Based on this distinction, in that document the resulting recommendations and several other international tax issues were classified into three categories according to the degree of action required by the Netherlands.

OECD/G20 Base Erosion and Profit Shifting project

In its closing statement of the 2012 summit the G20 called for the ending of base erosion in international taxation, a call later repeated by the G20 ministers of finance. In response, the OECD started a project to address base erosion and profit shifting (BEPS) by producing a cohesive set of international rules to counter BEPS.

The BEPS project addressed gaps in the interaction of domestic tax rules that can create opportunities for BEPS. Globalisation and digitalisation amplified this process, which raised concerns about tax fairness.

In July 2013, the OECD presented an action plan to the G20 ministers of finance, which stated the issues the BEPS project would address. During the project, over 80 non-OECD countries were consulted. From 2015 onwards 14 developing countries and regional organisations participated in the Committee on Fiscal Affairs and working parties responsible for the BEPS project.

The final BEPS report, issued in 2015, contains 15 actions designed to address mismatches between domestic tax rules, divided into three categories based on the force of the recommendations and ranging from mere guidance based on best practices to a common approach to a minimum standard to which all participating countries must commit. Four of the actions are considered to be the minimum standard that must be implemented and monitored through a peer review of countries in the Inclusive Framework on BEPS.

79 (Ministry of Finance, 2013f, pp. 12, 13, 14); (OECD, 2013a, pp. 8, 9, 10, 11)
80 (Ministry of Foreign Affairs & Ministry of Finance, 2013c)
81 (Ministry of Finance, 2013e, p. 20)
82 (Ministry of Finance, 2015f, p. 6)

The first category contained measures to be implemented by the Dutch government because they were expected to contribute to countering tax avoidance but the risk of them interfering with the 'real' economy was considered low. They are:[83]

- Transfer pricing rules
- Country-by-country reporting
- Tax treaties with developing countries and CD
- Exchange of information on tax rulings

The second category of actions required global coordination because unilateral implementation by the Netherlands would affect companies disproportionally. They are:

- Hybrid mismatches
- Limitation on interest deductions
- Controlled foreign company rules

The final category is related to the strengths of the Dutch international tax system and were to be preserved and, if necessary, strengthened. They are:

- Treaty network
- Participation exemption
- No withholding tax on interest and royalty payments
- Tax rulings
- Mutual agreement procedure/arbitration
- Innovation box

It was stressed that the Dutch economy was very international, which explained the need for an attractive fiscal climate and to ensure that climate remains attractive in relation to the implementation of the BEPS actions. The Dutch government noted that any resulting negative consequences would be compensated to ensure this business climate remained attractive.[84]

The 15 BEPS actions and the Dutch reaction are summarised in Table 3. The Netherlands supported most actions, most of which were already considered to be in line with Dutch tax policy at the time.

[83] See the glossary for an explanation of the terms.
[84] (Ministry of Finance, 2015f, pp. 6, 7, 8, 9)

Table 3 Summary of the 15 OECD BEPS actions and response by the Netherlands				
BEPS action	**Explanation**	**BEPS status final report (2015)**	**Dutch position final report (2015)**	**Implementation status Netherlands (2018)**
1. Tax challenges arising from digitalisation	Identify the main difficulties that the digital economy poses for the application of existing international tax rules and develop detailed options to address these difficulties	No specific recommendations, monitoring in 2020	Not yet available	Ongoing in OECD
2. Neutralising the effects of hybrid mismatch arrangements	Develop model treaty provisions and recommendations regarding the design of domestic rules to neutralise the effect (e.g. double non-taxation, double deduction, long-term deferral) of hybrid instruments and entities	Common approach	Coordinated approach nessecary	Via EU (ATAD 2)
3. Controlled foreign company	Develop recommendations regarding the design of controlled foreign company (CFC) rules. CFC rules respond to the risk that taxpayers can strip the tax base of their country of residence and by shifting income into a foreign company that is controlled by the taxpayers.	Guidance based on best practices	Coordinated approach nessecary	VIA EU (ATAD 1)

Table 3 Summary of the 15 OECD BEPS actions and response by the Netherlands				
BEPS action	**Explanation**	**BEPS status final report (2015)**	**Dutch position final report (2015)**	**Implementation status Netherlands (2018)**
4. Limitation on interest deductions	Develop recommendations regarding best practices in the design of rules to prevent base erosion through the use of interest expense, 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, and other financial payments that are economically equivalent to interest payments	Common approach	Coordinated approach nessecary	VIA EU (ATAD 1)
5. Harmful tax practices	Revamp the work on harmful tax practices, prioritising improving transparency, including compulsory spontaneous exchange on rulings related to preferential regimes, and on requiring substantial activity for any preferential regime	Minimum standard	Positive, exchange of rulings supported, no (major) changes to innovation box nessecary	Exchange of information via OECD and EU, innovation box changed

Table 3 Summary of the 15 OECD BEPS actions and response by the Netherlands				
BEPS action	**Explanation**	**BEPS status final report (2015)**	**Dutch position final report (2015)**	**Implementation status Netherlands (2018)**
6. Prevention of tax treaty abuse	Develop model treaty provisions and recommendations regarding the design of domestic rules to prevent the granting of treaty benefits in inappropriate circumstances.	Minimum standard	Positive, considered part of treaty policy.	Included in treaty policy and MLI
7. Permanent establishment status	Develop changes to the definition of PE to prevent the artificial avoidance of PE status in relation to BEPS, including through the use of commissionaire arrangements and the specific activity exemptions.	Changes to OECD model treaty	Positive, considered part of treaty policy following OECD model treaty	Included in treaty policy and MLI
8. Transfer pricing	Develop rules to prevent BEPS by moving intangibles among, risks among, or allocating excessive capital to group members. Develop rules to prevent BEPS by engaging in transactions which would not, or would only very rarely, occur between third parties.	Changes to OECD PTG	Positive, changes to OECD-TPG in line with Dutch policy	Included in TPG and transfer pricing legislation
9. Transfer pricing				

Table 3 Summary of the 15 OECD BEPS actions and response by the Netherlands

BEPS action	Explanation	BEPS status final report (2015)	Dutch position final report (2015)	Implementation status Netherlands (2018)
10. Transfer pricing				
11. BEPS data analysis	Develop recommendations regarding indicators of the scale and economic impact of BEPS and ensure that tools are available to monitor and evaluate the effectiveness and economic impact of the actions taken to address BEPS on an ongoing basis.	Recommendations for improved measurement	Positive	Ongoing in OECD
12. Mandatory disclosure rules	Develop recommendations regarding the design of mandatory disclosure rules for aggressive or abusive transactions, arrangements, or structures, taking into consideration the administrative costs for tax administrations and businesses and drawing on experiences of the increasing number of countries that have such rules.	Guidance based on best practices	Negative, no changes needed to current practice	Implemented per 01-01-2021

Table 3 Summary of the 15 OECD BEPS actions and response by the Netherlands				
BEPS action	**Explanation**	**BEPS status final report (2015)**	**Dutch position final report (2015)**	**Implementation status Netherlands (2018)**
13. Country-by-country reporting	Develop rules regarding transfer pricing documentation to enhance transparency for tax administration, taking into consideration the compliance costs for business.	Minimum standard	Positive, legislation already introduced	Implemented per 01-01-2017
14. Mutual agreement procedure	Develop solutions to address obstacles that prevent countries from solving treaty-related disputes under MAP, including the absence of arbitration provisions in most treaties and the fact that access to MAP and arbitration may be denied in certain cases.	Minimum standard	Mixed, already compliant but hoped for more ambitious recommendation	Included in MLI and Ad Hoc Group
15. Multilateral instrument	Analyse the tax and public international law issues related to the development of a multilateral instrument to enable jurisdictions that wish to do so to implement measures developed in the course of the work on BEPS and amend bilateral tax treaties.	Ad-hoc group formed to design MLI	Positive	Implemented per 01-07-2019

Action 15 of the OECD BEPS project concerns the Multilateral Instrument (MLI), a multilateral tax treaty through which existing bilateral treaties can be updated to include the latest standards if both treaty parties sign and ratify the MLI and opt for the same articles. The MLI includes articles on BEPS actions 2 (hybrid mismatches), 6 (treaty abuse), 7 (PE) and 14 (MAP). Next to the agreed minimum standard for actions 6 and 14, the MLI offers additional articles for these actions that countries can opt to include. In a letter to Parliament the Dutch government presented its intentions towards the MLI, stating that with the exception of one clause under action 6, the Netherlands intended to include all available options.[85]

Initiatives of the European Union
A letter to Parliament[86] in 2018 contained further measures aimed at preventing the Netherlands from being used as a conduit to transfer profits to tax havens. The letter also included an update on the implementation status of the recommendations of the OECD BEPS project. Actions 2–4 , for which no minimum standard has been agreed were taken up by the European Union in two anti-tax avoidance directives (ATAD I & II[87]). Other BEPS actions touch on the same topics as initiatives of the EU as well, as shown in Table 4.

Table 4 Translation of BEPS actions into EU legislation

BEPS action	Link to EU (2015)	EU legislation
1. Tax challenges arising from digitalisation		CCCTB
2. Neutralising the effects of hybrid mismatch arrangements		ATAD 2
3. Controlled foreign company		ATAD 1
4. Limitation on interest deductions		ATAD 1
5. Harmful tax practices	Automatic exchange of rulings	Directive on administrative cooperation
6. Prevention of tax treaty abuse		
7. Permanent establishment status		
8. Transfer pricing	CCCTB	CCCTB
9. Transfer pricing	CCCTB	CCCTB
10. Transfer pricing	CCCTB	CCCTB
11. BEPS data analysis		
12. Mandatory disclosure rules		Directive on administrative cooperation

85 See (Ministry of Finance, 2016h, pp. 3, 4, 5, 6, 7) for details on the articles and clauses of the MLI.
86 (Ministry of Finance, 2018a)
87 https://ec.europa.eu/taxation_customs/business/company-tax/anti-tax-avoidance-package/anti-tax-avoidance-directive_en; see annex 3 for details on the standards in ATAD I & II.

Table 4 Translation of BEPS actions into EU legislation		
BEPS action	**Link to EU (2015)**	**EU legislation**
13. Country-by-country reporting	Public CbC	Directive on administrative cooperation
14. Mutual agreement procedure		
15. Multilateral instrument		

Although EU legislation primarily concerns EU Member States and is therefore more limited in geographic scope than the OECD BEPS project, which has global ambitions and reach, it can affect third countries, including developing countries. This effect was acknowledged with ATAD II, which specifically applies to structures involving third countries.

On 12 July 2016, the EU had adopted ATAD I, which laid down rules against tax avoidance practices that directly affect the functioning of the internal market. The preamble highlighted the need for ensuring that tax is paid where profits and value are generated, to restore trust in the fairness of tax systems and allow governments to effectively exercise their tax sovereignty. This directive translated actions 3 and 4 of the OECD BEPS process into European law. ATAD left EU Member States with fewer options for transposition into domestic tax law than the OECD BEPS; it proposed a minimum standard Member States must comply with. Because the adoption of the proposal coincided with the Netherlands presidency of the EU and the Dutch government considered it undesirable to adopt a clear stance on the proposals during its presidency, the Dutch stance is not very clearly described in a letter to Parliament[88] containing a reaction to the proposal, in which, the Netherlands stressed that any commitments to counter tax avoidance should be laid down in enforceable 'hard law', because optional standards as in the OECD BEPS project ran the risk of being implemented by only a few countries. In addition, EU directives should be in line with the global rules to prevent a competitive disadvantage for the EU.[89] It was for these reasons that the Netherlands strove for the OECD to have a larger role in the development and implementation of international standards.

On 29 May 2017, ATAD II[90] was adopted, extending the rules covering hybrid mismatches to non-EU countries. More types of hybrid mismatches were added too. The Netherlands fully supported ATAD II and has chosen to go further than the minimum standard required, in several cases going further than other EU Member States.[91]

Other initiatives with an implicit link to the OECD BEPS project are the Directive on Administrative Cooperation in the Field of Taxation and the Common Consolidated Corporate Tax Base (CCCTB), both initially proposed by the European Commission (EC) in 2011.

88 (Ministry of Finance, 2016b, pp. 3, 6)
89 (Ministry of Finance, 2016b, pp. 3, 6); (Ministry of Finance, 2017c, p. 18)
90 https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32017L0952&from=NL
91 See annex 3 for details on the implementation of the ATAD standards. (House of Representatives, 2019b, pp. 5, 6, 7); (House of Representatives, 2019a, p. 2); (Ministry of Finance, 2019d)

EU legislation to counter tax avoidance

In the last decade the European Commission published several action plans and legislation to address tax avoidance by multinationals. In 2012, the European Commission published an action plan to counter tax evasion and tax avoidance. The plan combined existing and new initiatives to counter tax fraud, evasion and avoidance.

In 2015, another action plan was published, on 'fair and efficient corporate taxation in the EU', partly as a consequence of a lack of global consensus on several of the actions of the BEPS project. This plan identified five areas for action: relaunching the Common Consolidated Corporate Tax base, ensuring fair taxation where profits are generated, creating a better business environment, increasing transparency and improving EU coordination.

In 2016 and 2017, ATAD I and II were introduced, which translate the OECD-BEPS actions 2-4 into binding EUlegislation while providing for several opt-outs for EU member states.

Another important piece of EU legislation is the Directive on Administrative Cooperation in the Field of Taxation, which was introduced in 2011 and has since been amended five times to include cooperation on matters such as mandatory disclosure, country-by-country reporting and the exchange of tax rulings.

EU Directive on Administrative Cooperation

The Directive on Administrative Cooperation in the Field of Taxation was adopted in 2011 and superseded earlier legislation aimed at administrative cooperation between Member States. The directive has since been amended five times to include different forms of cooperation in taxation: 1) exchange of fiscal information, 2) exchange of tax rulings, 3) exchange of country-by-country reports, 4) exchange of beneficial ownership information and 5) mandatory disclosure.[92]

The Netherlands fully supported the first two and the fourth amendments, with the caveat that they had to be in line with the outcomes of the OECD BEPS project to ensure a global level playing field.[93] With respect to the third and fifth amendments, the Netherlands voiced some objections.

92 https://ec.europa.eu/taxation_customs/business/tax-cooperation-control/administrative-cooperation/enhanced-administrative-cooperation-field-direct-taxation_en

93 (Ministry of Finance, 2016f, pp. 3, 5); (Ministry of Foreign Affairs, 2016d, p. 5); (Ministry of Finance, 2015d, p. 9); (Ministry of Finance, 2015b, pp. 3, 5, 6)

The third amendment, adopted in 2016, extended the scope of country-by-country reporting (CbCR). Until then, CbCR had only been obligatory for financial companies but earlier the EC had announced it would investigate the possibilities of extending the CbCR regime to all companies. The Netherlands voiced support for this move in a letter to Parliament.[94]

The amendment obliges multinationals with annual worldwide earnings of over €750 million to produce a standardised country report which will help tax authorities to investigate whether any BEPS issues may have occurred, after which more detailed information can be requested. The EC proposal was almost identical to the OECD BEPS recommendations related to action 13, which had already been implemented by the Netherlands in 2015.

Later in 2016, the EC issued a proposal for public CbCR for categories of companies which would cover around 90% of all earnings by multinationals worldwide. Information would be made public for each EU Member State and low-tax jurisdiction separately. Earnings from all other third countries would be aggregated. In addition to fiscal information, information would have to be on provided on revenue, profit and employees. The Netherlands questioned this proposal because of its possible negative economic repercussions and the need to ensure it was in line with other international transparency rules. An impact assessment was therefore requested by the Netherlands. In 2018, the Netherlands stated in a letter to Parliament that it now supported this proposal. So far, no legislation on this issue has been adopted by the EU.[95]

The fifth amendment, adopted in 2018, included mandatory disclosure, which obliges financial intermediaries to report possible aggressive tax structures to the tax authorities. Although the Netherlands supported the intent of this proposal, it had concerns about the scope, as is explained in letter to Parliament. They related to the interpretation of the wording 'the main benefit of a structure', the exchange of tax structures that had not – or not yet – been implemented and those already shared via other means (exchange of rulings, for example). For these reasons, the proportionality of the proposal was judged negatively.[96] It was nevertheless implemented by the Netherlands in 2019.[97]

Common Consolidated Corporate Tax Base

Originally, the Common Consolidated Corporate Tax Base (CCCTB) was proposed by the EC in 2011. It was an optional tax system in which companies could choose to use the CCCTB to calculate their consolidated fiscal profit, after which this profit would be allocated to the Member States in which it was active, based on equal shares of turnover, assets and employment. The Netherlands judged this proposal negatively because of the costs associated with operating two parallel tax systems. Also, the allocation of fiscal profit was likely to impact the Netherlands negatively because Member States with more 'old' industry would be likely to profit more than economies more reliant on services and innovation, such as the Netherlands.[98]

[94] (Ministry of Finance, 2015b, p. 6); (Ministry of Finance, 2016a, pp. 3, 5)
[95] (Ministry of Finance, 2016d, p. 48); (Ministry of Finance, 2016e, pp. 2, 3, 4, 5); (Ministry of Finance, 2018a, p. 17)
[96] (Ministry of Finance, 2017a, pp. 2, 3, 7, 10)
[97] (Ministry of Finance, 2019e)
[98] (Ministry of Finance, 2011d, pp. 2, 5)

Because the Member States could not agree on the 2011 proposal, the EC proposed an updated version of the CCCTB in 2015. It was designed to be obligatory for multinationals and would be introduced gradually, starting with establishing the common tax base. The proposal was likely to still entail operating two tax systems if the CCCTB were optional for smaller companies. Also, consolidation was still expected to be based on the allocation proposed in 2011, with the expected negative effects for the Netherlands. For these reasons, the Netherlands was still against this proposal.

The Netherlands preferred countering tax avoidance via harmonisation between tax systems on specific, vulnerable issues.[99] The Dutch standpoint was that unnecessary harmonisation and consolidation were contrary to the spirit of the OECD BEPS project, which was trying to ensure profits are taxed where they are created. So far, no legislation has been adopted by the EU on this issue.[100]

4.1.2 What are the priorities of developing countries with respect to base erosion and profit shifting practices by multinationals?

Having discussed the reaction of the Netherlands to the OECD BEPS actions and related European legislation above, in this section, the focus is on the nature of the standards and whether they are line with the priorities of developing countries. It is explored to what extent and which priorities of developing countries with respect to international taxation were identified by the Dutch government, international organisations and developing countries themselves. This allows priorities identified by the OECD BEPS project to be compared with and EU legislation.

The priorities of developing countries relate to both theory and practice (i.e. implementation) of international standards against tax avoidance. Both are therefore addressed and hence so are implementation issues related to the OECD BEPS standards that developing countries may experience.

[99] (Ministry of Finance, 2015d, pp. 4, 5)
[100] (Ministry of Finance, 2015f, p. 19)

Table 5 Priorities of developing countries in international corporate tax rules

BEPS action	Importance to developing countries (ATAF)	Importance to developing countries (NL)	Importance to developing countries (international organisations)			
	ATAF (2014/2016)	(NL 2015)	IMF (2014)	IMF (2014)	UN (2018)	OECD (2014)
1. Tax challenges arising from digitalisation	High					
2. Neutralising the effects of hybrid mismatch arrangements				High		
3. Controlled foreign company						
4. Limitation on interest deductions	High	High		High		High
5. Harmful tax practices						
6. Prevention of tax treaty abuse	High	High		High	High	High
7. Permanent establishment status	High	High			High	
8. Transfer pricing	High	High				High
9. Transfer pricing	High	High				High
10. Transfer pricing	High	High				High
11. BEPS data analysis						High
12. Mandatory disclosure rules						
13. Country-by-country reporting	High					High
14. Mutual agreement procedure	High				Low	

Table 5 Priorities of developing countries in international corporate tax rules

BEPS action	Importance to developing countries (ATAF)	Importance to developing countries (NL)	Importance to developing countries (international organisations)			
	ATAF (2014/2016)	(NL 2015)	IMF (2014)	IMF (2014)	UN (2018)	OECD (2014)
15. Multilateral instrument						
Offshore indirect transfers	High		High	High		
Tax incentives	High		High			High
Lack of comparability transfer pricing	High		High	High		
Wider and more fundamental tax reform				High	High	
Taxation off natural resources	High			High		
Fraudulent invoicing						
Informal sector	High					

Priorities identified by the Netherlands

In its 2015 letter to Parliament in reaction to the final reports on the BEPS project, the Dutch government considered six actions as important for developing countries (see Table 5). Action 4 on the limitation of interest deductions was considered to be important to ensure interest deductions on loans to affiliates of MNEs would not lead to excessive base erosion in developing countries. Action 6 on treaty shopping (by including anti-abuse clauses in bilateral tax treaties) should, it was felt, ensure developing countries have the means to protect their withholding taxes on dividend, interest and royalty payments. Action 7 on the definition of PE was considered important for developing countries because PE increases the likelihood that developing countries will able to tax some of the profits of affiliates of MNE affiliates operating within their borders.

Actions 8–10 against transfer pricing were considered to be especially important for developing countries; the letter specifically mentioned services of concern such as management fees and the valuing internal transactions of commodities by MNEs.[101]

[101] (Ministry of Finance, 2015f, pp. 2, 15, 17, 18, 19)

The OECD BEPS project was seen as beneficial for all countries, irrespective of their development status. According to the MoF, this explained why developing countries were only mentioned after the 15 BEPS actions had been finalised. As the BEPS project was limited to tackling avoidance structures, it was seen as a combined effort by all tax authorities in an effort to 'enlarge the cake' by reducing untaxed profits.
When assessing EC proposals, the Dutch government usually mentions their relevance for developing countries in the so-called *BNC-fiches*. Most proposals were assessed to have no implications for developing countries, such as the proposals on exchange of information and CbCR (including public CbCR). Two *BNC-fiches* where the interests of developing countries were said to have been included in the Dutch position concerned EC proposals on mandatory disclosure and ATAD. Mandatory disclosure was mentioned because developing countries might have been unable to comply with the criteria of structures and payments involving these countries. Therefore these structures and payments may be considered potentially aggressive.[102]

Various letters to Parliament mention the expected positive, primarily indirect, effects of implementation of ATAD on developing countries; it could serve as a model for developing countries, stimulate the EC to propagate sound financial governance in its external relations and stimulate the EU Member States to review their treaty network and implement the BEPS recommendations. Furthermore, the controlled foreign company rules included in ATAD make it possible to consider profits from a third country in the taxation of MNEs when that country is on the EU list of uncooperative tax jurisdictions. It was thought that this might discourage tax avoidance by nationals and companies in developing countries too.[103]

Priorities identified by international organisations
Annex 2 summarises the reports published by international organisations and included in Table 5 that discuss the BEPS priorities of developing countries. Although there are differences between the reports, there is also substantial overlap, which allowed the following BEPS priorities for developing countries to be identified: the OECD BEPS actions mentioned by all or most organisations (OECD, IMF, UN) with special relevance for developing countries are actions 4 (interest deduction), 6 (treaty abuse), 7 (PE status), 8–10 (transfer pricing) and 13 (transparency / CbC reporting). In addition, some priorities were identified that are not covered by OECD BEPS actions: tax incentives, indirect transfer of assets, data on transfer pricing comparability and the informal sector.[104]

[102] (Ministry of Foreign Affairs, 2013d, p. 3); (Ministry of Finance, 2017a, p. 10); (Ministry of Finance, 2015b, p. 6); (Ministry of Finance, 2016b, pp. 13, 14)
[103] (Ministry of Finance, 2016b, p. 13); (Ministry of Finance, 2019g, p. 1)
[104] Annex 2 describes the identified priorities in more detail.

Priorities identified by developing countries

The initial response to the OECD/G20 BEPS actions were discussed at the 2014 ATAF[105] Consultative Conference on New Rules of the Global Tax Agenda.[106] The conference took place after the interim reports on the 15 BEPS actions had been released. Although the conference preceded the final BEPS reports, the participants debated the issues of concern for the African continent, especially in relation to BEPS. A subsequent policy brief by ATAF described these concerns about the BEPS actions, as shown in Table 5[107]

By 2016, ATAF had reformulated the African position with respect to BEPS. The digital economy and arbitration, which had been among the key concerns for Africa listed in 2014, were dropped. The other BEPS issues not addressed in the OECD/G20 BEPS project remained similar. Extractive industry and the informal sector remained as key priorities.[108]

Implementation of BEPS in developing countries

Implementation in domestic law and enforcement of international standards against tax avoidance requires sufficient legislative and administrative capacity in developing countries. The inability to implement effectively may diminish the relevance of the standards, irrespective of their theoretical relevance for addressing tax avoidance.

A general concern for developing countries is the complexity of many of the OECD BEPS actions. Reducing complexity is an important aspect that is often neglected because it is difficult to build consensus on the standards between developed countries, with the result that compromises are technically complex.[109]

Priorities of developing countries on tax policy in a broad sense are different and much more basic than the topics dealt with under the OECD BEPS project and include, for example, automatic information exchange, setting up IT systems and tackling corruption. Prioritising BEPS could shift scarce resources away from potentially more important issues for developing countries, such as limiting illicit financial flows, reforming domestic tax legislation or improving the effectiveness of their domestic tax administrations.[110]

A recent report by the IMF concludes that although some issues of relevance for developing countries have been addressed in the OECD BEPS project, complexity has increased further. ‘The four areas of particular concern identified in IMF (2014)[111] have received attention since, but remain far from fully resolved.

[105] The African Tax Administration Forum (ATAF), a regional organisation which represents African countries during the OECD BEPS project.

[106] The priorities of developing countries are mainly based on assessments by ATAF, which comprises 38 African member countries and is generally considered as representative of these countries in international tax discussions.

[107] (ATAF, 2014a); (ATAF, 2014b)

[108] (ATAF, 2016)

[109] (SEO, 2021, pp. 64, 68, 69)

[110] (SEO, 2021, pp. 44, 64, 68, 69)

[111] See the table at the beginning of the section and annex 2 for an elaboration of the issues identified.

Given their vast complexity, however, it can be very hard for many developing countries and small states to implement the new global standards and common approaches of the BEPS package, or even to grasp their full implications. This, and dealing with the greater expertise of multinational enterprises, is a potential drain on scarce talent needed to address what can be more pressing domestic tax issues.'[112]

The country studies of Uganda, Kenya and Ghana carried out for this evaluation provide additional information on the stance of developing countries towards joining the IFB and implementing the BEPS actions.[113] Of these three countries, only Kenya participates in the IFB and is therefore obliged to implement at least the four minimum standards.

The reasons given by Ugandan and Ghanaian sources during interviews for not joining the IFB are dissatisfaction with the actions and a lack of capacity and knowledge on technical issues such as transfer pricing and PE. Scepticism about the initiative was mentioned in relation to residence taxation being emphasised while important issues for developing countries are not addressed. The complexity of BEPS actions combined with the lack of capacity and knowledge of developing countries means that the consequences of joining the IFB and implementing the BEPS actions are not immediately clear and require further analysis, for which the capacity is scarce. Sources in both countries indicated that the spirit of the BEPS project is generally supported and in Ghana, some of the measures have been partly translated into domestic legislation independently of the BEPS project.[114]

In Kenya, legislation on the BEPS actions has not yet been implemented, but several BEPS provisions were included in a new tax law that was submitted to Parliament in 2020 and according to Kenyan officials is expected to be ratified soon. Sources outside the government are more critical of this corporate tax bill and doubt to what extent to what extent it really addresses BEPS actions. In Kenya, a lack of understanding of complex technical issues pertaining to international corporate taxation was also mentioned as a factor hindering progress with implementation of the BEPS actions.[115]

More critical voices in Uganda and Kenya are sceptical of the authorities' intent to commit to BEPS and implement the necessary legislation. These critics argue that attracting FDI could become more difficult as a result of the BEPS standards and authorities have a short-term focus on collecting tax revenue rather than a longer-term policy on corporate taxation. A longer-term policy would include an argued appraisal on the BEPS standards, which was not provided for in the draft income tax act in Kenya, according to critics.[116]

112 (IMF, 2019b, pp. 12, 13)
113 See annex 1 for an elaboration of the methodology used in the country studies.
114 (SEO, 2021c, pp. 17, 20); (SEO, 2021a, pp. 13, 14, 16); (Mensah, 2017); (Mbithi, n.d.)
115 (SEO, 2021b, p. 18); (Chambers & Partners, 2020)
116 (SEO, 2021c, p. 20); (SEO, 2021c, p. 23)

4.2 Findings

Since about 2013, the year in which the OECD BEPS project began, the international tax policy of the Netherlands has been strongly tied to that project. The BEPS standards have now been included in Dutch international tax policy and in bilateral tax treaties.[117]

Annex 3 presents information on the status of the Netherlands and a selection of other developed and developing countries in relation to the implementation of the four minimum standards[118] of the OECD BEPS project, ATAD I and II and the MLI. Based on an OECD peer review, after addressing several recommendations related to action 5, Dutch tax policy is now considered to comply with the minimum standard four recommendations of the OECD BEPS project. Although most countries received recommendations on further improvement, the most recent OECD peer reviews and progress reports show that other OECD countries also meet almost all the minimum standards.

Several of the BEPS standards have been included in the MLI. In general, the position taken by the Netherlands is more generous than that of other developed countries, which generally exclude many more of the optional articles in the MLI. OECD BEPS actions 2, 3 and 4 were translated to the EU directives ATAD I and II. Implementation of these EU directives shows some discrepancies between EU Member States. Generally, the Netherlands is less prone to using opt-outs from certain provisions than other EU Member States, except in its implementation of CFC rules, which is more limited in scope than that of several other EU Member States.

With the exception of Indonesia, implementation of the OECD BEPS minimum standards has been rather limited in developing countries so far, especially with respect to implementation of the required CbCR legislation and framework and the MLI. Of the 77 countries classified by the UN as low- or lower-middle income countries, 28 have joined the IFB so far, of which 14 have signed the MLI (and six have ratified it).

There are several reasons for developing countries not joining the IFB and implementing the BEPS actions. Not all the priorities of developing countries, as identified by several stakeholders, are addressed in the BEPS project, including high priority issues such as tax incentives or the taxation of indirect transfers and natural resources. There has not yet been a more general discussion on source versus residence taxation. The BEPS actions (which do include some priority issues of developing countries) have increased the complexity of already highly technical issues. This, in combination with a lack in capacity and knowledge in many developing countries, makes it not necessarily attractive for these countries to join and implement the BEPS actions.

117 (SEO n.d.-d, p. 65)

118 These are: harmful tax practices, prevention of tax treaty abuse, country-by-country reporting and mutual agreement procedure.

Therefore, although the Netherlands is doing well in terms of implementing all relevant international standards against tax avoidance, these standards do not reflect all the priority issues of developing countries. Furthermore, a recent advisory report on corporate taxation in the Netherlands advises taking further measures to impose a lower limit on the CIT and eliminate mismatches, which implies that merely implementing BEPS and ATAD is insufficient.[119]

4.3 Has the Netherlands succeeded in including developing countries and their priorities in discussions on international standards on countering tax avoidance?

In the previous section it was shown that the priorities of developing countries were to some extent addressed in the OECD BEPS project but that several were not. Addressing the increased complexity of the actions was also shown to be a priority of developing countries and likely to be a factor hindering their participation and implementation of actions. This section examines to what extent the Netherlands attempted and was able to identify these priorities of developing countries before and during the development of the OECD BEPS standards. Secondly, it examines whether the Netherlands drew attention to the priorities of developing countries during meetings in which these standards were being developed. Finally, initiatives initiated or supported by the Netherlands to include developing countries directly in the OECD BEPS process are discussed.

4.3.1 Which needs and priorities of developing countries with respect to the OECD/G20 BEPS discussions were identified by the Netherlands, and how?

Below, forums in which the Netherlands participated and where the interests of developing countries with respect to BEPS were deliberated are discussed. These forums – whether domestic or international – could therefore be used as a channel for the Netherlands to identify the priorities of developing countries (which were represented either directly through regional organisations such as ATAF or through domestic or international NGOs) for these countries to adopt in their own negotiation stances and related activities.

Round table on matters of international taxation
Since 2010, the MoF and MFA have organised a round table on matters of international taxation with NGOs, tax advisers, employer and employee organisations twice or three times a year. In these meetings the MoF elicits the perspectives of the various stakeholders as an input for the Dutch position in international discussions and Dutch policy on tax and tax treaties. Ongoing treaty negotiations are not discussed, however.

[119] (Commissie ter Haar, 2020, p. 89)

The round table has no official status; no reports or minutes of the meetings are produced. During the round table meetings, opinions generally diverge between NGOs that wish to see more far-reaching measures to counter tax avoidance and accommodate the interests of developing countries and the employer organisations that underline the importance of tax certainty. There are also bilateral contacts between the MoF, MFA, NGOs and the private sector.[120]

OECD Informal Task Force on Tax and Development

The NFV 2011 mentioned the OECD Informal Task Force on Tax and Development (TF) set up in May 2010 partly on the initiative of the Netherlands and comprising governments from OECD and developing countries, NGOs, international institutions and international business organisations. Co-chaired by the Netherlands and South Africa since 2010, it has worked on practical proposals for developing countries relating to information exchange, transfer pricing, CbCR and capacity building. This was done at the instigation of the OECD committees on development (DAC), fiscal affairs (CFA) and the Global Forum on Transparency and Exchange of Information for Tax Purposes.[121]

The TF is mostly concerned with supporting the implementation of tax standards in developing countries in relation to the issues mentioned above and, since 2015, the OECD BEPS standards.[122] In 2011, however, together with the IMF, World Bank and UN, the TF made recommendations to the G20 Development Working Group about countering tax avoidance and improving tax transparency in developing countries.

The recommendations were partially endorsed by the G20.[123] On CbCR no consensus was reached in the TF because developing countries and NGOs were generally in favour while developed countries and business organisations were generally against more stringent CbCR. When the OECD BEP project started in 2013, the TF continued providing input in the processes, although it is unclear to what extent this was able to shape the BEPS actions.[124] Other tax issues discussed in TF meetings during the period evaluated were tax incentives, taxation of natural resources and PE.[125] The TF was used as a channel for the Netherlands to identify needs and priorities of developing countries, as expressed in letters to Parliament in which transfer pricing and exchange of information are specifically mentioned as important to developing countries.[126]

[120] (SEO, 2021, p. 40)
[121] (SEO, 2021, p. 37); (Ministry of Finance, 2011c, p. 79); (Ministry of Finance, 2011c, p. 20); (Ministry of Foreign Affairs & Ministry of Finance, 2015a, p. 5)
[122] (OECD, 2015, p. 1); (OECD, 2016, p. 1)
[123] (Ministry of Foreign Affairs, 2012, p. 5)
[124] (OECD, 2011, p. 6); (OECD, 2012, p. 3); (OECD, 2013c, p. 3)
[125] (OECD, 2012, p. 5); (OECD, 2013c, pp. 6, 7); (OECD, 2018, p. 1)
[126] (Ministry of Finance, 2011e, p. 3); (Ministry of Finance, 2012a, p. 5); (SEO, 2021, p. 37)

OECD/G20 BEPS project and Inclusive Framework on BEPS
In the first round of the OECD/G20 project (2013–2015) developing countries were consulted by the OECD Secretariat, though not formally involved in discussions. However, various reports[127] of international organisations on the BEPS priorities for developing countries were published during this phase. Multiple interviewees referred to these reports as a source for identifying the priorities of developing countries.

Most technical issues are generally not discussed in detail during meetings of the CFA and IFB; the former is responsible for development of the BEPS standards while the latter is responsible for their implementation and development of BEPS 2.0.

Detailed discussion of these issues generally takes place in the working groups that report to the CFA and IFB. An exception is the taxation of the digital economy, which has been discussed extensively during IFB meetings since 2016 under the BEPS 2.0 project. Participating developing countries sometimes state their (general) priorities, which are mostly related to the need for rules that are simple and easy to implement because of capacity constraints. The complexity and volume of BEPS standards in combination with the required peer reviews might discourage them from joining to join the IFB.[128]

4.3.2 How did the Netherlands take these needs and priorities into account when developing and defending its stance during the OECD/G20 BEPS discussions and when helping design ATAD I and II in the EU?

There are no public documents stating to what extent the Dutch government identified and took into account the priorities of developing countries when developing the stance it would take during meetings discussing the OECD BEPS actions. We therefore resorted to other sources, some confidential. The Dutch position on EU legislative proposals is based on the *BNC-fiches* which were discussed in section 4.1 and are therefore not repeated here.

OECD/G20 BEPS project
According to Dutch delegates participating in the OECD BEPS project, the influence of individual countries should not be overstated. It was a long process in which different topics were discussed but in general no explicit decisions were taken within the CFA because consensus was sought by the OECD Secretariat. If insufficient support for specific measures was observed, no further action was taken. The OECD Secretariat was therefore extremely important during the process of formulating and elaborating on the BEPS actions. That said, some light can be shed on the stance adopted by the Netherlands in general and some specific issues.

[127] Discussed in section 4.1 and annex 2.
[128] (SEO, 2021, p. 38); confidential source MoF

The Netherlands expressed support for the narrative but was also of the opinion that the draft BEPS Action Plan released in 2013[129] should not discuss tax rates and bases but should limit itself to hybrid mismatches and cross-border issues.

A level playing field should be restored, which would also mean that all participating countries should implement the actions in the same timeframe. The Netherlands' reaction to specific actions in the draft BEPS Action Plan is summarised in Table 6 below. Although the interests of developing countries are not specifically mentioned, it reveals the stance taken by the Netherlands at the time with respect to these actions, some of which are priority issues of developing countries.[130]

Table 6 Netherlands' reaction to specific actions in the draft BEPS Action Plan

Action concerned	Abridged version of Netherlands' observation
Action 1 Hybrid mismatch arrangements	The main issue is implementation; the proposed changes would only work if all countries implemented them together. A multilateral instrument would be a good option to explore, building on work done a few years ago on a multilateral way to amend bilateral treaties.
Action 3 Interest expense deductions	Should this item be included at all in the Action Plan? As there is broad support to include it, the rules should not be mandatory but rather provide tools for interested countries.
Action 5 Anti-treaty shopping	There is a great need for a multilateral instrument to adopt the provisions more quickly. Instead of providing guidance and examples, a model limitation on benefits (LoB) should be developed, as proposed by a delegate from another country.
Actions 7, 8, 9 Transfer pricing	[In relation to a discussion of transfer pricing with respect to intangibles and the options for departing from the arm's length principle (ALP) because it is too hard to apply in some cases.] The Netherlands prefers to remain within the ALP because it is worried that in too many cases countries may step outside the ALP.
Action 11 Transfer Pricing Documentation	The Netherlands does not support public CbCR, which is discussed as a measure that could help improve transfer pricing practices.
Action 13 MAP and arbitration	The Netherlands supports the action item, and suggests that arbitration provisions could be inserted into existing treaties using a multilateral instrument. It also suggests establishing a permanent court in the distant future to hear these cases.
Action 14 digital economy	It is not clear that the issues in the digital economy are more difficult to address than the issues in the real economy; there is no need to prescribe solutions at this point.

[129] (OECD, 2013a)
[130] (SEO, 2021, pp. 42, 43, 46, 47); confidential source MoF

The draft Action Plan also referred to the balance between source and residence taxation, an issue that the Netherlands considered to be longer-term work that should be discussed more thoroughly in the future.[131]

The remainder of this section is based on letters to Parliament and deals with the implementation of the BEPS standards by developing countries and the extent to which the Netherlands took the interest of developing countries into account and supported these efforts financially or otherwise.[132]

In 2014, in response to the progress and work plan of the TF, the Netherlands noted the absence of BEPS and insisted that the priorities as expressed by developing countries should be leading when developing the TF's support programme. With respect to CbCR, the Netherlands strove for a regime that allowed all countries to be able to participate. One of the conditions for the Netherlands to support a solution was that it should be easily implementable in order to ensure developing countries would be able to participate.

The Netherlands insisted BEPS actions should be amenable to implementation by developing countries. Therefore, demand-driven CD was considered necessary: for example, on tax audits under the programme Tax Inspectors Without Borders (mentioned in this respect during a CFA meeting). Countries that join the IFB are visited by OECD delegates to ensure the BEPS standards are discussed at high government (ministerial) level. The visits include an action plan to support implementation of the action, accompanied by a timetable. The Netherlands financially supported these introduction programmes for developing countries.

In 2014, the G20 Development Working Group (DWG) mandated international organisations (OECD, IMF, WB and UN) to deliver toolkits and guidance to support the implementation of measures addressing BEPS in developing countries that lacked capacity. The Netherlands was among the countries that subsequently provided financial support for developing BEPS toolkits to help these countries to implement the BEP recommendation. The resulting BEPS tool discussed by IBFD, GIZ, OECD and the Netherlands was intended to assist developing countries not only to clarify whether joining the IFB would be desirable or whether they needed more time to make the necessary preparations, but also to formulate priorities on cross-border taxation, how BEPS standards could assist in this respect, what would be needed to implement them and what tailored assistance would be required. The tool would be piloted in Malawi and possibly Morocco.

[131] (SEO, 2021, pp. 42, 43, 46, 47); confidential source MoF

[132] (Ministry of Foreign Affairs, 2015, p. 2); (Ministry of Finance, 2015c, p. 5);(Ministry of Foreign Affairs & Ministry of Finance, 2015b, p. 1) ; (Ministry of Finance, 2015f, p. 2); (Ministry of Foreign Affairs, 2016b, p. 5); (OECD, 2017b, p. 21); confidential source MoF

4.3.3 At which stages and to what extent were developing countries able to influence the process of the OECD/G20 BEPS as a result of activities supported by the Netherlands?

Previous sections discussed to what extent the Netherlands identified the priorities of developing countries with respect to the OECD BEPS project and included them in its negotiation stance. In this section, the direct involvement of developing countries in the OECD BEPS process is discussed, together with the extent to which the Netherlands supported this involvement.

OECD/G20 BEPS project

During the first round of the OECD/G20 project (2013–2015) developing countries were consulted, but not formally involved in discussions. More than 80 non-OECD countries were consulted by the OECD Secretariat. The number of developing countries able to participate directly increased after 2015. In 2014, a letter to Parliament mentioned that around ten developing countries and representative organisations such as ATAF and CIAT would be included directly in the discussions. Consultations by the OECD with other developing countries would be intensified. Eventually, 14 developing countries were able to participate in the CFA as invitees and in several working groups on BEPS, partly thanks to financial support from the Netherlands.[133]

The Netherlands underlined the importance of involving developing countries in the OECD/G20 BEPS project on several occasions, including supporting initiatives that enabled this. However, it was also stressed that the OECD had already put much effort into this; engagement with developing countries took place through four regional consultations and four thematic global forums. According to the MoF, it was up to developing countries to provide their input either individually, through regional organisations such as ATAF or CIAT or in writing.

At the request of the G20 finance ministers, an inclusive framework for the implementation of the BEPS project was proposed, for which a variety of financing options were available, as noted by the OECD Secretariat. In response, the Netherlands stressed the need for as many countries as possible to participate.[134]

Inclusive Framework on BEPS

During the second round of the OECD BEPS project, which started in 2016, the participation of non-OECD members in the implementation and monitoring of the BEPS recommendations was formalised in the Inclusive Framework on BEPS (IFB). The IFB currently involves 137 countries, including 28 low- and lower-middle income countries.[135] Several regional organisations also participate, including ATAF and CIAT.

[133] (Ministry of Finance, 2014f, p. 2)

[134] (Ministry of Foreign Affairs, 2015, p. 2); (Ministry of Finance, 2015c, p. 5);(Ministry of Foreign Affairs & Ministry of Finance, 2015b, p. 1) ; (Ministry of Finance, 2015f, p. 2); (Ministry of Foreign Affairs, 2016b, p. 5)

[135] Six lower-income countries and 22 lower-middle income countries, according to the UN classification: https://www.un.org/development/desa/dpad/wp-content/uploads/sites/45/WESP2020_Annex.pdf

The IFB also formalises the participation of non-OECD members in the implementation and monitoring of the BEPS actions, in which all countries are equal and decision making is based on consensus.[136]

The goal of the Netherlands during the BEPS project was that it should lead to practical recommendations that were also in the interest of developing countries. In letters to Parliament, the importance of including developing countries in the process was stressed and supported by the Dutch government because rules to counter tax avoidance also have to reflect the priorities of developing countries and be applicable by them. It was claimed in interviews with MoF sources, however, that the interests of developing countries in the OECD BEPS project do not differ greatly from those of developed countries. According to the Dutch government, in addition to contributions by developing countries, the contribution of NGOs and the private sector to the OECD BEPS project should ensure recommendations are realistic and efficient.

Although the Netherlands supported the participation of developing countries in the CFA and IFB, it was also in favour of limiting decision making to countries that had fully committed to implementing the BEPS minimum standards. According to the Netherlands, it was unclear whether developing countries could become BEPS Associates[137] if they had committed to the BEPS standards but not to the implementation timetable (which was still under discussion). The stance taken by the Netherlands was (and still is) that only countries fully committed to the BEPS project may become Associates. Developing countries have the option of participating as invitees and then progressing to Associate status. Invitees may participate in discussion and efforts will be made to take into account the input from all countries expressing views during meetings. Ultimately, if no consensus can be reached, participants and Invitees will not be able to block the compromise reached to obtain consensus; neither would they be bound by the outcome.

The architecture of working parties (WPs) 1 and 6 and a proposed Advisory Task Force which were to be tasked with developing advice on the BEPS project was discussed in 2014. The Netherlands took the stance that any decision making on the WPs' agenda should be limited to the CFA (in which only OECD members participate and vote), whereas the IFB should be only a consultative body.[138]

Eventually the BEPS framework and participation requirements were formulated in the following way.

[136] (Ministry of Finance, 2014f, p. 2); (Ministry of Finance, 2015f, p. 2); (Ministry of Finance, 2016h, pp. 2, 8); (Ministry of Finance, 2014f, p. 2);(Ministry of Foreign Affairs & Ministry of Finance, 2015b, p. 1) (House of Representatives, 2017b, pp. 16, 17)

[137] Full members who participate in standard-setting and peer reviews.

[138] (Ministry of Foreign Affairs, 2013c, p. 2); (Ministry of Foreign Affairs, 2016b, pp. 5, 16); (Ministry of Finance, 2015f, p. 2); (Ministry of Finance, 2014c, p. 3); (Ministry of Finance, 2015c, p. 5); Confidential source MoF

To join the framework, countries and jurisdictions were required to commit to the comprehensive BEPS package and its implementation and to pay an annual BEPS membership fee of €20,800 for non-G20 countries and €53,800 for G20 countries. However, it was recognised that interested developing countries' timing of implementation might differ from that of more developed countries and jurisdictions, and that their circumstances should be addressed appropriately in the framework.[139]

The OECD's decision-making process for tax purposes is two-tiered. In the first tier, countries' technical experts participate in the decision making in the WPs and work closely with their respective CFA delegates to make them aware of the technicalities discussed at the subsidiary levels. In the second tier, countries' senior officials participate in the CFA decision process to ensure political commitment to the outcomes. Embodied in the CFA, the Inclusive Framework on BEPS makes use of this consensus-based mechanism whereby all members participate on an equal footing. The IFB has essentially taken over the role of the CFA in decision making and instructing the WPs on BEPS-related issues. All meetings of the CFA and its WPs that relate to BEPS usually take place in Paris, France, with the CFA meeting at least twice a year and the WPs meeting two to four times per year.

Developing countries were also included in the ad hoc group responsible for the technical layout of the MLI, in which almost 100 countries participated.[140] The ad hoc group is outside the formal scope of the IFB; on 27 May 2015 it was opened for participation on an equal footing by all interested countries and observers. All interested countries may to sign up for the MLI irrespective of whether they are members of the IFB.[141]

United Nations Committee of Experts on International Cooperation in Tax Matters
Around the same time as the start of the first round of OECD BEPS in 2013, the UN Committee of Experts on International Cooperation in Tax Matters (commonly referred to as the UN Tax Committee) also identified and discussed BEPS issues relevant for developing countries. The Netherlands attended these meetings as an observer country. One of the current members of the UN Committee is a staff member of the MoF who has attended in his personal capacity since 2017.[142] The committee's activities were also financially supported by the MFA.

The UN Tax Committee functions as a forum for developed and developing countries to address tax issues, beyond and complementary to the OECD processes. It is responsible for keeping under review and, where necessary, updating the United Nations Model Double Taxation Convention between Developed and Developing Countries and the *Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries*. It also provides a framework for dialogue with a view to enhancing and promoting international tax cooperation among domestic tax authorities and assesses how new and emerging issues could affect this cooperation.

139 (OECD, 2017b, p. 11)
140 (Ministry of Finance, 2016h, p. 2); (Ministry of Finance, 2016h, p. 8); (House of Representatives, 2017b, pp. 16, 17)
141 (OECD, 2017b, p. 11)
142 (SEO, 2021, p. 41)

The committee is also responsible for making recommendations on capacity building and the provision of CD to developing countries. All UN Member States have the same status: they act as observers in the UN committee. They may actively participate in the committee's meetings, plenary sessions and subgroups.

At the 2015 UN Financing for Development conference in Addis Ababa and the July 2016 Nairobi conference, the G77 (which represents 126 countries) called for the UN Tax Committee to be upgraded from its current status as a 'group of experts' to an intergovernmental body with balanced geographical representation. Their objective was to create a new, more legitimate counterpart to the OECD, as a forum for debating more fundamental tax reforms. The proposal was rejected by OECD countries (including the EU on behalf of its Member States), which argued that it would be duplicative and ineffective. Another reason for the rejection was the UN Tax Committee's lack of resources to engage permanent staff to carry out tax research and/or to advise developing countries. In the UN, decisions are based on majority voting instead of consensus-based decision making as in the OECD, which, according to the Netherlands, could negatively affect implementation of decisions by countries opposing them.[143] At the ninth session of the UN Tax Committee in Geneva, a sub-committee on BEPS for Developing Countries was established to draw on its own experience with a view to: (i) informing developing countries on such issues; (ii) facilitating the input of developing country experiences and views into the ongoing UN work, as appropriate; and (iii) facilitating the input of developing country experiences and views into the OECD/G20 Action Plan on BEPS.

Capacity of developing countries

Developing countries' capacity to participate fully in the OECD/G20 BEPS project has been questioned on the grounds of their resources and expertise. In a recent (2020) letter to Parliament, the government noted that the reason more developing countries had not joined the IFB was unclear. The letter pointed out that developing countries are included in the process in several ways but are unable to contribute as much to the discussions as developed countries because they lack lack sufficient qualified personnel with the expertise necessary to contribute on all levels.[144]

Developing countries need to invest considerable staff capacity to keep up with the OECD discussions, but are already short of staff and relevant expertise. Some developing countries have little negotiating experience and an imperfect understanding of international tax systems. Hence they often end up with the 'bare minimum', because they have difficulties in: a) determining what their preferred position is; and b) defending this position during negotiations. On several occasions, delegates from developing countries mentioned that a major reason for this was the cost of participation and of attending the meeting: the annual membership fee of €20,800 for non-G20 countries, plus the travel and accommodation costs, combined with the demanding meeting schedule set by the OECD.[145]

[143] (Burgers & Mosquera, 2017, p. 39) ; (ICAI, 2016, p. 16); (Forstater, M., 2018, p. 3); confidential source MoF

[144] (Ministry of Finance, 2020a, p. 21); (House of Representatives, 2014b, p. 11)

[145] (SEO, 2021, p. 53); (Christensen, R.C., Hearson, M., & Randriamanalina, T., 2020, pp. 7, 14, 28); (Kingma, S., 2019, p. 1288); confidential source MoF

Developing countries can pool their resources through specialised international bodies like ATAF that are under the IFB are permitted to act as observer. ATAF also provides technical support and advice to its members and assists them in analysing proposals put forward by the Inclusive Framework and in assessing the implications for their tax base and investment climate. Although ATAF might be able to make its voice heard more than individual countries, the fact is that the 'African voice' is only an average which does not necessarily correspond with all the interests of the individual countries.[146]

Related to the lack of resources to be able to consistently participate in all plenary and working group meetings, another factor that is mentioned is developing countries' lack of expertise in international tax matters, generally highly technical issues. This shortcoming is not always solely due to the lack of trained personnel. Until the Kenyan government started reorganising the international tax office recently, they had a very serviceable and capable team in place. During the reorganisation, the unit was moved to the criminal section (tax frauds) and the team lost some highly experienced officers. This shift in priorities has weakened the overall capacity of the international tax office.[147]

In response to a question in a parliamentary debate in 2014, on whether developing countries are sufficiently involved in the BEPS process, the State Secretary for Finance replied that developing countries could participate at all levels but lacked the expertise and will to do so. He noted that as they were generally relatively small economies, it made sense that they had less responsibility than larger economies. Countries with more fiscal expertise were mostly responsible for the effort and progress of the BEPS project. Developing countries were not excluded, they participated in accordance with their abilities. In response, a Member of Parliament acknowledged the limits of developing countries' ability to fully participate on all levels but stated that should this be the case, when multilateral rules were being drawn up that affect all countries, developing countries should nonetheless have an equal say to OECD members.[148]

Recognising that certain low-income countries were struggling to participate regularly in Paris-based meetings, regional meetings were upgraded as an integral part of the Inclusive Framework, with the aim to ensure that all interested countries could have a voice and participate in the BEPS processes. Regional meetings were organised in five regional/linguistic groupings, in cooperation with other international organisations and regional tax organisations.[149]

[146] (SEO, 2021, pp. 52, 53)
[147] (ICAI, 2016, p. 15); (SEO, 2021, pp. 52; 53); (SEO, 2021b, p. 14)
[148] (House of Representatives, 2014b, pp. 3, 4, 11, 14);
[149] (OECD, 2017b, p. 16)

4.4 Findings

Four channels were available to the Netherlands for identifying the priorities of developing countries: 1) a round table with, amongst others, representatives of Dutch civil society, 2) the OECD informal Task Force on Tax and Development; 3) The UN Tax Committee and 4) reports published by international organisations. Which, if any, priorities of developing countries were identified by the Netherlands remains largely unclear, however. Because the Netherlands saw developing countries' priorities as being identical to those of developed countries, it considered that not much effort was needed to identify them.

The interests of developing countries are seldom mentioned in conjunction with the stance adopted by the Netherlands in meetings on the BEPS project; when they are mentioned, it is more in relation to ensuring resulting standards are relatively easy to implement and the need to assist developing countries in their implementation. Identification of these priorities by the Netherlands was limited to describing the importance of the resulting BEPS actions for developing countries, but not by an *ex ante* identification process and actually consulting these countries.

The initial reaction of the Netherlands to the BEPS draft action plan showed that the Netherlands was in favour of a limited scope of the BEPS project. Its view was that more fundamental discussions (for example on the division of taxing rights between source and residence countries, which was proposed by other delegates) should be excluded but might be discussed in the future.

Developing countries began to directly influence the BEPS process around 2015, when, with fincial support from the Netherlands, 14 developing countries were admitted to the CFA. Since 2016, thanks to the introduction of the IFB, all developing countries have been able to join the IFB on an equal footing, although obstacles to full participation remain due to high participation costs in terms of money and capacity. The IFB was initially mostly limited to the implementation and monitoring of the BEPS actions, which were finalised before 2015, when developing countries were not represented in the discussions. Currently it is also the forum where BEPS 2.0 discussion takes place.[150]

During discussion on the BEPS actions, the Netherlands was in favour of direct participation of developing countries, which it stressed on multiple occasions and also supported financially. In terms of participation in the CFA and IFB, the Netherlands wanted to limit participation to countries that fully commit to the BEPS actions, which means at least the implementation of the minimum standards.

The Netherlands also wanted to limit the role of the IFB to a consultation body on decisions regarding future standards, with decision making being limited to the CFA. Currently, the IFB is the decision-making body with respect to the BEPS 2.0 project.

[150] (ICAI, 2016, p. 6)

5

Decreasing the use of the Netherlands’ tax system as a tax avoidance conduit

This chapter deals with sub-goal 3 of the PCD agenda, which is aimed at decreasing the use of the Netherlands' tax system for conduit activities. The implementation of international standards, as discussed in chapter 4, has resulted in changes to Dutch tax treaty policy and tax policy in general. Unilateral measures to achieve this goal have also been introduced by the Netherlands.

Two tax avoidance objectives are specifically mentioned in the PCD agenda: the inclusion of anti-abuse clauses in tax treaties with 23 partner developing countries and the introduction of a conditional withholding tax on dividend, interest and royalty payments from conduit companies established in the Netherlands to low-tax jurisdictions. Below, before discussing the efficacy of these objectives, it is examined to what extent Dutch tax treaty policy enables the Dutch tax system to be exploited for conduit activities by MNEs.

This chapter is organised as follows: it starts by summarising Dutch tax treaty policy in general and for developing countries. From this policy description several findings are derived that indicate the scope for using the Netherlands as a conduit to avoid paying tax to these countries. These findings are further elaborated on and analysed using available data on FDI of nine developing countries and the withholding tax rates in tax treaties between eight developing countries and the Netherlands. Also included in this section is information on the stance taken by developing countries and the Netherlands during tax treaty negotiations between them.

Next, the results are presented of the CPB network analysis[151] commissioned for this evaluation to estimate the scope for tax avoidance before and after 1) the introduction of the conditional withholding tax on dividend, interest and royalty payments from the Netherlands to low-tax jurisdictions and 2) the introduction of anti-abuse clauses in tax treaties between several developing countries and the Netherlands. The findings on the latter are supplemented with available information on the use of these clauses in practice.[152]

The following research question is addressed in this chapter:

Are anti-abuse clauses and the introduction of withholding taxes on royalties and interest able to counter tax avoidance by multinationals from developing countries via the Netherlands?

This research question has been broken down into three sub-questions:
1. What is the risk of tax avoidance by multinationals from developing countries being facilitated by the Netherlands as a result of Dutch tax treaty policy?
2. To what extent have conditional withholding taxes countered tax avoidance by multinationals from developing countries via the Netherlands?
3. To what extent have anti-abuse clauses in bilateral tax treaties countered tax avoidance by multinationals from developing countries via the Netherlands?

[151] CPB (Netherlands Bureau for Economic Policy Analysis, 2020)
[152] See annex 1 for a more detailed description of the methodology used to answer the research questions in this chapter.

5.1 What is the risk of tax avoidance by multinationals from developing countries being facilitated by the Netherlands as a result of Dutch tax treaty policy?

Principles of Dutch tax treaty policy

The Memorandum on Fiscal Treaty Policy 2011 (NFV 2011) and other parliamentary documents specify the multiple aims of bilateral tax treaties to avoid double taxation. Below, the recent Memorandum on Fiscal Treaty Policy 2020 is mentioned only when it differs from the earlier 2011 version, which specified treaty policy in the period this evaluation focused on. The tax treaties concluded with developed and developing countries have similar aims: to prevent double taxation, prevent tax avoidance and evasion and to include options for exchange of information, provide mutual assistance in tax matters, protect against discriminatory actions and provide options for consultation and arbitration in the event of disagreements. These provisions help to provide certainty for international investors and make both treaty partners a more attractive destination for investments. Tax treaties are said to offer the best option for addressing differences between domestic tax systems and provide improved legal protection and administrative cooperation between tax jurisdictions. It has been argued that without the certainty of the tax treatment guaranteed by a tax treaty, few companies would be willing to invest in a developing country.[153]

The Dutch position is to strive as much as possible for capital import neutrality with respect to active income for multinationals established in the Netherlands, which means that income of the affiliate taxed in the source country is exempt from taxation in the parent company's residence country – i.e. it is not taxed twice. Capital export neutrality is striven for with respect to passive incomes of the parent company such as portfolio dividends, royalties and interest payments, which are credited with the withholding taxes paid by the affiliate but are not exempt from Dutch taxes. This ensures that Dutch companies and individuals operating in another country face the same tax regime as local companies and individuals in both the source and residence country. This should stimulate Dutch companies and individuals to operate abroad, which is considered necessary given the relatively small domestic market in the Netherlands.

Tax treaty policy towards developing countries

The NFV 2011 specified the general criteria applied when negotiating a tax treaty. The application of these criteria is elaborated on in the explanatory memorandum of a new tax treaty when it is sent to the House of Representatives for ratification. For each treaty it is specified to what extent the general criteria have been applied during negotiations with developing and developed countries. The criteria specified for treaty negotiations with developing countries are listed in Table 7.[154]

[153] (Ministry of Finance, 2015a, p. 5); (Ministry of Finance, 2011f, p. 20); (Ministry of Finance, 2012a, p. 5); (Ministry of Finance, 2012b, p. 2); (Ministry of Finance, 2016g, p. 3)

[154] (Ministry of Finance, 2011c, pp. 39, 40, 45, 46, 47); (Ministry of Finance, 2011g, p. 2)

Table 7 Summary of Dutch policy on tax treaties with developing countries

Topic	Principles of Dutch tax treaty policy (NFV 2011)	Exceptions for developing countries (NFV 2011)	Subsequent changes	Additional measures (NFV 2020)
Withholding taxes on dividend	No withholding taxation of participation dividends; these will be limited to residence taxation. Portfolio dividends will be taxed according to the Dutch national tariff of 15%. An article that aims to prevent treaty abuse will be proposed.	Withholding taxes on participation dividends allowed	No changes	The Netherlands is willing to accept a higher level of withholding tax than in the benchmark treaty, provided that the country is able to demonstrate that it has changed its policy in this respect.
Withholding taxes on interest & royalty's	No withholding taxes on interest and royalty's. If the treaty partner insists on inclusion, as many as possible exemptions of these withholding taxes will be included. If considered reasonable and a real threat of treaty abuse exists, at the request of the treaty partner, it is acceptable to include articles that prevent treaty abuse.	Withholding taxes on interest and royalties allowed	No changes	The Netherlands is willing to accept a higher level of withholding tax than in the benchmark treaty, provided that the country is able to demonstrate that it has changed its policy in this respect.
Withholding taxes on technical service fees	Not acceptable	Not acceptable	Not acceptable	Acceptable

Table 7 Summary of Dutch policy on tax treaties with developing countries

Topic	Principles of Dutch tax treaty policy (NFV 2011)	Exceptions for developing countries (NFV 2011)	Subsequent changes	Additional measures (NFV 2020)
Anti-abuse clauses	If considered reasonable and a real threat of treaty abuse exists, if requested by the treaty partner is is acceptable to include articles that prevent treaty abuse	Risks of potential treaty abuse mentioned during treaty negotiations and if necessary articles preventing treaty abuse included in the treaty	Offered to 23 developing countries (2013)/ included in MLI (2016)	Conditio sine qua non for tax treaties
Use of model tax treaty	OECD model treaty	‘Other’ articles of the UN-model treaty acceptable to support the fiscal development of the developing country	No changes	‘Other’ articles of the UN-model treaty acceptable to support the fiscal development of the developing country
Permanent establishment	Reluctance to include articles that extend the definition of permanent establishment. The MoF is reluctant to include a services PE in BTTs. In the view of the MoF, if a company based in the Netherlands provides consultancy or advisory service to another country, the Netherlands has the taxation rights	A more extensive definition of permanent establishment, which includes a shorter period of 6 months instead of 12 months before a permanent presence is ‘established’ for construction sites. A services PE is acceptable as well, although further agreements over profit allocation to the PE are considered very important in such cases.	New definition included in OECD model treaty 2017	PE on services acceptable

The Netherlands is willing to accept deviations from its standard criteria when negotiating with developing countries but there are limits to the extent to which it is willing to 'act' on behalf of the treaty partner. This is because tax treaties do not prevent developing countries from levying corporate profit taxes generated there. Unilateral measures by the Netherlands are not always able to prevent double taxation because of differences between tax systems.[155]

Another reason for the unwillingness of the Netherlands to deviate too much from the standard criteria is that in order to prevent Dutch companies and Dutch nationals operating in these countries being disadvantaged, the results of treaty negotiations should be in line with tax treaties between developing and third countries. Therefore, when negotiating a tax treaty, the existing treaty network of that country is taken into account, specifically the recently ratified treaties with developed countries (e.g. Belgium, Germany, United Kingdom and Denmark). When looking at the Dutch treaty network, the date on which the treaty was signed must also be considered. According to the MoF, older treaties tend to include lower withholding taxes and fewer or no anti-abuse clauses. If other tax treaties are more beneficial in terms of lower withholding taxes, it is assumed that it is less likely that provisions in the treaty with the Netherlands will be abused, as elaborated in letters to Parliament.[156] The NFV 2020 states that the Netherlands is willing to accept a higher level of withholding tax than agreed in a benchmark treaty, provided that the country is able to demonstrate that it has changed its policy in this respect.[157]

As well as implementing the BEPS standards and EU legislation discussed under sub-goal 1, in a letter to Parliament in 2018[158] the Netherlands introduced unilateral measures to counter tax avoidance via the Netherlands. The letter announced a further four proposed or intended policy measures aimed at preventing the Netherlands from being used as a conduit to transfer profits to tax havens via the parent company established in the Netherlands: 1) the introduction of conditional withholding taxes on outgoing interest, royalties and dividend payments to low-tax jurisdictions. These were introduced in 2021 for interest and royalties and from 2024 will apply to dividend payments. 2) the adoption of anti-abuse provisions in all tax treaties to prevent treaty abuse (preferably through the MLI); 3) stricter substance requirements for companies residing in the Netherlands, from 2020 onwards[159] (eventually introduced in 2021); and 4) support for EC proposals on mandatory disclosure and public CbCR, as explained in chapter 4.

[155] (Ministry of Finance, 2015a, p. 5); (Ministry of Finance, 2011f, p. 20); (Ministry of Finance, 2012a, p. 5); (Ministry of Finance, 2012b, p. 2); (Ministry of Finance, 2016g, p. 3)

[156] (Ministry of Finance, 2013b, p. 47); (p48); (Ministry of Finance, 2016g, p. 7); (Ministry of Finance & Ministry of Foreign Affairs, 2016a, p. 6); (SEO, 2021, p. 65)

[157] (Ministry of Finance, 2020d, p. 29)

[158] (Ministry of Finance, 2018a, pp. 9, 10, 11)

[159] These additional substance requirements include staff wages of at least €100,000 per annum and an office space that has been available for at least 24 months. Existing requirements pertained, among other things, to board members' country of residence and the location where decisions are made. See: wetten.nl - Regeling - Uitvoeringsbesluit internationale bijstandsverlening bij de heffing van belastingen - BWBR0030973 (overheid.nl)

Although the measures in this policy letter are not only relevant for countering tax avoidance from developing countries, the first and second measures have been included in the Dutch Cabinet's Agenda on Policy Coherence for Development since 2018, under the heading 'Increased government revenues in developing countries, especially low-income and partner countries' as they are expected to contribute to this goal too.[160]

The aspects of Dutch tax treaty policy relevant for developing countries are elaborated below. Tax treaties are generally based on model tax treaties provided by the OECD, the UN and, more recently, by ATAF.[161] In general, OECD countries, including the Netherlands, base their bilateral tax treaties on the OECD tax treaty model.[162] Non-OECD countries generally prefer the UN model treaty[163], which offers more taxation rights to the source country (the country that receives the FDI), although the two models overlap substantially. As stated in the NFV 2011, the Netherlands is receptive to proposals from a developing country to include certain articles from the UN model tax treaty, but only if these are also included in the tax treaties that developing country concludes with third countries.[164]

Withholding taxes

The OECD model treaty stipulates a maximum withholding tax rate on dividend payments (5% for participation and 15% for portfolio) and on equity and interest payments on intra-company loans (10%), whereas the UN model does not limit these rates.[165]
Another difference is that in the OECD model treaty, royalty payments on intellectual property should only be taxed in the residence country in which the parent company has registered those rights, whereas in the UN model treaty the source country should also enjoy taxation rights. In practice however, several OECD countries do allow withholding taxes on royalty payments.[166]

Withholding taxes

Withholding taxes are levied on certain corporate payments to foreign entities. These payments can be distributions of profit that have already been subject to corporate income tax (dividends) as well as payments that are deductible from corporate income tax (interest, royalties, or management fees).

[160] (Ministry of Foreign Affairs, 2018d)
[161] The ATAF model agreement is of recent date and is not used in tax treaties to which the Netherlands is a party, so has not been included here. It can be found here, together with a comparison with the UN and OECD model tax treaties: https://events.ataftax.org//events/index.php?page=documents&folder=17
[162] (OECD, 2017a)
[163] (UN, 2017)
[164] (Ministry of Foreign Affairs, 2018e, pp. 6, 8, 9); (Ministry of Finance, 2014g, p. 41); (Ministry of Finance, 2011f, p. 19); (Ministry of Finance, 2011g, p. 2); (Ministry of Finance, 2011c, p. 40)
[165] (Ministry of Finance, 2016g, p. 5)
[166] (Ministry of Finance, 2016g, p. 5); (Lennard, M., 2009, p. 8)

In practice, most countries impose withholding taxes on dividends, interest payments, or both. In addition, many countries levy withholding taxes on royalty payments for the use of intellectual property such as trademarks or patents, and some countries levy withholding taxes on management fees and technical services.

There are several reasons for levying withholding taxes. First, they are relatively easy for the host country to collect because they involve international transfers, similar to trade taxes, and the basis for calculating the tax is straightforward.

Second, historically, withholding taxes on payments to both foreign and domestic recipients has served to prevent tax evasion. An investor who received dividend or interest payments could try to conceal this income from the tax authority. If this income had already been taxed at source and paid by the entity distributing the dividend or paying the interest, the tax was more difficult to evade.

Third, withholding taxes allow FDI as source countries in fiscal terms to take a larger share of the total tax revenue that can be levied on income earned by foreign investors. In the case of foreign investment, withholding taxes concern the allocation of taxation rights between host and home country. Developing countries are usually net FDI recipients. Therefore, withholding taxes can have a redistributive effect at international level by increasing the share of taxes multinational firms pay in developing countries.

Usually, the Netherlands strives to lower or eliminate withholding taxes in its tax treaties. The NFV 2011 stated that in treaties concluded with developing countries the Netherlands is willing to accept higher withholding taxes on dividend, interest and royalty payments if proposed by the developing country. However, withholding taxes that are too high might discourage direct investments, which would not be in the interest of developing countries. In the NFV 2020, withholding taxes on technical services or management fees have been added as also acceptable for the Netherlands in tax treaties with developing countries.[167]

The conditional withholding tax of 25% on dividend, interest and royalty payments from the Netherlands to low-tax jurisdictions or countries present on an EU list of uncooperative tax jurisdictions[168] was introduced to prevent tax avoidance via conduit structures that use the Dutch tax system legitimately and meet the substance requirements. The withholding tax on interest and royalties took effect in 2021.[169]

[167] (Ministry of Finance, 2015a, p. 6); (Ministry of Finance, 2014g, p. 41); (Ministry of Finance, 2012a, p. 7); (Ministry of Finance, 2011h, p. 3); (Ministry of Finance, 2011c, p. 80); (Ministry of Finance, 2011g); (Ministry of Finance, 2020c, p. 2)

[168] The process of identifying non-cooperative tax jurisdictions started in 2016 with a review of 92 jurisdictions based on their economic relations with the EU, their institutional quality and the size of their financial sector. Because of these criteria few developing countries were reviewed and listed. https://www.consilium.europa.eu/nl/policies/eu-list-of-non-cooperative-jurisdictions/

[169] (Ministry of Finance, 2018e, p. 9); (Ministry of Finance, 2018a, pp. 3, 8, 9)

The announced conditional withholding tax on dividend payments was initially cancelled later in 2018 after the government decided to retain the general tax of 15% on dividend,[170] which needed to be monitored before a decision could be made on the withholding tax. A letter to Parliament in 2020 announced that a conditional withholding tax on dividend payments to low-tax jurisdictions would be implemented from 2024 onwards. It was concluded that even after the dividend tax had been retained there were still possibilities for dividend payments to be made to low-tax jurisdictions without paying tax, which was considered undesirable.[171]

Although withholding tax was not explicitly related was not explicitly related to developing countries in parliamentary documents, it was expected that payments to low-tax jurisdictions would largely disappear. This was expected to affect developing countries as well. In a parliamentary debate on inequality, the conditional withholding taxes on dividend, interest and royalty payments were specifically related to tax avoidance in developing countries. It was noted that introducing conditional withholding taxes would affect payments through SPEs and non-SPEs. In a letter to Parliament it was acknowledged that actions undertaken by the Netherlands alone would probably result in these payments being rerouted through other countries and that therefore a multilateral approach was needed.[172]

Anti-abuse clauses

The NFV 2011 stated that tax treaties should eliminate the possibility of abuse by dividing taxation rights between source and residence country while taking into account specific characteristics of the fiscal systems of treaty partners. Taxation rights would be forfeited only when there were certain guarantees to prevent tax avoidance.

Three types of treaty abuse can be identified,[173] the third of which is most relevant here: an entity of a third country gaining access to treaty benefits pertaining to the companies established in the Netherlands and in its treaty partner. This implies trying to obtain the lower withholding tax rate the tax treaty provides, instead of paying the usually higher domestic rates in the source country. The larger the discrepancy between the withholding tax rate in the treaty on payments to the residence country and the domestic rate on such payments, the greater the rewards from treaty abuse. Therefore, as stated in the NFV 2011, the Netherlands is willing to include anti-abuse clauses at the request of the potential treaty partner, even in cases where this is not directly required from the perspective of the Netherlands, given that proportionality and subsidiarity are assured; the anti-abuse clauses should not disadvantage well-intentioned investors.[174]

170 The general tax of 15% on dividend payments applies to payments to all countries except EU countries (exempted) and some treaty partners (exempted, or the rate is reduced in accordance with the rate specified in the tax treaty). (Ministry of Finance, 2020b, p. 4)

171 (Ministry of Finance, 2020b, p. 4); (Ministry of Finance, 2018d, p. 4)

172 (Ministry of Finance, 2020b, p. 4); (Ministry of Foreign Affairs, 2018e, p. 8); (Ministry of Finance, 2019b, p. 29)

173 The first is the emigration of a Dutch entity to a country with which the Netherlands has concluded a tax treaty in order to profit from the combination of the fiscal regime of the treaty partner and the tax treaty in place. The second is the performing of certain legal acts by a Dutch or domestic entity of the treaty partner in order to claim treaty benefits which otherwise would not have been granted.

174 (Ministry of Finance, 2011a, pp. 25, 26)

In 2013, in response to an IBFD report commissioned by the Dutch government[175] in which tax treaties of developing countries concluded with the Netherlands are compared with treaties these countries have concluded with third countries, the Netherlands offered 23 developing countries the opportunity to include anti-abuse clauses in their existing tax treaties with the Netherlands. The IBFD report found the tax treaties had similar results (although withholding tax rates in treaties with the Netherlands were relatively low), but the Dutch government nevertheless considered the absence of anti-abuse clauses undesirable. By 2021, agreements relating to the inclusion of anti-abuse clauses were reached in 14 of the 23 countries and nine of these clauses were in force.[176]

In its 2013 response, the government also announced that during ongoing and future negotiations with developing countries, the question of which type of anti-abuse clause should be added to a treaty would be answered in close collaboration with these countries. A further measure involves providing more information on the risk of base erosion due to possible tax treaty abuse when presenting new tax treaties to House of Representatives and by including a comparison with other tax treaties concluded by the developing country.[177]

The Netherlands has included the minimum standard on preventing treaty abuse (Action 6) of the OECD BEPS project in its tax treaty policy since 2015. This standard, either implemented bilaterally or through the MLI, applies to both developed and developing countries. Complying with the minimum standard regarding anti-abuse clauses entails that the preamble to a tax treaty mentions that one of the aims of the treaty is to counter tax avoidance and evasion. It also means that the provisions of the treaty must have one of the following three forms in one of the following three forms: 1) a principal purpose test (PPT) equivalent to paragraph 9 of Article 29 of the 2017 OECD Model Tax Convention together with a simplified or detailed version of the limitation on benefits (LoB) rule that appears in paragraphs 1 to 7 of the 2017 OECD Model; 2) the PPT alone; 3) a detailed version of the LoB rule together with a mechanism (such as a treaty rule that might take the form of a PPT rule restricted to conduit arrangements, or domestic anti-abuse rules or judicial doctrines that would achieve a similar result) that would deal with conduit arrangements not already covered by tax treaties.[178]

In 2013, the Netherlands initially preferred the LoB clause because it details the types of transactions and entities that are eligible for treaty benefits. This was preferred over the more generic main purpose test (MPT) and PPT. In general, most jurisdictions prefer a PPT or MPT instead of an LoB, because the LoB is more difficult to apply, which seems to be the case for developing countries as well. When signing the MLI in 2016, the Netherlands stated its preference for the PPT (option 2).

[175] (IBFD, 2013)
[176] (Ministry of Finance, 2021, pp. 7, 8)
[177] (Ministry of Finance, 2016d, p. 23); (Ministry of Foreign Affairs, 2018b, p. 9); (Ministry of Finance, 2015a, p. 6); (Ministry of Finance, 2013e, pp. 20, 21, 24); (Ministry of Finance, 2013e, pp. 2, 3); (Ministry of Foreign Affairs, 2020b, p. 2)
[178] (OECD/G20, 2019a, pp. 15, 16); (Ministry of Finance, 2016h, pp. 3, 4, 6), see annex 3

In 2016, it was reported that three of the four treaties concluded between the Netherlands and a developing country contained some sort of PPT.[179]

Permanent establishment

An important difference between the OECD and UN model treaties is the definition of permanent establishment (PE) used. In the UN model, the standard requirements to meet the definition of the PE are less demanding than those in the OECD treaty: for example, the duration of the period after which a building site in the source country is considered a PE is shorter in the UN model treaty. A PE on services is included in the UN model, whereas the OECD model treats services similarly to goods, which means the same presence is necessary to enable taxation in the source country.[180]

Treaty-related recommendations of the BEPS project with respect to PE (Action 7) became part of the OECD model treaty 2017, on which the Netherlands models its tax treaties. The MLI can be used to implement these changes to existing tax treaties. These changes pertain to instances where the PE status is artificially avoided.[181] Even though the Netherlands seeks to align the definition of the PE with OECD standards, in the NFV 2020 the Dutch government states that in tax treaties concluded with developing countries it is acceptable to include a definition of the service PE, in line with the UN model treaty.[182]

Permanent establishment

Permanent establishment means a fixed place of business for a multinational company operating in another country, resulting in an income or value-added tax liability in that country. PE is defined by the tax law of each jurisdiction, usually as a consequence of bilateral tax treaties entered into between the two jurisdictions.

Having PE status in a source country has implications for an MNE in terms of the need to file a tax return, the application of certain types of tax (corporate income tax, and possibly turnover or sales taxes and withholding tax), attribution of profits over countries and a range of other non-tax compliance obligations. The overall purpose of international tax treaties is to determine whether the source country will relinquish its taxing rights with respect to particular income profits or gains and, if so, to what extent. If it does, the investor's residence country may fully tax the investor's profits. PE is the principal mechanism by which a source country can claw back tax from an enterprise formally established in the residence country.

179 (Ministry of Finance, 2013b, p. 47); (Ministry of Finance, 2015a, p. 6)(Ministry of Finance, 2013e, p. 21); (House of Representatives, 2016a, p. 24); (House of Representatives, 2016a, p. 24)(Ministry of Finance, 2016g, p. 9); (Ministry of Finance, 2017f, p. 18)

180 (Lennard, M., 2009, p. 5)

181 (Ministry of Finance, 2016h, p. 3); (Ministry of Finance, 2016h, p. 6); (Ministry of Finance, 2016h, pp. 3, 4); (Ministry of Finance, 2020c, p. 15)

182 (Ministry of Finance, 2020c, p. 33)

Treaty negotiations
This section examines to what extent the principles of Dutch tax treaty policy were put into practice during the evaluation period, using information from the mandates and reports of treaty negotiations between the Netherlands and five developing countries. The documents on treaty negotiations were drafted and shared[183] by the MoF and provide information on the negotiations with Kenya, Ghana, Ethiopia, Malawi and Zambia. The negotiation mandate (there may be more than one, depending on the number of negotiation rounds) state the Dutch stance in relation to a particular treaty with respect to specific aspects of the NFV. Following negotiations, the signed treaty accompanied by an explanatory memorandum which elaborates on the negotiation result and to what extent it follows the NFV is submitted to House of Representatives for 'tacit approval'.[184]

Of the five treaties included here, the two with Ethiopia and Zambia were eventually put to a vote, which led to ratification in both cases. Due to delays in the ratification process in Kenya and Malawi, these treaties have not yet been submitted to House of Representatives for ratification. The treaty with Ghana consisted of a protocol to the existing treaty, which was 'tacitly' approved.

Table 8 Dates of tax treaty negotiations with five developing countries

Treaty negotiations					
Treaty partner	First round	Second round	Protocol	Treaty signed	Treaty in force
Ethiopia	nov/ dec-2011	jan-2012	mrt-2014	2012/2014 (protocol)	2016
Ghana	-	-	apr-2014	2008/2017 (protocol)	2008/2017 (protocol)
Kenya	jul-2010	okt-2010	-	2015	-
Malawi	aug-2013	-	-	2015	-
Zambia	apr-2014	-	-	2015	2018

The treaty negotiations for Kenya, Ghana, Ethiopia, Malawi and Zambia are summarised below, focusing on the aspects elaborated earlier, which are:
- Whether higher withholding taxes were negotiated (compared to treaties between the Netherlands and developed countries)
- The extent to which articles on PE are in line with the UN model treaty
- Whether anti-abuse clauses have been included and, if so, which type (LoB/PPT)

[183] Due to confidentiality and the sensitivity of the negotiations, the MoF was willing to share these documents for negotiations already concluded. At the time of writing, several negotiations with other developing countries were ongoing.
[184] 'Tacit' approval means the treaty is automatically approved unless at least a fifth of the Members of Parliament object to it within thirty days. If that happens, it requires more elaborate treatment in the House of Representatives and is eventually put to the vote.

Withholding taxes

Table 9 Withholding taxes agreed on in tax treaty negotiations with four developing countries

		Withholding tax rates		
Treaty partner		**Dividend (%)**	**Interest (%)**	**Royalties (%)**
Ethiopia	Initial position NL	0, 15 (portfolio)	0	0
	Initial position Ethiopia	>=5	>=5	>=5
	Result	5, 10/15 (portfolio)	5	5
Kenya	Initial position NL	0, 15 (portfolio)	0	0
	Initial position Kenya	0, 10 (portfolio)	10	10
	Result	0, 10 (portfolio)	10	10
Malawi	Initial position NL	0, 15 (portfolio)	0	0
	Initial position Malawi	5, 10 (portfolio)	10	10
	Result	0/5, 10/15 (portfolio)	10	5
Zambia	Initial position NL	0, 15 (portfolio)	10	5
	Initial position Zambia	10	15	20
	Result	5, 15 (portfolio)	10	7,5

The initial negotiation stances and results of the negotiations show that in most cases the Netherlands was willing to agree to developing countries' negotiation stance on withholding tax rates. Exceptions are withholding taxes on royalties in the treaty with Malawi and in all categories in the treaty with Zambia. The reason provided for not agreeing to all demands of these countries is that in both cases this would mean deviating from the benchmark treaties used (the Norway–Malawi and the UK–Zambia treaty, respectively).[185]

[185] (Ministry of Finance, 2016c, p. 2); (Ministry of Finance, 2013d); (Ministry of Finance & Ministry of Foreign Affairs, 2016c, pp. 2, 3); (Ministry of Finance, 2013g)

In the case of Malawi, a withholding tax on management fees was not included because, according to the explanatory memorandum, both parties ultimately considered it unnecessary to do so because there are no affiliates in Malawi that pay management fees to their parent company established in the Netherlands. However, the minutes of the treaty negotiations show that Malawi did propose a withholding tax on technical fees, but this was not acceptable for the Netherlands (in combination with a services PE, which was included in the treaty).[186]

In the case of Zambia, the explanation for the withholding tax rate on royalty payments being higher than in the Zambia–UK treaty is that Zambia had introduced a new policy including a recent increase in the domestic rate. In return, Zambia could agree to drop a withholding tax on technical services it had initially proposed.[187]

A withholding tax on technical fees was requested by three of the four[188] developing countries included here. The Netherlands was against including this article, but a compromise was usually found by including a service component in the PE article.

Next to the level of the withholding tax rates, the scope, thresholds, exceptions and definition of payments to which these rates apply are of importance. In the case of dividends, the threshold applies to the ownership or equity share in the affiliate in the source country that is required above which the lower withholding tax rate for qualifying companies applies. A minimum stake of 10% or 25% is usually required. For withholding tax on interest payments, exemptions usually apply to loans of government or government-related institutions. The definition of royalty payments determines what is included in the application of the withholding tax on royalty on the use of licensed intellectual property registered in the residence country. Table 10 shows a summary of these thresholds, exceptions and definitions for these negotiations.

[186] (Ministry of Finance, 2016g, pp. 4, 5); (Ministry of Finance, 2013d); (Ministry of Finance, 2013g)
[187] (Ministry of Finance, 2014b)
[188] Because the negotiations with Ghana were limited to a protocol to the tax treaty including anti-abuse clauses, it is only referred to in the section pertaining to anti-abuse clauses.

Table 10 Thresholds and exemptions agreed on in tax treaty negotiations with four developing countries

		Thresholds and exemptions		
Treaty partner		**Dividend**	**Interest**	**Royalties**
Ethiopia	Initial position NL	Qualifying dividend for stakes <10% and pension funds	No tax on interest to government or government-related bodies and pension funds, maybe more	Limited definition
	Initial position Ethiopia	?	?	?
	Result	Qualifying dividend for stakes <10% and pension funds	No tax on interest to government bodies	Limited definition in line OECD-model treaty
Kenya	Initial position NL	?	No tax on interest to government or government-related bodies and pension funds, financial institutions	Limited definition
	Initial position Kenya	?	?	Include use of industrial, commercial or scientific equipment
	Result	Dividend qualifying companies from 10% stakes	No tax on interest to government or government-related bodies, guaranteed loans, and pension funds	Services excluded. Possible exemptions for agricultural and environmental technology
Malawi	Initial position NL	Dividend qualifying companies from 10% stakes	No tax on interest to government or government-related bodies, guaranteed loans, maybe more	Limited definition
	Initial position Malawi	Dividend qualifying companies from 25% stakes	?	Broader definition than OECD-model treaty
	Result	Dividend qualifying companies from 10% stakes, pension funds exempt	No tax on interest to government or government-related bodies, guaranteed loans and pension funds	Limited definition in line OECD-model treaty

Table 10 Thresholds and exemptions agreed on in tax treaty negotiations with four developing countries

		Thresholds and exemptions		
Treaty partner		**Dividend**	**Interest**	**Royalties**
Zambia	Initial position NL	Qualifying dividend for stakes <10% and pension funds	No tax on interest to government or government-related bodies and pension funds	Limited definition/ higher rate for older technology
	Initial position Zambia	?	No tax on interest to government bodies	Limited definition and no 'split' rate
	Result	Qualifying dividend for stakes <10% and pension funds	No tax on interest to government bodies	Limited definition and no 'split' rate

Table 10 shows that most discussion was centred around the definition of royalties. In line with the OECD model treaty, the Netherlands seeks to apply a narrow definition, whereas developing countries generally want to expand the definition – for example, to include the use of industrial, commercial or scientific equipment, as was proposed by Kenya.[189] The negotiations examined, however, all resulted in the application of the narrower definition in line with the OECD model treaty.

The permanent establishment

The Netherlands' negotiation stance with respect to the definition of the PE was generally to follow the OECD model treaty, which stipulates that a PE related to construction sites in the source country is present after a period of 12 months. Services (for example, providing technical or managerial services in a country) need a fixed place of business to be considered a PE. Developing countries generally want to shorten the period after which a construction site is considered a PE and to expand the definition of the PE to include services not provided from a fixed place of business. A summary of the negotiations is listed in Table 11.

[189] (Ministry of Finance, 2010)

Table 11 Permanent establishment agreed on in tax treaty negotiations with four developing countries

		Permanent establishment	
Treaty partner		**Construction**	**Services**
Ethiopia	Initial position NL	PE after 12 months, 6 months acceptable	Exclude services in PE, inclusion may be acceptable. Similar for insurance activities
	Initial position Ethiopia	PE after 6 months	Include services in PE, including insurance activities
	Result	PE after 6 months	Services excluded
Kenya	Initial position NL	PE after 12 months	Exclude services in PE
	Initial position Kenya	PE after 6 months	Include services in PE
	Result	PE after 9 months	Services excluded, except insurance activities after 183 days
Malawi	Initial position NL	PE after 12 months, 6 months acceptable	PE after 183 days acceptable
	Initial position Malawi	PE after 6 months	PE after 90 days
	Result	PE after 6 months	PE after 183 days
Zambia	Initial position NL	Limited definition in line with OECD model treaty	Limited definition in line with OECD model treaty. More expaned definition acceptable
	Initial position Zambia	?	Included, including insurance activities
	Result	PE after period of 183 days. Exploration of natural resources included	Services included after 183 days. Insurance activities excluded

From the final treaties, it is clear that the Netherlands is willing to shorten the period after which a construction PE is assumed, which is in line with the UN model treaty.
The Netherlands regards expanding the definition of PE to services as undesirable but finds it acceptable as part of a compromise that excludes an article on a withholding tax on technical services.

Anti-abuse clauses
Anti-abuse clauses were eventually included in all five tax treaty negotiations with developing countries examined. The negotiations with Malawi and Zambia took place after 2013, the year in which the Netherlands offered to include anti-abuse clauses. Both treaties use the MPT in the articles on dividend, interest and royalties.

The tax treaties with Ethiopia and Ghana initially did not include anti-abuse clauses, but these clauses were added later in a protocol to the treaties. In the case of Ethiopia, anti-abuse clauses were initially deemed unnecessary because the difference between domestic withholding tax rates and those agreed in the treaty was considered too small by the Netherlands to be used for tax avoidance purposes. The treaty negotiation mandate for the Dutch negotiators mentions that if withholding tax rates could be agreed on at 0%, anti-abuse clauses would be introduced into the negotiations.[190]

In a parliamentary debate in 2014, the State Secretary for Finance stated that anti-abuse clauses did not have priority for Ethiopia. Perhaps this was because the request of the Netherlands to include them was made halfway through the negotiations. That was also the reason a protocol including the anti-abuse clause was added to the treaty after it had been signed but not yet ratified. The anti-abuse clause included is an LoB.[191]

The original treaty with Ghana was signed in 2008, after which negotiations took place in 2014 to include the anti-abuse clauses via a protocol to the treaty. Initially, an LoB clause was agreed upon, but it was later changed to a PPT in order to bring the clause in line with the recommendation of the OECD BEPS project. The protocol was signed and ratified in 2017.[192]

The treaty with Kenya only included an MPT in the article on dividends, but because the treaty was not signed before 2013, anti-abuse clauses were eventually included at the request of the Netherlands. This was done in the articles on interest and royalties, in the form of an MPT.[193]

Other articles

The treaty negotiations revealed that other articles were also the source of initial disagreement between the negotiation stances of the Netherlands and the prospective treaty party. Although not mentioned in the NFV 2011 or NVF 2020 as especially significant for developing countries, these articles were consistently brought up during negotiations. The most prominent examples are article 7 (in both the OECD and UN model tax treaties) on business profits and article 14 on capital gains.

Article 7 of the OECD model tax treaty is additional to the article on PE, which is relevant to establishing whether the business profits of an enterprise should be taxed in the other (source) state. That article, however, does not itself allocate taxation rights: when an enterprise of a residence country carries on business in the source country through a PE situated therein, it is necessary to determine which, if any, of the profits that source country may tax. Article 7 provides the answer to that question by establishing which of the profits attributable to the PE may be taxed by the source country.

[190] (Ministry of Finance, 2011)
[191] (House of Representatives, 2014a, p. 6)
[192] (Ministry of Finance, 2014d); (Ministry of Foreign Affairs, 2017d, p. 2)
[193] (Ministry of Finance & Ministry of Foreign Affairs, 2016a, pp. 2, 3)

During the negotiations, all four developing countries opted for business profit to be defined in accordance with the OECD model treaty 2008 update, whereas the Netherlands preferred the 2010 update, in which article 7 of the model treaty has been updated. The Netherlands preferred the profit allocation based on activities and added value, in line with the updated OECD position, whereas developing countries were more focused on sales that can be attributed to a PE.

Article 13 of the model tax treaties deals with capital gains tax. Many source countries levy a tax on capital gains that arise from the sale of certain property or shares. In some countries this tax is limited to the sale of interests in real estate, mining assets, land and other immovable property; in other countries it also applies to the sale of participations in domestic companies. Tax treaties often allow source countries to levy capital gains tax on immovable property but allocate the right to tax capital gains on the sale of shares to the residence country of foreign investment. This is also the case for Dutch tax treaties.[194]

Of the four developing countries included here, three preferred some type of source taxation on capital gains on the sale of shares, in two cases limited to shares in immovable property. The Netherlands tried to restrict this right to the extent possible; source taxation on shares is generally not acceptable while source taxation on the sale of shares in immovable property may be acceptable if sufficient exemptions can be agreed on.

The importance of the capital gains tax was stressed by several sources, but in practice, domestic laws in developing countries and tax treaties often do not sufficiently clearly define source taxation rights in general and immovable property in particular,[195] which can open up opportunities for tax avoidance structures.[196]

Dutch tax treaty network

Above, the Dutch tax treaty policy towards developing countries was explored and the extent to which it is applied in practice by analysing tax treaty negotiations with five developing countries. Below, the tax treaties resulting from these negotiations and tax treaties with other developing countries are analysed. This is done by comparing the Dutch tax treaty network with developing countries to that of other developed countries. Subsequently, potential tax revenue losses of developing countries via the Dutch tax treaty network are estimated via a network analysis.[197]

194 (Weyzig, F., 2013, p. 52)

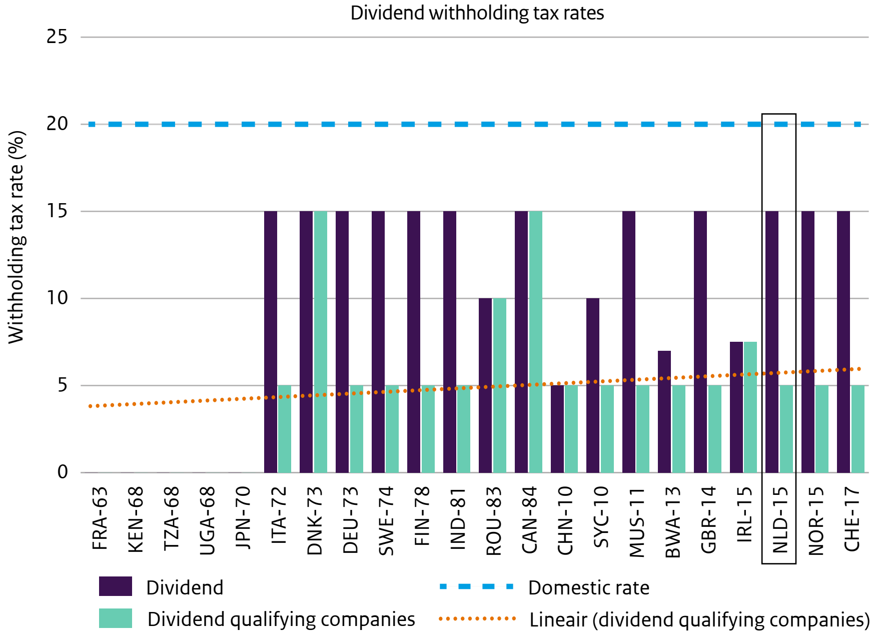
195 (Seatini / Actionaid, 2014, p. 18); (IMF, 2014, pp. 29, 30); (Weyzig, F., 2013, pp. 71, 72)

196 The strategies multinational firms use to avoid capital gains tax on the sale of foreign assets closely resemble strategies to avoid withholding taxes. These strategies usually involve an intermediary holding in a third country. This can be a third country with a tax treaty that eliminates capital gains tax on a bilateral basis. Alternatively, a firm can sell the intermediary holding itself instead of the shares held by the intermediary holding. In that case, the conduit country where the intermediary holding is located may also be a tax haven that does not have a tax treaty with the host country.

197 (Netherlands Bureau for Economic Policy Analysis, 2020)

Withholding tax rates
As an example, dividend withholding tax rates agreed on in tax treaties in the tax treaty network of Zambia are shown in Figure 3, in which the treaty with the Netherlands is highlighted. See annex 4 for all figures comparing withholding tax rates on dividend, interest and royalty payments in Dutch tax treaties with eight developing countries in the sample.

Figure 3 *Withholding tax rates in Zambian tax treaties signed from 1963–2017. These years refer to the year the tax treaty was signed, not when it was ratified. Because ratification can take a long time, the year of signing better reflects the attitude towards tax treaties at that time*



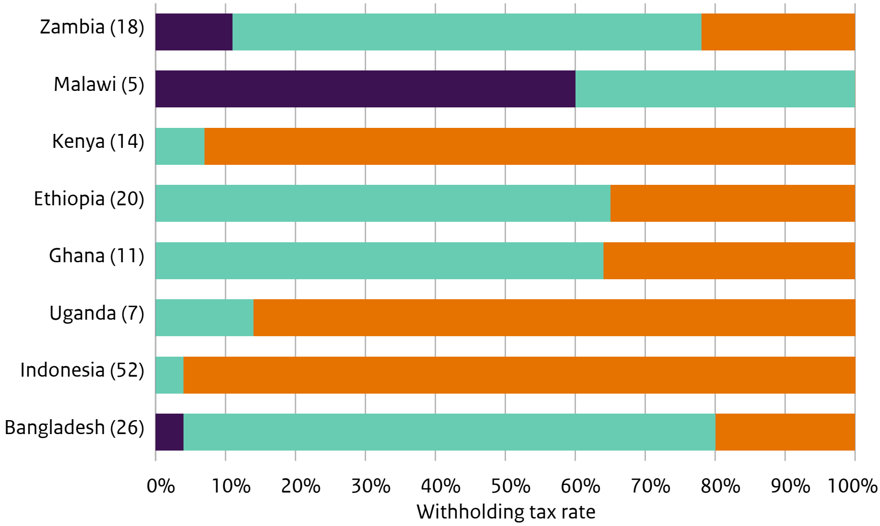
Source: IOB based on IBFD tax treaty database.

Figure 4 summarises and compares the results of the Netherlands' negotiations on withholding tax rates in tax treaties concluded between a selection of developing and developed countries. Following a report published by SOMO,[198] withholding tax rates of the Dutch tax treaty were compared to those of other developed countries. However, whereas SOMO limits the comparison group to OECD countries, developed non-OECD countries have also been included here because some of them (the United Arab Emirates, for example) are prominent in terms of negotiating relatively low withholding tax rates. Therefore, all upper-middle income and developed countries were included as comparable countries.

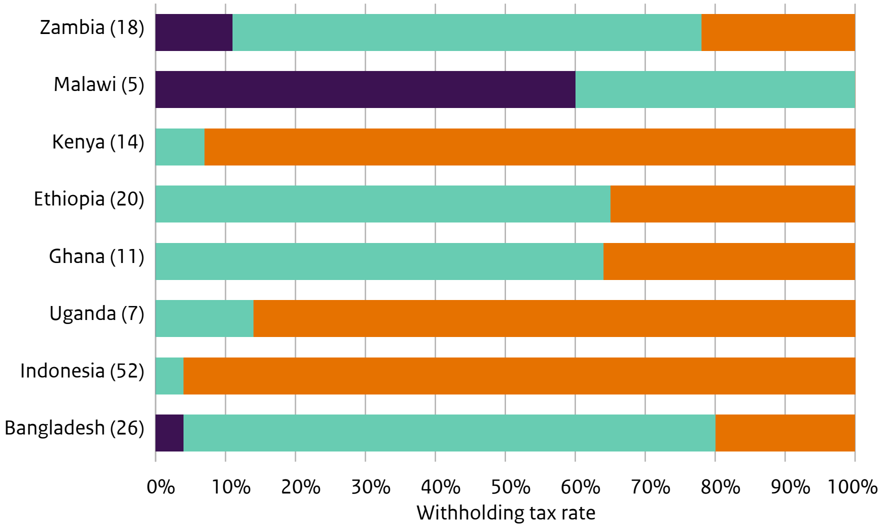
[198] (SOMO, 2020)

Figure 4 *Comparison between the withholding tax rates eight developing countries negotiated in bilateral tax treaties with the Netherlands and those they negotiated in bilateral treaties with third countries*

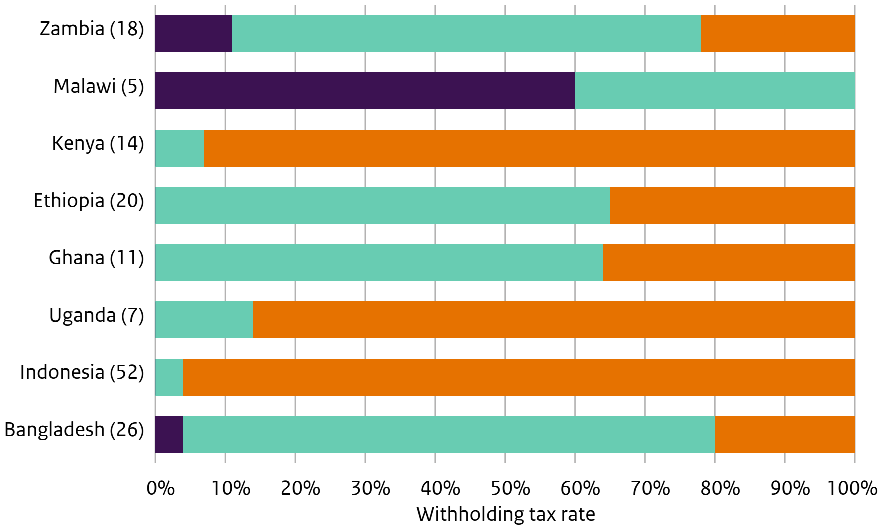
a. Dividend qualifying companies



b. Interest



c. Royalties



Source: IOB based on IBFD tax treaty database; Purple/mint/orange = share of tax treaties of this country with lower/similar/higher withholding tax rates than in its tax treaty with the Netherlands; in brackets the number of tax treaties between the listed country and upper-middle income and developed countries.[199]

In Figure 4, the countries have been ranked based on the year their tax treaties with the Netherlands were signed, starting with Zambia as the most recent. Although some treaty negotiations took place before publication of the NFV 2011, the Netherlands considers that all treaties from Ethiopia onwards are in line with it, according to the explanatory memorandums sent to House of Representatives.[200]

The Netherlands belongs to a small group of countries which have concluded tax treaties with the lowest withholding tax rate on dividend payments for qualifying companies (participation dividend) from Ethiopia, Bangladesh, Kenya, Uganda and Indonesia.
In Uganda, the Netherlands is the only country with a 0% participation dividend withholding tax rate (because Uganda has seven tax treaties in force with upper-middle income and developed countries, each treaty counts for around 14% in Figure 4). In other countries and for interest and royalties, the Netherlands is usually among the countries with the lowest withholding tax rate, but this group is larger than for the three cases mentioned above. Note that because the number of treaties in force varies between five for Malawi and 52 for Indonesia (excluding those with low- and lower-middle income countries), the number of treaties in each group may also vary considerably between countries.

[199] Although the tax treaties with Kenya and Zambia have been signed and have not yet entered into force because they are pending ratification, they have been included for comparison.
[200] (Ministry of Foreign Affairs, 2013b); (Ministry of Finance & Ministry of Foreign Affairs, 2016b, p. 2)

In a limited number of cases, the Netherlands is not among the countries that have concluded tax treaties with the lowest rate, notably for the two most recent treaties with Zambia and Malawi (both signed in 2015). In both cases, the group of tax treaties with the lowest rate (0% withholding tax rates on all categories) date from the 1960s, when these countries were still British colonies.

During treaty negotiations with Zambia and Malawi in the period 2013–2014, a recent tax treaty between these countries and another developed country was used as a benchmark by Dutch treaty negotiators. This was done to ensure Dutch willingness to accommodate the position of developing countries would not make the Netherlands worse off than other developed countries. As a result, both treaties are very similar to the benchmark treaties used; the benchmark treaty used for Zambia was its treaty with the UK signed in 2014 and the benchmark treaty for Malawi was its treaty with Norway signed in 2010.[201]

Figure 5 shows the development of participation dividend withholding tax rates in 179[202] tax treaties with higher middle income and developed countries currently in force in the eight developing countries in the sample. Operational tax treaties with the Netherlands are shown in orange.[203] Contrary to the statements of representatives of the Ministry of Finance[204], the figure shows a declining trend in withholding tax rates, from an average of over 10% in tax treaties signed up to 2000, decreasing to 9% in the first decade of this century and to an average of 6.8% in the second decade. The withholding tax rates of interest and royalties show a similar decreasing trend (see annex 4). Because the benchmark treaties include withholding tax rates that are below the average rates for the entire sample and in some cases for these specific countries too, it can be inferred that the Netherlands aimed for relatively low withholding tax rates.

The NFV 2020 states that the Netherlands is willing to accept a higher level of withholding tax than agreed in the benchmark treaty, provided that the country is able to demonstrate that it has changed its policy in this respect.[205] It is still unclear what this means in practice, however, because in almost all cases domestic[206] withholding tax rates are higher than those agreed in the country in question's tax treaties and those requested by developing countries during negotiations.

[201] (Ministry of Finance & Ministry of Foreign Affairs, 2016c, pp. 2, 3); (Ministry of Finance, 2014a); (Ministry of Finance, 2016c, p. 2); (Ministry of Finance, 2013c)

[202] Excluded are five treaties signed in the colonial period because they do not reflect the tax treaty policy of the independent countries. The figures on interest and royalties exclude a further six treaties because they do not include withholding tax rates; domestic rates apply.

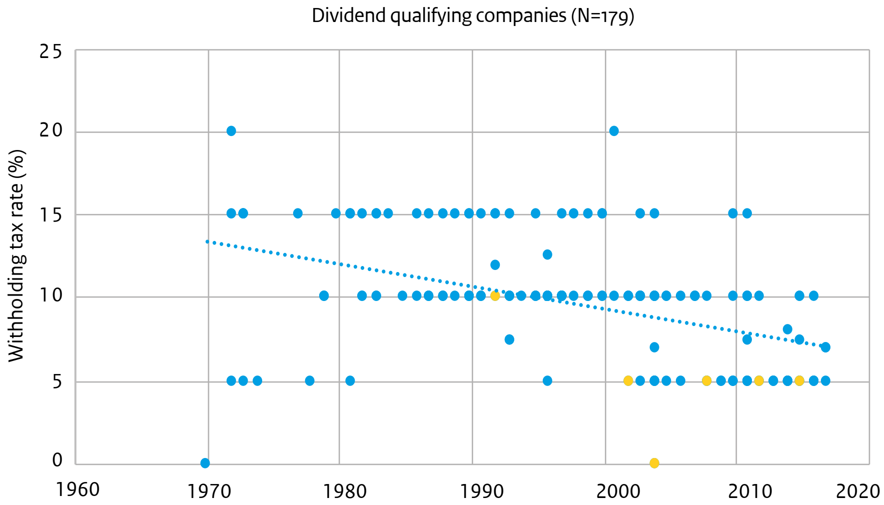
[203] Limited to six treaties because the treaties signed between the Netherlands and Kenya and Malawi are not yet in force.

[204] (House of Representatives, 2014b, p. 9); (SEO, 2021, p. 65)

[205] (Ministry of Finance, 2020d, p. 29)

[206] The withholding tax rate applied by a developing country on payments to countries with which it does not have a bilateral tax treaty.

Figure 5 *Development of participation dividend withholding tax rate for tax treaties with higher middle income and developed countries currently in force in Bangladesh, Ethiopia, Ghana, Indonesia, Kenya, Malawi, Uganda and Zambia*



(Source: IOB based on IBFD tax treaty database)

Network analysis

Below are summarised the results of the CPB network analysis[207] that estimated potential tax revenue losses for five developing countries[208] that could result from treaty shopping, and the role of their tax treaties with the Netherlands in enabling treaty shopping. The analysis did not provide the actual tax revenue losses of these countries but estimated to what extent the Dutch tax treaty network could be used for tax avoidance purposes in developing countries. It provides insight into the results of Dutch tax treaty policy and negotiations and the implications for six developing countries[209] by comparing the relative importance of the Netherlands.[210]

The network analysis considered the international tax system as a transportation network and computed the 'shortest' routes that minimise the taxes that MNEs need to pay on the repatriation of profits.[211] The tax 'distances' were constructed from the tax rates of the domestic CIT, the non-resident withholding taxes on dividend payments from source to residence country and the double tax relief systems in bilateral tax treaties. Of particular interest are the bilateral tax treaties with reciprocal reduction of the withholding tax rates.

[207] (Netherlands Bureau for Economic Policy Analysis, 2020)
[208] Bangladesh, Ethiopia, Indonesia, Uganda, Zambia.
[209] Bangladesh, Egypt, Ethiopia, Indonesia, Uganda and Zambia
[210] See annex 5 for a more detailed description of the methodology and results. The methodology of the network analysis is described in more detail in (CPB Netherlands Bureau for Economic Policy Analysis, 2017)
[211] In the form of dividend, interest and royalty payments that reward or compensate for the equity stake, loan and use of intellectual property rights provided by the parent company in the resident country.

The MNEs can reduce the withholding taxes on their repatriated profits by choosing the 'cheapest' route over the network. This could be a direct route, or indirect via a conduit entity residing in a third (conduit) country. In the latter case we speak of treaty shopping.

Figure 6 shows the source tax revenue loss caused by treaty shopping for lower withholding taxes on dividend[212], interest and royalty payments in the reference situation. Source taxation is the withholding tax revenue lost due to treaty shopping, as compared to effects on total tax revenues, including residence taxation (CIT) by the source country. An earlier study by the CPB Netherlands Bureau for Economic Policy Analysis found that as source taxation decreases as a result of treaty shopping, the tax base for residence (CIT) taxation may increase for countries with few tax treaties, which results in higher total tax revenues after treaty shopping, although this is not a realistic assumption for most developing countries.[213]

The simulated total tax revenue losses are reported in annex 5; the effect of treaty shopping on source taxation revenues are shown below in figure 6. Two scenarios are tested in sections 5.2 and 5.3: the introduction by the Netherlands of conditional withholding taxes on payments flowing to third countries and the implementation and enforcement of anti-abuse clauses in tax treaties between the Netherlands and developing countries.

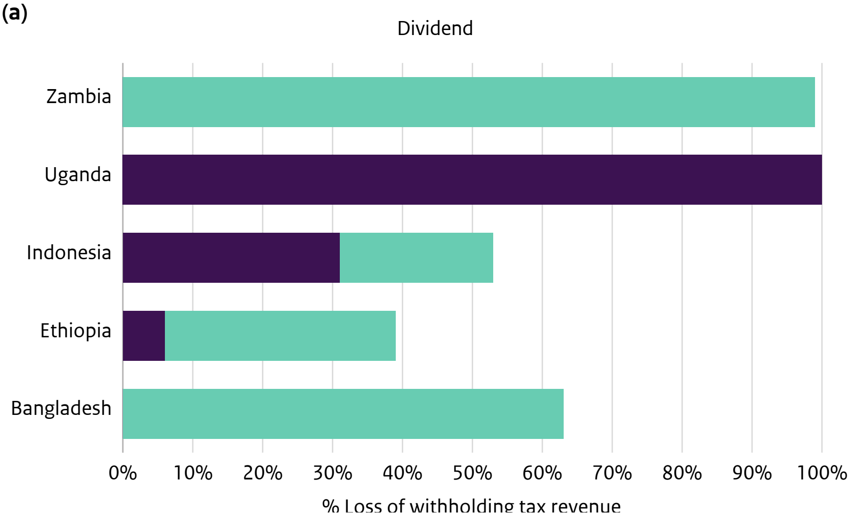
Figure 6 compares simulated tax revenue losses using only direct routes with optimal routes (direct or indirect) given bilateral withholding tax rates and the CIT in the residence country. Tax revenue losses are presented as percentage of the total tax revenues on direct routes and the share of the Netherlands as the first treaty in these total tax revenue losses. For example, Uganda potentially loses all its withholding tax income on dividend payments, all because of using the tax treaty with the Netherlands.

[212] Participation and portfolio dividends were combined in the network analysis; the lowest rate available in a tax treaty is assumed applicable to all dividend payments.

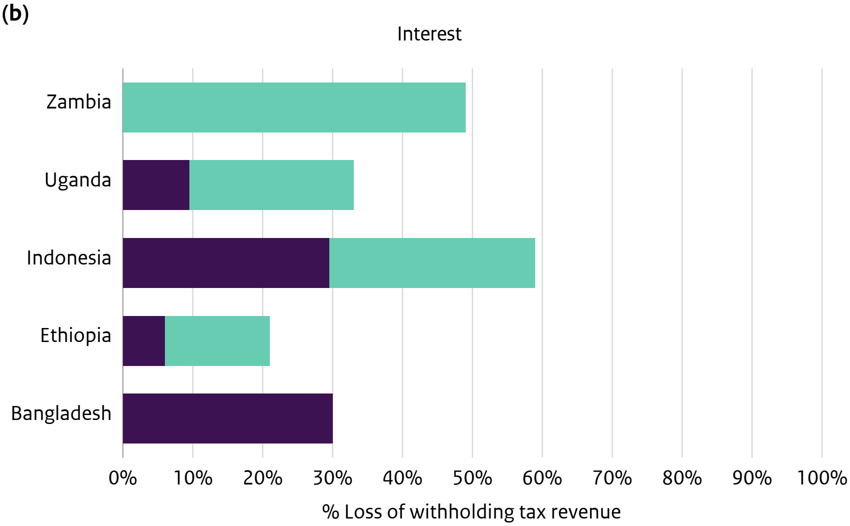
[213] India and Angola are examples of countries with a higher tax base for residence taxation. As their source taxation remains constant, they are net gainers of treaty shopping. Other developing countries also have higher residence taxation. The question is whether this higher tax is collected in practice. In its analysis, the CPB treats countries symmetrically as capital exporter (home) and importer (host country). In reality, most developing countries are net capital importers. Thus the symmetric treatment of FDI flows and repatriated profits may not be the most suitable assumption in this case (CPB Netherlands Bureau for Economic Policy Analysis, 2014b, p. 27)

Figure 6 *Baseline scenario: total withholding tax revenue lost due to treaty shopping (mint) and the share of losses via the Netherlands (purple) for dividends (a), interest (b) and royalties (c)*

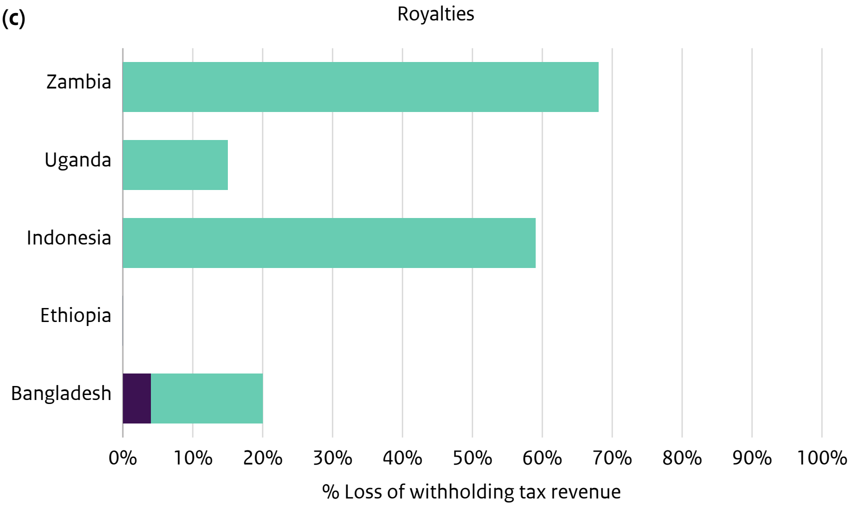
(a)



(b)



(c)



Source: (Netherlands Bureau for Economic Policy Analysis, 2020)

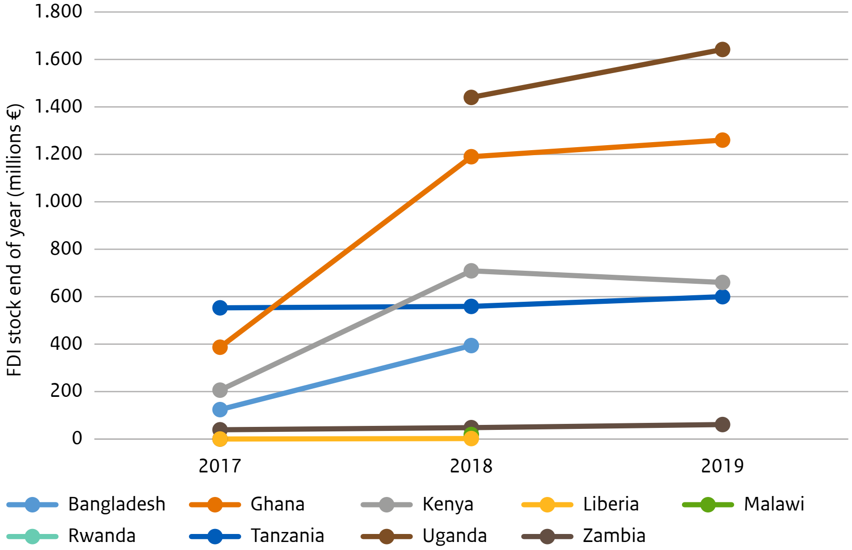
Figure 6 shows that the part played by the Netherlands is especially prominent for tax revenue losses on dividend payments from Uganda and Indonesia and for interest payments in Indonesia and Bangladesh. According to the analysis, Dutch tax treaties provide few opportunities for tax avoidance in the case of royalty payments. In the case of Uganda, the major part played by the Netherlands is attributable to the absence of a withholding tax on participation dividend payments. The Netherlands has a participation exemption and a large treaty network with reduced withholding tax rates, which means dividend payments can be further distributed to numerous countries without paying any tax on them (after application of the CIT in the source country).[214]

Foreign direct investment and incomes

Potential tax revenue losses estimated in the network analysis can be combined with actual data on FDI and dividend, interest and royalty payments derived from these investments. FDI data include direct investments from non-Dutch investors to developing countries that are routed through Dutch SPEs, thereby enjoying the benefits of the tax treaty negotiated by the Netherlands.

[214] It is assumed here that the condition of 50% participation in the affiliate company in the source country is met and there is no withholding tax on dividend payments from the parent company in the Netherlands to third countries.

Figure 7 *Graph of FDI stock of Dutch SPEs in Bangladesh, Ghana, Kenya, Liberia, Malawi, Rwanda, Tanzania, Uganda and Zambia*



Source: DNB. For reasons of confidentiality, data is missing for several data points.

The graph in Figure 7 shows that Dutch SPEs had a large FDI stock in Uganda of around €1.5 billion in the years 2018 and 2019.[215] Other countries with relatively large stocks are Ghana, Kenya and Tanzania, ranging from €0.6 billion to €1.2 billion in 2019. Note that the FDI from Dutch SPEs in all developing countries in 2018 was around €78 billion compared to around €3,246 billion worldwide[216], i.e. around 2.5% of assets owned by Dutch SPEs abroad were owned in developing countries.

Figure 8 shows the share of FDI originating from the Netherlands, as reported by the recipient country. It shows the importance of the Netherlands as the origin of FDI for six countries.[217] The Netherlands is especially important as a source of FDI for Uganda and Indonesia; for the remaining countries, the share is below 10% and of less importance. UNCTAD has reported that the Netherlands is the most important source of FDI in Africa, although two-thirds of this stock is located in three countries (Nigeria, Egypt and South Africa).[218]

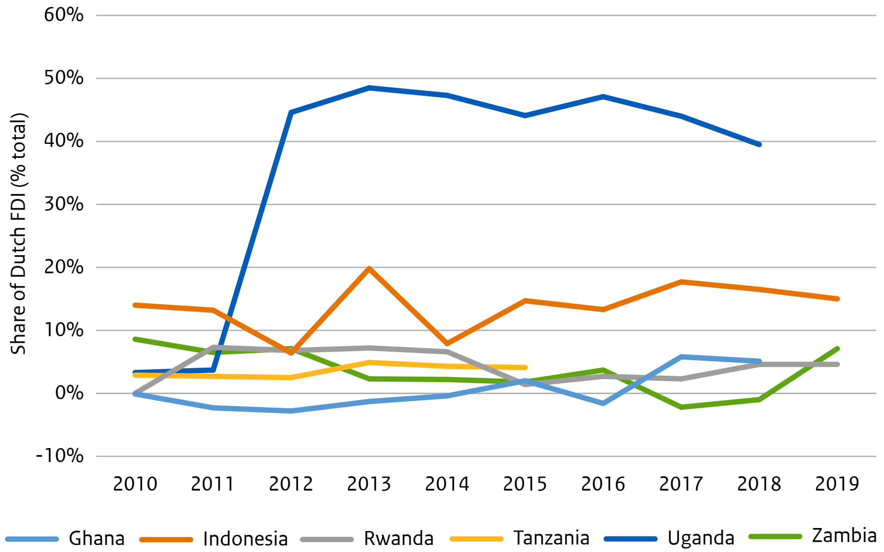
[215] Uganda reports incoming FDI from the Netherlands of around $3.5 billion in 2018. The difference with the €1.5 billion reported by the Netherlands could not be explained.

[216] DNB Table 15.3: geographic distribution of FDI by Dutch SPEs. https://statistiek.dnb.nl/downloads/index.aspx#/details/geografie-directe-investeringen-bfi-s/dataset/f8af558c-65eb-46e9-b019-62a3daa264a2/resource/e193c8dc-98f1-47d6-b00f-600de659b5a0.

[217] The number of countries included is limited by the availability of data in the IMF Coordinated Direct Investment Survey. Coordinated Direct Investment Survey - IMF Data

[218] (UNCTAD, 2020, pp. 28, 35)

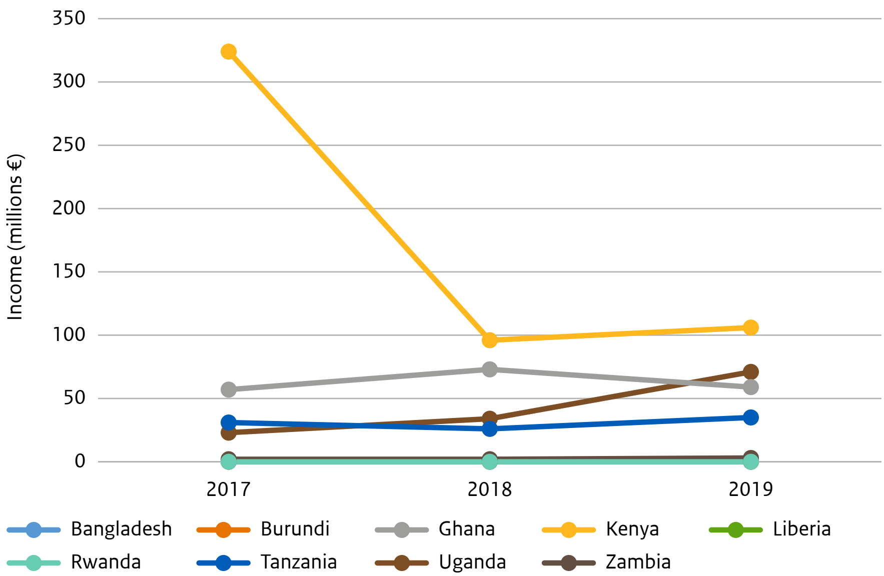
Figure 8 *Share of FDI from the Netherlands in inward FDI stock for Ghana, Indonesia, Rwanda, Tanzania, Uganda and Zambia*



Source: IMF Coordinated Direct Investment Survey

Income derived from these FDIs is shown in the graph in Figure 9, in which dividend, interest and royalty payments distributed to Dutch SPEs have been combined.

Figure 9 *Income of Dutch SPEs (million €) derived from FDI in Bangladesh, Burundi, Ghana, Kenya, Liberia, Rwanda, Tanzania, Uganda and Zambia*



Source: DNB. For reasons of confidentiality, data is missing for several data points.

Figure 9 shows that income flows received from developing countries are largest for Kenya, Uganda and Ghana, ranging between €25 million and €325 million annually.

Combining the percentage of tax revenues lost through the Netherlands and the actual investment data may give some indication of the order of magnitude of the results of treaty shopping. For example, FDI from Dutch SPEs in Uganda was around €1.6 billion in 2018. Given that the ratio of income to outstanding FDI for Dutch SPEs was around 5% in 2018, this implies that €80 million of generated income could be expected (which is close to the €70 million reported). Assuming this income consists entirely of dividends and all payments are derived from affiliates owned for at least 50% by the Dutch SPE, a 0% withholding tax rate applies. Compared to the domestic withholding tax rate on dividend of 15%, this would account for €12 million of annual withholding tax revenue losses for Uganda as an upper limit.

An earlier assessment by the MoF in 2011 mentioned in a report by SEO[219] concluded that the lowering of withholding taxes in tax treaties with the Netherlands led to annual tax revenues being €145 million lower for low and lower middle income developing countries. A more recent estimate by ActionAid in 2020 is an annual €1.8 billion withholding tax revenue loss for all developing countries because of the Dutch tax treaty network. However, by including higher-middle income countries with much larger FDI stocks (such as China and Brazil) the relative importance of sub-Saharan African countries becomes very small because of their small FDI stocks. Also, the ActionAid estimate was not corrected for countries with which the Netherlands does not have a tax treaty.[220]

There are other reasons for caution when interpreting these numbers: 1) they are not proof of tax avoidance because there may be legitimate reasons for routing the FDI through the Netherlands other than to avoid withholding tax; 2) in most cases, other tax treaties are in force between the developing country and third countries through which the investment could be routed and whose withholding tax rates may also be lower than domestic rates and 3) without information on the ultimate benefiting owner, it is unclear where the FDI originates and to whom the derived income belongs, therefore it is unclear what the amount of withholding taxes paid in the source country would be in a counterfactual situation.

Position of developing countries

The potential substantial tax revenue losses for developing countries revealed by analysis raise the question of why developing countries agree to relatively low or no withholding tax rates or even sign tax treaties at all.

Some developing countries appear willing to knowingly accept low withholding taxes, in order to signal their attractiveness to potential foreign investors. A tax treaty with the Netherlands could serve a useful purpose because it offers access not only to Dutch investors

[219] (SEO, 2013)

[220] (Ministry of Finance, 2013f, p. 9); (Van Dorp, M. & Verbraak, G., 2020, p. 12)

but also acts as a gateway to investors worldwide.[221] By incorporating themselves in the reliable conduit country of the Netherlands, these investors can explicitly use the extensive Dutch treaty network.[222]

Although it is unclear to what extent tax treaties are decisive in attracting FDI, the budgetary consequences of a potential decrease in tax revenues as a result of lower withholding tax rates can be significant for certain developing countries. Questions on the budgetary consequences for developing countries have been raised in the House of Representatives. In a letter to Parliament in 2017 it was stressed that it is not possible for the Netherlands to calculate the budgetary consequences for Kenya of its tax treaty with the Netherlands. On another occasion, the State Secretary for Finance said that the consequences of its tax treaty with the Netherlands for Ethiopia were expected to be neutral from, although without offering evidence for this claim.[223]

The competence of the negotiators of developing countries has also been questioned in the House of Representatives. Several questions asked about the quality of the negotiators acting for Malawi and questioned the democratic process and legitimacy of such unequal negotiations. In response, the Deputy Minister of Finance stated that was not his place to comment on the quality of the policy process and legitimacy in this specific case, Malawi.[224] An earlier letter to Parliament from 2012 described the general stance of the Netherlands towards developing countries as follows: developing countries should be able to decide themselves what is best for them and therefore do not need special treatment from the Netherlands; their fiscal autonomy should be respected, as they are able to inform themselves and decide upon their own priorities and wishes. Their tax negotiators are considered to be well educated and capable of formulating and defending their positions. Developing countries should be able to prepare themselves sufficiently for treaty negotiations because there are enough resources available to be sufficiently informed about the topic.[225]

Evidence from the country studies in Uganda, Ghana and Kenya conducted for this evaluation shows that tax treaties with the Netherlands are not always considered beneficial for these countries.

The governments of Uganda and Ghana have both stated they do not consider the tax treaty with the Netherlands beneficial.

[221] The empirical literature is not clear on this point, however. A study by (Beer, S & Loeprick, J., 2018) on the impact of double taxation treaties of developing countries with investment hubs failed to find evidence of this effect. On the other hand, (Hines, J., 2010) documents a 'distance effect', with countries closer to investment hubs (jurisdictions that typically have many tax treaties) receiving more investments. Similarly, (CPB Netherlands Bureau for Economic Policy Analysis, 2014a) documents an increase in FDI to countries that sign a DTT.

[222] (Ministry of Foreign Affairs, 2013a, pp. 2, 3) (Ministry of Finance, 2017b, p. 7).

[223] (Ministry of Finance, 2017b, p. 7); (Ministry of Finance, 2016g, pp. 14, 15); (Ministry of Foreign Affairs, 2013a, p. 5)

[224] (Ministry of Finance, 2016g, pp. 7, 12)

[225] (Ministry of Finance, 2012a, p. 6); (Ministry of Finance, 2012c, p. 10); (Ministry of Finance, 2011f, p. 22)

In its Domestic Revenue Mobilisation Strategy (DRMS) of October 2019, the Ugandan Ministry of Finance (MFPED) notes the risks involved with tax treaties. On page 61 it is stated that 'recommended interventions at the international level such as the BEPS actions go some way to addressing Uganda's international tax concerns, but do not fully cater for.... [the risks of] inequitable sharing of taxing rights under tax treaties. In particular: 'While tax treaties were initially contracted to assure foreign investors of a predictable and internationally accepted tax environment, and to facilitate offshore tax administration, the evidence suggests that these are not necessarily associated with increased investment from treaty partners. Instead, multinational companies from non-treaty partners routinely "locate" in certain jurisdictions simply to exploit treaty benefits, such as a lower withholding rate, undermining the income tax base'.

The DRMS therefore recommends renegotiating all existing tax treaties, especially those with the Netherlands and Mauritius, and refraining from signing new tax treaties. The focus should be on Tax Information Exchange Agreements (TIEA) and Mutual Assistance Procedures (MAP) to strengthen compliance efforts in Uganda. These conclusions are supported by the IMF and other sources as well.[226]

In 2013, the Netherlands issued a letter to 23 developing countries, including Uganda, offering to revise existing tax treaties in order to introduce anti-avoidance provision in accordance with BEPS standards. However, in 2014 Uganda suspended all tax treaty negotiations while they formulated a general tax treaty policy framework. In October and December 2019, the Netherlands proposed starting a second round of negotiations with Uganda, which eventually took place in March 2021. Further negotiations are necessary but have not yet been scheduled. The Netherlands has indicated its willingness to include higher withholding taxes.[227]

According to interviews held in the course of the Ghana country study, the government of Ghana believes that the 2008 tax treaty is not very beneficial for Ghana, mainly because of the low withholding tax rates and the arbitration provision. With respect to the latter, the UN Tax Committee mentions that it is never in the interests of a state to limit its sovereignty in tax matters through mandatory arbitration. Moreover, the difficulty of finding suitable arbitrators and developing countries' general lack of expertise with mutual agreement procedures would put them at a disadvantage when settling disputes with the more experienced developed countries. Ghana would have preferred to renegotiate the whole treaty, including these articles, but (as far as we have been able to confirm) Ghana did not formally express this to the Netherlands partners as a condition for revising the 2008 tax treaty. The draft protocol signed and ratified in 2017 was very short (a PPT clause, an amendment to the exchange of information article and a provision on assistance in tax collection) and so Ghana decided to accept it and to come back to the issue of a full renegotiation of the 2008 tax treaty in the future.

[226] (SEO, 2021c, pp. 23, 26)
[227] (SEO, 2021c, p. 26); (Ministry of Finance, 2020g, pp. 5, 6)

As of September 2020, Ghana had not made any formal request for renegotiations with the Netherlands.[228]

Whereas Kenya and the Netherlands signed their tax treaties in 2015, Kenya has so far not ratified its tax treaty. The official reason given was the failure from the Kenyan side to follow the correct internal ratification procedure. Presumably, this had to with the lack of a call for public participation, which is a prerequisite in the Kenyan ratification process.[229]

5.2 To what extent has the introduction of conditional withholding taxes countered tax avoidance by multinationals from developing countries via the Netherlands?

The previous section analysed to what extent the Dutch fiscal system provides opportunities for tax avoidance by MNEs from developing countries. Below and in section 5.3, the evidence on the extent to which two specific measures taken by the Dutch government are able to reduce or eliminate these possibilities is presented. The results of the scenario simulating the introduction by the Netherlands of a 21.7%[230] conditional withholding tax on dividend, interest and royalties to low-tax jurisdictions[231] are shown in Figure 10. The figure reveals to what extent treaty shopping using the Dutch tax treaty network continues or other countries become more attractive as a conduit for payments to low-tax jurisdictions.

228 (SEO, 2021a, p. 20)

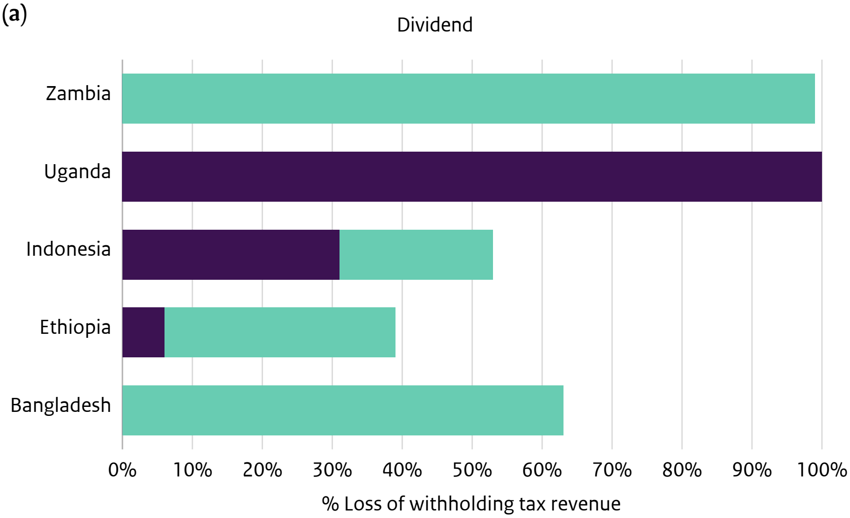
229 (SEO, 2021b, p. 24)

230 A 21.7% withholding tax rate was used in the analysis instead of the 25% eventually applied, because this had been agreed in a earlier study that applied the network analyses at a time when the rate was still undecided.

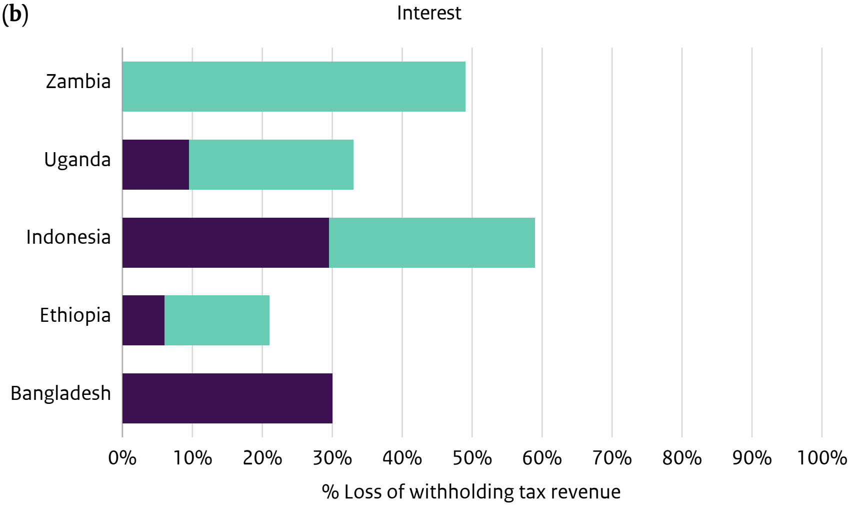
231 Low-tax jurisdictions included are the following 14 countries: US Virgin Islands, Bahamas, Bahrein, Bermuda, British Virgin Islands, Guernsey, Isle of Man, Jersey, Cayman Islands, Kuwait, Qatar, Saudi Arabia, Trinidad and Tobago, and the United Arab Emirates. The remaining seven countries on the list of low-tax jurisdictions could not be included in the analysis but are generally less important in facilitating tax avoidance. (CPB Netherlands Bureau for Economic Policy Analysis, 2019, pp. 10, 11)

Figure 10 *Total withholding tax revenue lost due to treaty shopping (mint) and the share of losses via the Netherlands (purple) after the introduction of a conditional withholding tax by the Netherlands for dividends (a), interest (b) and royalties (c)*

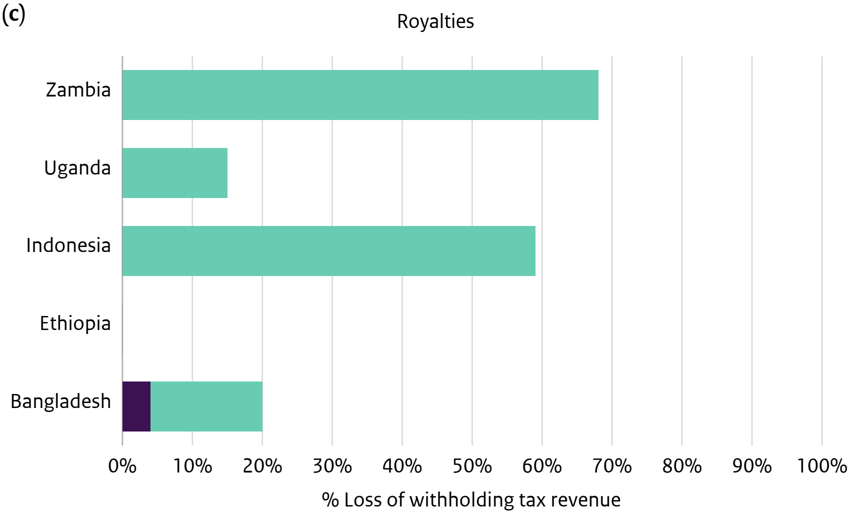
(a)



(b)



(c)



Source: (Netherlands Bureau for Economic Policy Analysis, 2020)

The Netherlands does not have a tax treaty with most low-tax jurisdictions and hence there are no reduced withholding tax rates. This means that the standard rate of 15% of the general dividend tax is applicable in the case of dividend payments, which is not attractive for optimal routes. The losses on dividend withholding tax revenue for developing countries are identical to those in the baseline scenario. However, the share of the Netherlands as the first intermediary country is slightly smaller.

The loss of withholding tax revenues for interest payments also remains the same as in the baseline scenario. However, there is an impact on the Netherlands; the part played by the Netherlands is taken over by other conduit countries if the Netherlands is no longer the first intermediary country. For two of the countries, Bangladesh and Uganda, the treaty with the Netherlands remains a channel for the tax revenue loss, even with the conditional withholding tax on the payments flowing through the Netherlands. For two other developing countries, Ethiopia and Indonesia, the Dutch share shrinks considerably. The substituting countries are Cyprus and France for Ethiopia, and the United Arab Emirates for Indonesia.

With respect to royalty payments, only the Dutch treaty with Bangladesh plays a marginal role in treaty shopping in the baseline scenario. The share of the Netherlands decreases, but the part the Netherlands plays is taken over by other countries, which means no change in withholding tax revenue losses in Bangladesh.[232]

[232] (Netherlands Bureau for Economic Policy Analysis, 2020, pp. 17, 18)

5.3 To what extent has the inclusion of anti-abuse clauses in bilateral tax treaties countered tax avoidance by multinationals from developing countries via the Netherlands?

Below, first the results of the second scenario applied to the network analysis are briefly discussed. Then the application of anti-abuse clauses in practice is examined, which provides evidence on the demonstrated or potential effectiveness of anti-abuse clauses in countering tax avoidance.

The second scenario analysed in the network analysis assumes a fully effective anti-abuse clause in tax treaties between developing countries and the Netherlands. This was included in the model by removing the Netherlands from all indirect tax routes, thereby assuming that all indirect routes consist of treaty shopping. As expected, the results show that the Netherlands is no longer used as a first station on tax avoidance routes. However, tax revenues of developing countries are expected to hardly change, indicating there are likely to be sufficient alternatives available for tax-avoiding foreign investors to reroute their FDI and income flows. The results with respect to tax revenue loss for developing countries are very similar to those in the baseline scenario, with the exception that the Netherlands is no longer used on tax optimising routes. Therefore, the figures have not been repeated here.

Clearly, a fully effective anti-abuse clause could potentially ensure the Netherlands is no longer used for tax avoidance purposes. However, the question is to what extent anti-abuse clauses are used in practice.

The first condition for effective anti-abuse clauses is for these clauses to be included in the tax treaty directly or via the MLI. As mentioned in section 5.1, in 2013 the Netherlands approached 23 developing countries with the offer to include anti-abuse clauses in bilateral treaties that were in force or were to be concluded. In 2015, the MoF reported that the initial reactions of these countries to this request were mostly very positive.[233] However, the actual response of developing countries to the offer differed significantly; in 2017, it was reported that agreement on the inclusion of these clauses had been reached with only six countries, three countries had not yet responded and negotiations were ongoing with the remainder. In 2021, it was reported that of the complete group of 23 countries, agreement had been reached with 14 on the inclusion of anti-abuse clauses, which are currently active in nine of these countries.[234]

Table 12 shows the status of tax treaties between the Netherlands and these 23 countries. Of the 23 countries, Mongolia and Kyrgyzstan have cancelled their tax treaty with the Netherlands and a further two (Kenya and Malawi) have not yet ratified their tax treaty with the Netherlands.

[233] (Ministry of Finance, 2015a, p. 84)
[234] (Ministry of Finance, 2021, pp. 7, 8)

Of the remaining 19 developing countries with a tax treaty with the Netherlands in force, nine[235] have anti-abuse clauses in place. For the remaining 10 countries, either bilateral negotiations are ongoing or they have not signed and/or ratified the MLI. In the case of Ukraine, the recently negotiated protocol has not been ratified and the treaty has not been brought under the MLI by the Netherlands.

235 Anti-abuse clauses in the bilateral treaty with Pakistan will enter into force via the MLI on 01-01-2022 with respect to withholding taxes and on 01-10-2021 with respect to other other taxes. Because this had already been agreed, this treaty was included in the nine mentioned.

Table 12 Status of anti-abuse clauses in tax treaties offered by the Netherlands to 23 developing countries.

Country name	Country Classification	Anti-abuse clause offered 2013	Agreement 2021	Tax treaty with the Netherlands	Tax treaty signed (year signed)	Tax treaty in force (year ratified)	MLI status	Entry into force	Brought under MLI by the Netherlands	Brought under MLI by treaty partner	Anti-abuse clauses in force
Bangladesh	LMIC	Yes	No	Yes	1993	1994			Yes	No	No
Egypt	LMIC	Yes	Yes	Yes	1999	2000	Ratified	jan-2021	Yes	Yes	Yes
Ethiopia	LIC	Yes	Yes	Yes	2012 (original); 2014 (protocol)	2014 (original); 2016 (protocol)			Yes	No	Yes
Georgia	UMIC	Yes	Yes	Yes	2002	2003	Ratified	jul-2019	Yes	Yes	Yes
Ghana	LMIC	Yes	Yes	Yes	2008 (original); 2017 (protocol)	2008 (original); 2017 (protocol)			Yes	No	Yes
India	LMIC	Yes	Yes	Yes	1988 (original); 2012 (protocol)	1989 (original); 2012 (protocol)	Ratified	okt-2019	Yes	Yes	Yes
Indonesia	LMIC	Yes	Yes	Yes	2002 (original); 2015 (protocol)	2003 (original); 2017 (protocol)	Ratified	aug-2020	Yes	Yes	Yes
Kenya	LMIC	Yes	Yes	Signed	2015	No	Signed		Yes	(Yes)	No
Kyrgyzstan	LMIC	Yes	No	No		No			No	No	No
Malawi	LIC	Yes	Yes	Signed	2015	No			Yes	No	No
Mongolia	LMIC	Yes	No	No	No	No			No	No	No

Table 12 Status of anti-abuse clauses in tax treaties offered by the Netherlands to 23 developing countries.

Country name	Country Classification	Anti-abuse clause offered 2013	Agreement 2021	Tax treaty with the Netherlands	Tax treaty signed (year signed)	Tax treaty in force (year ratified)	MLI status	Entry into force	Brought under MLI by the Netherlands	Brought under MLI by treaty partner	Anti-abuse clauses in force
Morocco	LMIC	Yes	Yes	Yes	1977	1987	Signed		Yes	(Yes)	No
Nigeria	LMIC	Yes	Yes	Yes	1991	1992	Signed		Yes	(Yes)	No
Pakistan	LMIC	Yes	Yes	Yes	1982	1982	Ratified	apr-2021	Yes	Yes	Yes
Phillipines	LMIC	Yes	No	Yes	1989	1991			Yes	No	No
Republic of Moldova	LMIC	Yes	No	Yes	2000	2001			Yes	No	No
Sri Lanka	UMIC	Yes	No	Yes	1982	1984			No	No	No
Uganda	LIC	Yes	No	Yes	2004	2006			Yes	No	No
Ukraine	LMIC	Yes	Yes	Yes	1995 (original); 2018 (protocol)	1996	Ratified	dec-2019	No	Yes	No
Uzbekistan	LMIC	Yes	Yes	Yes	2001 (original); 2017 (protocol)	2002 (original); 2017 (protocol)			Yes	No	Yes
Vietnam	LMIC	Yes	No	Yes	1995	1995			Yes	No	No
Zambia	LMIC	Yes	Yes	Yes	2015	2018			Yes	No	Yes
Zimbabwe	LMIC	Yes	No	Yes	1989	1991			Yes	No	No

Legend: LIC = low income country; LMIC = low middle income country; MLI = multilateral instrument;

Table 12 shows that anti-abuse clauses are currently in force in only nine treaties, which suggests that in this group of 23 countries there is little sense of the urgency of including anti-abuse clauses either bilaterally or through the MLI. In several letters to Parliament, it is opined that some developing countries had different priorities or were unsure whether they wished to include anti-abuse clauses. It was also mentioned that some developing countries wanted to include a (long) list of other topics in the negotiations in response to the Dutch offer, which could hinder progress. The Netherlands had responded to the reluctance of some developing countries by repeatedly bringing the need to include anti-abuse clauses in tax treaties to the attention of countries not responding to the request.[236]

Little information is available on the actual application of anti-abuse clauses. To date, the active anti-abuse clauses in nine bilateral tax treaties with developing countries have not been invoked. To date, none of the nine developing countries with active anti-abuse clauses in their bilateral tax treaties has informed the MoF that they have invoked these clauses. The other treaty party does have the option to invoke the clauses without informing the MoF, which could lead to a MAP)case/consultation if the individual or business entity liable to tax objects. If the case is not resolved this way, it may result in arbitrage, but so far this has not occurred either, though it is difficult to say whether this is due to the preventive effect of the clauses or whether developing countries lack the capacity to proceed to arbitrage. As the bilateral treaty with India including anti-abuse clauses came into force in 2012, but the other five treaties including anti-abuse clauses did not come into force until 2016–2018, it might be too early draw conclusions.

If tax authorities in developing countries suspect a potential harmful structure, they have the option to request additional information from the NTCA in the Netherlands. In order for information to be exchanged (either spontaneously or on request) with developing countries there has to be a legal basis and a working relationship with the tax authority in the developing country. For five of the 11 developing countries in our sample, there is no legal basis for exchange of information and with a further three countries no contact has been established with the tax authorities (despite multiple requests by the Netherlands). Of the remaining three, in the case of Liberia there is only a legal basis for exchange of information on request, but no information has been exchanged so far. The most recent exchange with Ghana was in 2018. This leaves only Uganda where information is exchanged.

An evaluation of DFIDs support to strengthen tax systems in developing countries showed that by 2016, only a few of the countries with the necessary legislation for exchange of information had begun requesting information from international partners. In Ghana, which had received capacity building support from the Global Forum since 2011, the tax revenue authority reported that its staff remained unsure of when it is appropriate to make an information request. The 2016 evaluation concluded that

[236] (Ministry of Foreign Affairs, 2017c, p. 25); (Ministry of Foreign Affairs, 2016b, p. 8); (House of Representatives, 2016b, p. 17); (House of Representatives, 2015b, p. 3); (Ministry of Finance, 2014f, p. 2); (Ministry of Finance, 2014e, p. 4); (House of Representatives, 2013, p. 18); (Ministry of Finance, 2015e, p. 17); (Ministry of Foreign Affairs, 2016c, p. 8); (House of Representatives, 2016b, p. 17)

If exchange of information is automatic, tax administrations in least developed countries may lack sufficient in-house capacity to be able to deal with the large volume of information they would receive.[237]

The Netherlands is legally required to exchange information if the substance requirements have not been met. It may spontaneously exchange information in other cases too, but there are no clear criteria for doing so. In practice, the Netherlands seems rarely to have exchanged information with developing countries. This does not necessarily mean that the developing country cannot invoke the anti-abuse clauses: if it does invoke them, a separate procedure for which the MoF is responsible is instigated.

During a parliamentary debate in 2017, it was stressed that although the responsibility to protect the tax base and prevent tax avoidance rests with the developing country, the Netherlands actively shares information with other countries if the interest and royalty payments seem to be disproportionately large given the substance of the parent company in the Netherlands.[238] These substance requirements are currently paying staff wages of at least €100,000 annually and the presence of an office space in the Netherlands for at least 24 months.[239] In the period 2014–2018, information was shared in 165 cases, 12 of which involved a developing country. If no legal basis exists for the exchange of information with the country concerned, the Netherlands takes no further action. Companies that act as a conduit for interest and royalty payments are obliged to report their compliance with substance requirements. Because of the magnitude of the remaining payments and structures involving third countries, only a small proportion of them are checked by the NTCA in the Netherlands, selected using a risk-based assessment.

5.4 Findings

The Netherlands generally adheres to the principles introduced in NFV 2011 for accommodating the priorities of developing countries during tax treaty negotiations. In the period evaluated from 2012 to 2020, non-zero withholding taxes were accepted, the definition of PE somewhat broadened and treaty partners were offered the option of including anti-abuse clauses in their bilateral treaties; initially, the offer was made directly to individual treaty partners but later it became possible to use the MLI.

The NFV 2011 did not include exemptions and definitions of concepts related to withholding taxes on dividend, interest and royalty payments. Exemptions can negate the effect of a relatively high withholding tax for certain types of interest payments and, in the case of royalty payments, so can a definition that excludes as much as possible.

[237] (ICAI, 2016, p. 22)
[238] (Ministry of Finance, 2017d, p. 15); (House of Representatives, 2017a, p. 13)
[239] As explained earlier, these substance requirements of annual staff wages of at least €100,000 and an office space that has been available for at least 24 months were additional to existing requirements pertaining, among other thingss, to board members' country of residence and the location where decisions are made.

Examination of all available negotiations with developing countries that took place during the period evaluated revealed that several of the standpoints of developing countries were not included in the final treaty because they were not accepted by the Netherlands. These preferences related to demands for higher withholding taxes, a broader definition of the PE and a withholding tax on technical services. Acceptance of the latter element has been included in the NFV 2020, though it has not been defined there. Nevertheless, it is expected that in future, such a tax will be included more often in tax treaties with developing countries.

The reason the Netherlands is not willing to accommodate all standpoints of developing countries is that a recent treaty between the developing country in question and a third developed country is generally used as a benchmark during treaty negotiations. Because the Netherlands strives for a level playing field for Dutch investors compared to other foreign (and local) investors in a treaty partner country, this benchmark treaty is considered to be the upper limit to an acceptable negotiation result. The timeline of withholding tax rates in Figures 5 and 21 shows a decreasing trend for all categories in all decades, implying that if another developed country is able to negotiate lower withholding taxes, the Netherlands is likely to follow with similar demands. Withholding tax rates in tax treaties between developing countries and the Netherlands are already lower than those in treaties with third countries.

The network analysis of the current Dutch tax treaty network revealed that the potential for treaty shopping via the Netherlands is significant and that in several cases the Netherlands was the most important channel for facilitating tax avoidance. The Netherlands is attractive for treaty shopping not only because of the relatively low withholding tax rates it has negotiated with developing countries, but also because its large treaty network gives it an advantage over countries with similar withholding tax rates with developing countries. This implies that using a benchmark treaty could in fact expand options for treaty shopping via the Dutch treaty network compared to the options available via the country of the benchmark treaty. Now that the NFV 2020 has somewhat reduced the importance of a benchmark treaty for determining withholding tax rates , it seems likely that the rates in tax treaties concluded between the Netherlands and developing countries will be higher.

Having also acknowledged the risk of treaty shopping, beginning in 2013 the Netherlands approached 23 developing countries and offered to include anti-abuse clauses in its tax treaties with them. The main reason that so far only nine developing countries have taken up this offer lies with these countries, as they have either not responded to the requests by the Netherlands or have not signed or ratified the MLI. Bilateral negotiations offer the opportunity to negotiate other aspects of a tax treaty too (e.g. the withholding tax rates and the definition of the PE). The Netherlands showed willingness to expand the scope of negotiations from the inclusion of anti-abuse clauses to other aspects of the treaty but developing countries seem reluctant to do so; negotiations are ongoing with several countries, however.

The anti-abuse clauses active in nine tax treaties with developing countries have not been invoked so far.

Whether this is because they are effective or whether the reason is that developing countries lack the capacity to enforce them is unknown. Information exchange with developing countries is very limited, due to the lack of a legal basis or to the failure of the Netherlands to establish contact with their tax authorities, despite several attempts.

Scenario analyses of the application of a conditional withholding tax on dividend, interest and royalties applied by the Netherlands to low-tax jurisdictions and the full effectiveness of anti-abuse clauses revealed that the part played by the Netherlands as a tax avoidance conduit is not unique and could relatively easily be taken over by other countries.

6

Capacity development

This chapter deals with sub-goal 2 of the PCD agenda, which aims to improve tax policies and tax collection in developing countries by providing capacity development (CD). CD is pursued through bilateral and multilateral activities financed by the MFA. Two research questions are addressed in this chapter.

Which CD activities are supported by the Netherlands and to what extent do they address the priorities of developing countries?

This research question has been broken down into the following sub-questions:
- Which CD activities were supported by the Netherlands during the period evaluated and what was their objective?
- Which CD needs did the Netherlands identify in developing countries, and how did it do so?
- Is there an (objective) standard for measuring the quality of a country's tax system? If so, what are the strengths and weaknesses of the tax systems in the case study countries?
- In what way did interventions financed by the Netherlands fit into the recipient country's tax system? Did they respond to that country's most urgent needs?
- To what extent has the Netherlands succeeded in improving donor coordination and coherence through the ATI and by guiding multilateral trust funds?

To what extent have CD activities supported by the Netherlands achieved the implementation of OECD/G20 BEPS standards and the negotiation and enforcement of tax treaties in developing countries?

This question has been broken down into the following sub-questions:
- To what extent did CD contribute to implementation of OECD BEPS actions by developing countries?
- To what extent did CD contribute to the recipient country having an informed negotiation stance during negotiations about and the enforcement of anti-abuse clauses in tax treaties with the Netherlands?

6.1 Which CD activities were supported by the Netherlands and to what extent did they address the needs of developing countries?

This chapter starts by briefly describing the CD support the Netherlands provided to developing countries during the period evaluated and the rationale behind it: which countries were supported with which activities and why. This is followed by an elaboration on the process of identifying those needs, which are subsequently tested by comparing them with CD needs, using tools developed to assist in this process. Finally, the influence of the Netherlands in steering multilateral funds to contribute to the identified needs is discussed.

6.1.1 Which activities were supported by the Netherlands during the period evaluated and what was their objective?

Capacity development supported by the Netherlands
Several letter to Parliament in 2013 elaborated on the Dutch CD aimed at strengthening tax authorities in developing countries. They note that support is provided to contribute to an increase in tax revenues of developing country governments and is provided bilaterally by experts from the MoF and NTCA[240], through consultants (IBFD), the Dutch Association of Municipalities (VNG) and multilaterally. Multilateral support is provided through ATAF,[241] the OECD, the World Bank, the UN and the IMF.[242]

Capacity Development

Refers to the process by which individuals and/or organisations obtain, improve, and retain the skills, knowledge, tools, equipment and other resources needed to do their jobs competently. Capacity development is therefore the combined results of technical assistance, training, conferences and other knowledge-sharing activities. In the past, this was often referred to as 'capacity building'.

The programmes through which capacity development was provided during the period evaluated are listed below for bilateral and multilateral support separately. Details on the activities conducted under most of these programmes are given in annex 6.[243] Not only the three case study countries but also Ethiopia, Indonesia and Zambia have been included,[244] as they were the only countries in our sample that had adopted anti-abuse clauses in their double taxation agreement with the Netherlands (it will be recalled that this study aimed to evaluate the effectiveness of these clauses).[245]

Bilateral capacity development
From 2012–2020, the Netherlands supported nine bilateral CD programmes relating to taxation (a tenth was started in 2020), all of which had the same overarching goal of improving DRM. In total, training was provided to 23 unique countries. Assistance was provided via three main organisations: MoF, with NTCA as its implementing agency, IBFD

[240] The MFA pays for travel and accommodation costs while the MoF pays the salaries for personnel on short missions.
[241] ATAF, an organisation of African tax authorities, became an official international organisation in 2012 and receives financial support from the Netherlands, which is also advising on the establishment of a CD unit to ensure ATAF will ultimately itself be able to provide.
[242] (Ministry of Foreign Affairs & Ministry of Finance, 2013a, pp. 1, 2); (Ministry of Finance, 2013e, p. 5); (House of Representatives, 2013, p. 21)
[243] The list of interventions that took place under these programmes may not be complete due to missing documentation
[244] With the exception of the assistance provided by the IBFD, details are also given on the activities undertaken in Malawi, Liberia, Rwanda and Tanzania for this programme.
[245] More recently, anti-abuse clauses in tax treaties with more countries have come into force, as explained in 5.1.

and VNG. Assistance was also provided through the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ), a consortium of Dutch NGOs and Capabuild Foundation.
The CD activities provided by the MoF and NTCA and the IBFD aimed to improve DRM mostly by drafting understandable, practical and manageable tax and customs legislation, improving fiscal policy and improving the efficiency and effectiveness of policy and regulation by tax and customs administrations. Furthermore, when requested, the IBFD activities also addressed the implementation of BEPS standards and negotiating and maintaining tax treaties, including the implementation and application of anti-abuse clauses. The bilateral activities provided by VNG had a less general goal and were country/region specific. The VNG programme in Ghana aimed to achieve a sustainable increase in local tax revenue to finance improved basic services for the citizens, whereas the programme in the Palestinian Authority was aimed at reforming the property tax.

The GIZ programme also had country-specific focus on Ghana, aiming to broaden its revenue base at central and decentral level. The Capabuild programme was to strengthen tax academies, whereas a programme by a consortium of Dutch NGOs (as part of the larger Dialogue and Dissent programme) focused less on tax administration itself and more on strengthening the capacity of civil society organisations to lobby and influence and improve their political space.

The NTCA provided a total of 24 activities to the six countries mentioned above (Ghana, Kenya, Uganda, Ethiopia, Indonesia and Zambia), 20 of which were linked to domestic taxation and four to international taxation. For three of the interventions a link to BEPS could be made. The IBFD provided a total of 38 activities to nine partner countries, only one of which was linked to domestic taxation, the remaining 37 concerned international taxation. For 11 of the interventions a link to BEPS could be made and 12 interventions had to do with treaty enforcement and/or negotiations. The activities provided by VNG, a consortium of Dutch NGOs, GIZ and Capabuild Foundation had a domestic focus.

Three of the seven activities provided by the consortium of Dutch NGOs with respect to improved financial and tax systems related to international taxation. All three had to do with treaty enforcement and/or negotiations. The programmes through which bilateral CD was provided are listed in Table 13.[246]

Table 13 The bilateral taxation-related CD programmes supported by the Netherlands in the period 2012-2020

Name	Implementing organisation	Period	Budget	Recipient countries
Strengthening tax systems	MoF and NTCA	2012-2016	€1.1 million	Burundi, Ethiopia, Ghana, Indonesia, Kenya, Liberia, Malawi, Ukraine, Rwanda, Tanzania, Uganda and Zambia

246 See annex 5 for an elaboration on how the distinction between activities with a domestic and international focus and further subdivisions were made

Table 13 The bilateral taxation-related CD programmes supported by the Netherlands in the period 2012-2020				
Name	**Implementing organisation**	**Period**	**Budget**	**Recipient countries**
Promoting DRM in partner countries	MoF and NTCA	2017-2020	€2 million	Bangladesh, Ethiopia, Ghana, Indonesia, Kenya, Rwanda and Uganda
Capacity building in taxation	IBFD	2013-2015	€1.4 million	Ethiopia, Ghana, Kenya, Malawi, Ukraine, Palestinian Authority, Rwanda, Tanzania and Zambia
Capacity building in taxation	IBFD	2016-2020	€3 million	Bangladesh, Ethiopia, Ghana, Indonesia, Kenya, Malawi, Rwanda, Tanzania, Uganda and Zambia
Domestic resource mobilisation	IBFD	2020-2025	€2.75 million	To be determined
Local tax communities in Ghana	VNG/Maple Consult	2017-2022	€4 million	Ghana
Decentralisation of property tax	VNG	2018-2021	€2 million	Palestinian Authority
Improved financial and tax systems	Both Ends, SOMO, ActionAid, Clean Clothes Campaign, TNI and Milieudefensie	2015-2021	€10 million	Bolivia, Ghana, Guatemala, Honduras, India, Indonesia, Kenya, Liberia, Mozambique, Nicaragua, Senegal, Uganda, Zambia and Zimbabwe
Support to the Ghana Revenue authority	GIZ	2014-2017	€2 million	Ghana
Capabuild Foundation	Capabuild Foundation	2019-2022	€0.5 million	Ghana, Indonesia and Rwanda.

Multilateral capacity development
Since 2012, the MFA has also contributed financially to 14 multilateral programmes not focused on a specific country or training area. Based on the MFA Assessment Memorandums, most programmes describe improving DRM or mention 'capacity building' as the main goal. The multilateral CD has been provided mainly through IMF, ATAF, OECD, UN and World Bank programmes, as described below.

The activities provided through the IMF Topical Trust Funds were mostly aimed at improving revenue collection, developing sound financial systems and building institutional capacity for, among other things, managing natural resources. This was done mostly through IMF's specialised expertise and ability to integrate policy, administrative and legislative dimensions.

The activities provided by ATAF were focused on strengthening the capacity and knowledge of developing countries in Africa to enhance economic growth, increase the state's accountability to its citizens and to combat tax avoidance. The ATAF aimed to achieve these goals through developing a sustainable and independent African union of tax authorities, driving the knowledge hub on African tax matters and informing and influencing the regional and global dialogue, including the BEPS project, as the African voice on taxation matters. The OECD BEPS and TIWB supported activities that were aimed at enhancing DRM to ensure that multinationals would be taxed fairly and effectively and developing countries participate effectively in BEPS standard setting and policy solutions. This was done mostly in a practical, hands-on manner through the TIWB programme with peer-to-peer expert deployments providing assistance on real audit cases, focusing on international tax issues and general audit practices. The OECD Tax and Development and UN–DESA programmes also focused on enhancing DRM, but aimed to reach this goal not by building administrative capacity but though participation in committees, building regional networks and translating key UN manuals into French.

Most of the activities under the multilateral programmes in the six selected partner countries had a focus on domestic taxation but as this link could not be made for all activities, the numbers presented here are an approximation.[247] Even though the IMF Topical Trust Funds included assistance on international tax matters, all the activities that took place in the partner countries focused on domestic taxation. However, some interventions of the other programmes did relate to international taxation. Of the 37 activities ATAF provided to the six partner countries, ten related to international taxation. For four of the interventions a link to BEPS could be made and five other interventions had to do with treaty enforcement and/or negotiations. For the OECD BEPS and TIWB support, four of the 13 interventions provided in the six partner countries related to international taxation. All four trainings could be linked to BEPS. Eight of the nine interventions under the World Bank programme were aimed at domestic taxation. No link could be made to BEPS or treaty negotiations and/or enforcement.

Table 14 Multilateral taxation-related CD programmes supported by the Netherlands in the period 2012-2020

Name	Implementing Organisation	Period	Dutch contribution	goal
Support to topical trust funds	IMF	2009-2013	€4 million	Addressing shortcomings that contribute to poor revenue collection and CD to manage natural resources.
Revenue mobilisation trust fund	IMF	2016-2023	€4.6 million	Establishing well-designed and administered tax systems that generate sustainable revenue to pay for essential public services.

[247] See annex 5 for details on how the distinction between activities with a domestic and international focus and further subdivisions were made

Table 14 Multilateral taxation-related CD programmes supported by the Netherlands in the period 2012-2020

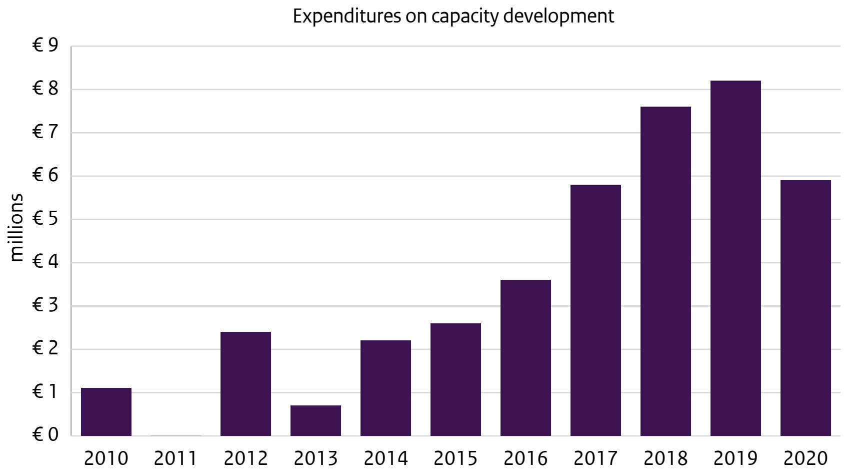
Name	Implementing Organisation	Period	Dutch contribution	goal
Managing natural resource wealth trust fund phase II	IMF	2016-2022	€4.084 million	Enabling countries to derive the maximum benefit from their extractives to facilitate their economic development and poverty reduction goals.
Support to AFRITACs	IMF	2009-2013	€4 million	Achieving sound public resource management, well-developed financial systems and high-quality macroeconomic statistics.
AFRITAC core	IMF	2015-2019	€7 million	Achieving sound public resource management, well-developed financial systems and high-quality macroeconomic statistics.
TADAT tax diagnostics	IMF	2014-2018	€1 million	Providing an independent, standardised, evidence-based, quality-assured, all-round assessment of the performance of a tax administration system.
Tax administration diagnostic assessment	IMF	2019-2024	€1.7 million	Providing an independent, standardised, evidence-based, quality-assured, all-round assessment of the performance of a tax administration system.
Support to ATAF	South African Revenue Service	2011-2014	€0.25 million	Building efficient and effective tax administrations in Africa.
Support to ATAF	ATAF executive secretary	2014-2015	€0.25 million	CD for tax authorities in developing countries and combating tax avoidance.
Support to ATAF	ATAF	2017-2020	€0.9 million	Strengthening African tax authorities' capability in cross-border tax issues and international agreements.
OECD tax and development	OECD	2015-2017	€2.2 million	Improving the environment for developing countries to collect appropriate and adequate tax revenues and to build effective states.

Table 14 Multilateral taxation-related CD programmes supported by the Netherlands in the period 2012-2020

Name	Implementing Organisation	Period	Dutch contribution	goal
OECD BEPS and TIWB support	OECD	2017-2020	€1 million	Improving DRM by improving the capacity to tax multinational companies fairly and effectively.
Capacity building in DRM	UN–DESA	2017-2019	€0.5 million	Reducing BEPS and improving DRM.
Global tax programme	World Bank	2018-2022	€8.8 million	Strengthening tax policy and administrative capacity.

Total expenditures on the 24 CD programmes financed by the MFA[248] in the period 2010–2020 was around €40 million (see Figure 11). Thus the average annual expenditures are around €4 million, which is only 0.001% of the total ODA budget of the Netherlands, which in 2019 was around €4.3 billion.

Figure 11 *Annual expenditures (in million €) by the Netherlands on mobilising domestic revenue in developing countries 2010–2020.*



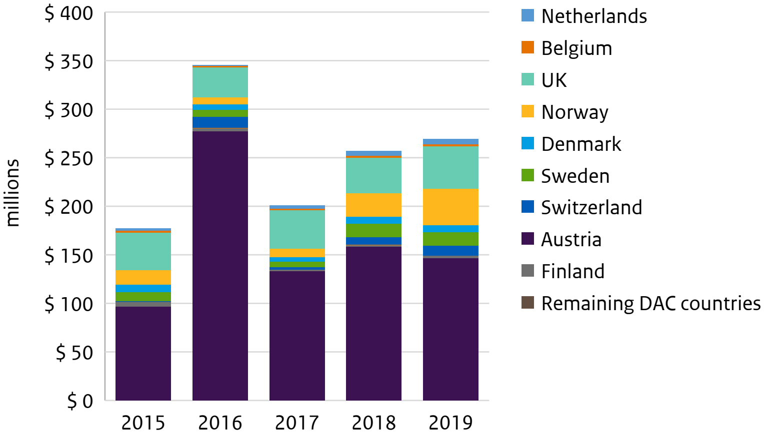
Multilateral contributions were around €21.5 million of the total MFA budget and were mostly part of larger trust funds which operate relatively large programmes in multiple countries. Bilateral activities accounted for around €13 million, which was spent on ten programmes in 23 countries. Average expenditures per country per year were therefore around €50,000.

[248] Based on activities tagged 'domestic revenue mobilisation' plus a percentage of other activities which contribute towards this goal. This share is agreed by MFA's policy department DDE and the financial department FEZ.

The remaining budget was spent on a consortium of Dutch NGOs, as part of MFA's Dialogue and Dissent programme, to fortify the voice of civil society in developing countries on matters of taxation.

In 2015, with the Netherlands as one of the initiators, the Addis Tax Initiative was launched. It included a pledge by 18 donors (including the Netherlands) to have doubled expenditures on CD no later than 2020. The 2019 the Dutch Government's annual report on policy coherence in development mentions that $8 million was spent on CD in that year compared to $3.2 million in 2015, showing that the Netherlands had met the pledge it made during the ATI.[249] On average, in the period 2015–2019, expenditures by the Netherlands accounted for 1.5% of total expenditures on domestic resource mobilisation (DRM) by all OECD DAC countries, which makes the Netherlands a relatively small donor; of the listed countries, only Belgium, Austria and Finland provided less aid on DRM in the period 2015–2019, as shown in Figure 12. Relative to the GDP of the listed countries, Dutch contributions on DRM in 2019 were also relatively small (not shown).

Figure 12 Annual expenditures by OECD DAC countries on domestic revenue mobilisation in 2015–2019, in million $[250]



[249] (Ministry of Foreign Affairs, 2018b, p. 2); (Ministry of Foreign Affairs, 2018c); (Ministry of Foreign Affairs, 2020b, p. 1)

[250] Due to differences in the MFA's internal financial system and data reported to the OECD DAC, some differences occur in annual expenditures by the Netherlands, even after correcting for the euro – US dollar exchange rate.

6.1.2 Which CD needs did the Netherlands identify in developing countries, and how did it do so?

When identifying CD needs in developing countries, the Netherlands distinguished between the countries to which assistance is offered and the type of assistance offered. The goal of the Dutch government, as stated in a letter to Parliament in 2013, was to provide at least five developing countries with bilateral support for their tax authority and customs services, the latter due to the relative importance of customs duties for developing countries. Support would be demand-driven and aimed at tax legislation, implementation and enforcement related to both domestic and international taxation issues. Further criteria for determining where and what type of CD support would be provided are mentioned below.[251] A question in the House of Representatives in 2015 asked why some of the poorest developing countries with which the Netherlands had concluded a tax treaty had not received CD.

In response, the State Secretary for Finance noted that although there was contact with all 23 developing countries with which the Netherlands had a tax treaty, not all of them were considered relevant for receiving CD on the basis of the quality of their tax authority, the size of the economy and the complexity of the type of companies present in the country.[252]

CD was aimed at creating an effective tax system, as well as supporting domestic and local tax authorities, partly based on implementation of the new BEPS standards. A letter to Parliament in anticipation of the launch of the ATI stated that CD was aimed at implementation of the BEPS standards, international initiatives on exchange of information and South–South cooperation. Countries that showed willingness to reform their tax systems were eligible for help.[253]

During parliamentary debates in 2013 and 2017, the Minister for Foreign Trade and Development Cooperation noted that because taxation in developing countries was based more on extraction of natural resources and less on revenues, they were vulnerable to corruption and fraud and therefore CD to increase tax revenues should be accompanied by assistance to improve public finance management. Other specific needs mentioned were insufficient expertise in developing countries to challenge the transfer pricing practices of multinationals.[254]

CD also took into account the topics on which the Dutch tax authority and IBFD have specific expertise. The tax authority assisted with audits that included transfer pricing issues, whereas thanks to its specific expertise on tax treaties, IBDF could advise developing countries on the prevention of treaty abuse.[255]

[251] (Ministry of Foreign Affairs & Ministry of Finance, 2013a, pp. 1, 2)
[252] (House of Representatives, 2015a, pp. 19, 20) (Ministry of Foreign Affairs & Ministry of Finance, 2013a, pp. 1, 2) (Ministry of Foreign Affairs & Ministry of Finance, 2013a, pp. 1, 2)(Ministry of Foreign Affairs & Ministry of Finance, 2013a, pp. 1, 2)
[253] (Ministry of Foreign Affairs & Ministry of Finance, 2015a, p. 5); (Ministry of Finance, 2015f, p. 2)
[254] (Ministry of Foreign Affairs, 2017e, p. 4); (Ministry of Foreign Affairs, 2013e, p. 3)
[255] (Ministry of Foreign Affairs, 2017b, pp. 7, 8)

An important condition of the bilateral CD programmes was that CD should be demand-driven. The idea behind this is that demand-driven programmes are more effective, as the recipient authorities will have ownership and a true interest as well as the capacity to receive CD.[256]

In practice, these criteria were not all explicitly taken into account. The process of identifying CD activities was essentially narrowed to two criteria: whether a request should be addressed bilaterally or multilaterally, based on the expertise of the NTCA and IBFD and 2) whether the country was on the list of partner countries.

The identification process started with the letters sent by the MFA to Dutch embassies in partner countries to inform the tax authorities of the existence of the CD programmes and inviting them to submit requests for CD.

The MFA applied approximately the following process:[257]

- First, a letter was sent to Dutch embassies in partner countries to find out whether the local revenue authorities were interested.
- Whenever a request came in, the MFA would assess it together with the NTCA and the IBFD through either a scoping mission to the partner country and/or a study visit by the partner country to the Netherlands in order to assess the demand for CD. Afterwards, the MFA and MoF compiled a list of the expertise requested by the partner country.
- Often during this process, efforts were made to consult with other bilateral and multilateral donors on whether they were active in this area of expertise.
  - If other donors such as the WB or the IMF already had similar activities ongoing, MFA policy was (and is) not to approve the request, particularly if it concerns topics with which these multilateral organisations have more experience. This was, however, not always done systematically. In at least one case, this led to overlap in the area of expertise with another donor.[258]
  - In this process, it was often checked with other bilateral donors to see whether the Netherlands was the only one (or one of only a few) that had the relevant expertise. However, this was not done systematically.
- It was also verified whether the request fitted in with Dutch bilateral expertise (NTCA/VNG/IBFD) and country and budget constraints.
  - The covenant between the MFA and MoF formally allowed assistance (up to 15% of programme resources) to be provided to countries other than the 15 original partner countries.
- As a next step, in some cases a second scoping mission was executed in order to set up a specific CD action plan, which in some cases diverged from the original plan.

[256] (SEO, 2016, p. 9)
[257] (SEO, 2021, pp. 89, 92)
[258] (SEO, 2021, p. 93)

In the original letters sent to the Dutch embassies, the Dutch MFA provided the partner countries *ex ante* with a list of examples of topics on which CD could be offered. This list was partly determined by NTCA and IBFD expertise and human resource capacity and by the Dutch government's views on what kind of CD developing countries were expected to need. For example, whilst the list included many topics relating to customs, the programmes formally only allowed a maximum of 25% of the resources to be spent on customs-related activities because, according to the MFA, revenue generation would increasingly need to come from taxes rather than customs administration, in view of increasing globalisation and trade liberalisation. Therefore, in practice, it could be said that this process was not entirely demand-driven in the sense that the choice of possible topics was mainly limited to the expertise of the implementing partners. It was demand-driven in the sense that it was based on requests for support from the recipient country.[259]

Determining the relevance of bilateral activities
Based on stakeholder interviews, it appears that neither the Dutch MFA nor NTCA explicitly assessed the relevance of some specific CD requests for the country in question.

An MFA representative noted that relevance is assessed in part during scoping missions but acknowledged that when a country asks for specific training or CD in a certain area, whether a country actually needs it is not always assessed (or is not assessed immediately). NTCA interviewees said that they might try to assess relevance by using information from the country itself, their own knowledge of the country or using information from development partners. An MFA representative also noted that, in general, the Tax Administration Diagnostic Assessment Tool (TADAT) reports (see next section for more on TADAT) were consulted to determine the relevance of a CD request. As a contributor to the TADAT programme the Netherlands has access to all TADAT reports (via the secretariat) and NTCA staff members have participated in TADAT missions. TADAT is not used systematically as a means of assessment, however. Nevertheless, Dutch stakeholders did mention some minor examples of cases when ongoing CD had been halted or requests for CD had not been followed up as a result of the TADAT assessment.[260]

IBFD, however, appears to have made some effort to assess shortcomings. According to IBFD stakeholders, when designing a suitable training programme for a developing country that had requested CD, that country's initial capacity was assessed. This included an assessment of its tax treaties and treaty policy, as well as the link with domestic law and the potential accompanying risks of tax avoidance. One interviewee from the IBFD stated that CD needs were also identified as part of post-training surveys as well as during informal and formal meetings.

Stakeholder interviews also revealed that donor coordination left much room for improvement in coordination and cooperation. For example, the NTCA programme in Ghana on Transfer Pricing did not appear to be coordinated with similar CD funded by the IMF and the Norwegian government.

[259] (SEO, 2021, p. 90)
[260] (SEO, 2021, pp. 93, 97)

Similarly, interviews with VNG, GIZ and the Netherlands embassy in Ghana revealed that there were donor coordination issues between the Dutch bilateral programme on property taxes (implemented by VNG) and the German bilateral programme implemented by GIZ that was active in a similar area in Ghana.[261]

Because the process of requesting bilateral CD was mainly demand-driven and the requests were not systematically assessed, no lists of the systematic CD needs identified were available for our evaluation.

An ICAI evaluation of DFID's capacity building support on international tax, which was designed to be demand-led, shows demand from partner countries has been mixed. DFID and the OECD have responded to this mixed demand by raising awareness of BEPS in order to persuade African leaders of the benefits of implementing the new BEPS standards. According to programme documentation, DFID partner countries took up the offer of support on transfer pricing. However, instead, requests for assistance on exchange of information came mainly from more advanced countries, such as Jamaica and Colombia, which are not priority countries for DFID.[262]

6.1.3 Is there an (objective) standard for measuring the quality of a country's tax system? If so, what are the strengths and weaknesses of the tax systems in the case study countries?

A range of instruments and resources exists for examining the quality, maturity or performance of tax systems. The most frequently used instruments focus specifically on assessing the performance of tax administrations. There are far fewer tools for assessing tax policy issues, since these are interdependent with a country's socio-economic and political priorities or macro-environmental factors and therefore inherently more difficult to identify. Notwithstanding, recently a Tax Policy Assessment Framework (TPAF) has been launched by IMF and the World Bank to do so. The TPAF is currently, however, only limited to VAT and therefore is not discussed further here.[263] An overview of the existing tools can be found in annex 6.[264]

There are multiple data collecting and reporting tools in place. Four important tools are the ATAF/African Tax Outlook Project, ATI Indicators, the International Survey on Revenue Administration (ISORA) and the USAID Collecting Taxes Database (CTD). These tools are designed to collect and compare cross-country information for tax administrations and are especially important for the diagnostic assessment, monitoring and evaluation of tax reforms.

[261] (SEO, 2021, p. 93)
[262] (ICAI, 2016, pp. 5, 22)
[263] (SEO, 2021, p. 94)
[264] (OECD, 2019a, p. 32)

The data from these tools can be used for producing comprehensive reports providing internationally comparative data on aspects of tax systems and their administration.[265] These tools thus not merely assess the strengths and weaknesses of tax administrations but also generate data that can serve as input for performance measurement.

There are also multiple tools are in place to analytically assess revenue administrations. They cover most of the tax reform phases and are designed to assess different components of tax systems. A few important tools are described below.

The OECD, cooperating with other organisations, has developed a number of tools that can potentially be used as a standard for measuring the quality of the tax systems in advanced and emerging countries. The performance indicators used by the OECD are based on data from ISORA.[266]

- The OECD has published the OECD Tax Administration Comparative Information Series biennially since 2004. This series examines the fundamental elements of modern tax administration systems and uses data, analyses and examples to highlight key trends, recent innovations and examples of good practices and performance measure indicators. The goal of this series is to share information, facilitate dialogue and identify opportunities to improve and design the administration systems of the 58 tax administrations for which comparative data is provided.
- The OECD also has maturity models: self-assessment instruments of a descriptive and qualitative nature that aim to elucidate specific functional, strategic or organisational areas of a tax administration.
- The Tax Administration Diagnostic Assessment Tool (TADAT) was originally developed in 2013 and is aimed at helping countries to strengthen their tax systems to better mobilise the domestic revenue needed to provide essential goods and services to their citizens in a sustainable and economically sound way.[267] The diagnostic tool looks at 28 indicators across nine so-called performance outcome areas (POAs), ranging from the integrity of the registered taxpayer base, to timely payment of taxes and issues of accountability and transparency. Apart from covering most tax administration functions, processes and institutions, the tool focuses on the performance of the domestic taxes. The TADAT assessments are thus limited to the efficiency of tax administrations and pay no attention to legislation related to international taxation issues.
- The BEPS tool (financially supported by the Netherlands) is to assist developing countries to clarify whether joining the IFB is desirable or whether they need more time to make the necessary preparations.

Although there can never be a truly ‘objective’ standard, the OECD maturity models and the TADAT diagnostic tool can be considered useful standards. Both include a set of measurable elements (criteria, indicators, performance area) deemed to be instrumental for effective and efficient revenue administration and revenue mobilisation.

[265] (Lindseth, F., 2020)
[266] (SEO, 2021, p. 95)
[267] https://www.tadat.org/designDecisionsDocument

Whereas the maturity models tend towards introspection and are mainly intended for advanced and emerging countries to self-evaluate their organisations and operations, TADAT focuses on a participatory yet external scrutiny of the tax administration system and provides a standard assessment of tax administration gaps in developing countries.[268] Furthermore, TADAT assessments have been carried out for most developing countries and, according to the TADAT secretariat itself, are widely used by the IMF, World Bank and a range of development partners for identifying, coordinating and prioritising CD in the area of DRM. [269]

During stakeholder interviews, TADAT was mentioned often as the objective standard against which tax administration performance is best assessed. Even though this tool has not been used systematically, according to NTCA stakeholders it does allow CD providers to check whether a request from a potential recipient country is logical or realistic. TADAT assessments have been done for all six selected partner countries[270] in this chapter except Indonesia.[271]

TADAT assessment scores each performance indicator on a range from A–D, where A is the highest possible score and D the lowest. Recent diagnostic assessments in the five countries mentioned in the footnote identified several weaknesses, but also helped reveal the significant improvements that were recorded during a second assessment of Uganda compared to the first assessment.[272] Because for the selected five countries, only the TADAT assessments for Uganda and Zambia are publicly available, only the strengths and weaknesses of the revenue administrations of Uganda and Zambia can be specified in more detail here.

Uganda's current weaknesses (score D or D+) concern: the on-time filing rate; timeliness of payment; time taken to resolve disputes; adequacy of the tax revenue accounting system; and public perception of integrity. Uganda's strengths (score A or B+) relate to: knowledge of the potential taxpayer base; identification, assessment, ranking and quantification of compliance risks; mitigation of risks through a compliance improvement plan; monitoring and evaluation of compliance risk mitigation activities; scope, currency and accessibility of information; use of electronic filing facilities; use of electronic payment methods; use of efficient collection systems; and the degree to which dispute outcomes are acted upon. Zambia's weaknesses (score D or D+) concern: accurate and reliable taxpayer information; on-time filing rate; stock and flow of tax arrears; extent of proactive initiatives to encourage accurate reporting; and adequacy of the tax revenue accounting system. Zambia's strengths (score A or B+) relate to: identification, assessment and mitigation of institutional risks; use of efficient collection systems; and internal assurance mechanisms.

[268] (SEO, 2021, p. 96)
[269] See among others (Akoi, D., Magumba, P., & Loke, M., 2019)
[270] The analysis in this chapter is limited to Ghana, Kenya and Uganda plus Ethiopia, Indonesia and Zambia. The latter three are included because anti-abuse clauses are already active in their tax treaties with the Netherlands.
[271] (SEO, 2021, p. 96)
[272] (Okello, A. et al., 2019)

The strengths and weaknesses of the revenue administrations of the three remaining partner countries (Ethiopia, Ghana and Kenya) cannot be specified. However, it can be said that in general, countries score low on risk management (POA 2), accuracy of reporting (POA 6) and the efficiency and effectiveness of the revenue management (POA 8). Scores for most of the nine TADAT categories vary between the five countries, ranging from B to D (although this can differ for the 28 sub-categories), indicating there are some differences between these countries. However, on average, the countries score between C and D for all categories, indicating limited scope for distinguishing between the relevance of activities.

6.1.4 In what way do interventions financed by the Netherlands fit into the recipient country's tax system? Do they respond to that country's most urgent needs?

As explained in the previous section, the needs of the recipient countries in the context of domestic taxation can be derived from the TADAT assessments to some extent. For activities related to international taxation, however, no tool is available to review the extent to which the interventions correspond with the most urgent needs of the recipient countries. Therefore, this section is limited to activities with a domestic focus; see annex 1 for details on how the main focus of activities is determined.

Bilateral interventions on domestic taxation

With respect to the relevance of bilateral interventions, the activities implemented by the MoF and the NTCA in the partner countries seem to be relevant for several of the TADAT POAs, mostly POA 2 (risk management) and POA 6 (accuracy of reporting). For all activities where a link to an indicator of the TADAT assessment can be made, the countries score rather low at the time of the assessment. In this respect, it can be said that the interventions by the MoF and NTCA correspond with the needs of recipient countries. However, TADAT POAs are generally too broad to be used to clearly determine the relevance of interventions, although they can point to a certain area where support is required.

The activities implemented by the IBFD relate mostly to international taxation and thus few links can be made to TADAT POAs. For the few activities where a link could be made, the issues addressed by the activities did correspond with low scores in the TADAT categories. Activities implemented by VNG were domestic in nature and thus could also be linked to TADAT POAs. The issues addressed by the activities corresponded with low TADAT scores. All bilaterally implemented activities on domestic taxation correspond with low TADAT scores; based on the TADAT assessment it can be said that these activities correspond to the most urgent needs of the recipient countries, although the assessment does not specify the added value of Dutch CD or the recipient country's willingness to reform, which also guide the decisions to provide CD support.

Multilateral interventions in domestic taxation

The interventions in domestic taxation implemented through multilateral programmes were probably relevant in that they broadly targeted topics and themes that relate to weaknesses identified by TADAT. Most programmes related to domestic taxation, with the exception of the interventions implemented by the OECD. The activities that took place under the programmes in the six selected partner countries are not discussed individually here, but in cases where a TADAT link could be made, the countries scored an average of C/D and thus the interventions covered topics which corresponded with weaknesses in revenue administration.

An illustration of the relevance of the CD activities with respect to TADAT outcome areas can be found in Uganda. In this country, the NTCA and the IMF conducted several interventions that could be linked to indicators in POA 2. The first TADAT assessment of Uganda in 2015 showed significantly lower scores in this outcome areas than the 2019 assessment. However, it cannot be concluded that this improvement is solely due to the interventions by the NTCA and the IMF.

6.1.5 To what extent has the Netherlands succeeded in improving donor coordination and coherence through ATI and guidance of multilateral trust funds?

The Netherlands has been a key player in setting up the Addis Tax Initiative (ATI). Indications for this can be found in the fact that the Netherlands chaired the Steering Committee in 2015–2016 and participated in all meetings until January 2018. The Netherlands currently chairs the working group on commitment 3 of the ATI. According to interviews conducted in the context of the midterm evaluation of the ATI, by signalling political support to the ATI, providing operational support and increasing DRM-related resources, Dutch engagement contributed significantly to the launch and development of ATI.[273]

In terms of policy coherence, the Netherlands has made a significant contribution to donor coordination through its involvement in the ATI. All ATI members, including the Netherlands, have made the following commitments as part of their membership:

- A commitment to collectively double their technical cooperation in the area of DRM/taxation between 2015–2020;
- A commitment to step up DRM as a key means of attaining the sustainable development goals (SDGs) and inclusive development, as linking DRM to more tax fairness, equality or better protection of environmental resources would give this commitment an additional dimension in line with the SDGs; and
- A commitment to ensure policy coherence for development.

[273] (SEO, 2021, pp. 103, 104, 106).

The addition of the third commitment on policy coherence to the ATI agenda was probably largely due to the insistence of the Netherlands. According to the ATI midterm evaluation, the Netherlands put forward the idea that it would make little sense to increase DRM-related CD and strengthen the capacity of developing countries to increase their DRM efforts if a key precondition – international or domestic tax avoidance and evasion – was not addressed. Since adopting this third commitment, the ATI has also focused on issues such as tax treaty renegotiation, use of tax incentives and taxation of bilateral ODA. This is done through making an extensive DRM database available, regularly publishing monitoring reports and briefs on the progress made, conducting research studies and organising conferences and workshops in light of the ATI commitments. The third commitment ensures that tax treaty negotiations, tax incentives and the taxation of bilateral ODA are included in these publications and events. [274]

The ATI aims at providing several services to overcome the challenges of providing its partner countries with a strong voice in setting the international tax and DRM priorities. Two such challenges are its somewhat limited capacity to coordinate its development partner's support and the need to address the uneven distribution of assistance across countries.[275] It tackles the challenges in various ways, such as offering a platform for partner countries to participate in the international dialogue, facilitating matchmaking and providing transparent information on spending priorities and support patterns etc. via the ATI country DRM profiles. By extension, it contributes to information sharing as a precondition for donor coordination. [276]

The midterm evaluation of the ATI shows that the ATI should be considered efficient at setting the international agenda, given its limited resources. As regards donor coordination, interviewees generally praised the ATI for facilitating the exchange of information between development partners. However, its overall efficiency cannot be assessed due to a lack of evidence on effective donor coordination by the ATI.[277]

Another recent study on donor coordination concluded that in the recent past progress has been made regarding the coordination of DRM-related support via forums, platforms, commitments and tools, in many of which the Netherlands is a partner.[278]

Each trust fund supported by the Netherlands (AFRITACs, RMTF, MNRW, TADAT, etc.) has an annual meeting with all donors, as well as a digital meeting every half year. During these meetings, the discussion would typically be about budget allocations rather than donor coordination, but strategy and the priorities of donors were also discussed. An MFA interviewee noted that some other, larger donors are more active in such meetings than the Netherlands because they have more resources.

[274] (SEO, 2021, p. 104)
[275] (SEO, 2021, pp. 105, 106)
[276] (SEO, 2021, p. 106)
[277] (ITC, 2019a, p. 30)
[278] (ITC, 2019b)

An example given was that only one MFA representative is responsible for all tax-related multilateral trust funds, whereas a donor like DFID has one person specifically responsible for IMF trust funds.

According to a representative of the TADAT Secretariat, the TADAT framework has increasingly been used to improve donor coordination. The representative noted explicitly that donor coordination has become much easier since the number of organisations working with the TADAT framework has increased.[279]

6.2 To what extent have CD activities supported by the Netherlands aided implementation of OECD/G20 BEPS standards and the negotiation and enforcement of tax treaties in developing countries?

This section discusses CD activities financed by the Netherlands that aimed to support the implementation of the OECD BEPS standards and the negotiation and enforcement of tax treaties in developing countries. It should be noted that the portfolio of activities includes activities not specifically related to these two topics, as explained in section 6.1. The emphasis of this evaluation is on the coherence between the sub-goals of the PCD agenda, therefore section 6.2 is limited to activities that specifically relate to either of those topics. As explained further in annex 1, the topics of the activities were derived from project documents, some of which directly state their relationship to these goals, whereas in others this is more implicit.[280]

6.2.1 To what extent did capacity development contribute to implementation of BEPS actions by developing countries?

Of the 62 activities the NTCA and IBFD provided to the six selected countries, 11 related to the implementation of BEPS actions, although in some cases this link was implicit rather than explicit. The contents of these activities are described in more detail below.
Primarily due to a lack of information on activities of multilateral programmes for specific countries, sections 6.2.1. and 6.2.2 are mainly limited to bilateral CD provided, even though some multilateral activities related to this topic were implemented in these countries too.

Most interventions in Ghana related to domestic taxation. With regard to CD focused on the implementation of BEPS the IBFD provided a seminar on the maintenance of tax treaties during which anti-abuse clauses were discussed (action 6). In addition, the OECD organised a training event on transfer pricing (actions 8-10), which could have contributed to the enacted new transfer pricing regulation.[281]
Kenya also received training on transfer pricing (actions 8-10). Although transfer pricing was

[279] (SEO, 2021, p. 106)

[280] For example when the BEPS project is not explicitly mentioned but the topics related to BEPS actions are addressed.

[281] Confidential source MoF

not prioritised due to CD activities from ATAF and TIWB, the KRA capacity in transfer pricing had already strengthened significantly, even to such an extent that KRA officials had started to provide CD to tax officials in other African countries.[282] The available evaluation reports for the bilateral and multilateral activities mention that the participants appreciated the manner in which the courses were delivered and considered them relevant, but felt that more training was needed on certain topics. Whether these activities were effective in contributing to their specific goals is not convincingly substantiated in these reports, however.

In Uganda, the IBFD provided interventions on the maintenance and administration of tax treaties, two interventions on the application of international principles of international taxation in the Ugandan context and a seminar on offshore entities which could be linked to BEPS actions 1, 3–10, 12, 13 and 15. The NTCA provided a training event on international taxation during which the MAP (action 14) was discussed. ATAF gave a workshop on the MAP (action 14) and also one on the MLI (action 15). In addition, the OECD TIWB programme has provided CD on transfer pricing (actions 8-10) three times: one of the training events also addressed action 4.

6.2.2 To what extent did CD enable recipient countries to negotiate and enforce anti-abuse clauses in tax treaties with the Netherlands from an informed position?

Below, activities that supported the negotiation of and implementation and use of anti-abuse (LoB and PPT) clauses in the tax treaty with the Netherlands are discussed for the three case study countries Ghana, Kenya and Uganda plus Ethiopia, Indonesia and Zambia (included because anti-abuse clauses were already active in their tax treaties with the Netherlands). Because CD support is generally aimed at improving technical capacity in a broader sense and not limited to instances of negotiations or dealings with the Netherlands, this research question was interpreted to include these broader effects too.

In various letters to Parliament, the ability of developing countries to successfully apply anti-abuse clauses in their tax treaties was partly related to the CD the Netherlands provided to the tax authorities of these countries. However, the offer of CD was brought up only once during the treaty negotiations examined for this evaluation. A 2018 letter to Parliament stated that it was discussed during treaty negotiations with Ethiopia but because CD is demand-driven it was considered that it was the responsibility of Ethiopia to request CD.[283]

[282] (SEO, 2021, p. 113)

[283] (Ministry of Finance, 2017c, p. 15); (Ministry of Finance, 2018e, p. 10); (Ministry of Finance, 2018a, p. 19); (Ministry of Finance, 2013h, p. 6)

The NFV 2020 specifies that developing countries require CD to protect their tax base and enforce the anti-abuse measures in their tax treaties recommended by the OECD/G20 BEPS project, which is supported by CD financed and partly implemented by the Netherlands. This was already mentioned in in an earlier letter to Parliament, in which it was stated that more CD was required for developing countries to make use of anti-abuse clauses and information received from foreign tax authorities.[284]

Of the 62 activities implemented by the NTCA and IBFD, 11 related to tax treaty maintenance, negotiation or enforcement. These are described in more detail below.

In Ghana, the IBFD provided interventions in tax treaties: one concerned the maintenance and administration of tax treaties and one specifically concerned tax treaties. The training programme was designed and implemented after the anti-abuse clauses had been included in the tax treaty between Ghana and the Netherlands and therefore the training was not relevant for the negotiations about the anti-abuse clauses in that treaty, but it could have contributed to the Ghanaian government being better informed about anti-abuse clauses in their domestic tax treaty model.[285]

IBFD provided an intervention on the maintenance and administration of tax treaties in Kenya in 2014. In that year, ATAF also provided an intervention on tax treaties. Since these interventions took place after the tax treaty with the Netherlands had been signed, they could not contribute to Kenya having a more informed negotiation stance, although they might have contributed to Kenya being better informed in general.

The IBFD provided a course on the maintenance and administration of tax treaties in Uganda in 2014. Even though over 90% of the participants stated that their learning objectives had been met and that the course was effective in strengthening their technical knowledge of international tax treaty issues, it is unclear to what extent this course had any impact on Uganda's tax treaty policy. Interviewers were not able to assess this impact, mainly due to the small number of agreements negotiated in recent years. It is also not clear whether this course had any impact on Uganda's decision to suspend negotiations on bilateral tax treaties for many years (while also not signing the MLI). One reason why it may not have had much impact is that the course participants were almost exclusively from the Uganda Revenue Authority and not from the MFPED. It is unlikely that this course had any specific impact on Uganda's tax treaty negotiations with the Netherlands since not until September 2019, more than three years after the second part of this IBFD course, did Uganda and the Netherlands reopen discussions to amend their tax treaty.[286]

[284] (Ministry of Finance, 2018a, pp. 19, 20); (Ministry of Finance, 2020c, p. 36)
[285] (SEO, 2021a, p. 26)
[286] (SEO, 2021c, p. 33)

In addition, ATAF provided a workshop in Uganda on the MLI in 2019. The workshop was intended to provide guidance to countries planning to adopt BEPS measures through bilateral protocols and to enhance the understanding of the provisions that countries might wish to adopt.

The available evaluation reports of CD interventions are mainly limited to the IMF's multilateral programmes and are generally positive about the quality of CD and its effects.[287] Unfortunately, as discussed earlier, from the available evidence on CD activities it is impossible to robustly attribute changes to the interventions. Therefore, it was not possible to robustly establish what effects these activities achieved.

Some tentative evidence on the short-term effects of CD is provided by an evaluation of DFID's activities in this field. DFID supported implementation of the new tax standards through a number of programmes managed centrally. According to the evaluation, various participating countries had adopted new regulations, signed international or bilateral agreements, developed action plans or established new specialist units within their tax administrations. Two of DFID's partner countries, Kenya and Zambia, successfully resolved some individual transfer pricing cases, albeit with the direct support of international experts. However, there were doubts that CD on highly specialised international tax issues would have much impact, given more basic capacity constraints in domestic tax systems. There were also concerns that the DFID-supported OECD had taken an overly technical approach to capacity building which failed to take sufficient account of the state of domestic tax systems.[288]

Sustainability was also considered to be an issue. In the area of transfer pricing, nearly 200 individual cases were resolved in four countries (Kenya, Colombia, Vietnam and Zambia) in the first two years of the Tax Transparency Programme, leading to the recovery of approximately £85 million in revenue. Even in countries that received assistance for several years, there is little evidence that the tax authorities have the in-house capacity to carry out such audits without external support.[289]

6.3 Findings

Expenditure by the Netherlands on the 24 CD programmes related to DRM in the period 2010–2020 totalled around €40 million. Annual expenditures increased considerably, from around €1 million in 2010 to €8 million in 2019 and €6 million in 2020, although this is still small compared to a selection of other OECD DAC countries and the total ODA budget of the Netherlands. Given average expenditures of around €50 thousand annually per country supported bilaterally, the question is what can realistically be achieved with this level of support. These small expenditures should be compensated for by the fact that CD financed by the Netherlands is conducted in a 'niche' where it can be relatively effective.

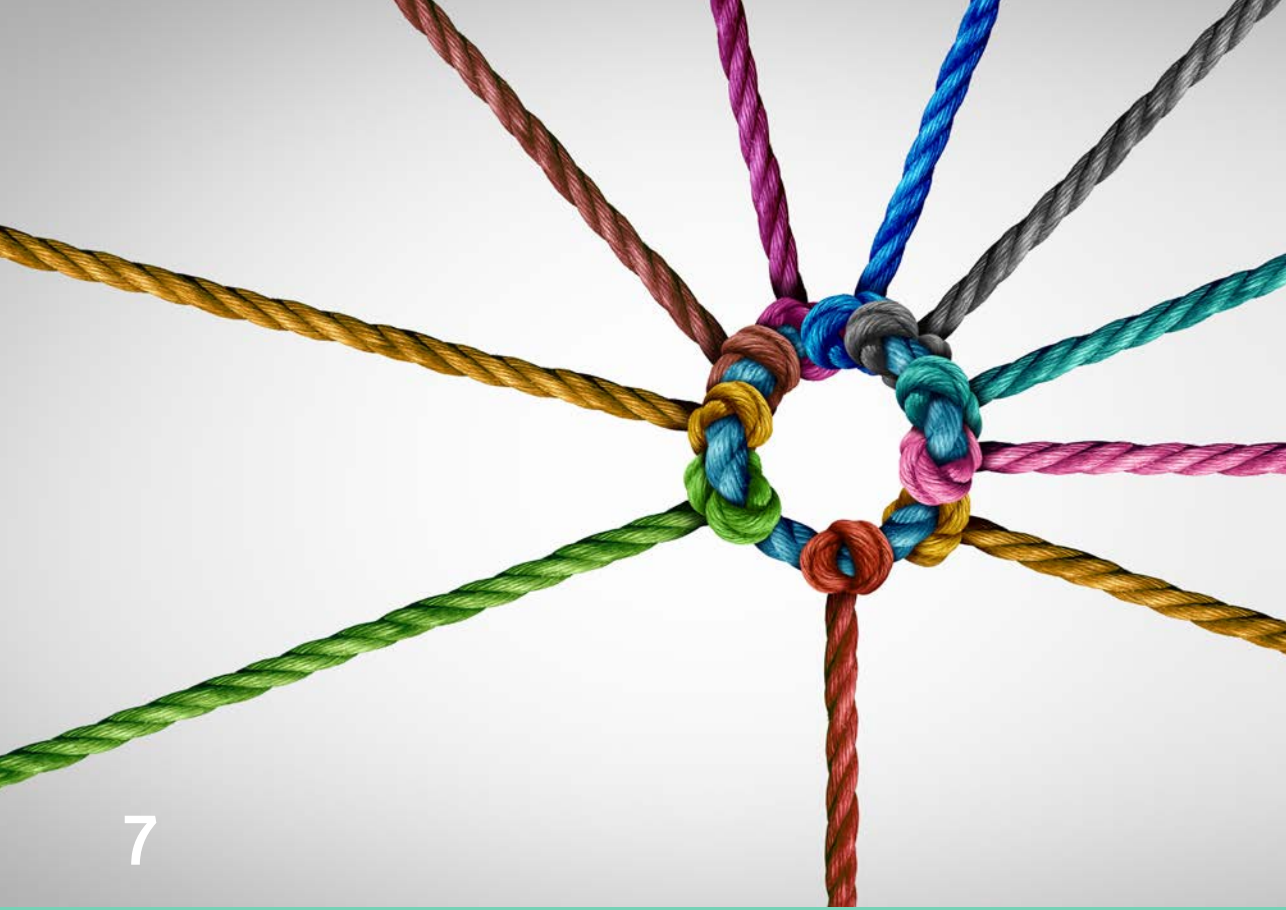
[287] (SEO, 2021, pp. 100, 101)
[288] (ICAI, 2016, p. 5)
[289] (ICAI, 2016, p. 22)

The CD activities have been implemented based on several predetermined conditions but at the same time are expected to be demand-driven. In practice, the latter has prevailed because the relevance of CD activities requested by development partners is not systematically checked against a list of criteria based on letters to Parliament. Theoretically, the criteria should have included the quality of the tax authority, size and complexity of the economy, a willingness to reform and the expertise of the implementing parties IBFD and the NTCA. CD on DRM was to be accompanied by CD on public finance management to reduce the risk of corruption and fraud, but this was phased out. Because of this, the assumption that the Netherlands is operating in a 'niche' is not substantiated.

Tools are available to analyse the priorities of developing countries with respect to the quality of their tax systems but they are not yet systematically used and are of limited use due to 1) their limitation to specific aspects of tax systems, generally excluding tax policy and instead focusing on tax administrations, 2) their categories are defined rather broadly and therefore they do not automatically identify viable CD activities. Tools like TADAT are therefore unable to adequately identify whether bilateral support from the Netherlands has added value over larger multilateral programmes active in DRM in most countries. The available evidence on both bilateral and multilateral activities generally shows that they are seen as relevant.

There is little evidence on the effectiveness of CD provided to assist in implementing OECD BEPS standards or anti-abuse clauses in tax treaties; although most reports are positive about the CD offered and its effects, there is insufficient evidence on the impact of activities to allow effects to be robustly attributed to interventions. It seems unlikely that a training event or workshop would be sufficient to rectify partner countries' limited implementation of the BEPS standards, non-use of anti-abuse clauses in tax treaties and the absence of information requests to the Netherlands.

Although relatively small in terms of its financial and human resources, the Netherlands plays an active role in multilateral trust funds and initiatives such as ATI. The Netherlands is credited for putting the topic of policy coherence on ATI's agenda. It is unclear to what extent interventions by the Netherlands have had an effect on the functioning of the multilateral funds it supported.



7

How coherent are Dutch policies and activities to counter tax avoidance in developing countries?

The PCD agenda 2018 as summarized in the introduction consists of three sub-goals, which were discussed separately in previous chapters. In this chapter, the extent to which the activities and policies under the three sub-goals were coherent is examined. After its introduction, the PCD agenda was amended several times in subsequent years. The goals and indicators changed or removed are included in the discussion below as well, to provide a complete overview of the policies and activities designed to be coherent in their effects on the goals of the PCD agenda.

No information was available on progress towards achieving the indicators specified in the PCD agenda because they are not systematically monitored, partly because in most cases they are too general or too difficult to credibly attribute to Dutch interventions.[290]
For example, indicators for the sub-goal on decreasing MNEs' use of the Netherlands' tax system as a conduit for tax avoidance are limited to the inclusion of anti-abuse clauses in tax treaties with developing countries and the introduction of a conditional withholding tax on dividend, interest and royalty payments flowing through the Netherlands. These indicators do not measure actual results, yet this is necessary because these actions are no guarantee that the goal of decreasing tax avoidance has been achieved. The indicators for the sub-goal on structural capacity building for good tax policies and tax collection in developing countries are CD expenditures by the Netherlands and increased tax-to-GDP ratios and tax revenues in developing countries due to CD programmes supported by the Netherlands. The latter two indicators are very difficult to credibly attribute to Dutch support and therefore very unlikely to produce reliable information.

Coherence between sub-goals
Coherence relates to both the intended and the actual effects of the policies and activities under the three sub-goals. Intended effects relate to the question of whether – and, if so, how – the interests of developing countries were taken into account during the design and implementation of policies and activities related to international standards and reducing the part played by the Netherlands as a conduit country. Coherence in actual results relates to the question of whether the observed effects all worked towards the same end, irrespective of what the effects were intended to be. A final aspect of coherence is whether implementation of the interventions under the three sub-goals was to some extent coordinated and harmonized: for example, whether CD in developing countries provided support for enforcing anti-abuse clauses or improving coordination between Dutch and local tax authorities.

The introduction of the PCD agenda in 2016 marked a shift in thinking in which the coherency aspects between policies and activities of different ministries were recognised to a larger extent. Since then, contacts between the MoF and MFA have increased, with the latter contributing to guiding policy documents such as the NFV to represent the interest of developing countries. Cooperation with respect to CD has also increased, with the MoF providing in-kind contributions to MFA's CD programmes. Nevertheless, a number of issues with respect to the coherence in implementing the interventions and activities were identified in this evaluation and are discussed below.

[290] See chapter 1 for the full list of indicators.

The PCD agenda has two goals related to taxation: 1) countering tax avoidance by multinationals and 2) increasing DRM in developing countries. While there is overlap, there are some differences. This discrepancy between the two goals is most at stake between the interventions and activities of the MFA and the MoF. CD interventions initiated and financed by the MFA are primarily intended to improve DRM in developing countries, partly by contributing to CD activities aimed at implementing the BEPS standards and tax treaty negotiation and enforcement. While expected to contribute to countering tax avoidance, CD activities aimed at international aspects of taxation are not necessarily the best option to increase DRM. Developing countries generally prioritise the taxation of domestic taxpayers; rules to counter tax avoidance are generally much more complex and require significant investment in terms of well-trained personnel. Because developing countries' means are limited, their CD needs are more basic.

Also, because the relevance of CD activities is not checked systematically, the criteria for authorising CD to help attain the goals of the PCD agenda, such as the criterion that the recipient countries must be those most at risk from tax avoidance via the Netherlands) are not always met. Commitments made by the MoF in the House of Representatives while discussing its fiscal treaty policy regarding supporting CD for developing countries with which the Netherlands intends to sign a tax treaty or offer anti-abuse clauses have little influence on the CD programmes of the MFA, which uses its own criteria for assessing the relevance of CD activities.

Another issue with the CD activities arises when experts financed by the MFA advise on tax treaty issues the Netherlands has raised or will raise during tax treaty negotiations. These MFA-financed experts are not permitted to advise developing countries with which the Netherlands is or will be negotiating a tax treaty. A conflict of interest has already risen in practice: one expert interviewed mentioned being reluctant to advise developing countries because this could harm the interests of the Netherlands.[291]

The contribution of the Netherlands in international forums (the OECD and EU) that discuss standards to counter tax avoidance is the responsibility of the MoF. Priorities of developing countries are considered to be more or less similar to those of developed countries. Although the MFA is felt to be better placed to voice the concerns of developing countries, its influence in the process is limited. MFA representatives participate in the round table that discusses the priorities of developing countries regarding international tax issues, but the round table's influence is limited. There is regular contact between MoF and MFA when the latter is asked for input on guiding policy documents (the NFV, for example) discussed in the Council of Ministers. However, current affairs are not discussed, nor are mandates, instructions or annotations shared, for example in preparation for upcoming meetings in the OECD or treaty negotiations with developing countries. The MFA is often only briefed on the outcomes afterwards.

[291] (SEO, 2021, p. 124)

Finally, measures introduced by the Netherlands to reduce the part it plays as a conduit for tax avoidance have limited effect on DRM in developing countries. The network analysis showed that in most cases other countries could take over the role of the Netherlands and therefore corporate tax revenues are unlikely to increase much in developing countries as a result of measures introduced by the Netherlands.

Tax exemptions on ODA activities

Most activities mentioned in the PCD agenda before 2018 are similar to those mentioned in later versions of the PCD agenda, with one exception, which is discussed below.

Late 2015, the MFA announced that it would refrain from requesting tax exemptions on import levies and customs duties and VAT for all new government-to-government activities (G2G) from 2016 onwards. The measure was included in the PCD agenda in 2016 and coincided with the Financing for Development conference in 2015, which saw the launch of the Addis Ababa Action Agenda, and a call for donor countries to refrain from requesting tax exemptions on VAT and import duties.[292] Since 2018, the Netherlands has been one of only five European donor countries that have renounced certain tax exemptions.[293] The decision was made after the DDE policy department had consulted the embassies involved, to ascertain the consequences. It was motivated by the wish to assist partner countries to increase domestic revenue mobilisation, to help them finance their own development agenda and become less dependent on aid for funding the SDGs.

The measure taken was to dispense with the option to request tax exemption on import levies and custom duties (hereafter called import duties) and VAT on goods and services provided under G2G ODA activities and programmes.[294] It did not apply to emergency and humanitarian aid. NGOs remained free to apply for exemptions where the recipient government accorded them such facilities. All ORET and ORIO activities already ongoing[295] fell under a transition period, which meant exemptions continued to be applied to these programmes. In the case of the infrastructure programme DRIVE, this step had been anticipated by the following provision: where recipient governments do not grant a tax waiver for infrastructure programmes, the costs of import duties and VAT on goods and services can be included in the project costs to be subsidised.

To ascertain whether this measure dispensing with tax exemption on import duties has been implemented, IOB undertook a survey. A questionnaire[296] was sent to 11 embassies in developing countries (eight of which responded), FMO and RVO. The results of the survey are summarised in annex 7. The results for FMO and RVO are discussed separately below.
The results show that in most of the eight countries that responded to the survey some sort of tax exemption on ODA activities is made available by the recipient governments.

292 (Ministry of Foreign Affairs, 2016a, p. 5); (Addis Tax Initiative, 2015, p. 29)
293 (Caldeira, E., Geourjon. A., & Rota-Graziosi, G., 2018, p. 12)
294 It was provisionally decided not to apply the measure to income taxes because of their complexity.
295 ORET, ORIO and DRIVE and Develop2Build are programmes financed by MFA that provide finance for infrastructure projects in developing countries.
296 See annex 7 for the questionnaire.

It is based either on a general exemption for ODA (or G2G ODA) activities or decided on a case-by-case basis. Dutch embassies in these countries generally do not assist companies in claiming these exemptions, with the exception of one case in Zambia. This does not preclude the use of tax exemptions by implementing parties because in some cases they can claim them independently on the basis of domestic legislation. This was verified to the extent possible: it seems that in most cases, the countries do not make use of tax exemptions. Average G2G expenditures per annum, based on the five embassies that reported them, are around €4 million. Note that these reported expenditures generally exclude those on the infrastructure programmes managed by RVO.[297]

The Dutch development bank FMO does not make contact with national governments but only with implementing parties and is therefore not in a position to claim tax exemptions on its activities. Nevertheless, FMO was mentioned by the MFA's policy department as not requesting tax exemptions since 2016.

RVO is the implementing agency responsible for the infrastructure activities ORET, ORIO, DRIVE and Develop2Build (D2B). ORIO grant agreements were all signed before 2016 and therefore most of them include tax exemptions. DRIVE activities are of more recent date and sometimes include tax exemptions when these are part of the domestic tax policies of recipient countries; recipient governments were asked to clarify the tax treatment of DRIVE activities, which was then applied. Because DRIVE activities have a maximum value of €60 million, tax exemptions were sometimes included by the recipient government if otherwise the project could not proceed. RVO covers 50% of project expenditures, which may include tax payments by the implementing agency as part of the project. Taxes 'recognised' by RVO are VAT, import duties and withholding taxes. These limitations prevent the other, less recognised, taxes being used by recipient country governments.

All nine activities (six ORIO and three DRIVE) in the sample of developing countries with commitments starting after 2016 (but in the case of ORIO, based on grant agreements signed earlier) made use of tax exemptions; in two DRIVE activities these were limited to exemption from VAT only. The average commitment of each of these nine projects was around €14 million.

With respect to D2B, the standard grant agreement states that VAT and import duties are generally not exempt, but other taxes are. Some issues were identified with respect to withholding taxes in cases where the recipient government was responsible for putting out the tender for a project. There was some unclarity about whether international parties are liable for withholding tax while local parties are exempt. Although in some cases these withholding taxes paid by the implementing party are exempt in the Netherlands, in some cases they can only be credited against the CIT.

[297] With the exception of Malawi and Zambia, where G2G activities are limited to the RVO-managed programmes.

This means that part of the withholding taxes may be paid by the implementing party, which raised the question of whether this should be paid from the D2B budget. Following the practice applied under DRIVE, it was decided to include net withholding taxes paid under eligible costs in a D2B grant. No detailed information was available on individual D2B activities. The annual D2B budget is around €10 million, which is considerably smaller than the ORIO and DRIVE grants.

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Annexes

Annex 1 Methodology

Evaluation matrix

Table 15 shows the evaluation matrix as used for this evaluation. It links the assumptions derived from the PCD agenda to the research questions, method and sources used to test them. The methodology listed in the table and summarised in the introduction to this evaluation is elaborated on below. This is followed by an explanation on the use of the evaluation criteria used in this evaluation.

Table 15 The evaluation matrix

Sub-goal	Assumption(s)	Research question	Methods	Sources
All sub-goals		1) What is the best estimate of tax revenue lost by developing countries due to tax avoidance by multinationals and what part did the Netherlands play in the tax avoidance?	- Literature study	- Scientific and grey literature
		2) How coherent are Dutch policies and activities to counter tax avoidance in developing countries?	- Synthesis of findings - Policy reconstruction	- Parliamentary documents

Table 15 The evaluation matrix

Sub-goal	Assumption(s)	Research question	Methods	Sources
Sub-goal 1: International agreements	- The Netherlands takes into account the interests of developing countries during international discussions - The Netherlands is able to improve developing countries' participation in international discussions	3) Has the Netherlands succeeded in including developing countries and their priorities in discussions on international agreements on countering tax avoidance?	- Policy reconstruction - Country studies	- Parliamentary documents - Instructions for and minutes of OECD meetings on BEPS
	- The Netherlands takes into account the interests of developing countries when implementing rules and recommendations based on international discussions	4) To what extent have the interests of developing countries been considered by the Netherlands when implementing recommendations of international discussions on countering tax avoidance?	- Policy reconstruction - Country studies - Literature study on BEPS	- Parliamentary documents - Instructions for and minutes of OECD meetings on BEPS - Scientific and grey literature

Table 15 The evaluation matrix

Sub-goal	Assumption(s)	Research question	Methods	Sources
Sub-goal 2: Capacity development	- CD addresses the priorities of developing countries with respect to strengthening their tax system - The Netherlands is able to guide multilateral funds and country programmes to increase their relevance	5) Which CD activities are supported by the Netherlands and to what extent do they address the needs of developing countries?	- Country studies - Literature study	- Project documents
	- CD is able to improve the skills and knowledge of tax authorities and other government institutions	6) To what extent have CD activities supported by the Netherlands aided implementation of the OECD/G20 BEPS standards and the negotiation and enforcement of tax treaties in developing countries?	- Country studies - Literature study	- Project documents

Table 15 The evaluation matrix				
Sub-goal	**Assumption(s)**	**Research question**	**Methods**	**Sources**
Sub-goal 3: Decreasing the part played by the Netherlands as channel for tax avoidance	- Inclusion of anti-abuse clauses in tax treaties with developing countries leads to a decrease in abuse of treaty benefits by multinationals - Introduction of withholding taxes by the Netherlands will decrease its role in tax avoidance from developing countries - There are no viable alternatives to avoiding tax via the Netherlands, so Dutch actions to counter tax avoidance are effective	7) Are anti-abuse clauses and the introduction of withholding taxes on royalties and interest able to counter tax avoidance by multinationals from developing countries via the Netherlands?	- Policy reconstruction - Network analysis	

Evaluation sources

The **policy reconstruction** describes the Dutch policies and activities under the three sub-goals of the PCD in the research period. It pertains to both the general policy based on policy documents and interviews and specific cases such as tax treaty negotiations with developing countries and negotiations in OECD bodies to discuss the OECD BEPS project.

The policy reconstruction is based on the following sources:

- Government letters to Parliament and minutes of parliamentary debates. A review of letters submitted to Parliament during the evaluation period, to analyse to what extent and in what way the interests of developing countries are communicated to Parliament.

- An analysis of a selection of papers published by relevant international organisations such as the OECD and the IMF, to gain an understanding of the priorities of developing countries as elaborated by these organisations.

- Interviews with representatives of government institutions, international organisations, NGOs and academia in the Netherlands. A list of interviewees is given below.

- Minutes of OECD meetings in the CFA and IFB. These minutes were disclosed by the Ministry of Finance and the OECD under conditions of confidentiality. Therefore, information on positions of individual countries, other than the Netherlands, cannot be disclosed. Minutes of meetings of OECD working parties functioning under the CFA/IFB in which technical issues related to the OECD BEPS project were discussed were not disclosed.

- Instructions for the delegates of the Ministry of Finance in OECD meetings in the CFA (plenary and bureau) and IFB (plenary and steering group). These instructions were analysed for relevant information on the extent to which developing countries and their priorities had been included in the Dutch positions.

- Mandates and reports of negotiations on a tax treaty between the Netherlands and five developing countries.[298] Following[299] the publication of the NFV 2011, negotiations took place and agreements were concluded with the following developing countries: Ghana, Kenya, Ethiopia, Malawi, Zambia, Ukraine and Uzbekistan.

  For these seven countries the mandate and reports of negotiations concluded with developing countries were made available by the MoF. That ministry was unwilling to share documents of ongoing negotiations on the grounds that this could harm the Dutch negotiation position. Five of these countries were included in this study; the remaining two, Ukraine and Uzbekistan, fall outside the scope of this evaluation (because they are not developing countries).

  The documents contain specific instructions on the Dutch position, the actual or expected position of the negotiation partner and a report on the progress made during each negotiation round. This provides insight into the priorities of developing countries in these negotiations and on any disagreement that occurred with the Netherlands.

- A confidential source provided by MoF, which, due to its sensitive nature cannot be disclosed.

Country case studies, commissioned for this evaluation and executed by SEO, in Kenya, Ghana and Uganda provided more insight into the position of governments and other stakeholders in these countries on issues such as international standards and bilateral tax treaties with the Netherlands. These three countries were chosen out of a shortlist of 11 as the most promising, based on a list of criteria, most importantly the number of bilateral CD activities financed by the Netherlands active in the country.[300]

[298] The MoF was willing to share the mandate and report(s) for concluded negotiations only.
[299] Note that some of the treaty negotiations with Kenya and Ethiopia took place before publication of the NFV 2011. However, both explanatory memorandums submitted to the House of Representatives together with the treaties mention that the results of the negotiations were in line with the NFV 2011.
[300] Other criteria were: 1) the number of multilateral activities supported by the Netherlands, 2) the presence of a bilateral tax treaty with the Netherlands; 3) whether bilateral-anti abuse clauses had been offered or were already active; 4) the FDI stock from the Netherlands in the country and the share via Dutch SPEs; 5) the tax-to-GDP ratio in the country.

Due to travel restrictions in light of the COVID-19 pandemic, all interviews were done digitally.

The country studies included four to five case studies per country, of which one per country focused specifically on tax treaty policy. A second case study analysed the country's position on the OECD BEPS project and its implementation. The remaining two or three case studies were of bilateral CD activities financed by the Netherlands. See Table 16 for an overview of the case studies included in the country studies.

The country studies are based on the following sources:

The case studies are mostly based on interviews with a range of (mostly) local actors from government, NGOs, academia and the private sector. An overview of interviews conducted for these country studies is given below.
Additionally, policy documents and grey literature that provide information on government positions on tax policy, the OECD BEPS project, BEPS-related issues and tax treaty negotiations with the Netherlands were consulted.

Table 16 The CD activities examined in the three country case studies conducted by SEO for the evaluation

	Ghana	Kenya	Uganda
Name	TIWB missions	Training on International Taxation (Part I and Part II)*	Training on International Taxation (Part I and Part II)**
Provider	DCTA	IBFD	IBFD
Year	2013–present	2015/2016	2015/2016
Number	**1**	**2**	**3**
Name	Double Tax Treaties – policy and negotiations (research and training) for the Ghanaian Revenue Authority	CD capacity building on transfer pricing***	Training/workshop/study visit international taxation
Provider	IBFD	TIWB (OECD and ATAF)	DCTA
Year	2019	2017-2018	2017
Number	**4**	**5**	**6**
Name	Analysis of the Ghanaian tax treaty policy (e.g. MLI/ negotiations with the Netherlands)	Analysis of tax treaty policy (e.g. MLI/ negotiations with the Netherlands)	Analysis of tax treaty policy (e.g. MLI/ negotiations with the Netherlands)
Provider	-	-	-
Year	-	**-**	-

Table 16 The CD activities examined in the three country case studies conducted by SEO for the evaluation			
	Ghana	**Kenya**	**Uganda**
Number	**7**	**8**	**9**
Name	Analysis of the Ghanaian position with respect to the OECD/BEPS and OECD/BEPS negotiations	Analysis of the Kenyan position with respect to the OECD/BEPS and OECD/BEPS negotiations	Analysis of the Ugandan position with respect to the OECD/BEPS and OECD/BEPS negotiations
Provider	Ghanaian Ministry of Finance	Kenyan Ministry of Finance	Ugandan Ministry of Finance
Year	-	-	-
Number	**10**	**11**	**12**
Name		Offshore Entities – Past, Present and Future. Seminar for the SADC and EAC Member States Tax Authorities Officers (in Amsterdam)****	Offshore Entities – Past, Present and Future. Seminar for the SADC and EAC Member States Tax Authorities Officers (in Amsterdam)****
Provider		IBFD	IBFD
Year		2016	2016
Number		**13a**	**13b**

Literature studies commissioned for this evaluation provided additional information on two research questions.

- The first, also by SEO, to answer research question 1, examined available scientific literature that attempts to assess the magnitude of tax revenue losses in developing countries due to tax avoidance by MNEs. It attempted to distinguish between different channels of tax avoidance and the role of the Dutch fiscal system in these avoidance activities.

- The second, by consultant Craig West, was to provide additional information on the priorities of developing countries in international taxation included under research question 4. Research already conducted as part of this evaluation provided some information on this issue, more specifically: an appreciation of the priorities of developing countries for BEPS identified by international organisations (OECD, IMF and UN). However, adequate information was lacking on the relevance of the BEPS recommendations for developing countries from other perspectives, i.e. developing countries and/or regional organisations. The literature study aimed to fill this gap by analysing additional academic and grey literature from the perspective of developing countries.

An **econometric analysis**, commissioned for this evaluation and conducted by the CPB Netherlands Bureau for Economic Policy Analysis provided information to answer research question 7. This network analysis was supplemented by quantitative information on withholding tax rates in bilateral tax treaties and investment and income flows between the Netherlands and developing countries.

- The CPB network analysis calculated the potential for tax avoidance in six developing countries via the Netherlands. Based on a network model, for each possible bilateral relationship between a specific developing country and all other countries in the world it was estimated whether a 'cheaper' tax route was available and how important the Netherlands was in these routes. Annex 5 provides details of the methodology used in the network analysis.

- Withholding tax rates and exemptions/thresholds in articles on dividend, interest and royalty payments in tax treaties concluded between the Netherlands and the treaty partner were listed and compared to those in other tax treaties of developing countries. This comparison indicated to what extent the treaties the Netherlands concluded with developing countries are different from those concluded with other countries. These withholding tax rates also complement the network analysis by revealing to what extent differences between them can explain the part played by the Netherlands in tax avoidance.

- *Investment and income data*
  Data on total FDI via the Netherlands and FDI via Dutch SPEs in developing countries as source was included to show the relative and absolute importance of the Netherlands as a source of direct investments. Additionally, income flows such as dividend, interest and royalty payments that flow from developing countries to Dutch SPEs were included to show their order of magnitude and thereby the potential effects of tax avoidance on tax revenues in developing countries.

Analysis of capacity development programmes A general description of the CD programmes under which CD financed by the Netherlands took place is included in this evaluation. In addition, the individual activities that took place under these programmes were analysed. To provide a good overview of the activities but to restrict the scope of the evaluation, this analysis was confined to the three case study countries (Ghana, Kenya and Uganda) plus the partner countries Ethiopia, Indonesia and Zambia. The latter three partner countries were included because they have adopted anti-abuse clauses in their tax treaties with the Netherlands and one of the aims of this study was to evaluate the effectiveness of these clauses. The decision to restrict the investigation to these six countries was made after the IBDF activities in all partner countries of the Netherlands had been analysed.

The analysis of the CD programmes is based on the following sources:
- MFA Assessment Memorandums (*beoordelingsmemoranda*) of the respective programmes
- available additional documentation on the specific programmes: activity reports, annual reports, evaluation reports
- country case studies executed by SEO
- final SEO report
- interviews conducted by SEO with Dutch MFA/NTCA officers

The activities that took place were divided according to whether they related to domestic or international taxation; sometimes a further subdivision could be made in relation to treaty negotiations and/or treaty enforcement. All activities could be characterised as either domestic or international in nature, based on which of these dominated. Therefore, characterising an activity as relating to domestic taxation does not mean that no international aspects were covered and vice versa. Furthermore, for each activity it was determined whether a specific connection could be made to a BEPS action or a TADAT POA could be made, so that later the relevance of the activity could be assessed. The distinction between domestic and international taxation and the relation to BEPS and TADAT could sometimes be supported by detailed activity or evaluation reports, but in some cases had to be made on the basis of the activity name alone because no further documentation was available. Hence, some links between activities and BEPS actions and/or TADAT POAs may inadvertently be spurious. Some activities have been excluded because the available documentation was incomplete.

The analysis of the CD programmes is partly based on the SEO report. Some conclusions from that report were incorporated in this evaluation. However, some conclusions reached in our evaluation are inconsistent with those from the SEO report, mostly when they are based on available evaluation reports of bilateral and multilateral CD activities. This is partly because for the purposes of this evaluation, questionnaires completed by participants after activities had taken place are not objective evidence that the activity contributed to the implementation of a BEPS action and/or corresponded with the most urgent needs of a recipient country.

Most individual activities of the IBFD and NTCA programmes were subsequently evaluated in a report drafted by the implementing partner. These reports generally describe the contents and general impression of the workshop/training delivered, sometimes accompanied by the results of a survey of participants immediately after the activity, evaluating the activity's quality and relevance. Although these reports provide some information on the contents of an activity and a general impression of its relevance, they are insufficient to analyse the activity's effects in terms of improving and applying participants' knowledge and expertise. The annual reports of the VNG programme contain detailed reports of the activities and evaluate the results related to the objectives. A midterm review of all bilateral support by SEO[301] provides further insight into the relevance of the activities.

[301] (SEO, 2016)

Annual reports were available for all the multilateral programmes supported by the Netherlands and in some cases, evaluations were available too. In general, the same caveats apply to these evaluations too; analysing the effects of CD based on the perception of participants and providers is risky and prone to bias (which is recognised in these evaluations as well). Therefore, in this evaluation, the conclusions of these reports and evaluations, especially with respect to effectiveness, are used only sporadically and when they are considered to be sufficiently substantiated.

Data availability per country
Not all data sources elaborated on were available for all developing countries in the sample, as listed in Table 17. The initial list of 11 countries was limited to eight countries for which most of these information sources were available. Bangladesh was added to the original list, which also included Burundi, Liberia, Rwanda and Tanzania and is used occasionally in this evaluation to provide information from a broader sample, based on availability of sources.

Table 17 Available information sources for the eight developing countries in the sample

Country name	Country study	Treaty mandate and reports	Network analysis	Withholding tax rates	Investment and income data	Capacity development
Bangladesh			X	X	X	
Ethiopia		X	X	X	X	X
Ghana	X	X		X	X	X
Indonesia			X	X	X	X
Kenya	X	X		X	X	X
Malawi		X		X	X	
Uganda	X		X	X	X	X
Zambia		X	X	X	X	X

Evaluation criteria

The evaluation criteria guiding this evaluation were coherence, relevance and effectiveness.

Coherence relates to both the intended and the actual effects of the policies and activities under the three sub-goals. Intended effects relate to the question of whether and, if so, in what way the interests of developing countries were taken into account during the design and implementation of policies and activities related to international standards and reducing the role of the Netherlands as a conduit country. Coherence in actual results relates to the question of whether observed effects all worked towards the same end, irrespective of what the effects were intended to be. A final aspect of coherence is whether implementation of the interventions under the three sub-goals was to some extent coordinated and harmonised. For example, whether CD in developing countries provided support to the enforcement of anti-abuse clauses or improved coordination between Dutch and local tax authorities.

Relevance is the extent to which the aid activity matches the priorities and policies of the target group, recipient and donor. It also applies to the process by which needs and priorities of developing countries were articulated.

Another aspect of relevance is donor coordination in international initiatives (such as ATI) and in domestic programmes to strengthen tax systems. Donor coordination should prevent the duplication of activities and ensure the activities of each donor are part of a broader effort to strengthen the tax system in a specific country. Donor coordination also relates to the influence of the Netherlands in guiding and monitoring the multilateral funds it contributes to.

Effectiveness is a measure of the extent to which an aid activity attains its objectives. Factors to consider when trying to assess the effectiveness of policies and activities are the context factors mentioned in the ToC. These relate to: the efforts of developing countries to counter tax avoidance by MNEs; the limits developing countries attempt to impose on the influence of Dutch policies and activities; the quality of the tax system in developing countries; and the willingness and means to counter tax avoidance by MNEs. Another important factor in assessing effectiveness is the ease with which financial flows may be rerouted.

FDI may be invested in another country, or another country than the Netherlands may be used as a conduit, undermining the effects of closing or limiting the use of a particular route. Lastly, an attractive tax system is considered an important aspect of the business climate in the Netherlands and is expected to attract FDI and headquarters of MNEs. This is mentioned in the explanation accompanying the 2019 MoF budget.[302]

Options for attributing CD activities directly to changes in tax revenue are limited mainly due to: 1) a breakdown of direct taxes into corporate taxes and other types is not available for all countries, 2) many developing countries do not distinguish withholding tax revenue in their national revenue statistics, 3) data on FDI both from and via the Netherlands is only available for a few developing countries, and 4) data on taxation of indirect transfers of assets is often lacking. Other factors that make it difficult to link CD activities with changes in tax revenue are the relatively small expected contribution of CD, factors that are difficult to account for (such as tax holidays, tax legislation and enforcement) and the difficulties of quantifying institutional quality and the effects of CD on it.

[302] (Ministry of Finance, 2019a)

List of interviewees

Khalid Amezoug	Tax policy advisor at the Dutch Ministry of Finance
Anna Bardadin	Senior Program Manager at the International Bureau of Fiscal Documentation (IBFD)
Esmé Berkhout	Tax expert at Oxfam Novib
Frank van Brunschot	Technical assistance advisor at the IMF (formerly strategic advisor international affairs at the NTCA)
Ben Dickinson	Head of the Global Relations and Development Division in the OECD's Centre for Tax Policy and Administration
Hans van Egdom	Coordinating Policy Advisor at the International Tax Unit of the Dutch Ministry of Finance
Maikel Evers	Associate partner at PwC and tax lawyer
Jan de Goede	Senior Principal, Tax Knowledge Management at the International Bureau of Fiscal Documentation (IBFD)
Jeanette Groenman	Policy Advisor at the Fiscal and Legal Affairs unit of the Dutch Ministry of Finance
Geert Holterman	Policy advisor at the Sustainable Economic Development Department of the Dutch Ministry of Foreign Affairs
Alex Israel	Tax policy advisor at the NTCA, seconded to the Dutch Ministry of Finance
Reijer Janssen	Deputy Director International Tax and Consumer Tax at the Dutch Ministry of Finance
Kristy Jonas	Tax policy advisor at the Dutch Ministry of Finance
Bart Kosters	Senior Principal Research Associate in IBFD's Tax Services Department
Nils Langemeier	Policy advisor at the Sustainable Economic Development Department of the Dutch Ministry of Foreign Affairs
Jan Loeprick	Senior Tax Economist at the IMF (formerly World Bank)

Arnold Merkies	Coordinator of the Dutch branch of the Tax Justice Network
Maarten van 't Riet	Economist and researcher at the Public Finance sector of CPB Netherlands Bureau for Economic Policy Analysis
Jolanda Roelofs	Central Liaison Office at the NTCA
Aart Roelofsen	Coordinating Policy Advisor at the International Tax Unit of the Dutch Ministry of Finance
Harry Roodbeen	Director International Tax and Consumer Tax at the Dutch Ministry of Finance
Esmée Rouwet	Policy Advisor at the International Tax Unit of the Dutch Ministry of Finance
Marlies de Ruiter	Partner at EY and Global International Tax Policy Leader
Dirk-Jan Sinke	Head of Tax Policy at VNO-NCW and MKB-Nederland
Joseph Stead	Senior Policy Analyst tax and development in the OECD's Centre for Tax Policy and Administration
Irma Mosquera Valderamma	Associate Professor of Tax Law at Leiden University, the Netherlands and Lead Researcher of the European Research Council ERC Funded Project GLOBTAXGOV
Nestor Venegas	Senior Policy Analyst tax and development in the OECD's Centre for Tax Policy and Administration
Marijn Verhoeven	Lead Economist in the Equitable Growth, Finance and Institutions Practice Group and Head of the Global Tax Team at the World Bank
Edwin Visser	Partner at PwC and Tax policy leader for the EMEA region
Francis Weyzig	Tax programme leader at CPB Netherlands Bureau for Economic Policy Analysis and member of the BEPS monitoring group

Case study Ghana

Francis Amankwa-Poku	Economics officer at the Ghanaian Ministry of Finance and Economic Planning
Bernard Anaba	Policy analyst and coordinator for Tax Justice Coalition
Mawutor Anku	Analyst at the international desk at the Ghanaian Ministry of Finance and Economic Planning
Veronica Josiah-Aryeh	Policy advisor at the Ghanaian Ministry of Finance and Economic Planning
Adrie van Braak	Charted accountant at the NTCA, involved with TIWB
Henri ten Broeke	Senior Programme Manager Local Taxation on Tree Programma Ghana at VNG
Frank van Brunshot	Technical assistance advisor at the IMF (formerly strategic advisor international affairs at the NTCA)
Jürgen Ehrke	Advisor at the GIZ in Ghana and head of the DRM component of GIZ's governance programme
Victor Raphael Frerking	Programme manager 'Good Financial Governance' at the GIZ
Ridha Hamzaoui	Regional Tax Manager for Africa and Middle East regions under the IBFD Africa, Middle East and Latin America Knowledge Group
Thierry van Helden	Policy advisor at the Embassy of the Kingdom of the Netherlands to Ghana
Geert Holterman	Policy advisor at the Sustainable Economic Development Department of the Dutch Ministry of Foreign Affairs
Peter Jongkind	Project Director Local Taxes at VNG International
Bart Kosters	Senior Principal Research Associate in International Bureau of Fiscal Documentation's (IBFD) Tax Services Department
Benjamin Kwafo	Tax policy Analyst at the Ghanaian Ministry of Finance and Economic Planning

Eric Mensah	Assistant Commissioner in charge of Legal Affairs and International Taxation Agreements at the Ghana Revenue Authority and currently the lead treaty negotiator for the Ghana double taxation treaty team
Phillip Jude Mensah	Deputy Assistant Commissioner, Board Secretariat and Legal Affairs, at the Ghana Revenue Authority
Mr. Musah	Transfer pricing unit at the GRA, TIWB recipient
Emily Muyaa	Managing Principal for Sub-Saharan Africa in the IBFD Africa and Middle East Department
Dominic Naab	Auditor at the Ghanaian Revenue Authority
Danuel Nuer	Head of tax policy unit at the Ghanaian Ministry of Finance and Economic Planning
Guswin Okkerse	Transfer pricing expert at the NTCA
Siebe Stellingwerf	Project Manager Taxation at VNG International
Ron Strikker	Ambassador of the Kingdom of the Netherlands to the Republic of Ghana
Peter van Tienhoven	Strategic advisor International affairs at the NTCA
Gijs Verbraak	Senior Policy Advisor at ActionAid
Norbert Vis	Tax inspector at the NTCA, involved with TIWB
Henry Yentumi	Strategic tax advisor to the GRA
Confidential Moses Yidana	Head of the transfer pricing unit at the GRA, TIWB recipient Academic and tax expert Representative of a Big-4 firm in Ghana IMF expert

Case study Kenya

Bernard Apind	Tax Policy Officer on Cross Border Taxation and Treaty Negotiations at The Kenyan National Treasury
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Isaac Gitone	Senior Policy Analyst at the Sectoral and Financial Affairs Department of Kenya's National treasury
Carlos Gutierrez	Principal Research Associate at IBFD Tax Services
Geert Holterman	Policy Advisor at the Sustainable Economic Development Department of the Dutch Ministry of Foreign Affairs
Bart Kosters	Senior Principal Research Associate in IBFD's Tax Services Department
Geerten Michielse	Senior Economist Tax Policy at the Fiscal Affairs department of the IMF
Josephine Muchiri	Manager International Tax Office at the KRA
Grace Namugambe	Programme Officer- Financing for Development/ Tax Justice - SEATINI-U
Regina Navuga	Programme Officer SEATINI-U
Joseph Ngugi	Deputy Director, Macro and fiscal affairs at the Kenyan National Treasury
Cromwel Pkomu	Policy Advisor at The Kenyan National Treasury
Tobias Rasmussen	IMF Resident Representative in Kenya
Robert Suuna	Head of Tax Analysis at Tax Justice Network (TJN) Africa
Confidential Gijs Verbraak	Senior Policy Advisor at ActionAid Academic and tax expert Representative of a Big-4 firm in Kenya Representative of a Big-4 firm in Kenya

Case study Uganda

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Geert Holterman	Policy advisor at the Sustainable Economic Development Department of the Dutch Ministry of Foreign Affairs
Kristy Jonas	Tax policy advisor at the Dutch Ministry of Finance
Bart Kosters	Senior Principal Research Associate in IBFD's Tax Services Department
Robert Luvuma	Manager International Taxation at the URA
Arnold Merkies	Coordinator of the Dutch branch of the Tax Justice Network
Geerten Michielse	Senior Economist Tax Policy at the Fiscal Affairs department of the IMF
Clara Mira	IMF Resident Representative Office in Uganda
Emily Muyaa	Managing Principal for Sub-Saharan Africa in the IBFD Africa and Middle East Department
Grace Namugambe	Programme Officer- Financing for Development/ Tax Justice - SEATINI-U
Regina Navuga	Programme officer SEATINI-U
Harry Roodbeen	Director International Tax and Consumer Tax at the Dutch Ministry of Finance
Robert Suuna	Head of tax analysis at Tax Justice Network (TJN) Africa
Confidential Gijs Verbraak	Senior Policy Advisor at ActionAid Academic tax expert East Africa

Annex 2 BEPS priorities for developing countries

This annex elaborates on the priorities of developing countries on BEPS issues as identified by international organisations, the Netherlands and developing countries themselves. The priorities identified by international organisations are based on a report by SEO commissioned for this evaluation,[303] the priorities identified by the Netherlands are those identified in a letter to Parliament,[304] while the priorities of developing countries were identified in the study by Craig West,[305] who was commissioned to do so for this evaluation.

Priorities identified by international organisations

The G20 Development Working Group (DWG) requested the OECD to collate the experiences of developing countries and international organisations in respect of the main sources of BEPS in developing countries and to analyses how these experiences relate to the OECD/G20 BEPS Action Plan. These experiences were based on '..dialogue and consultation with developing countries, and the experiences of international organizations working with developing countries'. The OECD identified the following most relevant key BEPS issues for developing countries:

- Base erosion caused by excessive payments to foreign affiliated companies in respect of interest, service charges, management and technical fees and royalties. (linked to OECD BEPS actions 4, 8 and 10)
- Profit shifting through supply chain restructuring that contractually reallocates risks, and associated profit, to affiliated companies in low-tax jurisdictions. (linked to OECD BEPS actions 8, 9, 10 and 13)
- Significant difficulties in obtaining the information needed to assess and address BEPS issues, and to apply their transfer pricing rules. (linked to OECD BEPS Actions 11 and 13)
- The use of techniques to obtain treaty benefits in situations where such benefits were not intended. (linked to OECD BEPS action 6)
- Tax loss caused by the techniques used to avoid tax paid when assets situated in developing countries are sold. (linked to OECD BEPS action 13)
- In addition, developing countries often face acute pressure to attract investment through offering tax incentives, which may erode the country's tax base with little demonstrable benefit (included in this report, not as an integral part of BEPS, but of first order concern to developing countries that impacts on the tax base)

[303] (SEO, 2021, p. 38,39)
[304] (Ministry of Finance, 2015g)
[305] (West, C., 2021, pp. 17, 18)

The following priorities for developing countries were mostly confirmed in another report by the IMF in 2014:

- 'Treaty shopping' – the use of tax treaty networks to reduce tax payments – a major issue for many developing countries, which would be well-advised always to be very cautious about signing any treaties (linked to OECD BEPS action 6)
- Better protection for many developing countries against the avoidance of tax on capital gains on natural resources and some other assets in their jurisdiction by the realisation of these gains (i.e. the transfer of ownership) in low-tax jurisdictions (not addressed by the OECD BEPS actions)
- Also, for many developing countries: effective provisions to guard against the use of borrowing to shift profits to lower tax jurisdictions (linked to OECD BEPS actions 2 and 4)
- Clearer, appropriately simplified rules and guidance to augment CD and address the challenges of transfer pricing (not addressed by the OECD BEPS Actions)
- The IMF report noted that although it was important for developing countries to cope better with the challenges of international taxation, this should not distract from wider and more fundamental tax reform objectives. Moreover, the IMF stressed that many developing countries had various other important BEPS concerns that were not covered by the OECD BEPS project: for example, the offshore indirect transfer of assets located in a country, tax incentives as source of tax leakage in developing countries and the lack of comparability data for transfer pricing.

In 2015, the UN's Financing for Development Office published a handbook on protecting the tax base of developing countries. The aim of this initiative was to supplement the OECD BEPS project by providing additional insight from the perspective of developing countries. The handbook identifies a number of priorities for developing countries, which more or less overlap with those of OECD and IMF:

- neutralising the effects of hybrid mismatch arrangements;
- limiting the deduction of interest and other financing expenses;
- preventing the avoidance of PE status;
- protecting the tax base in the digital economy;
- transparency and disclosure;
- preventing tax treaty abuse;
- preserving the taxation of capital gains by source countries;
- taxation of services;
- tax incentives.

In the 2017 update of the handbook on protecting the tax base of developing countries, the UN noted that many developing countries welcomed some of the OECD BEPS recommendations, especially the minimum standard on treaty shopping (action 6) and avoidance of PE status (action 7) but that because of their limited or lack of experience in mutual agreement procedures they did not consider some BEPS recommendations to be priorities (for example, the minimum standard on dispute resolution – action 14).

The UN further stressed that many recommendations from the OECD BEPS project have much to offer developing countries, but that: '..it is important to keep in mind the special needs and perspectives of developing countries regarding these issues: among others, the state of development of the tax system, the administrative resources available to deal with these matters, the nature of the trade and commercial relations with trading partners, and regional considerations. Each country must evaluate its own situation in order to identify its particular issues and determine the most appropriate techniques to ensure a sound tax base.'

The UN also stressed that a separate analysis of BEPS in developing countries is required because priorities in those countries differ: most developing countries are concerned more with reducing source-based taxation than with shifting domestic revenue of locally owned companies to low-tax jurisdictions. Developing countries are concerned with base erosion issues such as 'artificial' avoidance of PE status and establishing mechanisms to deal with such avoidance, and with tax treaty abuse and ways to reduce this. Furthermore, the corporate tax on inward investment accounts for a greater share of total revenue in developing countries than it does in countries with more developed tax systems. Finally, according to the UN the potential responses to BEPS are limited to some extent by the administrative capacity of developing countries.

Priorities identified by the Netherlands

Ever since the OECD/G20 BEPS 15 actions were made known in 2015, the Netherlands explicitly linked the specific actions of the OECD BEPS project to the interests of developing countries. In a letter to Parliament[306] the State Secretary for Finance detailed the actions the MoF deemed to be of particular importance to developing countries, as summarised below.

Action 4 on interest deduction:
The letter noted that the government recognised the problem of base erosion due to interest deduction and in this context preferred targeted measures rather than generic measures. It went on to say that here too, unilateral action by the Netherlands does not benefit a level playing field and the Cabinet was in favour of further developing binding rules, at least in a European context. As mentioned above, base erosion due to excessive interest deduction, and thus this action point, was seen as an important aspect for developing countries because by implementing the proposed interest deduction restrictions, these countries would ensure that (internal) interest costs incurred by branches of multinationals in developing countries would not lead to a disproportionate erosion of the base.

Action 6 on treaty shopping:
As a minimum standard, it had been agreed that treaties must contain a limitation on benefits (LoB) in combination with a PPT or with an anti-through-flow provision, but that solely a PPT would also suffice.

[306] (Ministry of Finance, 2015g)

The government attached great importance to the fact that the tax treaties to be concluded by the Netherlands in the future would meet this minimum standard. The new standards for anti-abuse provisions were deemed to be important for developing countries, as they would enable them to better implement withholding taxes by combating treaty shopping.

Action 7 on PE:
The Cabinet was in favour of this new assessment of whether there is a PE. The new definition of Article 5 would also become the government's commitment when negotiating a new or wholly or partly revised tax treaty with another country. Developing countries had also advocated these amendments to the definition of PE. In practice, there would more often be a PE, as a result of which, developing countries would more often receive tax rights on part of the corporate profit.

Actions 8-10 on transfer pricing:
These adjustments were fully in line with the Dutch policy laid down in the most recent transfer pricing decision. The government welcomed these amendments to the OECD Transfer Pricing Guidelines that provided a more resilient transfer pricing (TP) practice worldwide and help combat artificial profit shifts that could also benefit developing countries.

Action 13 on transfer pricing documentation:
The recommendation for the extension and harmonisation of TP documentation obligations was the concrete outcome of action point 13 of the BEPS project. The new rules were to apply to financial years beginning on or after January 1, 2016. Within the EU, the possibility of carrying out public CbCR was being investigated. Earlier in 2015, on behalf of the Cabinet, the State Secretary for Finance had requested the EC to prioritise research into the consequences of extending public CbCR for banks to all major multinational companies.

Priorities identified by developing countries

This section is based on the literature study by Craig West[307] that was based mostly on documentation published by ATAF.

The initial response to the OECD/G20 BEPS actions was discussed as early as 2014, at an ATAF Consultative Conference on New Rules of the Global Tax Agenda. This conference followed the release of the interim reports on the 15 BEPS actions. Although the conference preceded the final BEPS reports, the participants debated the issues (especially in relation to BEPS) that were of concern for the African continent. They were identified as:

- the digital economy – a new form of economy, requiring new rules and greater understanding of TP and the implementation of new legislation;
- transfer pricing – African countries were at various stages of developing the legislation and skills in TP, a topic that remained crucial for understanding the behaviour of MNEs;
- taxation of extractive industry – an industry with potential to yield much tax revenue but

[307] (West, C., 2021, pp. 17, 18)

that was dogged by unsustainable tax incentives and exemptions;
- tax instruments and information – the lack of treaties, agreements and accessible databases enhancing the understanding of the operations of MNEs for audit purposes;
- the informal sector – which continued to be a major potential source of tax revenue.

By December 2014, these had been mapped against the BEPS Action Plan as follows:

Table 18: African Tax Priorities mapped against BEPS actions

African Priority	BEPS Action numbers
Digital economy	Action 1
Base eroding payments: interest, royalties, management fees, technical fees	Actions 4 and 10
Treaty abuse	Action 6
Permanent establishment	Action 7
Transfer pricing issues relating to intangibles, risk and capital allocations	Actions 8 and 9
Access to information for TP purposes	Action 13
Arbitration	Action 14

The other non-OECD BEPS issues for Africa were identified as:
- transfer pricing comparability data
- taxation of the extractive industry
- tax incentives
- indirect transfers of assets

In addition, the ATAF document referred to:
- inadequate taxation of high net worth individuals (HNWI)
- insufficient tax mix and overreliance on single source taxation
- lack of automated systems in tax administration
- disconnect between tax policy and tax administration, leading to weak policies and legislation and under-resourced tax administrations, such that international policies and actions have no effect
- illicit financial flows in the form of trade mispricing
- the informal sector
- failure of regional coordination

In support of the above, in a 2015 survey conducted among developing countries (including Ghana and Zambia, two of this evaluation's sample countries), the following additional BEPS issues/needs were identified:
- encouraging developing countries to adopt a general anti-abuse rule (GAAR) as well as specific anti-avoidance rules in their domestic legislation
- pursuing work on the taxation of capital gains under domestic law and under tax treaties
- rebalancing source versus residence taxation, especially in relation to tax treaties
- the treatment of branch profit;
- the cash economy;
- the adverse consequences of the use of tax incentives.

Annex 3 Implementation of international standards by selected countries

This annex summarises the implementation of international standards by a selection of developed and developing countries. The first table provides information on the implementation of standards of the Global Forum on Transparency and Exchange of Information for Tax Purposes. It also gives information on the implementation of BEPS standards that has been derived from peer reviews of the four minimum standards, whose results with respect to implementation by the Netherlands are summarised below the tables. Information on the implementation of standards pertaining to the OECD BEPS and Global Forum in developing countries is also shown.

Lastly, the Netherlands' implementation of the standards prescribed in the EU's two Anti-Tax Avoidance Directives is compared with implementation by other EU Member States.

OECD BEPS and Global Forum

Implementation of standards of the Global Forum and BEPS is comparable across OECD countries, as shown by Table 19.

Table 19: Implementation by the Netherlands and seven other developed countries in Europe of the standards of the Global Forum on Transparency and Exchange of Information for Tax Purposes and the BEPS standards

	NL	IE	FR	BL	DE	LU	GB	CH
Exchange of information								
Member of Global Forum	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
EOIR rating round 1 *Compliant/largely compliant/ not reviewed*	LC	C	C	C	LC	LC	LC	LC
EOIR rating round 2 *Compliant/largely compliant/ not reviewed*	LC	C	C	LC	LC	LC	LC	LC
Mutual Administrative Assistance Convention *In force/signed/not signed*	F	F	F	F	F	F	F	F
Commitment to AEOI *Year/Not committed to a specific date*	2017	2017	2017	2017	2017	2017	2017	2018
CRS MCAA signed *In force/signed/not signed*	F	F	F	F	F	F	F	F
Mutual Administrative Assistance Convention *In force/signed/not signed*	F	F	F	F	F	F	F	F
BEPS								

Table 19: Implementation by the Netherlands and seven other developed countries in Europe of the standards of the Global Forum on Transparency and Exchange of Information for Tax Purposes and the BEPS standards

Inclusive Framework member	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Existence of harmful tax system (action 5) *Harmful/under review/not harmful*	NH	NH	NH	NH	NH	NH	NH	H*
Exchange of information on tax rulings (Action 5) *Reviewed and recommendations made/ no recommendations made*	NR	NR	R	NR	NR	NR	NR	NR
Preventing treaty abuse (Action 6) *Review in 2018 or 2019, no recommendations and 2020 review ongoing / 2020 review ongoing*	RNR	RNR	RNR	RNR	RNR	RNR	RNR	RNR
CbC – Domestic law (Action 13) *Legal Framework in place / Update on status pending*	LF	LF	LF	LF	LF	LF	LF	LF
CbC – Information exchange network (Action 13) *CbC MCAA Activated/Not signed/Not activated*	A	A	A	A	A	A	A	A
Effective dispute resolution (Action 14) *Stage 1/2 reviewed & recommendations made / Not reviewed*	2Rec	1Rec	2Rec	2Rec	2Rec	2Rec	2Rec	2Rec
Multilateral Instrument (Action 15) *In force/Signed/Not signed*	F	F	F	F	S	F	F	F

Source: SEO Amsterdam Economics and updated by IOB[308]. Legend: A = approved; C = compliant; LC = largely compliant; F = in force; S = signed; H = harmful; H* = in the process of being amended/ eliminated; NH = not harmful; R = recommendations; NR = no recommendations made; RNR = review ongoing; LF = legal framework in place; 1Rec = Stage 1 reviewed & recommendations made; 2Rec = Stage 2 reviewed & recommendations made

[308] https://www.oecd.org/tax/beps/beps-actions/action6/ last accessed on 30-10-2020; https://www.oecd.org/tax/transparency/country-monitoring/

Table 20 shows that the Netherlands has implemented the MLI more generously than seven other OECD countries.

Table 20: Implementation of the MLI: the Netherlands compared with seven other OECD countries

	NL	IE	FR	BE	DE	LU	GB	CH
Hybrid mismatches	✓	✓		✓	✓	✓		✓
Dual residence entities	✓	✓					✓	
Not using an exemption method to avoid double taxation	✓					✓		
Annual assets against dividend stripping	✓	✓	✓	✓	✓			✓
Looking back for interests in real estate bodies	✓	✓						
Anti-abuse clauses for PEs in third jurisdictions	✓							
PE broker structures etc.	✓		✓					
Artificial avoidance of PE status through commissionaire arrangements and similar strategies	✓	✓	✓	✓	✓	✓		
Anti-fragmentation	✓	✓	✓	✓	✓		✓	
Splitting up contracts	✓	✓	✓					

Source: SEO Amsterdam Economics and updated by IOB. A tick denotes that a country intends to implement the measure via the MLI.[309]

Action 5 Harmful Tax Practices

The minimum standard on harmful tax practices has been reviewed by the Forum on Harmful Tax (FHTP) practices and consists of three elements. Firstly, an assessment of preferential tax regimes to identify features of such regimes that can facilitate BEPS and therefore have the potential to unfairly impact the tax base of other jurisdictions.

[309] (Ministry of Finance, 2018b)

Secondly, a peer review and monitoring of the transparency framework that facilitates compulsory spontaneous exchange of relevant information on taxpayer-specific rulings which, in the absence of such information exchange, could give rise to BEPS concerns. Thirdly, the review of substantial activities requirements in no-tax juridictions and jurisdictions with only nominal tax, to ensure a level playing field.

For the first element, IFB members commit to ensuring that their preferential regimes do not compromise any of the five key factors used in the review process, and if they are found to do so, commit to ensure these regimes are amended or abolished. The five key factors are: 1) the regime imposes no or low effective tax rates on income from geographically mobile financial and other service activities; 2) the regime is ring-fenced from the domestic economy; 3) the regime lacks transparency; 4) there is no effective exchange of information about the regime; 5) the regime fails to require substantial activities. The final report on action 5 published in 2015 mentions the Dutch innovation box in a list of tax regimes that are 'inconsistent, either in whole or in part, with the nexus approach as described in this report', without further specifying why.[310] Follow-up reports in 2017 and 2019 concluded that the IP regime was considered not harmful because substance requirements were now in place and that 'grandfathering'[311] was in accordance with FHTP timelines.[312]

The peer review of the second element included reviewing (i) that there is an adequate domestic and international legal framework for the exchange of information related to rulings; (ii) that the templates for information on rulings being exchanged are complete and in the appropriate form; and (iii) that systems are in place to ensure that information on rulings is transmitted to the jurisdiction's competent authority for exchange of information and without undue delay is exchanged with relevant jurisdictions in accordance with the appropriate timelines.[313] The first peer review published in 2017 concluded that the Netherlands had met all criteria except for 'being able to identify all past rulings within the scope, meeting the timelines for exchanging information on past rulings to the relevant jurisdictions, and identifying and exchanging information on all new entrants to the grandfathered IP regime.' This shortcoming was attributed to the large number of past rulings that had to be collected and exchanged.[314]

The 2017 peer review also concluded that all recommendations of the previous peer review had been addressed by the Netherlands. However, it recommended identifying and exchanging information on all taxpayers benefiting from the third category of assets in the IP regime if they had not requested a ruling, in line with the terms of reference for the 2017 peer review.[315]

[310] (OECD/G20, 2015, p. 63);
[311] Grandfathering in the context of the FHTP's work refers to a transitional period during which taxpayers can benefit from a regime which may have harmful features.
[312] (OECD/G20, 2017b, p. 15); (OECD/G20, 2019b, p. 18)
[313] (OECD/G20, 2017c, p. 18)
[314] (OECD/G20, 2017c, pp. 203, 205)
[315] (OECD/G20, 2017c, p. 328)

Subsequently, the 2018 peer review concluded no further recommendations were necessary and those of previous year had been successfully addressed.[316] The third element applies to no or only nominal tax jurisdictions and is therefore not relevant for the Netherlands, as was confirmed in the only review on this topic, which only included tax regimes in those countries.[317]

Action 6 Prevention of tax treaty abuse

The peer review of action 6 lists whether jurisdictions comply with the minimum standard, which means including provisions dealing with treaty shopping in their tax treaties to ensure a minimum level of protection against treaty abuse. Complying with the minimum standard means the inclusion of treaty provisions in one of the following three forms: 1) a principal purpose test (PPT) equivalent to paragraph 9 of Article 29 of the 2017 OECD Model Tax Convention together with either a simplified or a detailed version of the limitation on benefits (LoB) rule that appears in paragraphs 1 to 7 of the 2017 OECD Model; 2) the PPT alone; 3) a detailed version of the LoB rule together with a mechanism (such as a treaty rule that might take the form of a PPT rule restricted to conduit arrangements, or domestic anti-abuse rules or judicial doctrines that would achieve a similar result) that would deal with conduit arrangements not already dealt with in tax treaties.[318]

The first peer review published in 2019 stated that of the 95 tax treaties of the Netherlands, 81 had been brought under the MLI, five included the complying instrument, a further seven tax treaties would be changed bilaterally and the remaining three (Aruba, Curaçao and Sint Maarten) were governed by the law of the Kingdom of the Netherlands. The Netherlands implemented articles 6 and 7 via the MLI and once these provisions came into effect, these tax treaties would comply with the minimum standard. The second peer review provided the same information as the first.[319]

Action 13 Country-by-country reporting (CbCR)

Action 13 (TP documentation and CbCR) provides a template for MNE groups to report relevant information annually for each tax jurisdiction in which they do business. It includes the amount of revenue, profit before income tax paid and accrued, as well as the number of employees, stated capital, retained earnings and tangible assets. MNE groups are also required to identify each entity within the group doing business in a particular jurisdiction and indicate the business activities each entity engages in.[320] Peer review of action 13 on CbCR deals withs of three aspects jurisdictions must comply with: 1) the domestic legal and administrative framework; 2) the exchange of information framework; 3) the confidentiality and appropriate use of CbCR reports. Because not all three aspects were implemented at the same time, they were reviewed in stages in the period 2017–2019.[321]

[316] (OECD/G20, 2019f, p. 298)
[317] (OECD/G20, 2019b)
[318] (OECD/G20, 2019a, pp. 15, 16)
[319] (OECD/G20, 2019a, p. 166); (OECD/G20, 2020a, p. 180)
[320] (OECD/G20, 2019e, p. 11)
[321] (OECD/G20, 2018, p. 16)

The first annual peer review covered: 1) the domestic legal and administrative framework, 2) certain aspects of the exchange of information framework and 3) certain aspects of the confidentiality and appropriate use of CbCR reports. The Netherlands' implementation of the action 13 minimum standard met all applicable ToR for the year in review. The report therefore contained no recommendations. The Netherlands has rules (primary and secondary laws, as well as guidelines) that impose and enforce CbCR requirements on MNE groups whose ultimate parent entity is resident for tax purposes in the Netherlands. The first filing obligation for a CbCR report in the Netherlands was for fiscal years commencing on or after 1 January 2016.[322]

The second and third peer reviews published in 2019 and 2020 arrived at the same conclusion: that the Netherlands complies with all criteria of the minimum standard with respect to the exchange of information framework in place and appropriate use.[323]

Action 14 Mutual agreement procedure (MAP)

The minimum standard on MAP)consists of 21 elements and 12 best practices, which assess a jurisdiction's legal and administrative framework in the following four key areas: 1) preventing disputes; 2) availability and access to MAP; 3) resolution of MAP cases; 4) implementation of MAP agreements. The first peer review in 2017 concluded that the Netherlands was largely compliant with the minimum standard with the exception of a number of tax treaties which lacked two provisions on the use and time limits of MAP cases. The Netherlands indicated that it would amend its tax treaties through bilateral renegotiation or through the MLI, which the Netherlands signed without making use of any reservations in its MAP article.[324]

The second peer review in 2019 drew the same conclusion and added that the Netherlands had opted for mandatory and binding arbitration in the MLI and no reservations had been made with respect to the MAP article in the MLI.[325]

In ten partner countries of the Netherlands, implementation of standards of the Global Forum and OECD BEPS is relatively limited, as Table 21 shows.

[322] (OECD/G20, 2018, p. 516)
[323] (OECD/G20, 2019e, pp. 362, 363); (OECD/G20, 2020b, p. 300)
[324] (OECD/G20, 2017a, p. 9)
[325] (OECD/G20, 2019d, p. 9)

Table 21: Implementation of standards of the Global Forum on Transparency and Exchange of Information for Tax Purposes and of OECD BEPS in ten partner countries of the Netherlands

	KE	ID	LR	ZW	EG	TN	BJ	BF	CG	SN
Tax treaty with the Netherlands	**Yes***	**Yes**	**No**	**Yes**	**Yes**	**Yes**	**No**	**No**	**No**	**No**
Exchange of information										
Member of Global Forum	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	No	Yes
EOIR rating round 1 *Compliant/largely compliant/partially compliant/not reviewed*	LC	PC	NR	-	NR	NR	NR	LC	-	LC
EOIR rating round 2 *Compliant/largely compliant/partially compliant/not reviewed*	NR	LC	PC	-	NR	LC	NR	NR	-	NR
Mutual Administrative Assistance Convention *In force/signed/not signed*	S	F	N	-	N	F	S	S	N	F
Commitment to AEOI *Year/Not committed to a specific date*	NC	2018	NC	-	NC	NC	NC	NC	NC	NC
CRS MCAA signed *Yes/Not applicable*	NA	Yes	Yes	-	NA	NA	NA	NA	NA	NA
Mutual Administrative Assistance Convention *In force/signed/not signed*	S	F	S	-	N	F	S	S	N	F
BEPS										
Inclusive Framework member	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Existence of harmful tax system (action 5) *Harmful/under review/not harmful*	NH	NH	NH	NH	NH	UR	NH	NH	NH	NH
Exchange of information on tax rulings (Action 5) *Reviewed and recommendations made/ no recommendations made*	NR	NR	NR	NR	R	NR	R	NR	R	R
Preventing treaty abuse (Action 6) *Review in 2018 or 2019, no recommendations and 2020 review ongoing / 2020 review ongoing*	RNR	RNR	RNR	RNR	RNR	RNR	RNR	RNR	RNR	RNR

Table 21: Implementation of standards of the Global Forum on Transparency and Exchange of Information for Tax Purposes and of OECD BEPS in ten partner countries of the Netherlands										
CbC – Domestic law (Action 13) *Legal Framework in place / Update on status pending*	U	LF	U	U	LF	LF	U	U	U	LF
CbC – Information exchange network (Action 13) *CbC MCAA Activated/Not signed/Not activated*	NS	A	NS	NS	NS	NA	NS	NS	NS	NA
Effective dispute resolution (Action 14) *Stage 1/2 reviewed & recommendations made / Not reviewed*	NR	1REC	NR	NR	NR	NR	NR	NR	NR	NR
Multilateral Instrument (Action 15) *In force/Signed/Not signed*	S	F	N	N	S	S	N	S	N	S

Source: SEO Amsterdam Economics and updated by IOB.[326] Legend: A = approved; C = compliant; LC = largely compliant; PC = partially compliant; F = in force; S = signed; N = not signed; NA = not applicable; H = harmful; NH = not harmful; R = recommendations; NR = no recommendations made; RNR = review ongoing; LF = legal framework in place; U = update on status pending; A = activated; NA = not activated; 1Rec = Stage 1 reviewed & recommendations made; 2Rec = Stage 2 reviewed & recommendations made; * Not yet ratified. Data on the other partner countries are not available because they have not joined the Inclusive Framework.

European Union anti-tax avoidance directives

ATAD I introduced five rules of minimum standards of which four (interest limitation rule, general anti-abuse rule (GAAR), controlled foreign company (CFC) rules and hybrid mismatches) are largely consistent with the OECD's BEPS recommendations in BEPS actions 2, 3, 4 (and 6), and the fifth (exit taxation) goes beyond the scope of the OECD's BEPS project. Subsequent rules relating to hybrid mismatches were finalised on 29 May 2017 when the ECOFIN adopted ATAD II (which amends ATAD I but only with respect to hybrid mismatches). It is important to note that ATAD sets a minimum level of protection and therefore Member States can adopt stricter rules when transposing the ATAD rules into their domestic laws.[327]

The five rules are summarised individually below. Each rule provides options for implementation by Member States. This overview of the rules and their implementation across Member States is based on a publication by PwC[328] that also explains all available options permitted. A letter to Parliament further elaborates on the ATAD rules.[329]

[326] based on: https://www.oecd.org/tax/beps/beps-actions/action6/ . Last accessed on 30-10-2020
[327] (PwC, 2020, p. 3)
[328] (PwC, 2020)
[329] (Ministry of Finance, 2018c)

- Interest limitation rule
  The deduction of 'exceeding borrowing costs' (deductible borrowing costs reduced by taxable interest revenues) is limited up to 30% of taxpayer's EBITDA (taxable income increased by tax-adjusted amounts for excess borrowing costs, depreciation and amortisation).
- Exit taxation
  Asset transfers from a corporate taxpayers' head office to its PE in another Member State or in a third country and vice versa (i.e. from the PE to head office as well as between PEs in different states) should be subject to an exit tax, provided that the Member State of the head office/PE (Member State of departure) no longer has the right to tax the transferred asset. Exit tax should also be liable when a corporate taxpayer transfers its tax residence or its entire business from one Member State to another Member State or a third country.
- General anti-abuse rule
  For the purposes of calculating the corporate tax liability, a Member State shall ignore an arrangement or a series of arrangements which, having been put into place for the main purpose or one of the main purposes of obtaining a tax advantage that defeats the object or purpose of the applicable tax law, are not genuine having regard to all relevant facts and circumstances. An arrangement may comprise more than one step or part.
- Controlled foreign company rule
  The ATAD's CFC rules apply to a) PEs which are not taxable or are exempt from tax in the Member State of the taxpayer's residence (the head office state), and b) entities where the taxpayer itself or together with its associated enterprises holds a direct or indirect participation of more than 50% of the voting rights, or owns directly or indirectly more than 50% of capital or is entitled to receive more than 50% of the profits of that entity. The foreign entity/PE must be liable for an amount of CIT which is less than 50% of the CIT it would have paid in the taxpayer's Member State.
- Hybrid mismatches
  ATAD II prescribes rules regarding the following hybrid mismatches:
  - hybrid financial instruments
  - hybrid entities
  - hybrid mismatches involving PEs
  - imported mismatches
  - reverse hybrid mismatches
  - hybrid transfers
  - tax residency mismatches

Table 22 summarises the implementation of ATAD by the EU Member States. It shows that the Netherlands adopted a more ambitious implementation with respect to most of the ATAD rules than most other EU Member States, although not in all cases. A recent advisory report on corporate taxation advises further strengthening the CFC rules because of their limited scope in the Netherlands.[330]

[330] (Commissie ter Haar, 2020, pp. 95, 96)

Table 22 Implementation of ATAD by European Union Member States		
Interest deduction limitation rule (EBITDA rule)	**Netherlands**	**# number countries (incl. NL)**
Application EBITDA rule		
Applies EBITDA rule	x	25
Does not apply EBITDA rule		3
Applies a domestic EBITDA rule		3
Transitional period		
Not equally effective rules	x	22
Equally effective rules		5
Used the transitional period		2
EC reasoned opinion for non-implementation		
Not applicable		1
EBITBA percentage and de minimis threshold		
30% of the EBITDA	x	30
25% of the EBITDA		1
25% of the EBITD		1
No de minimis threshold		2
De minimis threshold lower than € 3 million (general or applicable in certain cases)	x	6
Not applicable		3
Standalone exception		
Exception for standalone entities		11
No exception for standalone entities	x	14
Not applicable		3
Group approach		
Group approach applied	x	15
No group approach applied		10
Not applicable		3

Table 22 Implementation of ATAD by European Union Member States		
Interest deduction limitation rule (EBITDA rule)	**Netherlands**	**# number countries (incl. NL)**
Group escape		
Group escape opted		13
No group escape opted	x	12
Not applicable		3
Exclusion for existing loans and infrastructure exception		
General or specific exclusion of existing loans		7
No exclusion of existing loans	x	16
Not applicable		5
General of specific exclusion of loans for long-term infrastructure projects	x	17
Financial undertakings exception		
Financial undertakings excluded		18
Financial undertakings not excluded	x	7
Not applicable		3
Carry forward and carry back rules		
Unlimited carry forward, no carry back	x	8
Unlimited carry forward, five-year unused interest capacity		8
No carry forward rules available		3
Three-year carry forward, no carry back		1
Five-year carry forward, no carry back		1
Six-year carry forward, no carry back		1
Not applicable		3

Table 22 Exit taxation rule		
Exit taxation rules	**Netherlands**	**# number countries (incl. NL)**
Application of domestic exit taxation rules		
Was already applying exit taxation rules	x	16
Was not applying exit taxation rules		12
Implementation of ATAD's exit taxation rules		
Implemented ATAD's exit taxation rules	x	23
Has not implemented ATAD's exit taxation rules		5
Draft legislation amending domestic exit tax rules		2
Date of entry into of ATAD's exit taxation rules		
01-01-2018		4
01-01-2019	x	6
01-01-2020		13
Exception for temporary transfers		
Does not exempt temporary transfers	x	11
Exempts temporary transferd		12

Table 22 GAAR		
General anti-avoidance rule	**Netherlands**	**# number countries (incl. NL)**
Implementation of ATAD's GAAR		
Was already implementing a GAAR	x	27
Implemented ATAD's GAAR		17

Table 22 CFC rules		
General anti-avoidance rule	**Netherlands**	**# number countries (incl. NL)**
Implemented ATAD's CFC rules		
Implemented ATAD's CFC rule per 01/01/2019	x	24
Did not implement ATAD's CFC rules		3
Application per 01/01/2018		2
Proposed amendments		3
Model A or Model B		
Opted for model A		11
Opted for model B		10
Neither model A nor B		2
Combination of two models	x	1
Model A: substance carve-out for CFCs in third countries		
Application of substance carve-out to third-country situations	x	11
No application of substance carve-out to third country situations		1
No application of substance carve-out to either EU/EEA or third country situationes		1
Exceptions under model A		
One-third exception and financial undertakings exception	x	3
One-third qualifying income exception only		7
Neither one-third exception nor financial undertakings exceptions		2
Exceptions under model B		
Both accounting profits exceptions		6

Table 22 CFC rules		
General anti-avoidance rule	**Netherlands**	**# number countries (incl. NL)**
Accounting profits < € 750.000		2
No exceptions	x	3

Table 22 Anti-hybrid rules		
Anti-hybrid rules	**Netherlands**	**# number countries (incl. NL)**
Implementation of ATAD II's anti-hybrid rules		
Implemented ATAD II's rules	x	23
Has not implemented ATAD II's rules yet		5
ATAD II's anti-hybrid rules in more detail		
Has implemented all six anti-hybrid rules	x	22
Not decided not to implement all six hybrid-rules		1
Reverse hybrid rule		
Rule on reverse hybrid mismatches	x	14
Application as of 2019		1
Application as of 2020		3
Application as of 2021		1
Application as of 2022	x	9

Annex 4 Withholding tax rates

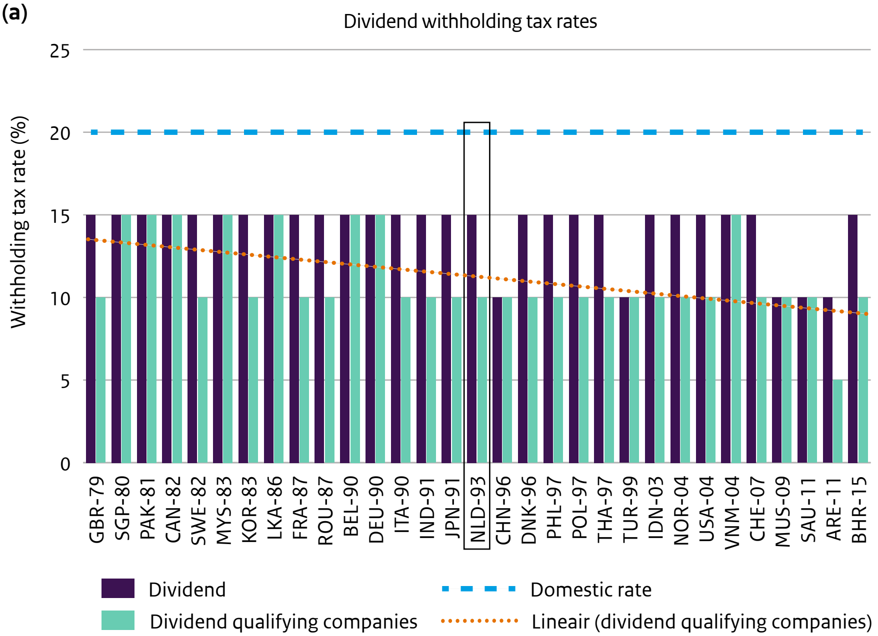
The figures in this annex compare withholding tax rates in tax treaties between the Netherlands and eight developing countries (Bangladesh, Ethiopia, Ghana, Indonesia, Kenya, Malawi, Uganda and Zambia) with the withholding tax rates in treaties between these countries and third countries. The data is derived from the IBFD tax treaties database. For each country, the withholding tax rate on dividend payment, interest and royalty payments is provided for its entire treaty network, except in the case of Bangladesh and Indonesia, whose treaty networks were too large to be included in a single figure.

Figures 13–20 enable comparisons to be made between the eight countries in terms of the domestic withholding tax rate applied to payments to the residence country without a tax treaty with the source country with lowered withholding tax rates. Two graphs are shown per country: the first relates to dividends (distinguishing between payments by 'regular' companies and qualifying companies which exceed a certain ownership stake threshold in the subsidiary in the source country) and the second to interest and royalties. Trendlines show the trend in the withholding tax rates negotiated in the developing country's tax treaties.

In Figure 21, all tax treaties of these eight developing countries have been combined to show a more representative trend in withholding tax rates in recent decades.

Figure 13 *Domestic withholding taxes in Bangladesh applied to payments to the residence country without a tax treaty with the source country with lowered withholding tax rates: (a) dividend withholding taxes (b) interest and royalties withholding taxes. Only the 30 most recently signed treaties are shown.*

(a)



(b)

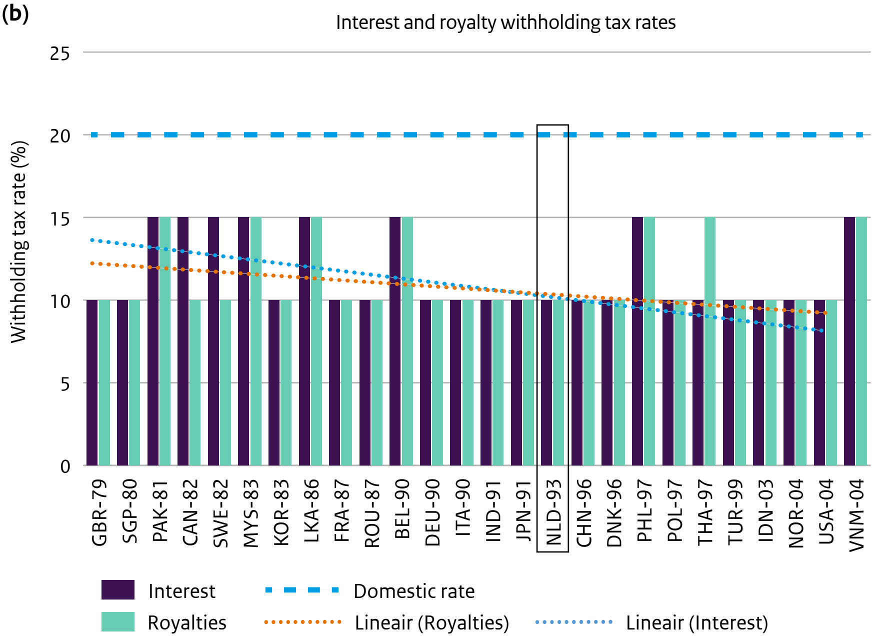
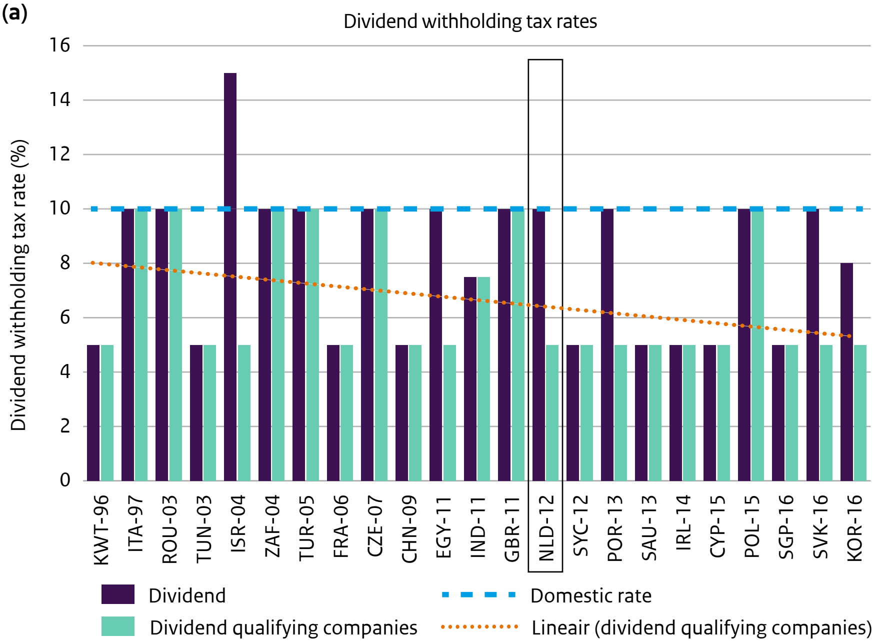


Figure 14 *Domestic withholding taxes in Ethiopia applied to payments to the residence country without a tax treaty with the source country with lowered withholding tax rates: (a) dividend withholding taxes (b) interest and royalties withholding taxes*

(a)



(b)

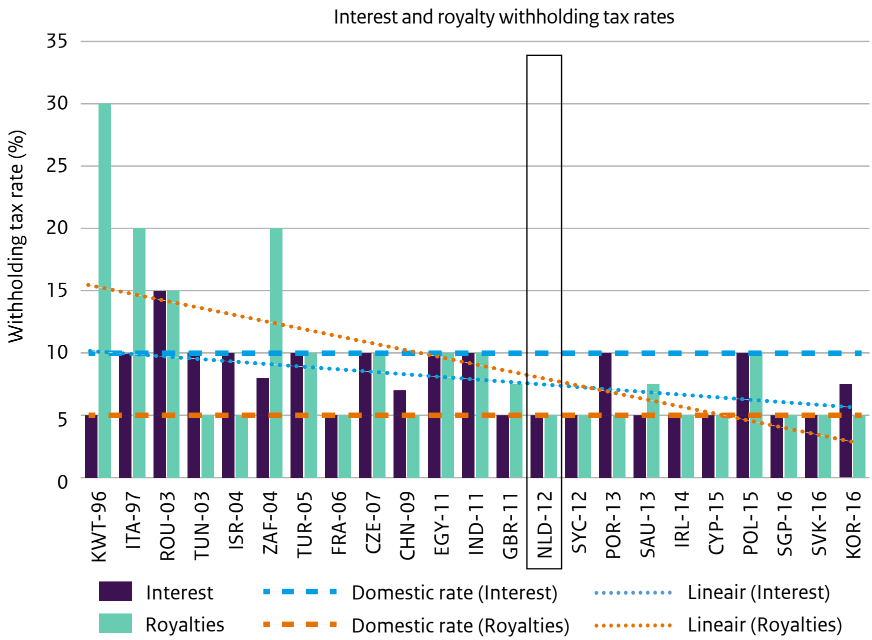
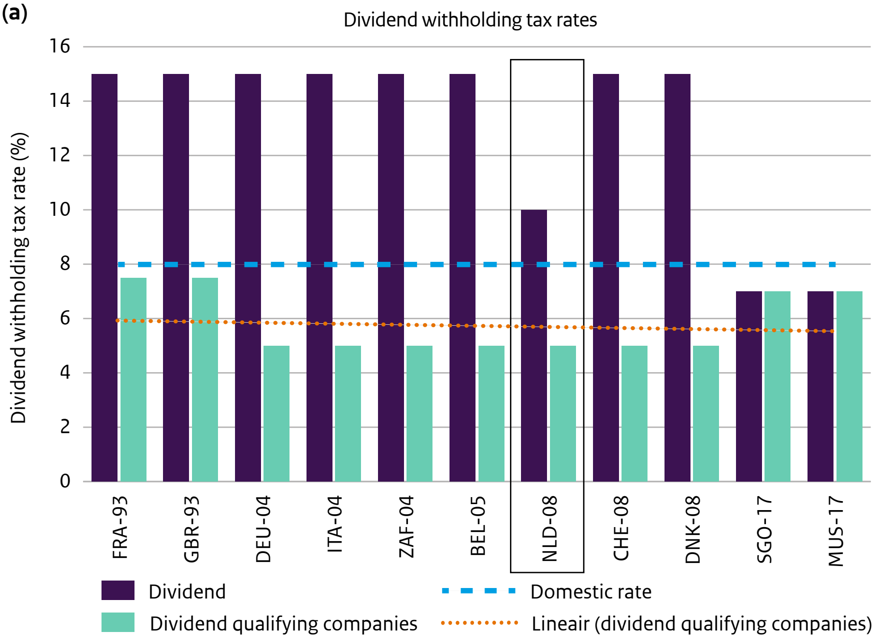


Figure 15 *Domestic withholding taxes in Ghana applied to payments to the residence country without a tax treaty with the source country with lowered withholding tax rates: (a) dividend withholding taxes (b) interest and royalties withholding taxes*

(a)



(b)

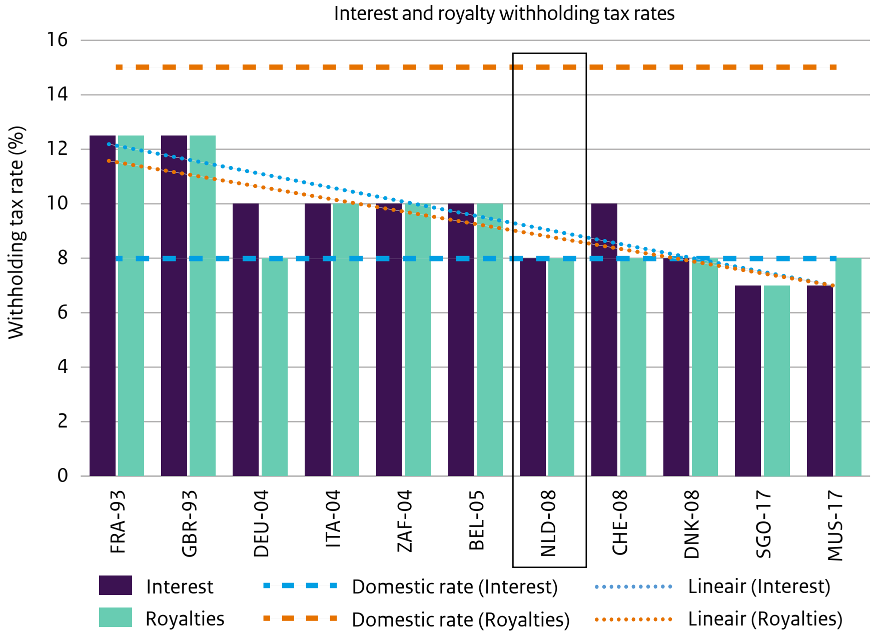
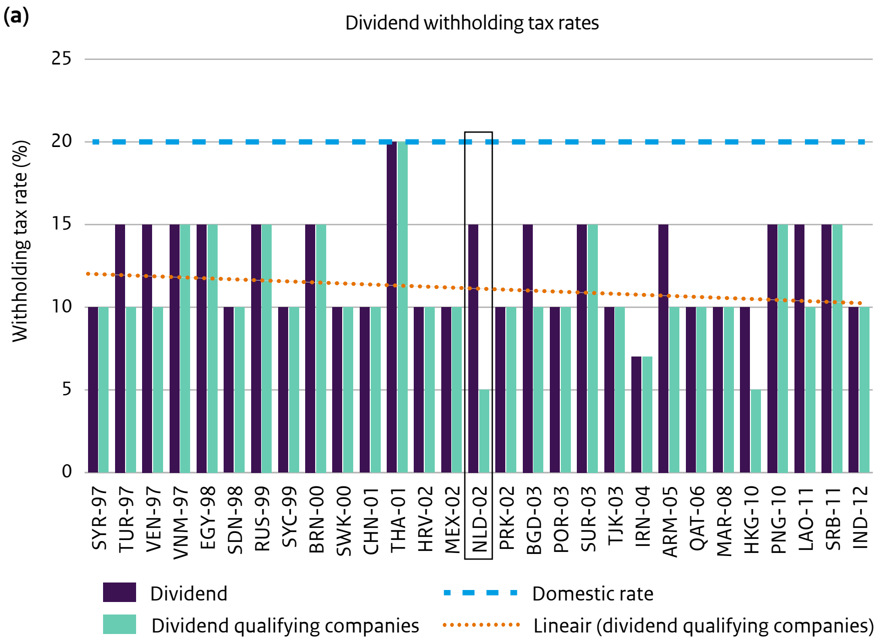


Figure 16 *Domestic withholding taxes in Indonesia applied to payments to the residence country without a tax treaty with the source country with lowered withholding tax rates: (a) dividend withholding taxes (b) interest and royalties withholding taxes. Only the 30 most recently signed treaties are shown*



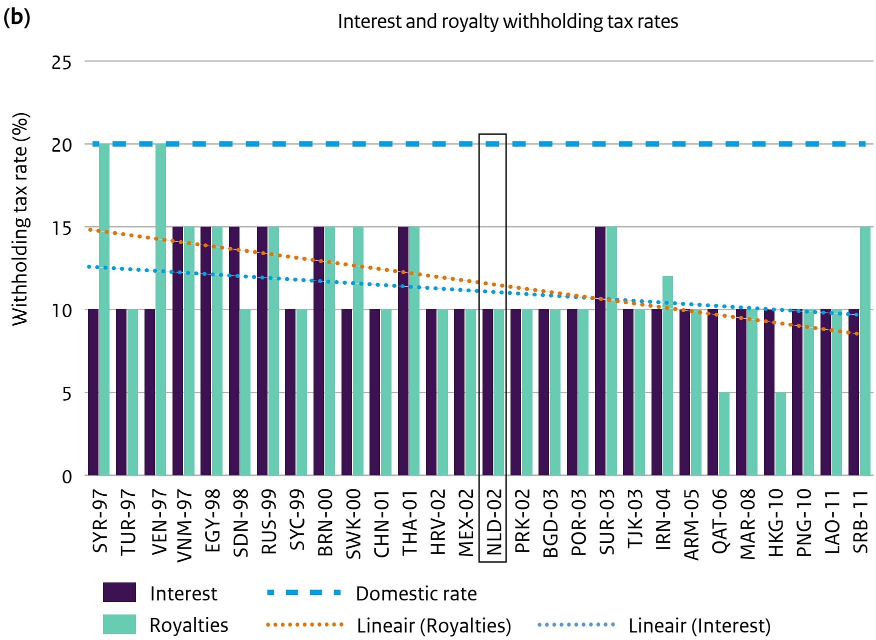
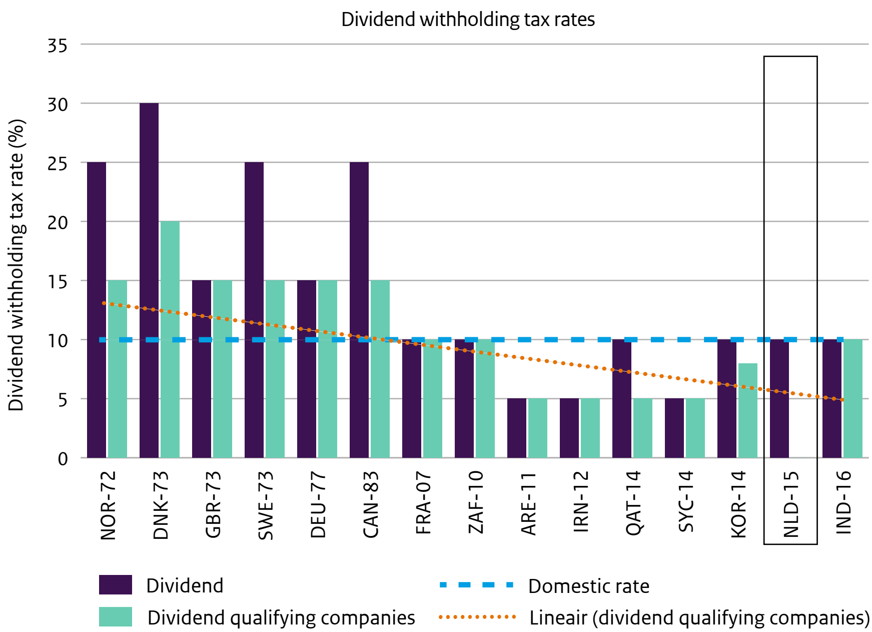


Figure 17 *Domestic withholding taxes in Kenya applied to payments to the residence country without a tax treaty with the source country with lowered withholding tax rates: (a) dividend withholding taxes (b) interest and royalties withholding taxes*

(a)



(b)

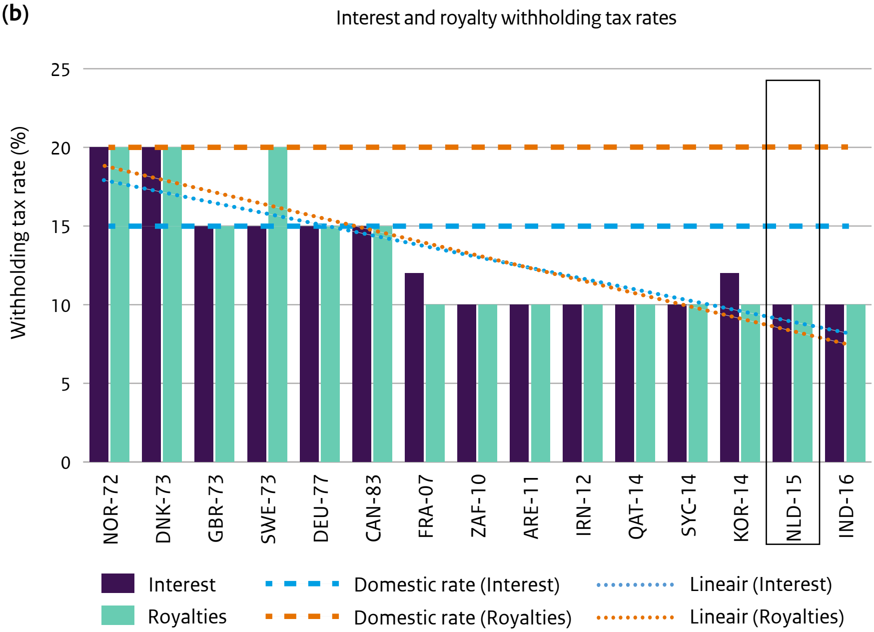


Figure 18 *Domestic withholding taxes in Malawi applied to payments to the residence country without a tax treaty with the source country with lowered withholding tax rates: (a) dividend withholding taxes (b) interest and royalties withholding taxes*

(a)

(b)

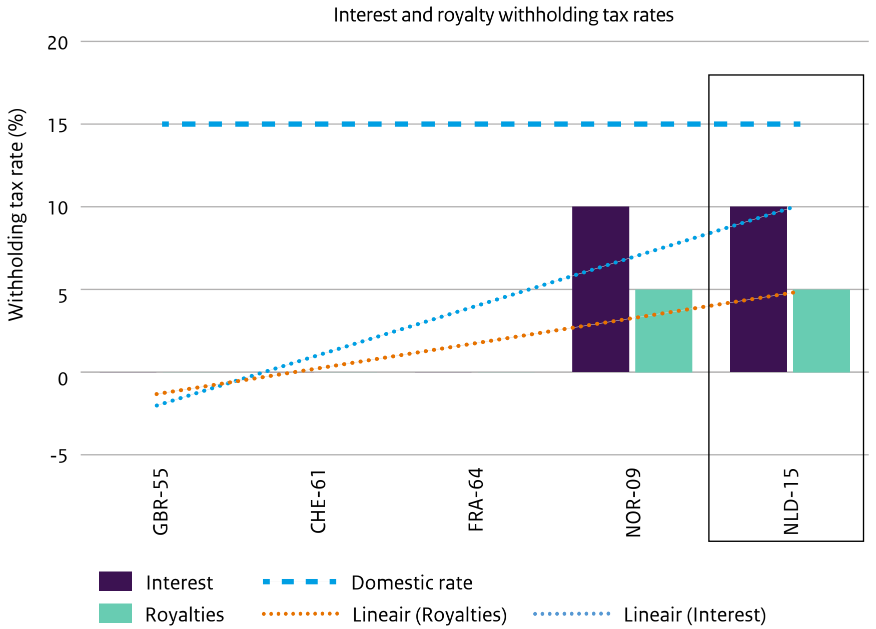
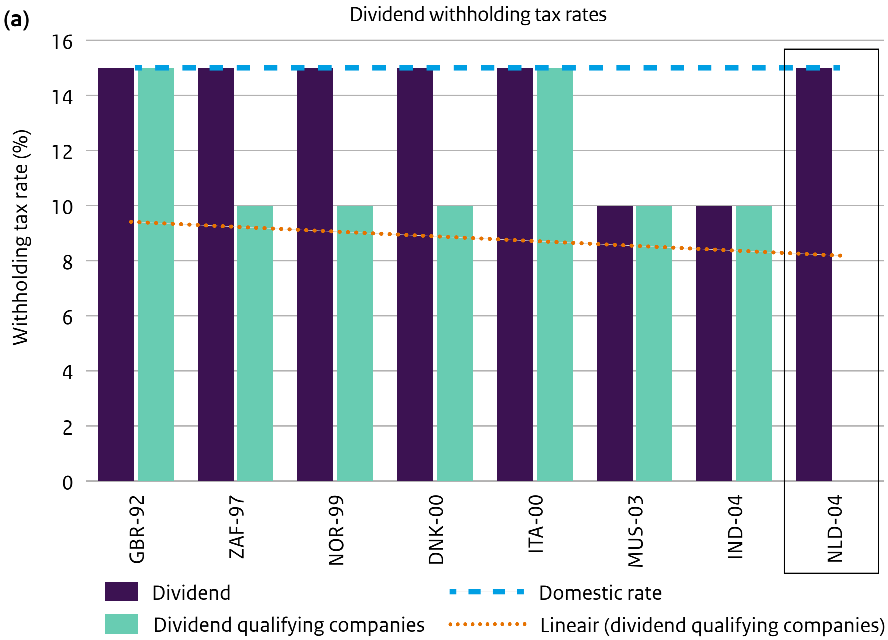


Figure 19 *Domestic withholding taxes in Uganda applied to payments to the residence country without a tax treaty with the source country with lowered withholding tax rates: (a) dividend withholding taxes (b) interest and royalties withholding taxes*



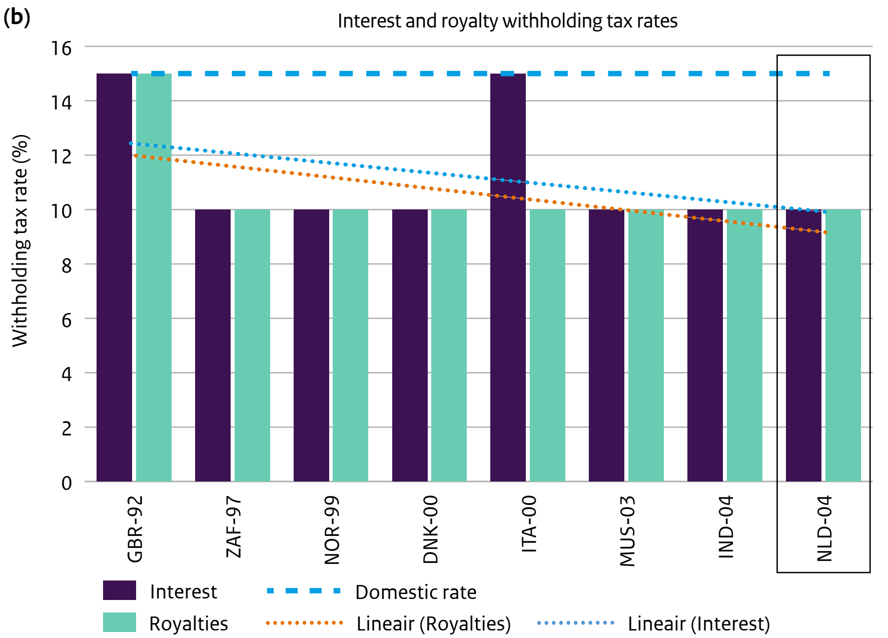
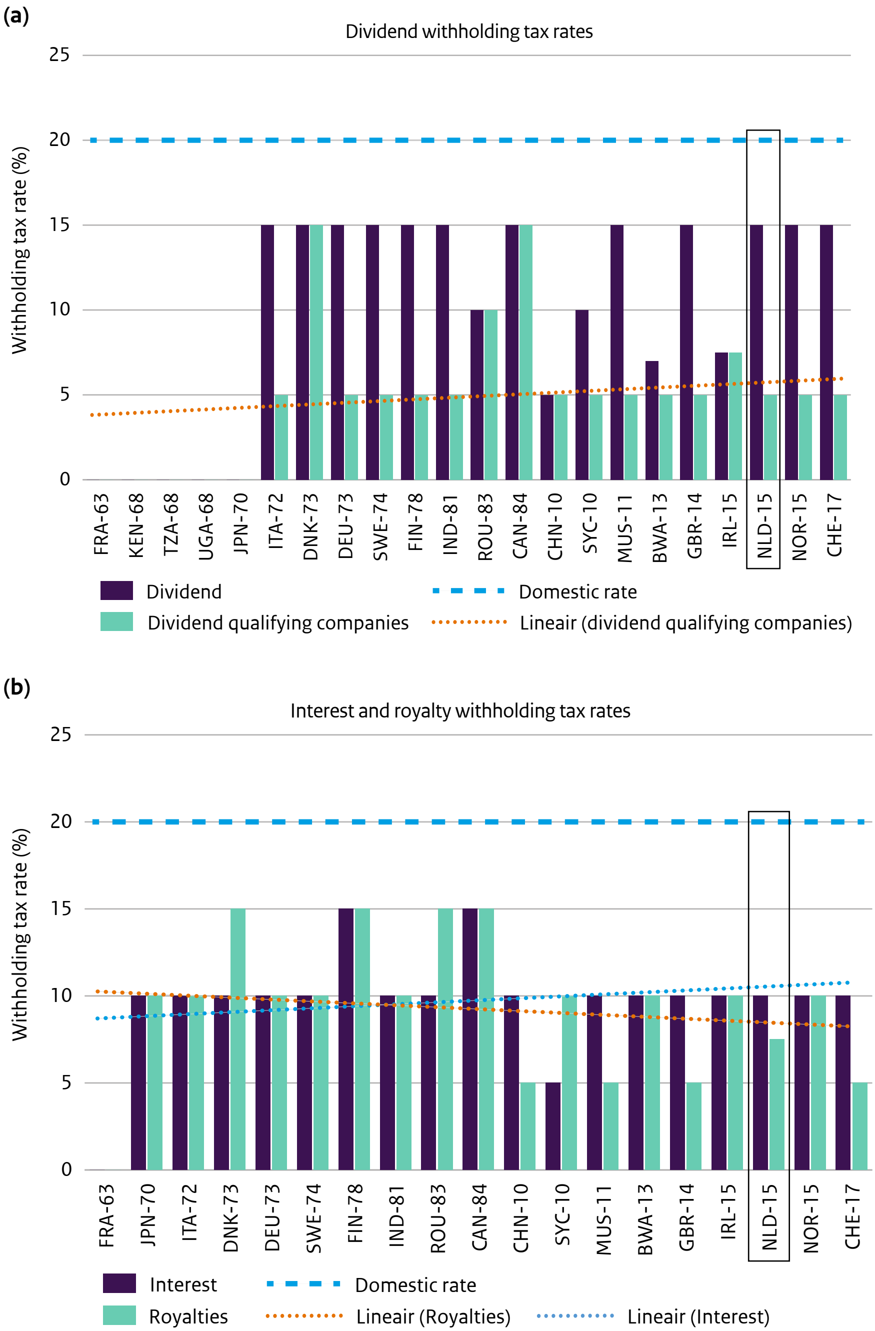


Figure 20 *Domestic withholding taxes in Zambia applied to payments to the residence country without a tax treaty with the source country with lowered withholding tax rates: (a) dividend withholding taxes (b) interest and royalties withholding taxes*

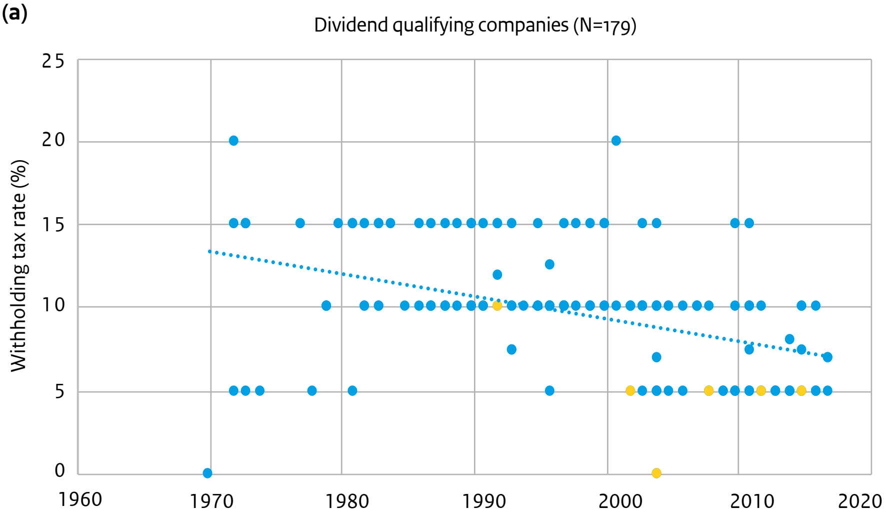


The trend in withholding tax rates

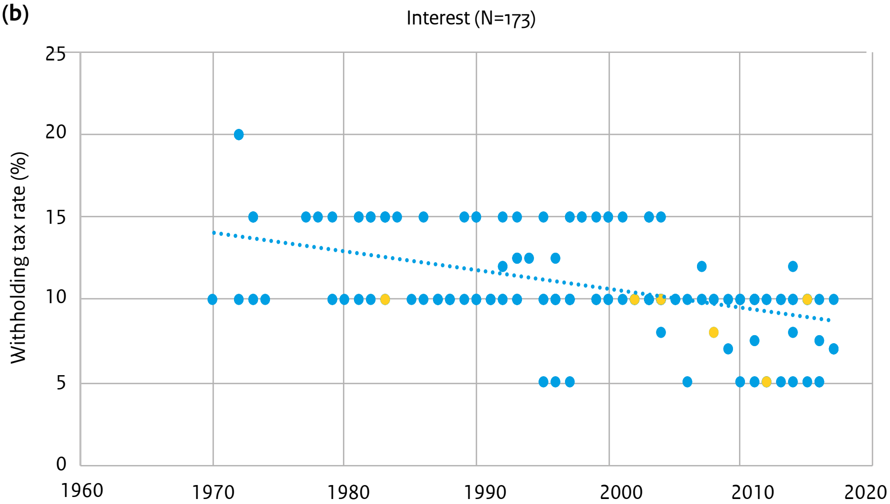
The withholding tax rates in tax treaties in force between the eight developing countries and all other upper-middle income and developed countries are shown in Figure 21.

Figure 21 *Timeline (1960–2020) for the withholding tax rates in current bilateral tax treaties between Bangladesh, Ethiopia, Ghana, Indonesia, Kenya, Malawi, Uganda and Zambia and all other upper-middle income and developed countries. (a) rates for dividend for qualifying countries (b) rates on interest (c) rates on royalties. Orange dots indicate tax treaties with the Netherlands.*

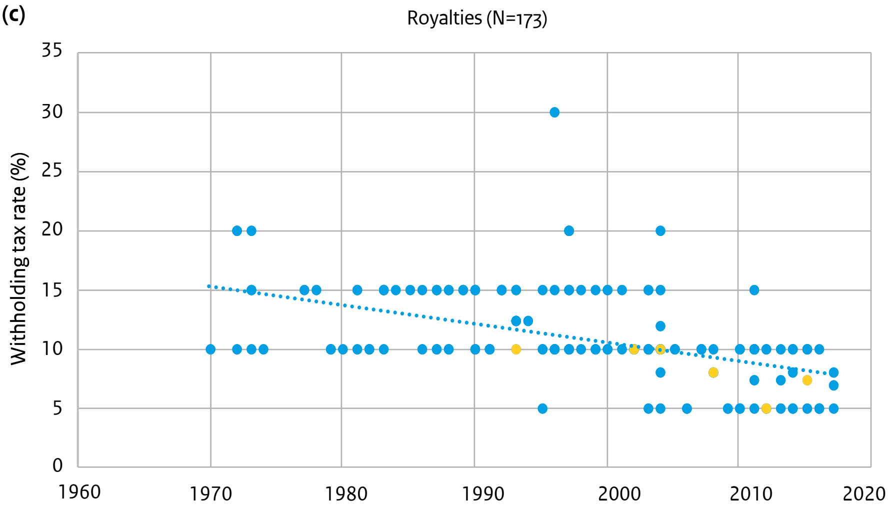
(a)



(b)



(c)


Royalties (N=173)
Withholding tax rate (%)
35
30
25
20
15
10
5
0
1960
1970
1980
1990
2000
2010
2020

Annex 5 Network analysis

The methodology used in the network analysis is based on that used in earlier studies by the CPB Netherlands Bureau of Economic Policy Analysis.[331] These studies explain the methodology, summarised below, in more detail. The network analysis used in this evaluation was extended to include interest and royalty flows and several developing countries. These additions are discussed in the second part of this annex.

Earlier studies
The method used to develop the indicators entails considering the international tax system to be a network and computing the 'shortest' paths to minimise tax expenditure for MNEs when repatriating profits. The network consists of 108 countries, and the tax payments are constructed from the statutory rates of CITs, withholding taxes on dividends and the double tax relief methods. The bilateral tax treaties typically reciprocally lower the withholding taxes and provide for more generous relief methods. This is used to compute the potential tax reduction by treaty shopping on repatriated dividends.

Profits could be taxed with the CIT in the host and home countries and with a dividend withholding tax in the host country. Double tax relief and tax treaties limit the possible triple taxation of dividend flows already following direct routes. For indirect routes, thus involving FDI diversion, the taxes of all possible conduit countries must be taken into account for both the home and host country. All information is compiled and stored in a 'tax-distance' matrix describing the tax costs for incoming and outgoing dividends between each pair of countries.[332]

The tax code of the home country may contain provisions to avoid double taxation; for instance, it may have a dividend participation exemption which, under certain conditions, exempts all, or part, of the foreign-source dividend income from liability for CIT. These conditions typically require a minimum share in the participation of the subsidiary and a minimum number of years that the stocks are held. In general, we assume that the conditions are satisfied. Some countries do not apply double tax relief methods to profit income from low-tax countries (CFC rules).

As well as *exemption*, two other methods of double tax relief are taken into account: *deduction* and *credits*. Deduction is the most modest relief method where no taxes need to be paid over the taxes already paid. The latter are deducted from the tax base. With the credit system, the base is the income of the subsidiary, but the taxes paid in the host country are credited against the home country CIT. Excess credit is not restituted. Under the credit method, tax relief is less generous than exemption but is more generous than deduction.

331 (CPB Netherlands Bureau for Economic Policy Analysis, 2017); (CPB Netherlands Bureau for Economic Policy Analysis, 2014b)

332 (CPB Netherlands Bureau for Economic Policy Analysis, 2017, p. 4)

The CIT of an intermediary country is relevant when the next intermediary parent in a tax route applies the credit method. Then it may not be clear which taxes can be credited: all the taxes of the preceding part of the tax route, or just the taxes paid in the previous country? In these conduit situations we took the average world CIT rate to be credited. This weighted average excludes the CIT rate of the country involved. The withholding taxes of the previous country were always taken into account and were credited where required.[333]

The algorithm generates the matrix of shortest distances, representing the lowest tax costs in repatriating profits from all host countries to all home countries. The lowest costs for a particular pair may be incurred on either the direct or indirect route. The average over all pairs is taken and double GDP weighted, where the weights serve as a proxy for the bilateral dividend flows. Ideally, the weights would be based on observations of these flows. However, these data are only very sparsely available and also reflect profit diversion for tax reasons.[334]

Additions

Dividend distribution usually takes place after corporate income taxation in the source country. After this, the home country may still levy corporate taxes, whereby the taxes paid in the source country are credited. In most cases there will be no corporate taxation in the home country because of the dividend participation exemption. Corporate taxation in the home country is different for interest and royalty payments. The payments are deducted from taxable corporate income in the source country. International payments are expected to be taxed in the destination country unless they are directly channelled to another country. If the latter is not the case, the CIT of the home country will be applied. Again, taxes paid in the source country may be offset (deducted or credited). Unlike with dividend, corporate tax is rarely exempted, but offsetting is common, providing that the taxes due in the destination country are at least equal to those paid in the source country. The network analysis was adapted to take all this into account. [335]

In the first model run, which only considered dividend, the results after GDP weighting of the country pairs showed minimal worldwide average tax benefits (less than 1 percentage point) from the optimal diversion of interest and royalty flows; for dividend, the average benefit was about 6 percentage points. Moreover, using indirect routes brings a tax benefit to only 20% of all country pairs in the case of interest, to only 25% of all country pairs in the case of royalties and to about 67% of the country pairs in the case of dividend. The results also reveal that not all country pairs are relevant for profit shifting; interest and royalty costs are preferably deducted in countries with a high statutory tax rate, whereas the payments are supposed to end up in low-tax jurisdictions. Strategic location of intellectual property is an example of this. These tax motives differ from those of treaty shopping, which we examined with the network analysis. In view of these findings, an alternative weighting scheme was developed for interest and royalties.

333 (CPB Netherlands Bureau for Economic Policy Analysis, 2017, pp. 7, 8, 9)
334 (CPB Netherlands Bureau for Economic Policy Analysis, 2017, p. 10)
335 (Netherlands Bureau for Economic Policy Analysis, 2020, p. 7)

The alternative version (dCIT13) only has positive weights for the country pairs AB for which it holds that the statutory tax rate of country A is higher than that of country B: CIT(A) > CIT(B). At the same time, as the reverse of the condition also holds, the weight of country pair BA will be zero. We combined this weighing with the economic relevance of source country A; GDP(A). Finally, the bigger the difference in tax rates, the larger the incentive to shift profits, and hence heavier weights. Thus: dCIT(AB) = GDP(A)*(CIT(A) – CIT(B)).
With these weights the worldwide average treaty shopping gain is almost 8 percentage points for interest and royalties.

International enterprises can structure their investments such that they make use of the most advantageous rates of the withholding taxes as set by the bilateral tax treaties. *Treaty shopping* therefore first and foremost signifies a reduction of withholding taxes and tax revenue losses in source countries. This is the dominant mechanism. The reduction of the withholding taxes could increase the tax base in the home country (*residence*). Tax revenues may increase, depending on the double tax relief system of the home country. Consider the *credit* method as relief to avoid double taxation. The withholding taxes already paid are taken as a 'credit' with the CIT in the home country. With less taxes already paid, less can be credited.

The third mechanism of treaty shopping derives from the fact that some countries have preferable relief systems for their treaty partners. For example, where the default system is the *credit* method, this tax relief system can be replaced by *exemption*, leading to a reduction of tax revenue in the destination country. We did indeed find that optimal routes make use of these preferential relief systems. This mechanism applies almost exclusively for dividend.

Finally, there is *conduit taxation*. A dividend flow passing through an intermediary station could, in principle, be taxed. Such an intermediary station would not be selected on an optimal route unless the CIT rate is zero. In the case of the interest and royalty flows passing through, it holds that the incoming flow will be taxable, but simultaneously the outgoing flow will be deducted from the taxable profit. *Conduit taxation* therefore always consists of withholding taxes. And, given the nature of the optimal routes (tax minimising) the revenues will be low. However, when other tax revenues are modest, a minimal *conduit* tax revenue may be relatively large for some countries.[336]

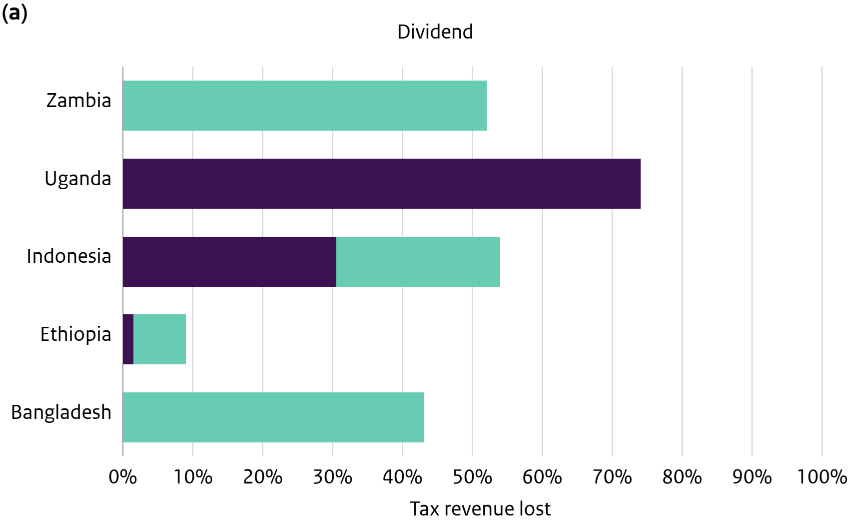
Results
The results presented below include effects on residence and conduit taxation, in contrast to the Figure 6 in section 5.1 which focus on effects on source taxation only. Figure 22 shows that the role of the Netherlands in tax revenue losses is substantial in several cases, especially with respect to taxation of dividend payments in Uganda and Indonesia and interest payments in Indonesia and Bangladesh. Around 75% of potential tax revenues on dividend payments in Uganda is lost, all of which is routed through the Netherlands in the 'optimal' situation.
In general, tax revenue losses are somewhat lower when residence and conduit taxation are included, because countries gain some residence tax revenue when withholding taxes are lowered due to including indirect tax routes.

[336] (Netherlands Bureau for Economic Policy Analysis, 2020, pp. 10, 11)

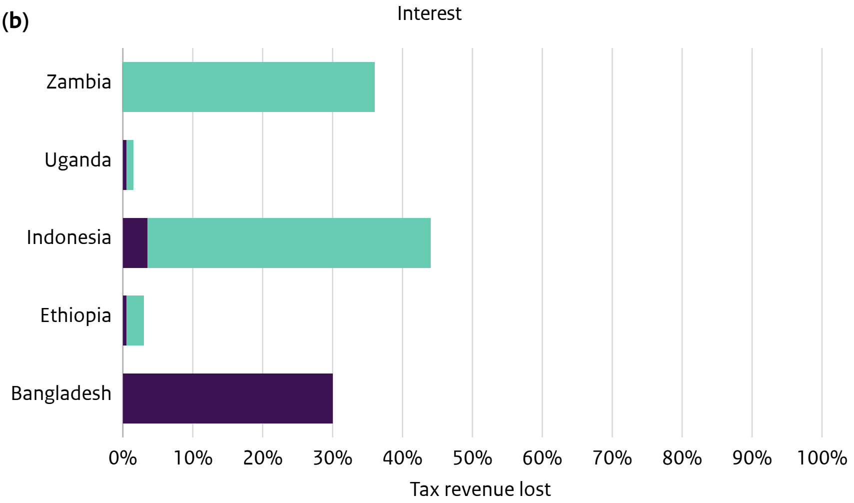
Results for the scenario with the implementation of conditional withholding show a reduction in the role of the Netherlands in several cases. The biggest reduction occurs in the case of interest payments from Indonesia, where the role of the Netherlands declines from 50% of tax revenue losses to around 5%. In other cases, the difference is less pronounced. In all cases, the role of the Netherlands is taken over by another country. In the scenario in which anti-abuse clauses are assumed to be fully effective, i.e. lowered withholding tax rates are not possible on indirect routes via the Netherlands, the role of the Netherlands is reduced to zero. However, other countries replace the Netherlands as conduit and hence the tax revenue losses are almost identical to those shown in the previous scenario and are therefore not repeated here.

Figure 22 *Baseline scenario: total tax revenue losses (mint) in Bangladesh, Ethiopia, Indonesia, Uganda and Zambia and the share of the Netherlands (purple) for (a) dividend (b) interest (c) royalties*

(a)



(b)



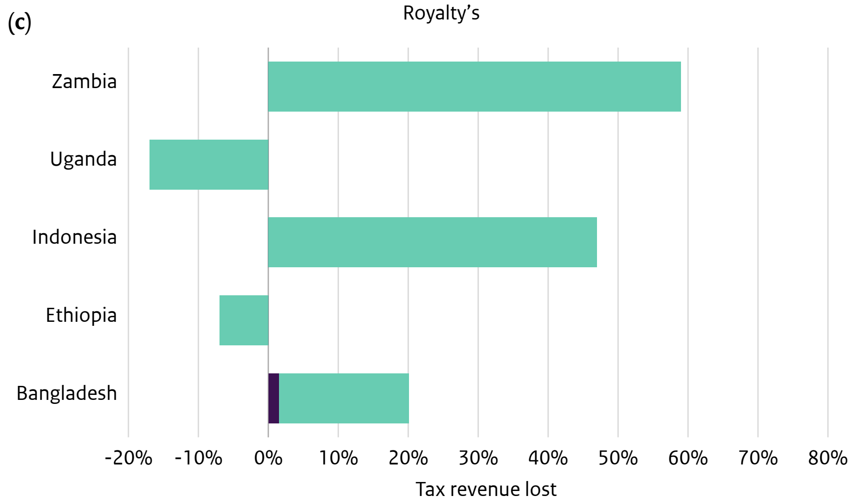
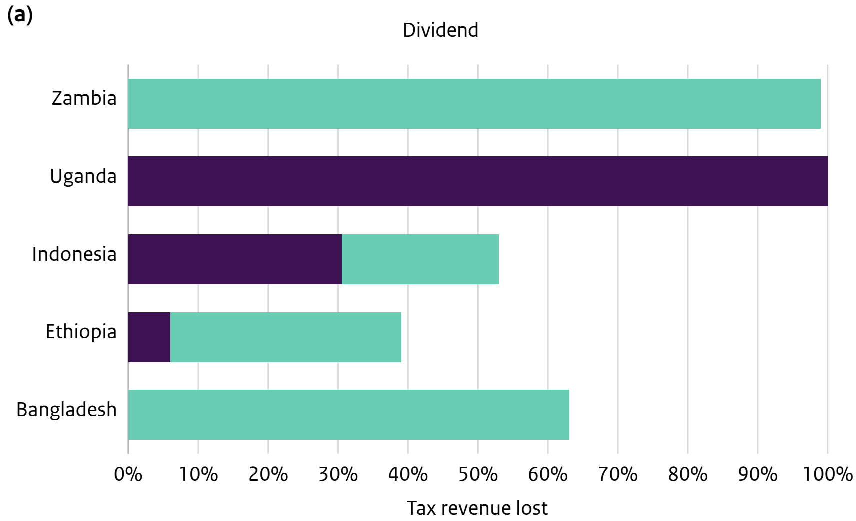
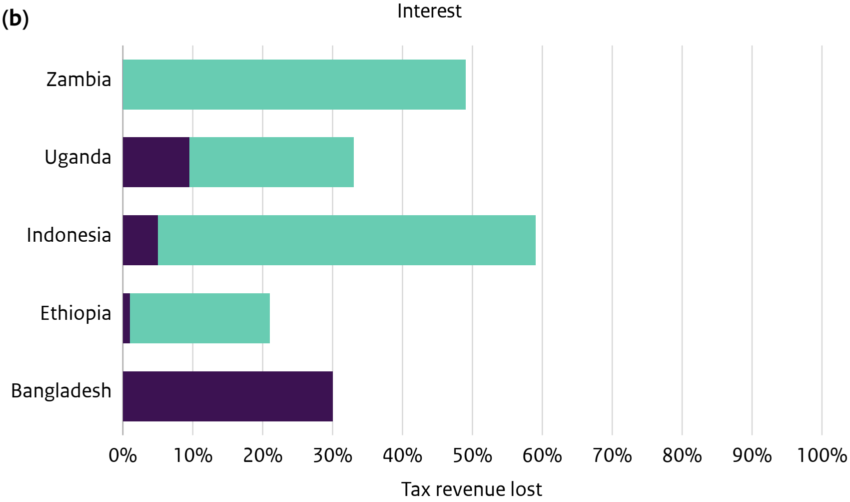


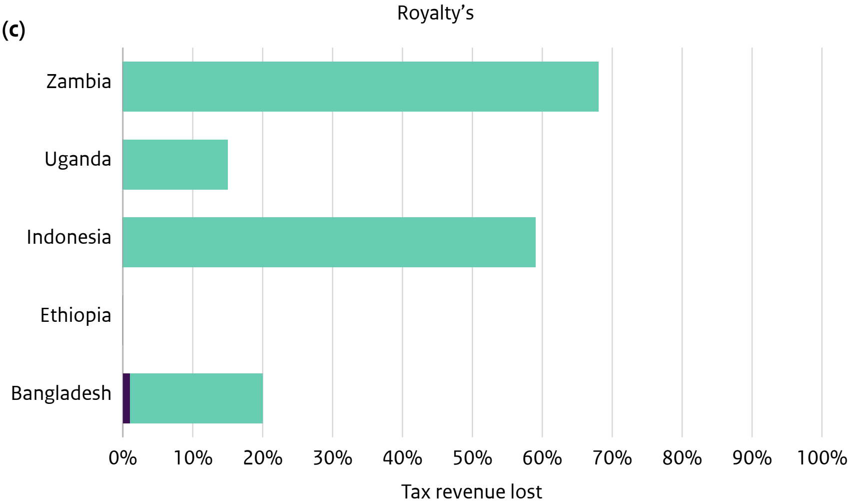
Figure 23 *Withholding tax scenario: total tax revenue losses (green) in Bangladesh, Ethiopia, Indonesia, Uganda and Zambia and the share of the Netherlands (purple) for (a) dividend (b) interest) (c) royalties*



(b)


Interest
Zambia
Uganda
Indonesia
Ethiopia
Bangladesh
0%
10%
20%
30%
40%
50%
60%
70%
80%
90%
100%
Tax revenue lost

(c)


Royalty's
Zambia
Uganda
Indonesia
Ethiopia
Bangladesh
0%
10%
20%
30%
40%
50%
60%
70%
80%
90%
100%
Tax revenue lost

Annex 6 Capacity development

List of capacity development activities

The tables below specify the activities that took place under the CD programmes elaborated on in chapter 6 for the focus countries Ghana, Kenya, Uganda, Indonesia, Ethiopia and Zambia. To the extent possible, expenditures and number of beneficiaries per activity are specified.

Strengthening tax systems (2012–2016) – MoF and NTCA – €1.1 million

Activity	Objective	Domestic/ international	BEPS/ TADAT-related	Participating countries and number of beneficiaries
High-level study visit to the Netherlands (2013) €22,225	Unknown, high-level visit from the Commissioner General	Domestic	Not available	Ghana (unknown)
Tax Inspectors Without Borders (2013-2016) €22,225	Strengthening the knowledge of tax authorities in developing countries by transferring knowledge, e.g. on controlling specific sectors and effectively addressing international TP rules	International	BEPS actions 8-10, TADAT P1-1/P2-3/ P2-4/P2-5/ P2-6/P6-16/ P6-18	Ghana (unknown)
Workshop on the valuation and classification of goods (2014) €4,4642	Training the GRA officers in such way that the task of valuing and classifying goods could go back to the GRA instead being outsourced to the 'destination inspection companies'	Domestic	Not available	Ghana (unknown)
Study visit re exchange of information (2014) € unknown	Studying the exchange of information office, review the automatic exchange of information process, the law and the procedures for information sharing	International	TADAT P6-16	Kenya (unknown), Uganda (unknown)
Study visit re tax audit and investigations (2014) € unknown	Unknown	Domestic	Not available	Kenya (2)

Activity	Objective	Domestic/ international	BEPS/ TADAT-related	Participating countries and number of beneficiaries
Study visit re risk management and authorised economic operator (2014) €5,698	Unknown	Domestic	Not available	Indonesia (unknown)
False invoice training (2016) € unknown	Training the participants to detect incorrect reporting through false invoices	Domestic	TADAT P2-3	Ethiopia (27)
Study visit re change management (2016) **€** unknown	Improving the performance of the KRA at lower costs, with an improvement in service, customer friendliness and transparency	Domestic	Not available	Kenya (3)
Study visit re human resource management (2016) € unknown	Informing the URA about human resource management activities of the NTCA	Domestic	Not available	Uganda (5)

Promoting DRM in partner countries (2017-2019) – MoF and NTCA – €2 million

Activity	Objective	Domestic/ international	BEPS/ TADAT-related	Participating countries and number of beneficiaries
Training for Customs Laboratory (2017) €14,383	Training aimed at the sustainable use and management of the customs laboratories	Domestic	Not available	Ghana (10)
Study visit re business process transformation (2017) €4,349	Unknown	Domestic	Not available	Indonesia (12)

Activity	Objective	Domestic/ international	BEPS/ TADAT-related	Participating countries and number of beneficiaries
Study visit re tax reform (2017) €24,933	Workshops provided on three themes: international agreements, public finance and human resources	Domestic	Not available	Indonesia (12)
Study visit re international taxation (2017) €9,741	During the visit various topics were covered, such as the MAP, exchange of information, company registrations, tax regimes, filing requirements and economic substance requirement	International	BEPS actions 7 and 14	Uganda (unknown)
Workshop on compliance risk management (2017) €25,714	Teaching the participants how to use the URA's resources in the most effective and efficient way	Domestic	TADAT P2-3/ P2-4/P2-5/ P2-6	Uganda (9)
Workshops on compliance risk management (2017-2019) > €85,331	Supporting comprehensive risk management strategy and the process of repositioning the Risk Management Unit to maximise compliance and develop a smart selection of taxpayers for audits	Domestic	TADAT P2-3/ P2-4/P2-5/ P2-6	Ghana (63)
Tax Inspectors Without Borders (2017-2019) €69,229	Strengthening the knowledge of tax authorities in developing countries by transferring knowledge e.g. on controlling specific sectors and effectively addressing international TP rules	International	BEPS actions 8-10, TADAT P1-1/P1-2/ P6-16/P6-18	Ghana (10)
Training on taxpayer services (2018) €11,849	Help setting up a taxpayer services call centre	Domestic	Not available	Ethiopia (27)
Training on tax audit (2018) €33,068	Assisting development towards a modern tax authority, with a focus on production typology	Domestic	TADAT P2-3	Ethiopia (90+)

Activity	Objective	Domestic/ international	BEPS/ TADAT-related	Participating countries and number of beneficiaries
Training on dispute resolution (2018) €23,127	Giving insight into how the objection and appeal process is organised in the Netherlands, which issues arise and which skills are required in the different phases in the process	Domestic	Not available	Indonesia (50)
Study visit re customs (2018) €3,843	Unknown	Domestic	Not available	Indonesia (2)
Training on learning & development (2018) €32,983	Building professional capacity and making a start towards a corporate tax academy	Domestic	Not available	Uganda (6)
Conference on change by improvement (2018) €196,442	Giving insight into how to implement changes and how to build an administration which facilitates continuous learning	Domestic	Not available	Ghana (5), Kenya (unknown), Uganda (unknown)
Study visit re fiscal legislation (2019) €26,314	Strengthening tax and customs regimes on the themes change management, compliance risk management, international taxation, the legislative process and audit	Domestic	Not available	Indonesia (11)
Study visit re on-time filing (2019) €4,000	Giving a broad insight into the Netherlands' system for on-time filing: business process, legislation, IT, organisational aspects of on-time filing	Domestic	TADAT P4-10/ P4-11	Uganda (4)

Capacity Building in Taxation (2013-2015) – IBFD – €1.4 million

Activity	Objective	Domestic/ international	BEPS/ TADAT-related	Participating countries and number of beneficiaries
Maintenance and administration of tax treaties (2014) €194,893	Equipping participants with skills to deal with international tax situations, what questions to ask, the different approaches of domestic tax systems to the most important issues and how to apply taxation treaties in practice	International: treaty enforcement	BEPS actions 6 and 7	Ethiopia (3), Ghana (4), Kenya (4), Rwanda (4), Tanzania (4), Uganda (4), Zambia (4)
International taxation: principles and application in Rwandan context (2014) €58,164	Providing tax officials of the RRA with the essentials of international taxation while incorporating international tax aspects of the Rwandan Law on Direct Taxes on Income	International, treaty enforcement	Not available	Rwanda (22)
International taxation: principles and application in Kenyan context (2015) €26,597	Improving understanding of the significance and impact of domestic law and tax treaties and of the viewpoint of each government department	International: treaty negotiations and enforcement	BEPS actions 6, 8-10 and 14	Kenya (25)
International taxation: principles and application in Ugandan context (2015) €24,091	Providing solid grounding in the key international tax principles relevant for building and maintaining a robust international tax policy and a tax treaty network that serves Uganda's specific requirements	International: treaty negotiations and enforcement	BEPS actions 6-10	Uganda (23)
Audit sector training on banking and insurance (2015) €38,191	Gaining a better understanding of the business, specific audit techniques, audit planning and advanced risk analysis	Domestic	TADAT P2-3	Rwanda (12)
Principles of international tax planning (2015) €21,472	Analysing the fundamentals of international tax planning and deepening knowledge of tax planning techniques	International	BEPS action 6	Rwanda (8)

Capacity Building in Taxation (2016-2020) – IBFD – €3 million

Activity	Objective	Domestic/ international	BEPS/ TADAT-related	Participating countries and number of beneficiaries
Seminar on offshore entities (2016) €156,343	Providing a better understanding of the concept of offshore entities for officers that have to deal with these entities in their daily work and equipping policy makers and treaty negotiators with strategies to tackle offshore entities	International, treaty negotiations and enforcement	BEPS action 5	Kenya (4), Rwanda (3), Tanzania (4), Uganda (4), Zambia (4)
Open standard tax courses (2016) €103,762	Providing knowledge on the basic principles of international taxation	International, treaty enforcement	Not available	Liberia (unknown)
International taxation: principles and application in Ugandan context part II (2016) €30,970	Providing solid grounding in the key international tax principles relevant for building and maintaining a robust international tax policy and a tax treaty network that serves Uganda's specific requirements	International, treaty negotiations and enforcement	BEPS actions 3-10, 12, 13 and 15	Uganda (22)
International taxation: principles and application in Kenyan context part II (2016) €23,504	Providing a better understanding of the policy and practical aspects of international taxation and treaty negotiation	International, treaty negotiations and enforcement	BEPS actions 6, 7 and 14	Kenya (24)
International taxation: principles and application in Ethiopian context (2017) €44,925	Providing an overview of all relevant cross-border activities and the provisions laid down in tax treaties in relation to how treaties may affect the provisions in domestic tax legislation of Ethiopia	International, treaty enforcement	BEPS actions 6-10	Ethiopia (36)
Workshop on illicit financial flows for NGOs (2018) €57,714	Addressing the issues connected with the enablers of illicit financial flows	International, treaty enforcement	Not available	Zambia (25)

Activity	Objective	Domestic/ international	BEPS/ TADAT- related	Participating countries and number of beneficiaries
The BEPS project and the MLI (2018) €57,714	Providing knowledge of the BEPS project and the role of the MLI to achieve BEPS measures	International treaty negotiations and enforcement	BEPS actions 4, 8-10 and 15	Zambia (15)
Double taxation agreements (2019) €69,420	Deepening relevant staff members' understanding of issues connected to double tax agreements and strengthening capacity	International treaty negotiations	BEPS actions 6-10 and 15	Ethiopia (15)
Tax treaties (2019) € unknown	Building capacity within the GRA in relation to applying and negotiating double taxation agreements	International treaty negotiations and enforcement	BEPS actions 6-10	Ghana (30)

Local Tax Communities in Ghana (2017-2022) – €4 million

Activity	Objective	Domestic/ international	BEPS/ TADAT- related
Various activities set up around the following modules: **problem analysis and strategy development (1)** and **organisation of local tax administration (2)** in 2018 and **implementation of Taxman software (3)** and **taxpayer communication and service delivery (4)** in 2019	Realise a sustainable increase of local tax revenues to finance improved basic services to citizens; increasing revenues of municipal and district assemblies and improve services to the public in Ghana; scale up the VNG international programme in three municipalities by joining forces with Canada, USA and Germany; expand the revenue side in Good Financial Government Programme; start the second phase partnership between Ghana Revenue Authority and the NTCA	Domestic	TADAT P1-1, P3-9 and P9-28

IMF Thematic Funds (2009-2022)

Activity	Objective	Domestic/ international	BEPS/ TADAT-related	Participating countries and number of beneficiaries
TPA–TTF Ethiopia Various activities set up around the following modules: tax procedure code (5); enforcement (6); taxpayer services (7); and tax administration integrity (9)	Address shortcomings that contribute to poor revenue collection with focus areas on: anti-money laundering; public finance management; fragile states; management of natural resource wealth; debt sustainability and public debt/asset management; financial stability and development	Domestic	TADAT P2-3, P2-4, P3-9, P4-10, P7-19, P7-20 and P9-25	Ethiopia (unknown)
MNRW–TTF Ethiopia Various activities set up around the following modules: strategy development (1) and tax procedure code (5)	Helping countries develop capacity to manage natural resources. In particular, CD (TA) will utilise the IMF's specialised expertise and unique ability to integrate policy, administrative and legislative dimensions	Domestic	TADAT P1-1 P1-2, P2-3, P2-4 and P3-4	Ethiopia (unknown)
MNRW–TTF Ghana Various activities set up around the following modules: fiscal regime (1) and extractive industries revenue administration (2)	Helping countries develop capacity to manage natural resources. In particular, CD (TA) will utilise the IMF's specialised expertise and unique ability to integrate policy, administrative and legislative dimensions	Domestic	TADAT P2-3 and P8-22	Ghana (unknown)

Activity	Objective	Domestic/ international	BEPS/ TADAT-related	Participating countries and number of beneficiaries
MNRW –TTF Kenya Various activities set up around the following modules: fiscal regime (1); extractive industries revenue administration (2); and extractive industries macro-fiscal policies, public financial management and expenditure policy (3)	Helping countries develop capacity to manage natural resources. In particular, CD (TA) will utilise the IMF's specialised expertise and unique ability to integrate policy, administrative and legislative dimensions	Domestic	TADAT P2-3 and P8-22	Kenya (unknown)
MNRW–TTF Uganda Various activities set up around the following modules: fiscal regime (1); extractive industries revenue administration (2); and extractive industries macro-fiscal policies, public financial management and expenditure policy (3)	Helping countries develop capacity to manage natural resources. In particular, CD (TA) will utilise the IMF's specialised expertise and unique ability to integrate policy, administrative and legislative dimensions	Domestic	TADAT P2-3 and P8-20	Uganda (unknown)

IMF – African regional capacity development centres (AFRITACs)

Activity	Objective	Domestic/ international	BEPS/ TADAT-related	Participating countries and number of beneficiaries
AFRICTACs Various activities took place on the following areas: Revenue policy and administration; public finance management; financial sector regulation; monetary policy and operations; economic and financial statistics; and macro-fiscal analysis	The IMF's Africa regional capacity development (AFRITAC) initiative was part of an international effort to build institutional and human capacity in African countries. The objective of the AFRITACs was to build institutional capacity in the core areas of the IMF's expertise to achieve sound public resource management, well-developed financial systems, and high-quality macroeconomic statistics.	Domestic	TADAT P2-3, P3-8, P4-11 and P8-22	Ethiopia (unknown), Kenya (unknown), Uganda (unknown), Zambia (unknown)

African Tax Administration Forum (ATAF)[337]

Activity	Objective	Domestic/ international	BEPS/ TADAT-related	Participating countries and number of beneficiaries
Tax fraud Investigation (2011)	Gaining insight into tax fraud schemes that threaten our economies and providing solutions that revenue authorities could employ	Domestic	Not available	Ghana (unknown)
Seminar on communication in tax administrations (2011)	Focusing on case studies about campaigns branding marketing and reputation management to enhance compliance in revenue administrations	Domestic	Not available	Ghana (unknown)
Large business taxpayers (2011)	Providing a broad overview of tax administration of large business issues, based on practices and experiences in African countries	Domestic	TADAT P2-3, P2-4	Kenya (unknown)
Exchange of information (2011)	Bringing member countries together to deliberate and share ideas on the benefits and importance of providing feedback on exchange of information cases regarding why tax administrations need to implement exchange of information feedback procedures	International	P1-2	Kenya (unknown), Uganda (unknown)

[337] In the annual reports from the first two ATAF programmes, only the locations where the activities took place were mentioned. The nationalities of the participants were not specified. Therefore it is possible that some activities are missing and for some activities the participating countries are missing.

Activity	Objective	Domestic/ international	BEPS/ TADAT-related	Participating countries and number of beneficiaries
Workshop on exchange of information & mutual assistance in tax matters (2011)	Promoting the work plan of the ATAF Exchange of Information and Tax Treaties Working Group and sharing expenses of tax administrations with regard to the exchange of tax information between competent authorities, especially in identifying ways of improving the efficiency of this process	International	P1-2	Uganda (unknown)
Taxpayer services (2011)	Drafting a declaration on the different aspects of taxpayer services which recognises the role and importance of taxpayer services as a pillar of tax administrations and which also serves as a recommendation to respective tax administrations to consider the principles which can be adopted and implemented in each tax administration	Domestic	Not available	Kenya (unknown)
Conference on tax fraud investigation (2011)	Gaining insight into tax fraud schemes that threaten our economies and providing solutions that African revenue authorities could employ to mitigate the consequent negative effects	Domestic	Not available	Uganda (unknown)

Activity	Objective	Domestic/ international	BEPS/ TADAT-related	Participating countries and number of beneficiaries
Seminar on TP (2013)	Gaining insight into, among others, TP issues in Africa, the role of the ATAF working groups, risk assessment and case selection and effective dispute resolution	International	BEPS actions 8-10	Ghana (unknown)
Seminar on auditing VAT systems (2013)	Gaining new perspectives on how VAT audits are carried out to train delegates to identify risks and select cases, and sharing experiences on VAT receipts from small vendors	Domestic	TADAT P2-3	Ghana (unknown)
Seminar on the interpretation of tax treaties (2013)	Providing a general understanding of international tax concepts and the application of treaties	International, treaty enforcement	Not available	Ethiopia (unknown), Zambia (unknown)
Tax treaties (2014)	Providing a general understanding of international tax concepts and the application of treaties	International, treaty enforcement	Not available	Kenya (unknown)
Short course on double tax treaties and base eroding payments (2017)	Strengthening the capacity of developing countries to protect and broaden their tax base in the process of curbing challenges posed by the 2030 Agenda for Sustainable Development	International	Not available	Kenya (unknown)
Short course on illicit financial flows (2017)	Empowering African Members of Parliament to deal with illicit financial flows from Africa	International	Not available	Kenya (unknown)

Activity	Objective	Domestic/ international	BEPS/ TADAT-related	Participating countries and number of beneficiaries
Meeting on illicit financial flows (2019)	Illustrating ATAF's work on the exchange of information in member countries and developing countries, discussing the implementation of the recommendations	Domestic	Not available	Ethiopia (unknown)
Capacity development on illicit financial flows (2019)	CD on illicit financial flows	Domestic	Not available	Ethiopia (unknown), Ghana (unknown), Kenya (unknown), Uganda (unknown)
Media & engagement training (2019)	Establishing a positive relationship between tax officials and the media and to enhance the media's understanding of tax issues to empower them to report accurately and informatively on matters of relevance to ATAF members	Domestic	Not available	Ghana (unknown), Kenya (unknown), Uganda (unknown), Zambia (unknown)
Online course on tax audits (2019)	Strengthening the skills of tax officials in the fundamentals of tax auditing	Domestic	TADAT P2-3	Ghana (unknown), Kenya (unknown), Zambia (unknown)
Short course on VAT fraud (2019)	Detecting various forms of VAT fraud	Domestic	TADAT P2-3	Ghana (unknown), Kenya (unknown), Zambia (unknown)

Activity	Objective	Domestic/ international	BEPS/ TADAT-related	Participating countries and number of beneficiaries
Workshop MLI (2019)	Enhancing know-how about the MLI which provides guidance to countries planning to adopt all or some of the treaty-related BEPS measures through bilateral protocols; to enhance understanding of the provisions that countries may wish to adopt and of administrative requirements; to create an appreciation of the revised ATAF model tax treaty	International, treaty negotiations	BEPS action 15	Kenya (unknown), Uganda (unknown), Zambia (unknown)
Train-the-trainer short course for members of the Exchange of Information Committee (2019)	Members of the Exchange of Information (EOI) Committee were trained on how to prepare course outlines and training materials on EOI to assist countries implementing EOI	Domestic	Not available	Kenya (unknown), Uganda (unknown)
Advanced course on tax audit (2019)	Providing participants with in-depth knowledge of tax principles and exposing them to a wide range of case studies of the three major tax types	Domestic	TADAT P2-3	Kenya (unknown), Zambia (unknown)
Integrity assurance workshop (2019)	Discussing and sharing experiences on the effectiveness of anti-corruption strategies that tax administrations are deploying to counter integrity breaches, and the results realised	Domestic	TADAT P9-25	Kenya (unknown), Uganda (unknown), Zambia (unknown)

Activity	Objective	Domestic/ international	BEPS/ TADAT-related	Participating countries and number of beneficiaries
Workshop on valuation of intellectual property and TP audits (2019)	Providing participants with knowledge on valuing intellectual property and how to apply TP rules to intellectual property	Domestic	BEPS actions 8-10	Kenya (unknown)
Conference on illicit financial flows (2019)	Discussing changes in the way companies conduct business resulting in the need to implement new nexus rules	Domestic	Not available	Kenya (unknown)
Discussion on struggles of tax administrations (2019)	Struggles regarding TP, BEPS and other practices which pose a serious risk to tax revenues in developing countries	International	BEPS actions 8-10	Kenya (unknown)
MAP workshops (2019)	Developing both knowledge and practical experience in relation to resolving tax treaty -related disputes under the MAP in compliance with the action 14 minimum standard	International, treaty enforcement	BEPS action 14	Uganda (unknown), Zambia (unknown)
Intermediate tax audit course (2019)	Gaining a solid understanding of the fundamentals of tax auditing	Domestic	TADAT P2-3	Uganda (unknown)
Second taxpayer education management workshop (2019)	Considering the impact of digitalisation on tax administration, looking specifically at striking a balance between modernising tax administration and designing relevant tax education programmes	Domestic	Not available	Uganda (unknown), Zambia (unknown)

OECD BEPS and TIWB support – OECD €1 million

Activity	Objective	Domestic/ international	BEPS/ TADAT-related	Participating countries and number of beneficiaries
Country-level audit support (TIWB) (2015-2019)	Supporting BEPS implementation and facilitating peer-to-peer expert deployments to provide practical tax assistance in real audit cases, focusing on international tax issues and general audit practices	Domestic	BEPS actions 8-10; TADAT P2-3	Ethiopia (unknown), Ghana (unknown), Kenya (unknown), Uganda (unknown), Zambia (unknown)
Country-level capacity development on BEPS and TP (2016-2018)	Providing assistance in understanding and implementing the BEPS package on a demand-led basis	International	BEPS actions 8-10	Kenya (unknown)
Revised TP legislation and interest deductibility legislation (2015-2018)	Drafting new legislation on TP and interest deductibility rules based on the BEPS action 4 recommended approach	International	BEPS actions 4 and 8-10	Uganda (unknown), Zambia (unknown)
Skills-building workshops on TP and related BEPS issues (2017-2018)	Unknown	International	BEPS actions 8-10	Uganda (unknown)
Academy programme (2018)	Enhancing the capacity of law enforcement authorities to prevent, detect and investigate tax crimes and other financial crimes, and to recover the proceeds of these crimes	Domestic	TADAT P6-16	Ghana (unknown), Indonesia (unknown). Kenya (unknown), Uganda (unknown), Zambia (unknown)
The design and implementation of measures for the collection of VAT on e-commerce sales (2018)	Unknown	Domestic	Not available	Indonesia (unknown)

Activity	Objective	Domestic/ international	BEPS/ TADAT-related	Participating countries and number of beneficiaries
Taxation of the Digital Economy (2018)	Unknown	Domestic	Not available	Indonesia (unknown)
Workshop on effective use of the AEOI (2018)	Assessing and improving the administration's capability for the collection, exchange, matching and use of the AEOI data	Domestic	Not available	Indonesia (unknown)
Workshop on enhancing inter-agency and international cooperation in the fight against tax crime (2019)	Enhancing inter-agency and international cooperation in the fight against tax crime	Domestic	Not available	Indonesia (90+)
VAT workshops (2019)	Identifying challenges and solutions to ensure that VAT revenues can be maximised, including in respect to the VAT challenges of digitalisation	Domestic	Not available	Ghana (unknown)
Workshop on fighting tax crime (2019)	Strategic workshop for Heads of Tax Audit and Investigations	Domestic	Not available	Indonesia (unknown)
Last mile training on exchange of information (2019)	Showing how to make effective use of the EOI tools by increasing the number and quality of outgoing requests to treaty partners	Domestic	TADAT P1-2	Kenya (unknown)
Workshop on intellectual property valuation (2019)	Unknown	Domestic	Not available	Kenya (unknown)

Global Tax Programme (2018-2022) – World Bank – €8.8 million

Activity	Objective	Domestic/ international	BEPS/ TADAT-related	Participating countries and number of beneficiaries
Strengthening property tax systems in developing countries (2018/2019) $ 1,970,000	Strengthening property tax policy, property valuation and tax administration systems of participating jurisdictions to help improve property taxation regimes and increase revenues	Domestic	Not available	Ghana (unknown)
Economic Management Strengthening (2018/2019) $ 15 million	Strengthening government of Ghana's institutional capacity for revenue expenditure management	Domestic	TADAT P8-22	Ghana (unknown)
Enhancing revenue mobilisation through improved tax compliance and administrative systems (2018/2019) $ 232,000	Supporting the GRA to improve taxation through analysis, database establishment, firm encouragement to register, transparency and accountability system	Domestic	TADAT P1-1 and P9-25	Ghana (unknown)
Indonesia fiscal reform (2018/2019) $ 1 billion	Supporting fiscal sector reforms that will assist the government of Indonesia to achieve its medium-term economic development and poverty reduction goals	Domestic	Not available	Indonesia (unknown)
Kenya tax CD and public expenditure analysis (2018/2019) $ 75,000	Increase DRM, inform on policy making on effectiveness and efficiency in expenditure programmes	Domestic	Not available	Kenya (unknown)

Activity	Objective	Domestic/ international	BEPS/ TADAT-related	Participating countries and number of beneficiaries
Uganda improving domestic revenue mobilisation (2018/2019) $ 600,000	Improving Uganda's DRM efforts, providing a better understanding of problems, compliance implications of existing instruments	Domestic	TADAT P2-3	Uganda (unknown)
Ethiopia tax and gender (2019/2020) $ 1,29 million	Supporting CD for data collection and analysis of taxation across different socioeconomic and demographic groups	Domestic	Not available	Ethiopia (unknown)
Ethiopia tax policy (2019/2020) $ 17 million	Supporting the government of Ethiopia in enhancing its revenue collection capacity in an efficient and equitable manner, with a focus on strengthening the legal framework and capacity in the areas of international trade taxation as well as selected domestic taxes	Domestic	Not available	Not available
International tax programme (2019/2020) $ unknown	Unknown	International	Not available	Indonesia (unknown)

Improved Financial and Tax Systems (2015-2021) – including Both ENDS –- €59,523,750

Activity	Objective	Domestic/ international	BEPS/ TADAT-related	Participating countries and number of beneficiaries
Joint position paper (2016)	Providing recommendations to Uganda for renegotiating the Uganda–Netherlands Double Taxation Agreement	International, treaty negotiations	Not available	Uganda (unknown)
Training on tax justice concepts in Zambia with civil society organisations (2016)	ensuring meaningful participation of women. Public participation in decision-making process around planning and budgeting and ensuring that the government generates more tax revenues, especially from the mining industry	Domestic	Not available	Zambia (unknown)
Framework for (re) negotiating of tax treaties (2017)	Contributing to a framework that aims to minimise revenue loss for in Uganda	International, treaty negotiation	Not available	Uganda (unknown)
Campaign for reopening tax discussions (2018)	Reopening the discussion pertaining to two taxes that negatively affect millions of people: the Mobile Money Tax and Over the Top Tax	Domestic	Not available	Uganda (unknown)
Lobby to increase royalties on minerals (2018)	Lobbying the government to increase the royalty rate for the extraction of minerals. Raising tax to boost revenues and redistribute wealth	Domestic	Not available	Zambia (unknown)

Activity	Objective	Domestic/ international	BEPS/ TADAT-related	Participating countries and number of beneficiaries
Meeting on double taxation agreement (2019)	Ugandan officers met with officials from the Dutch MoF to share their concerns on clauses in the Uganda–Netherlands Double Taxation Agreement	International, treaty negotiations	Not available	Uganda (unknown)
Advocating fair taxation (201)	Strengthening the capacities of communities, especially woman and youth, to advocate for fair taxation and better service delivery	Domestic	Not available	Zambia (unknown)

Support to the GRA (2014-2017) – GIZ – €2 million

Activity	Objective	Domestic/ international	BEPS/ TADAT-related
Various activities set up around: **improving the operations of the Customs Laboratory (2015-2019)**	Raising awareness on how to improve the functions of the laboratory and trigger the need to obtain required equipment as well as to utilise existing equipment better to improve the quality and quantity of tests done by the laboratory	Domestic	Not available
Various activities set up around: **facilitation of trade and investment (2015-2019)**	Building capacity of RMU staff for the effective functioning of the unit; training and development programme on risk registers and matrix management, compliance management	Domestic	TADAT P2-3
Various activities set up around: **strengthening the classification and valuation function of customs (2015-2019)**	Strengthening customs tariff classification knowledge and practices used during the customs clearance and audit process	Domestic	Not available

Capabuild Foundation (2019-2022) – Foundation Capabuild - €500.000

Activity	Objective	Domestic/ international	BEPS/ TADAT-related	Participating countries and number of beneficiaries
Fact-finding mission (2019)	Fact-finding mission to Ghana to inventory the current and wished-for state of art within the tax authority and other relevant parties	Domestic	Not available	Ghana (unknown)
Scoping visit (2019)	Assessing the needs of the Tax Training Center of the Ministry of Finance, visiting current contacts. Harmonising the mutual expectations among the Indonesia revenue authorities and training centre	Domestic	Not available	Indonesia (unknown)
Programme on taxation in the digital economy (2019)	Unknown	Domestic	Not available	Indonesia (unknown)

Figure 24 *Tools and frameworks available for supporting tax system reform*

Medium Term Revenue Strategies (MTRS)—An approach to comprehensive tax system reform—policy, administration, legal framework—recommended by the PCT (IMF, OECD, UN, WB) aiming to increase revenue-to-GDP ratio, improve system design, and enhance its performance and effectiveness. The MTRS approach anchors the TSR to (a) financing additional expenditure needs for growth and development, (b) sustained political commitment to reform formulation and implementation, and (c) coordinated CD support to reform by development partners.

TSR Phases	Mapping of Tools and Frameworks to Support Tax System Reform (TSR)								Tools / Frame-works
Diagnostic of Current Situation	**TADAT by multiple DPs**—to assess tax administration performance from outcome perspective –nine (9) performance outcome areas. Secretariat hosted by the IMF.	**IMF's RA-GAP**—to estimate policy and compliance gaps in VAT, CIT, Excises, PIT (under development).	**EC's FBs**—to assess tax and customs administrations against EU best practice.	**Micro simulation studies by multiple DPs**—such as Commitment to Equity (CEQ), to assess distributional impact of fiscal reforms.	**IMF/WB's TPAF** —to analyze existing tax policies in accordance with good practices.	**IMF's FARI**—to model, evaluate, compare and design fiscal regimes for extractive industries. **IMF's TEA**—to estimate revenue forgone due to tax exemptions and special treatments	**OECD/Global Forum Induction process**—to identify current BEPS, transparency and Exchange of Information deficits and challenges, via on-site visits and high-level engagement.	**CD missions to TS Diagnostic**—an approach used by PCT partners (and other DPs) to assess strengths and weaknesses of policy and revenue agencies against international trends/good practice.	Diagnostic Tools/ Frameworks[1]
	ISORA by CIAT/IMF/ /IOTA/OECD—to collect tax administration data on operations and other characteristics.	**USAID's CTD**—to collect a broad array of quantitate and qualitative indicators of tax systems.	**ATAF's ATO**—a paper-based tax administration survey ATAF conducts with its member countries.	**WB's DB**—to collect perception indexes in some specific tax policy and administration topics.	**Revenue Statistics by multiple DPs**—key data on tax (and non-tax) revenues.		**ATI indicators**—under consideration or alternatively using a subset of ISORA indicators.	**ISOCA by IMF/WCO** —to collect customs data on operations and other characteristics (to be launched).	Data gathering tools[2]
Reform Strategy Design	**CD missions to Comprehensive TSR design**—an approach used by the **IMF, WB** (and other DPs) to advise countries on the design of comprehensive tax system reform – policy, administration, and legal framework. In doing so, several diagnostic/data gathering tools are used, depending on the country's circumstances, to better tailored the advice to countries' capabilities to TSR reform design and implementation.[3]		**CD missions to Targeted TSR design**—an approach used by PCT partners (and other DPs) to advise countries on the design of targeted tax system reform—policy, administration, and/or legal framework—not necessarily in a comprehensive manner; sometimes associated with lending operations or international standard commitments.		**OECD /Global Forum Induction process** —to identify priorities for reform against international standards on BEPS and Exchange of Information and develop a roadmap and action plan.				Design Approach
Reform Implementation	**OECD's Maturity Models**—to provide tax administrations with a pathway for improving maturity in specific tax administration processes/areas.	**WB's DIAMOND**—to conduct drill-down assessments on specific operations and support areas to complement outcome-based tools (e.g. TADAT) to guide implementation CD.	**OECD/UN's TIWB**—to strengthen skills of tax administration auditors to enhance audit function.	**Papers, Toolkits & Technical Notes by multiple DPs**—to systematize and disseminate international trends/good practice in policy and administration.	**Training by multiple DPs**—to strengthen skills of tax administration officials at managerial and operational levels.[4]	**FTA's CBN**—to coordinate CB programs provided by FTA agencies in specific areas of tax administration, under a common approach and coordinating framework.	**OECD (and Partners) and Global Forum** —to provide support on legislative / regula-tory / administrative reform, organiza-tional change, capacity building and training.	**CD program to TSR implementation**—an approach used by PCT Partners (and other DPs) to support implementation of reform strategies – comprehensive or topic-specific.	Drilldown tools for implementation[5]
Monitoring & Evaluation	**Various of the above diagnostic and data gathering tools**—e.g. TADAT, ISORA.	**Targeted assessment of TSR programs by multiple DPs**—e.g. IMF's RMTF mid-term evaluation, targeted externally-financed CD projects (DFID, SECO, EC, etc.).	**Analytical work by multiple DPs**—to assess impact/results of tax policy and administration changes and draw lessons to support previous TRS phases.	**Ongoing evaluation of CD programs to TSR implementation by multiple DPs**—e.g. through Result-Based Management systems.	**OECD (Inclusive Framework)/Global Forum Peer Reviews**—to identify progress made on implementation of international standards and provide recommendations.				Evaluation/ Monitoring Tools/ Frameworks

source: (OECD, 2019a, p. 32)

Annex 7 Embassy survey on use of tax exemptions

The questionnaire sent to 11 embassies, Netherlands Enterprise Agency (RVO) and the Dutch Entrepreneurial Development Bank (FMO) is shown below.[338]

1. What is the amount of direct government-to-government aid in the total delegated ODA budget of your embassy for the years 2016–2020? Which activities count as G2G aid? (Please specify expenditures per year and activity name and number)
2. In what way is G2G aid distinguished from other aid types? Which definition for G2G aid is used to make this distinction?
3. Is there a general legal provision in the domestic law or regulations as a basis to ask for tax exemption for goods and services procured with ODA? Does the embassy play a role in an effective application of such a legal provision for specific activities (for instance by signing agreements or by making requests to the Ministry of Finance) or is this left to implementing agencies and companies?
4. Are tax exemptions applied to this type of aid activities when procuring/importing products and services? If so, which types of tax exemptions are applied? Which types of tax exemption could potentially be applied given the local legal provisions?
5. What is the amount of tax exemption granted on this type of aid activities by your embassy in the years 2016-2020? (please specify per year and activity name and number)
6. Do NGOs financed by your embassy receive a tax exemption? If so, is it on the basis of a general rule or an agreement with the host authorities?
7. To your best knowledge, which other bilateral donors providing this type of aid activities in your country no longer ask for tax exemption on bilateral G2G aid?

The results based on the answers received are shown in the table below and were discussed in detail in chapter 7.

[338] The questions were modified slightly to accommodate the different roles of the embassies, RVO and FMO in financing development activities in developing countries.

Table 23 Summary of embassies' responses to the questionnaire on the use of tax exemptions

Country	G2G 2016-2020	Tax exemptions provided by national government	Use of tax exemptions by implementing party	Assistance of embassy
Bangladesh	€ 44 million	Yes, in the BD law, there is a basis for tax exemption for importing goods and services under a G2G arrangement. This applies mainly to capital and equipment procurement.	No	Tax exemptions are part of standards arrangements with Bangladeshi Government
Burundi	No	N/A	N/A	N/A
Ethiopia	?	Potentially, in case of national programs implemented by the Federal Government itself certain imports of project/ program goods might be exempted from taxes.	No	No
Ghana	?	Potentially, Ghana MoF could decide to waive certain tax obligations, but they are not very keen on this in practice.	No	No
Indonesia	€ 29 million	Yes	Yes, on two projects started before 2016	In some cases, the Embassy will assist the implementing agency to arrange the exemption. But no tax exemptions are included in G2G-arrangements
Kenya	No response			

Table 23 Summary of embassies' responses to the questionnaire on the use of tax exemptions				
Country	**G2G 2016-2020**	**Tax exemptions provided by national government**	**Use of tax exemptions by implementing party**	**Assistance of embassy**
Uganda	€ 15 million	Yes, Official development assistance (ODA) i.e. aid-funded projects, goods and services are generally exempt from Value Added Tax.	No	"Tax exemptions are applied for directly by the projects/ companies, however the Embassy can assist by providing a supporting letter to show that the said company/NGO is implementing a project or procuring services funded by/using foreign government's or donor agency's funds in loan, grant or donation."
Malawi	€ 5 million	Yes, limited to NGO's	No	No
Zambia	€ 20 million	Potentially, on case-by-case negotiated in grant agreements	Yes, one project	The embassy was involved in the negotiations of the grant agreement for the Solwezi project where tax exemptions were requested.
Rwanda	No response			
Tanzania	No response			

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