

Draft Policy Position:

Corruption and Tax Abuse: two sides of the same coin

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Summary

In the past several years, the global policy agenda has increasingly focused on the persistent challenge of illicit financial flows. These include tax flight, proceeds of crime and corrupt money, often linked to grand corruption at the highest levels of government and business.¹ Not only have many of the world's largest banks paid massive fines for their roles in transacting illicit flows, but governments and regulators have come under substantial pressure to open up the secrecy jurisdictions that harbor such funds. There is growing awareness and concern about the high costs that illicit financial flows impose, especially in developing countries. Additionally, abusive tax practices no longer fit with expectations of corporate behaviour in an era of growing emphasis on companies' ethical and sustainable contributions to society. In this context, questions have emerged about the links between tax evasion, abusive tax avoidance and corruption.

There are multiple areas of overlap between corruption and abusive tax practices. Corruption and tax abuse reduce state resources and lead to the abuse of human rights and weakened institutions. They also frequently use secrecy jurisdictions, shell companies and other non-transparent legal structures. They are both facilitated by banks, lawyers, and accountants working to benefit the wealthy and powerful through questionable practices.

In many instances, large-scale abusive tax practices can constitute a form of corruption..

Indeed, a number of the policy proposals aimed to stop corruption are also relevant to stopping tax abuse, in particular, greater transparency in both corporate and government reporting of payments, organisational structures and ownership.

The Transparency International movement has recognised that by tackling tax abuse we can tackle corruption, calling in 2015 for 'reforms and practises that address those financial systems that facilitate corruption and tax evasion and that allow those responsible to escape justice'.² As a founding member of the Financial Transparency Coalition, since 2009 Transparency International has also been working in close partnership with leading global civil society organisations advocating for reforms in the areas of corruption, tax and development.³ Transparency International believes that specific challenges posed by corruption and tax abuse are not only aligned, but that the solutions to both lie in similar transparency and accountability measures.

The issue

Definitions

¹ TI has defined grand corruption as 'the abuse of high-level power that benefits the few at the expense of the many, and causes serious and widespread harm to individuals and society'.
http://www.transparency.org/glossary/term/grand_corruption.

² http://www.transparency.org/files/content/pressrelease/2015_TI_AMM_3Resolutions.pdf.

³ <https://financialtransparency.org/>.

Abusive tax practices have multiple overlaps with corruption, from their methods, to the actors involved, to the consequences.

Tax evasion is the “unlawful attempt to minimize tax liability through fraudulent techniques to circumvent or frustrate tax laws.”⁴ Per definition it is unlawful.

Aggressive tax planning is defined as follows:

- The European Commission calls it “taking advantage of the technicalities of a tax system or of mismatches between two or more tax systems for the purpose of reducing tax liability.”⁵
- The UK government uses the term “abusive” rather than “aggressive”, defining **abusive tax avoidance** as when “the course of action taken by the taxpayer aims to achieve a favourable tax result that Parliament did not anticipate when it introduced the tax rules in question and, critically, where that course of action cannot reasonably be regarded as reasonable.”⁶
- The US Internal Revenue Service (IRS) characterises **abusive tax avoidance transactions** as those that “take a tax position that is not supported by tax law or manipulate the law in a way that is not consistent with the law’s intent.”⁷
- The International Bar Association has suggested the term **tax abuse** to capture both evasion and aggressive avoidance, including “the tax practices that are contrary to the letter or spirit of domestic and international tax laws and policies.”⁸

For the purpose of this paper, we will refer to tax abuse as a combination of tax evasion and aggressive or abusive tax avoidance.

In practice, it can be highly challenging to determine the boundary between tax evasion and tax avoidance without a court decision. As the *Economist* magazine has noted “It is not correct to say, as many do, that tax evasion is illegal but tax avoidance is legal. The lawyers and accountants who manage avoidance schemes—which often exploit loopholes to gain a tax advantage that legislators never intended—work in a legal grey area.”⁹

The costs of tax abuse

Similar to corruption, tax evasion and aggressive tax avoidance have multiple negative effects, in particular for developing countries, which lose an estimated US \$100 billion in state tax revenues annually.¹⁰ Abusive tax practices directly undermine national administrations’ goals of creating a level-playing field for a competitive economy, distributing the cost of public goods across society, promoting growth and efficiency and driving

⁴ Definition at <http://www.businessdictionary.com/definition/tax-evasion.html>

⁵ European Commission Recommendation on aggressive tax planning, 6 December 2012: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32012H0772>

⁶ HM Revenue and Customs General Anti Abuse Rule Guidance: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/399270/2_HMRC_GAAR_Guidance_Parts_A-C_with_effect_from_30_January_2015_AD_V6.pdf

⁷ US Government Accountability Office; Abusive Tax Avoidance Transactions, May 2011: <http://www.gao.gov/new.items/d11493.pdf>

⁸ International Bar Association; Tax Abuses, Poverty and Human Rights p 7; April 2015: <http://www.ibanet.org/Article/Detail.aspx?ArticleUid=4A0CF930-A0D1-4784-8D09-F588DCDDFEA4>

⁹ The Economist: ‘Proposed Measures Against Dodgy Structures would be a Big Step Forward’, August 2016: <http://www.economist.com/news/britain/21705349-proposed-measures-against-dodgy-tax-structures-would-be-big-step-forward-you-feeling-lucky?fsrc=scn/tw/te/pe/ed/youfeelinglucky>

¹⁰ UNCTAD estimates cited by Alex Cobham, March 2015: <http://uncounted.org/2015/03/26/unctad-study-on-corporate-tax-in-developing-countries/>

innovation.¹¹ They also lead to public services being cut back, while at the same time forcing governments to increase taxes on labour or sales, resulting in tax systems that are generally more regressive.¹²

Overall, estimates by the economist Gabriel Zucman indicate lost tax revenues of \$200 billion per year to tax evasion globally, and an additional \$130 billion per year in tax avoidance by US corporations alone.¹³ The European Commission has put revenues lost to tax evasion and avoidance at EUR 1 trillion a year.¹⁴

Tax revenues are essential for the achievement of development outcomes and economic sustainability.¹⁵ Fiscal policies have been included in the Sustainable Development Goals (SDGs), in particular under Target 17.1 which refers directly to the strengthening of domestic resource mobilization and to improved capacity for tax collection.¹⁶

In addition, abusive tax behaviour has a direct negative impact on human rights, depriving states of “the resources required to provide the programmes that give effect to economic, social and cultural rights, and to create and strengthen the institutions that uphold civil and political rights.”¹⁷

Who, what, where

By exploring the issues of who is involved in tax abuse and where it is known to happen, we can draw immediate parallels with risks for corruption that Transparency International seeks to minimise. Looking back, a historic link between tax and corruption was Transparency International’s advocacy against the tax deductibility of bribes to foreign public officials, which contributed to a ban being included in the OECD Convention on Foreign Bribery.¹⁸

Tax abuse is most often carried out on behalf of wealthy individuals and large firms, who rely on professional service providers to do this work. “A very high level of technical expertise is required to establish and manage an effective tax avoidance strategy, and that expertise does not come cheap. A large and multifaceted industry of professionals—including lawyers, accountants, finance specialists, bankers and offshore service experts—thrives on creating “tax benefits” for those who can afford their services.”¹⁹

Professional service providers such as banks, accountants and lawyers have a critical role in society, for example as providers of financial information²⁰ and legal advice.²¹ In most countries, they need a license or membership of a professional body in order to operate. The codes of some professional bodies, for instance, the professional code of accountants in the US, specifically note that accountants have a public interest duty.²²

¹¹ Financial Transparency Coalition, ‘How Tax Evasion and Avoidance Undermine a Good Tax System’:

<https://financialtransparency.org/how-tax-evasion-and-avoidance-undermine-a-good-tax-system/>

¹² Gillian Brock and Hamish Russell, ‘Abusive Tax Avoidance and Institutional Corruption: The Responsibilities of Tax Professionals’, Edmond J. Safra working paper No. 56, 2015: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2566281

¹³ <https://theintercept.com/2016/04/05/heres-the-price-countries-pay-for-tax-evasion-exposed-in-panama-papers/>

¹⁴ https://ec.europa.eu/taxation_customs/fight-against-tax-fraud-tax-evasion/a-huge-problem_en

¹⁵

http://www.transparency.org/whatwedo/publication/working_paper_03_2015_tax_systems_a_channel_for_corruption_or_a_way_to_fight

¹⁶ Sustainable Development Goals: <https://sustainabledevelopment.un.org/?menu=1300>

¹⁷ Emphasis added. International Bar Association, 2015.

¹⁸ http://www.oecd.org/daf/anti-bribery/ConvCombatBribery_ENG.pdf

¹⁹ Brock and Russell, 2015.

²⁰ Institute of Chartered Accountants in England and Wales; Role of Accountants:

<http://www.icaew.com/en/technical/sustainability/getting-started/role-of-accountants>

²¹ International Bar Association, 2015.

²² Brock and Russell, 2015.

However, professional service providers can also act as enablers of tax evasion and aggressive tax avoidance: “Tax professionals, including and especially large multinationals firms of accountants, financial advisors, lawyers, and bankers, have not only designed the architecture that facilitates wide-scale abusive tax schemes necessary for destructive forms of tax competition to flourish, but have also been instrumental in implementing these schemes.”²³

Banks and law firms can facilitate tax abuse by offering services that allow clients to avoid tax in their countries of origin, or by – knowingly or unknowingly – accepting funds that have their origins in tax abuse. At least nine of the top 20 global banks have been placed under investigation, been sanctioned or have agreed to settlements related to abusive tax practices since the 2008 financial crisis.²⁴ Lawyers also play a crucial role in creating the legal entities that can facilitate tax abuse. In the US, for instance, “law firms routinely write opinions on the legality of tax avoidance strategies...In many cases of abusive avoidance, the soundness or legitimacy of these legal opinions is highly dubious.”²⁵

Awareness of this architecture and the practices that it enables has had a major impact on professional services. In recent years, the Big Four accounting firms²⁶ have reduced the mass marketing of highly aggressive tax practices,²⁷ but as recently as 2013 they continued to offer tax avoidance schemes with as little as 50% chance of succeeding if challenged in court.²⁸

Following the money in abusive tax schemes often leads to tax havens. In recent years, there have been numerous efforts to reduce the number and appeal of tax havens, also known as secrecy jurisdictions, due to their role in money laundering and as safe havens for illicit flows. Secret company ownership frequently plays a role in cases of grand corruption tax evasion and aggressive tax avoidance. For instance, corrupt politicians used secret companies to obscure their identity in 70 per cent of more than 200 cases of grand corruption surveyed by the World Bank.²⁹

Several additional issues are particularly relevant to the overlaps between tax abuse and corruption. The first involves **lobbying** practices. Lobbying has a legitimate function but when abused can play a role in securing tax exemptions and other tax benefits for individual corporations or business sectors.³⁰ In the UK, for instance, representatives of large businesses are involved in the design of tax laws that could advance their own interests.³¹ In the US, lobbying by private equity firms has contributed to the maintenance of a tax loophole - the carried interest tax loophole - from which they directly benefit.³² When lobbying lacks transparency, there is heightened risk for undue influence.

There can also be a risk of **regulatory capture** by parties with a vested interest in tax policy outcomes. At the EU level, for example, 98 percent of the experts advising the Directorate-General for Taxation and Customs Union come from the industry it is supposed to

²³ Gillian Brock, ‘Review of Peter Dietsch’s *Catching Capital: The ethics of tax competition*’, *Erasmus Journal for Philosophy and Economics*, Volume 9, Issue 1, Spring 2016 pp. 164-172. <http://ejpe.org/pdf/9-1-br-2.pdf>

²⁴ Including JP Morgan Chase, BNP Paribas, Deutsche Bank, HSBC, Credit Agricole, Barclays, Citigroup, Societe Generale, and Royal Bank of Scotland.

²⁵ Brock and Russell, 2015.

²⁶ EY, PWC, KPMG and Deloitte.

²⁷ US GAO: <http://www.gao.gov/new.items/d11493.pdf>

²⁸ UK Parliamentary committee: <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmpubacc/870/870.pdf>

²⁹ World Bank/UNODC Stolen Asset Recovery Initiative, ‘The Puppet Masters’, October 2011, <https://star.worldbank.org/star/publication/puppet-masters>.

³⁰ International Bar Association, 2015, p. 25.

³¹ <http://www.taxjustice.net/2016/09/09/hmrc-close-big-business-far-public-new-report/>

³² <http://www.newyorker.com/magazine/2016/03/14/david-rubenstein-and-the-carried-interest-dilemma>

regulate³³. Capture and undue influence can have a direct impact on the design of national and global tax systems. For example, almost 87 percent of the contributions to an OECD consultation on country-by-country reporting came from the private sector, only six percent of which supported public country-by-country reporting, a key measure to increase corporate transparency.³⁴

Bribery is of course also a considerable risk when it comes to tax collection. Bribes may be paid to reduce or avoid tax altogether. The International Bar Association has noted that “the negotiation of tax holidays and incentives is fertile ground for bribery and corruption”³⁵. This finding is supported by cross-country research finding a link between corruption and tax incentives³⁶ and by publicly reported cases of individual companies found to have engaged in bribery to reduce their tax liabilities³⁷. In addition, policy responses to improve the efficiency of tax systems have specifically mentioned the goal of reducing bribery risks, for example in the city of Jakarta.³⁸

Avoiding corruption and tax abuse also feature in efforts to promote transparency in the extractive and other sectors. In the past decade, country-by-country reporting has emerged as a means to deter or uncover irregular payments in **high risk sectors**. It is a form of financial reporting in which multinational corporations produce certain financial data disaggregated by country and for each country in which they operate. This data includes sales and purchases within the corporation and externally, profits, losses, number of employees and staffing costs, taxes paid and tax obligations, summaries of assets and liabilities.³⁹ Under US and EU legislation, for example, most global extractive companies must now disclose all payments they make to governments, such as royalties. Publishing such data opens it up to reconciliation in public budgets and serves as a means to limit discretion and secret dealings.

The rationale for country-by-country reporting in high-risk sectors from a tax abuse perspective is that increased transparency regarding the activities and financial information of multinational corporations would reduce the opportunities for manipulation of profits and revenues,⁴⁰ in particular through the use of transfer mispricing. According to Christian Aid: “A common method of tax dodging is for a company to manipulate its profits and revenues through tax havens, which combine high levels of secrecy with very low or even zero tax rates...New rules requiring such country-by-country reporting would help identify where trade mispricing has taken place.”⁴¹

A changing policy and business climate

Nine years after the financial crisis began, international organisations have begun to draw strong links between tax avoidance and corruption. In July of 2016, the Asian Development Bank (ADB) proposed to update its anticorruption policy to “take into account issues of tax

³³ <http://www.transparencyinternational.eu/2016/04/who-are-the-experts/>

³⁴ https://www.oxfam.org/sites/www.oxfam.org/files/bp185-business-among-friends-corporate-tax-reform-120514-en_0.pdf

³⁵ International Bar Association, 2015.

³⁶ Zelekha & Sharabi, ‘Tax Incentives and Corruption: Evidence and Policy Implications’. *International Journal of Economic Sciences*, Vol. 1 (No 2), 2012.

³⁷ <http://www.fcpablog.com/blog/2007/9/26/bristow-resolves-corrupt-nigeria-tax-payments.html>

³⁸ <https://govinsider.asia/smart-gov/jakarta-launches-e-tax-system-to-reduce-bribes/>

³⁹ https://www.transparency.org/glossary/term/country_by_country_reporting

⁴⁰ Hop, Ma & Thomas, ‘Tax Avoidance and Geographic Earnings Disclosure’, *Journal of Accounting and Economics*, 2013. <http://www.sciencedirect.com/science/article/pii/S0165410113000475>. Lower levels of public disclosure by firms were linked to lower effective tax rates, indicating a higher risk of abusive tax practices.

⁴¹ Christian Aid, ‘False Profits’: <http://www.christianaid.org.uk/Images/false-profits.pdf>

integrity at a country and project level". The ADB has defined tax integrity issues to include "tax secrecy, tax evasion and legal forms of aggressive tax planning".⁴² The president of the World Bank, Jim Yong Kim, has stated that "Some companies use elaborate strategies to not pay taxes in countries in which they work, a form of corruption that hurts the poor."⁴³

In parallel to changes in policy climate on tax and corruption, there has been growing focus on the rights and responsibilities of corporations in society. Given that companies play an active role in shaping the public policy environment that governs their operations, demands on companies for transparency regarding a wide range of social, environmental and governance issues have increased. The idea that a corporation's sole purpose is to maximise shareholder value has increasingly come under question.⁴⁴ The Swedish bank Nordea, with \$191 billion of assets under management, not only believes that '(a) modern way of doing business goes beyond delivering returns to shareholders; consideration is also paid to the impact businesses have on the environment and communities in which they operate', but also that 'while tax avoidance could be profitable in the short term, in the long term it can inflict considerable damage on a company's reputation, along with its relationship with tax authorities and local communities.'⁴⁵

This emerging agenda also recognizes that non-aggressive tax practices are a core component of responsible corporate behaviour. For example, the United Nations' Principles for Responsible Investment (PRI) initiative has produced guidance on Corporate Tax Responsibility, emphasising that for companies "tax is not simply a cost to be minimised, but a vital investment in the local infrastructure, employee-base and communities in which they operate", and that aggressive tax planning can cause macroeconomic and societal distortions.⁴⁶

Across a range of sectors, companies have begun to publish more information about their tax payments to governments. Prominent and global efforts to promote anti-corruption in the oil and gas sector, promoted by major civil society coalition Publish What You Pay and pursued via a multi-stakeholder initiative, the Extractive Industry Transparency Initiative, have driven forward the agenda for public country-by-country reporting (CBCR) for companies.

A similar country by country corporate reporting agenda has become a central pillar of the G20 and OECD's proposals to tackle tax avoidance, in particular in the context of the Base Erosion and Profit Shifting (BEPS) project, concluded in 2015. Here, the aim was to prevent tax abuse as part of an effort to bolster domestic resources and combat illicit flows. As a result of BEPS, a detailed country-by-country reporting template has been adopted,⁴⁷ although it has not required country-by-country to be public, but only to be shared with tax authorities.

Recommendations

⁴² <http://www.adb.org/sites/default/files/institutional-document/186044/anticorruption-policy-consultation-paper.pdf>

⁴³ <http://www.worldbank.org/en/news/speech/2015/10/01/speech-world-bank-group-president-shared-prosperity-equal-opportunity>

⁴⁴ Lynn Stout, The Shareholder Value Myth; Harvard Law School Forum on Corporate Governance and Financial Regulation; June 26, 2012 at <https://corpgov.law.harvard.edu/2012/06/26/the-shareholder-value-myth/>

⁴⁵ https://www.nordea.com/Images/36-70003/responsible_corporate_tax_practices_mar_2014.pdf

⁴⁶ PRI; Engagement Guidance on Corporate Tax Responsibility; 2015: https://www.unpri.org/download_report/8531 see foreword and p. 7.

⁴⁷ See OECD/G20 Country-by-Country reporting implementation package: <https://www.oecd.org/ctp/transfer-pricing/beps-action-13-country-by-country-reporting-implementation-package.pdf>

Large-scale tax abuse has multiple overlaps with corruption, especially grand corruption, in terms of its a) consequences – ranging from increased poverty and human rights violations to weakened state institutions; b) actors – including powerful individuals, multinational corporations, and banks, as well as professional service providers such as lawyers and accountants; and c) channels and methods – ranging from anonymously held companies and trusts, secret bank accounts, and bribery to lobbying, undue influence and state capture. In many instances, in particular where it involves the abuse of high-level power, large-scale tax abuse can itself constitute a form of corruption.

Within the broad fields of anti-corruption and tax transparency, Transparency International has identified the following four priority policy recommendations:

a. Further promote and implement public country-by-country reporting (CBCR)

Transparency International supports CBCR as a mechanism for transparency, anti-corruption and accountability.

As TI's Transparency in Corporate Reporting (TRAC) report in 2012 states: "Country-by-country disclosure allows local citizens and civil society organisations to monitor companies' business relations, transfers and value sharing practices, as well as the money transfers to governments in the form of taxation and licensing."⁴⁸

Governments should require all companies to publish financial accounts on a country-by-country basis. The primary purpose of public country-by country reporting is to increase the accountability and transparency of companies. National governments should follow this trend and adopt laws that promote the highest possible reporting standard requiring that companies in all industry sectors publish their financial accounts on a country-by-country basis.

Companies should report payments country-by-country and publicly so they can be compared and reconciled with those reported by government. Such publicly available information will reduce the scope for corruption, off-budget payments, and other processes that keep transactions off the books. Companies should publish financial accounts for each country of operation. While publishing individual financial accounts for each country represents a relatively small incremental effort for multinational companies, as the information is already available to them internally, it will have a big impact on the countries in which they operate.

Civil society should continue to advocate for country-by-country reporting, mobilising more broadly to ensure that governments and companies take the necessary measures to foster the transparency needed for greater accountability. They should also participate and encourage the public engagement with and sharing of information from such reports, to promote both corporate and government accountability.

b. Create transparency in and public access to company ownership data

Transparency International has widely advocated for public registries of beneficial ownership in various fora, such as the G20⁴⁹ and the UK Anti-corruption Summit,⁵⁰ where this was adopted as a new commitment by a number of participating governments.

⁴⁸ See TRAC 2012, p. 7:

http://www.transparency.org/whatwedo/publication/transparency_in_corporate_reporting_assessing_the_worlds_largest_companies

⁴⁹ See *Just for Show* report: http://www.transparency.org/whatwedo/publication/just_for_show_g20_promises

Governments should establish central, registries that publicly disclose beneficial ownership information. This will help law enforcement, journalists, and governments to do their job and help investors and citizens know who is behind the companies they invest in or buy from.

Governments should also support the initiative of Transparency International and other partners in creating a **Global Public Beneficial Ownership Registry**, which can be populated by individual government-held beneficial ownership information. The global public register of beneficial owners of companies will set the standard for openness about company ownership and reduce corruption risk and the associated costs to society.⁵¹

Companies should add their voices to business leaders such as the B-Team and major investors who have called for transparency in beneficial ownership and should voluntarily offer their information on beneficial ownership to the Global Public Beneficial Ownership Registry.

Civil society should continue to advocate for public registries in countries which have not yet committed to implement them.

c. Encourage transparency in lobbying and corporate political engagement

Given the weak state of regulation on lobbying in many countries and the low levels of transparency with regard to corporate access to government, lobbying remains a risk for corruption and for securing specific tax advantages or for retaining structures that enable abusive tax practices.

Governments should implement fully transparent, mandatory lobby registers. In addition, governments should publish dates, participants and topics of meetings with public officials and decision-makers.

Companies should ensure that their boards are accountable for the company's political engagement, and publicly state their commitment to responsible corporate political engagement.

They should report publicly, comprehensively and accessibly on their lobbying activities and political engagement.

Civil society should continue to advocate for increased transparency in lobbying, for example by drawing on available data to expose instances where opaque practices persist.

d. Extend oversight of professional services

⁵⁰ See report on the UK Anti-corruption Summit:

http://www.transparency.org/whatwedo/publication/the_anti_corruption_summit_london

⁵¹ <http://blog.transparency.org/2016/04/04/secret-company-ownership-a-global-solution-for-a-global-challenge/>

There is growing recognition of the financial and social damage that professional services such as banks, accountants, lawyers, and real estate agents can play in facilitating both tax abuse and corruption. Even though the professional enablers engaging in this facilitation may be a minority within their professions, tougher oversight and sanctions are required.

Governments should fully comply with international standards to require professionals in law and accountancy, real estate, as well as company formation agents and bankers to have in place anti-money laundering procedures and report suspicions of money laundering or tax abuse.

Governments should also establish more effective oversight and sanctions for these sectors.

Professional bodies should withdraw professional licenses from those implicated in wrongdoing.

Civil society should engage with professional bodies and governments to create momentum and support for appropriate standards and oversight, as well as for a credible regime of sanctions.

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Sidebar: Monsieur Ruling

Between 2002 and 2010, Luxembourg's tax authorities issued at least 548 "comfort letters" for multinational corporations. These individual, customised tax rulings – formally known as "advance tax agreements" were negotiated directly with the authorities by accounting firm PricewaterhouseCoopers on behalf of their clients. They allowed over 340 corporations to cut billions off their tax bills in other jurisdictions.

The comfort letters, which became public in 2014 thanks to data shared with investigative journalists in the series of stories that became known as Luxleaks, were often signed by a single tax official named Marius Kohl, now retired, and at the time known in tax circles as "Monsieur Ruling". Kohl would sign off up to 39 comfort letters a day, some of them up to 100 pages long.

In October 2015, the European Commission decided selected tax advantages provided to Fiat by Luxembourg were illegal under EU state aid rules. An investigation into whether Luxembourg provided illegal state aid to McDonald's is ongoing.

Sources: Wall Street Journal: Business-Friendly Bureaucrat Helped Build Tax Haven in Luxembourg. October 21, 2014. <http://www.wsj.com/articles/luxembourg-tax-deals-under-pressure-1413930593>

Huffington Post: Leaked Docs Expose More than 340 Companies' Tax Schemes in Luxembourg

http://www.huffingtonpost.com/2014/11/05/luxembourg-tax-haven_n_6094544.html

http://europa.eu/rapid/press-release_IP-15-5880_en.htm

<http://mnetax.com/eu-commission-publishes-decision-open-mcdonalds-state-aid-case-tax-ruling-15537>

[END SIDEBAR]

Sidebar 2: Transfer mispricing

Abusive tax practices often involve **transfer mispricing**. Transfer pricing is the process through which parent companies and/or subsidiaries of the same parent, in different countries, establish a price for goods or services traded between themselves. Transfer mispricing is the abusive manipulation of this process for the purpose of [avoiding or reducing taxes](#) across all entities. This takes place when related firms agree to manipulate the price of their internal transactions in order to declare less profit in higher-tax jurisdictions and therefore reduce their total tax payments. It deliberately generates profit and hides or accumulates money in the jurisdiction where the tax bill is low.⁵² In addition, this type of abuse is particularly relevant in developing countries, where state capacity to counter aggressive tax planning is low. For instance, only three African countries had transfer pricing units in their internal revenue services as of 2014.⁵³

The High-Level Panel on Illicit Financial Flows out of Africa found evidence that abusive transfer pricing was happening on a substantial scale out of Africa⁵⁴. The OECD has also addressed this issue in its approach to BEPS.⁵⁵

[END SIDEBAR]

⁵² https://www.transparency.org/glossary/term/transfer_mispricing

⁵³ See http://www.uneca.org/sites/default/files/PublicationFiles/iff_main_report_26feb_en.pdf p. 27.

⁵⁴ http://www.uneca.org/sites/default/files/PublicationFiles/iff_main_report_26feb_en.pdf

⁵⁵ <http://www.oecd.org/ctp/tax-global/developing-capacity-in-beps-and-transfer-pricing.pdf>