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Stemming the spills:

Guiding framework for undertaking national tax spillover analyses

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Acknowledgements

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Abbreviations and acronyms

APA	Advance Pricing Agreement
ATP	aggressive tax planning
BEPS	base erosion and profit shifting
CBCR	country-by-country reporting
CEDAW	Convention on the Elimination of all forms of Discrimination against Women
CFC	controlled foreign corporation(s)
CIT	corporate income tax
CSOs	civil society organisations
DFIs	development finance institutions
DTTs	double taxation treaties
ECAs	export credit agencies
EU	European Union
FfD	Financing for Development
IBFD	International Bureau for Fiscal Documentation
IMF	International Monetary Fund
MNE	multinational enterprise
IP	intellectual property
OECD	Organisation for Economic Co-operation and Development
ODA	official development assistance
R&D	research and development
Spillovers	refers to *spillover* effects
Spillover analysis	refers to *national tax spillover analysis*
USD	US dollar(s)
VAT	value added tax

Executive summary

Why are tax spillover analyses needed?

A 'tax spillover' occurs when a tax rule or practice in one country directly or indirectly affects tax revenues, rules or practices in other countries. Thus, tax policies do not only affect the country imposing them – they can affect others, often adversely.

The last decade has revealed scandal after scandal exposing how multinational companies use the tax system of one country, or a combination of the tax systems of several countries, to avoid paying tax in a third country.[1] Yet, currently, there are few mechanisms to understand how the tax policies of an individual country affect other countries.

ActionAid believes that understanding and addressing tax spillovers is key to fair and responsible tax policies. With this new report, we propose a guiding framework for EU member states to conduct national tax spillover analyses and aim to kick-start a wider debate on this important topic.

It is widely recognised by the IMF, the OECD and other institutions that tax spillovers are sizable, especially for developing countries.[2] Tax is central to the financing of the 2030 Agenda for Sustainable Development,[3] to which all EU member states have committed. The commitment to policy coherence for development by EU member states is meant to ensure that all their policies take account of the impact on developing countries, with taxation as one of the key areas.[4] To make informed policy choices, EU member states need to analyse their tax policies in order to improve understanding of these extra-territorial effects. For this reason, a number of actors, including the European Parliament,[5] are calling for EU member states to conduct national tax spillover analyses to honour their international commitments.

Recommendations for conducting tax spillover analyses

Specifying the precise national mechanisms for analysing spillover effects is difficult due to country-specific contexts and the complex, often changing nature of tax processes.[6] Therefore, instead of presenting an exact model, this Guiding Framework presents recommendations for the factors that national tax spillover analyses should take into account in terms of methodology, scope and process.

This Guiding Framework, which has been developed with inputs from partners from across Europe and Africa, argues that spillover analyses need a broader scope than those so far conducted by the Netherlands and Ireland, and should take into account human rights impacts, transparency measures, international cooperation and also potentially positive spillover effects.

In order to turn improved knowledge into improved policy decisions, more dialogue is needed across national borders and across ministries and institutional "silos" within individual EU member states. ActionAid hopes that the recommendations will encourage such dialogues.

Chapter 1: Methodological recommendations

A national tax spillover analysis should include:

- A clear and detailed formulation of the **intended objectives** of the spillover analysis
- A broad **qualitative analysis of the policy areas** (listed in Chapter 2) most likely to have spillover effects on the tax revenues of developing countries and their capacity to meet sustainable development goals and human rights obligations
- Use of **quantitative methods where possible** so as to make the findings as rigorous and objective as possible
- An **interpretive and comparative analysis** of the

qualitative and quantitative findings that provides the basis for assessing the country's commitment to policy coherence for development
- Identifying one or more **case studies** that can subsequently be conducted

Chapter 2: Scope and content recommendations

Chapter 2 lists the most important policy measures that a national tax spillover analysis should take into account. These include domestic rules that enable aggressive tax planning, such as "ring-fencing" structures, rules indirectly affecting the effective tax rate for corporate income, capital gains, royalties, interest, dividends, as well as IP rules, R&D rules and transfer pricing rules. A spillover analysis should also take into account features of the national tax system that have been negatively reviewed in the Financial Secrecy Index.[7]

A spillover analysis should also address other bilateral activities of EU member states, such as DTTs and the role of their DFIs.

Importantly, a spillover analysis should also consider the many potentially positive spillover effects from, for example:

- *Transparency measures,* including publishing the core elements of tax rulings, CBCR filings of companies and the identity of beneficial ownership of bank accounts, trusts, and property
- *Anti-abuse measures,* including CFC rules and general anti-avoidance rules
- *International cooperation,* including automatic exchange of information about financial accounts, CBCR, APAs and other tax rulings

Chapter 3: Process recommendations

Chapter 3 presents a list of principles recommended for undertaking spillover analyses:

- All **relevant government departments** should be involved in preparing the analysis, including the Ministries of Foreign Affairs, Business and Finance, and the administrative departments responsible for taxation, aid and development policies.
- The spillover analysis should cover **all tax rules** and practices **of member states** which may give rise to spillovers in developing countries, including those which have indirect effects.
- There should be agreement among all the stakeholders on **what data needs to be collected** for the study and an assurance that all those with access to this data will provide it.
- The analysis should include the **participation of relevant stakeholders**, such as parliamentary committees, civil society groups, academics and the business community.
- There should be a period for a **public consultation** and written submissions, and these inputs should be explicitly considered in the final report.
- There should be a **period of debate** and scrutiny of drafts of the analysis produced, and transparency throughout the process.
- An external, **independent party should be contracted** to conduct the spillover analysis.
- The government should make a commitment to **publishing the analysis** in full.
- There should be a commitment on the part of the government commissioning the analysis to **act on its findings.**

Undertaking a spillover analysis should not cause a government to postpone changing policies already known to be harmful.

Introduction

Rationale for this Guiding Framework

The intention of this report is to offer encouragement and guidance for decision makers in EU member states to undertake spillover analyses of the effect of national tax systems on developing countries. It aims to encourage dialogue on this issue and strengthen the commitment of EU member states to policy coherence for development (PCD). We also hope this framework can be used by journalists, civil society and governments in developing countries as a reference when discussing with EU governments which policy areas and key questions a spillover analysis should address.

This Guiding Framework has been developed with inputs from more than 20 academics, representatives of civil society organisations, politicians and state officials. The intended audience is decision makers in EU member states, in particular in Ministries of Finance, Foreign Affairs and Economy – or their equivalents – as well as in administrative departments responsible for taxation, aid and development.

ActionAid hopes to encourage intergovernmental dialogues about the basic values and principles of taxation. Given that EU countries have shared values with regard to human rights, democracy, and a state's rights to sovereignty, there is potential for agreeing on a number of fundamental principles for taxation which could guide interstate tax relations within and beyond the EU. Designing a state's tax system is a deeply political issue and cannot be treated as a purely technical matter. ActionAid regards agreeing on such principles as both a logical and necessary starting point for any genuine reform of the current international tax system.

In this report, ActionAid defines a *national tax spillover analysis* as an investigation of the effects that the tax system of a given country (country A) has on the capacity of another country (country B) to meet the sustainable development goals and its human rights obligations. A national tax spillover analysis will always be contextual and tailored to the given country and its situation. Different interest groups and businesses all have an interest in shaping the focus of a spillover analysis, especially regarding what to include and exclude. However, in a democracy, one would and should expect decision makers to be open about why they choose a given focus and what interests are served by that choice. If spillover analyses are to achieve their aim of protecting the corporate tax base of developing countries, then they need to be rigorous, comprehensive and transparent along the lines suggested in this report.

Human rights, democracy and national tax spillover analyses

Why spillover analyses are necessary

EU member states have committed themselves to supporting development around the world, most recently in the 2030 Agenda for Sustainable Development and the Sustainable Development Goals, which call for ending poverty and improving health and education.[8] Many developing countries lack adequate education, health and other services and increased tax revenues are urgently needed to increase investment in these. Domestic resource mobilisation, including tax, was put at the centre of the last UN International Conference on Financing for Development, which took place in Addis Ababa in July 2015.[9]

However, the last decade has revealed scandal after scandal of companies exploiting discrepancies between the tax systems of different countries to avoid paying tax in other countries.[10] For example, research by ActionAid found that Malawi lost US$43 million in revenue over six years from a single company– the Australian mining firm, Paladin, which used the Dutch tax system to avoid paying taxes on interest payments and management fees.[11] The DTT between the Netherlands and Malawi (which has since been renegotiated) reduced these withholding taxes to 0%. In Malawi the lost revenues could have paid for 431,000 annual HIV/AIDS treatments[12] or 17,000 nurses' salaries for a year.[13] The LuxLeaks scandal[14] showed that tax rulings drastically reduced the effective tax rates of hundreds of multinational companies in Luxembourg, sometimes to single figures.[15] The SwissLeaks scandal, covering one bank in one European country, laid bare financial information on more than US$100 billion from 106,000 clients in 203 countries;[16] the Financial Transparency Coalition[17] estimated that the money concerning Sierra Leone could finance 19% of the country's health budget.[18]

Research on global financial flows makes clear that reducing the negative spillover effects from international taxation could make a difference to people in developing countries. For instance, the OECD acknowledges that the impact on developing countries of cross-border tax avoidance is likely to exceed total aid flows by a considerable margin.[19] The IMF estimates that developing countries lose $200 billion to tax avoidance every year.[20]

A key tax spillover results from international tax competition,[21] with nation states engage in a "race to the bottom" on rates of corporate taxation, in which mobile capital scours the world in search of tax breaks and subsidies – and which undermines the tax bases of all countries and reduces the public revenues needed to fund public services.[22] Another spillover from tax competition is tax incentives; calculations by ActionAid suggest that US$138 billion is lost every year through the tax incentives that developing country governments offer to large businesses.[23]

The IMF's 2014 analysis, *Spillovers In International Corporate Taxation*, reaffirms that spillovers are especially marked and important for developing countries.[24] It also concludes that: tax rules and practices in one country do indeed affect the rules and practices on tax in other countries; these spillovers can matter for macroeconomic performance; and that spillover effects on corporate tax bases and rates are significant and sizable.

Therefore, improving the understanding of these spillovers is important for EU member states, both to protect their own tax bases and to adopt responsible tax policies in relation to developing countries.

It is also important to stress that, since some EU member states have tax policies that obviously have negative spillovers on developing countries, the conduct of a spillover analysis should not excuse a government from taking immediate action to address its harmful policies.

The impacts of EU tax policies on human rights in developing countries

The fundamental principle of democracy is that the state is governed by the people for the people.[25] The intended purpose of taxes is to finance state activities. Central to the Universal Declaration of Human Rights is everyone's right to a minimum level of "living standards",[26] such as article 25 on the rights to housing, medical care and security in the event of sickness and old age, or article 26 on the right to education.[27] Thus, as Dr Attiya Waris from the University of Nairobi has pointed out,[28] human rights and taxation in democratic states have the same end purpose: the improvement of human life. Whereas the first expresses itself universally, the other expresses itself domestically, but the relationship is strong and increasingly recognised by states and international organisations.[29]

In the 2014 *UN Report of the Special Rapporteur on extreme poverty and human rights*,[30] Magdalena Sepúlveda Carmona presented fiscal policy, and particularly taxation policies, as a major determinant in the enjoyment of human rights. The report analysed how the principles of non-discrimination, equality and the duty of international cooperation should inform taxation policies at the global and national levels. With regard to international cooperation and extraterritorial impact, the report recommended that each state should refrain from any conduct that impairs the ability of another state to raise revenue as required by their human rights commitments and cooperate in creating an international environment that enables all states to fulfil their human rights obligations.[31]

In 2016, Switzerland was criticised for breaching its extraterritorial obligations under Article 2 of the Convention on the Elimination of all forms of Discrimination against Women (CEDAW).[32] Switzerland was requested to "provide information on the measures taken to ensure that the State party's tax and financial secrecy policies do not contribute to large-scale tax abuse in foreign countries, thereby having a negative impact on resources available to realise women's rights in those countries".[33]

Table 1: Timeline of EU member states' commitment to PCD

Year	Institutions	Commitment
1992	EU	Treaty of Maastricht
2000	UN	UN Millennium Declaration – Goal 8
2002	OECD	Action for a Shared Development Agenda
2006	EU	EU Consensus for Development
2008	OECD	Ministerial Declaration on PCD
2007	EU	Lisbon Treaty, Art. 208
2011	EU	Agenda for Change
2012	OECD	Strategy on Development
2015	UN	Agenda 2030 and Sustainable Development Goals, Goal 17
2017	EU	European Consensus on Development

The obligations of EU member states on tax and PCD

The Lisbon Treaty 2007 article 208 made PCD a legal obligation, requiring EU member states to take into account the impacts of their domestic policies on developing countries and to pursue synergies across all policy areas. PCD has since been recognised in all key EU development documents as an important tool in promoting sustainable development.[34]

Since 2010, domestic revenue mobilisation in developing countries has been one of the key priorities in EU development policy,[35] further strengthened in the 2015 *Collect More, Spend Better* agenda.[36] Given their strong and often direct impact on the capacity of developing countries to generate tax revenue, tax policies have rightly become increasingly central to PCD considerations in EU member states.[37]

In 2015, tax issues were explicitly considered in the European Commission's EU Report on PCD, which listed the Tax Transparency Package (COM(2015) 135 final) and the Action Plan for a fair and efficient tax system in the EU (COM (2015)302) as the EU actions which were supposed to increase policy coherence for development in this area.[38] The European Parliament supported these measures and took an even stronger position on tax and PCD in its resolution on the 2015 EU Report on PCD [39] as well as in its resolution on tax and development,[40] calling on the EU to, among other things:

- conduct an impact assessment and spillover analysis of the new EU tax legislation
- ensure that corporations pay their fair share of taxes
- promote and operationalise the principle of PCD in tax matters on a global level
- encourage further international cooperation on tax matters

The 2015 EU Staff Working Document, *Collect More – Spend Better,*[41] emphasises the shift that took place at the third Financing for Development Conference in Addis Ababa in 2015[42] – stressing that domestic public finance should be at the heart of the efforts of every country to achieve key objectives. Moreover, this was part of the process which led to the adoption of the 2030 Agenda for Sustainable Development.[43] The EU (together with development partners) hereby launched the Addis Tax Initiative,[44] in which countries declared their commitment to enhancing the mobilisation and effective use of domestic revenues and improving the fairness, transparency, efficiency and effectiveness of their tax systems in order to address inequalities.[45]

PCD has also been recognised in a number of OECD processes, especially in the aid effectiveness debates, the UN Millennium Declaration and the UN Agenda 2030. The importance of non-aid policies for development was also acknowledged in 2011 at the High Level Forum on Aid Effectiveness in Busan, where the representatives of developing and developed countries agreed to reduce the dependence of developing countries on aid and to examine the interdependence and coherence of all public policies – not just development policies.[46]

A deeper understanding of tax spillovers is needed to translate these political commitments into corresponding policy actions. Spillover analyses are a technical necessity; to meet their PCD commitments EU member states need to analyse their policies and improve the understanding of the extraterritorial effects of their national tax systems.

Chapter one: Methodological recommendations

This chapter presents recommendations on the analytical steps and methodological elements needed to conduct national spillover analyses. These recommendations are partly based on an assessment of two country spillover analyses that have already been conducted – by the Netherlands and Ireland - and on two existing theoretical frameworks.

The Dutch and Irish analyses

Two national tax spillover analyses are known to have been conducted by EU Member States. In 2013 the IBFD and the School of Economics of Utrecht University carried out a research study into Dutch tax treaties with developing countries for the Dutch Ministry of Foreign Affairs. In 2015, the IBFD was again contracted by the Irish Department of Finance to produce an analysis of the *Possible Effects of the Irish Tax System on Developing Economies.* Both studies focused on a select number of developing countries and the impact of DTTs on investments and capital flows with those countries. The study also included spillovers from some parts of the domestic tax system. In both cases, the decision to carry out a national spillover analysis was prompted by calls from CSOs. In both cases, the responsible ministry and the IBFD bemoaned the lack of prior experience and models to guide the research process and design. In addition, both analyses were subsequently criticised for not considering important aspects of spillover effects.

The **Dutch study**[47] compared the DTTs between the Netherlands and a select number of developing countries with the DTTs these developing countries have with other countries. It concluded that the anti-abuse provisions of the Dutch tax treaties needed to be revised, but that they were no worse than the other treaties and that no changes were needed in terms of their content or their interaction with other aspects of Dutch tax law. The methodology and findings were subsequently criticised, with commentators pointing out that little attention was paid to tax dodging structures where profits end up largely untaxed in the Netherlands itself, such as those involving deductions for so-called informal capital, often in combination with Dutch tax rulings providing advance certainty about the use of aggressive tax planning structures.[48]

Like the Dutch study, the **Irish study**[49] did not suggest revisions to the Irish tax system. It found that the domestic tax system in general did not facilitate conduit structures that lead to a loss of revenue for developing countries. The Irish study was broader in scope, but less detailed, since the Irish Central Statistics Office did not provide access to unpublished country-level data in the way the Dutch central bank had done. Hence, the question has been raised as to whether similar data could and should have been made available by the Irish government.[50]

The study was criticised for ignoring Ireland's role in driving down global corporate income tax rates, and - like the Dutch study – was also criticised for having a too narrow, transaction-specific focus, ignoring Ireland's systemic role in relation to the tax systems of other countries, especially countries within Europe, as demonstrated by the LuxLeaks revelations in 2015.[51]

Two existing theoretical frameworks

There are at least two existing theoretical frameworks for conducting tax spillover analyses.

The IMF's 2014 Staff Report, *Spillovers in International Corporate Taxation*[52]

The IMF's framework builds on the literature and on the experience of the IMF's technical advice projects and discusses a range of tax policies, including tax treaty networks and mismatches between different national tax systems. The analysis focuses on general international tax spillovers but not bilateral spillovers.[53] It presents a quantitative methodology that distinguishes between three types of spillovers: (1) strategic spillovers, (2) base spillovers due to real activities and (3) base spillovers due to profit shifting.

1. *Strategic spillovers.* These refer to the effect of changes in one country's tax rate on the tax rates of other countries. The IMF's methodology uses annual data on corporate income tax (CIT) rates in 103 countries, excluding oil-dependent ones, for the period 1980–2013. It uses statutory CIT rates and looks at country-specific responses modelled as a function of the previous year's tax rates in all other countries. The analysis finds a substantial country response: for OECD countries, a one percentage point decrease in the statutory CIT rates of other countries generates, on average, a cut of 0.7 percentage points in response, and for developing countries, too, there is evidence that a race to the bottom is taking place among certain regimes.

2. *Base spillovers due to real activities.* These concern the effect of changes in a country's tax rate on the tax bases of other countries due to shifts in real economic activity. The methodology used here is more complex and relates changes in a country's corporate tax base to the average tax rate of all other countries one year before.[54] Again, the analysis shows a substantial spillover: if the average tax rate of all countries falls by 1 percentage point, the average country's corporate tax base is reduced by 3.7%. This amounts to quite substantial spillovers, considering that CIT rates worldwide have fallen by some 5 points over the last decade.

3. *Base spillovers due to profit shifting.* These refer to the effect of changes in a country's tax rate on the tax bases of other countries due to profit shifting. Analytically, the main difference to spillovers arising from real activities is that the analysis relates to changes in a country's tax base to the tax rates of a list of tax havens, assuming that profits are mainly shifted into tax havens. The chosen list of tax havens[55] is much narrower than empirically based lists such as the Financial Secrecy Index.[56] However, the IMF analysis still finds that the base erosion effect due to profit shifting is as large as that of real activities.

The 2017 APPG/SPERI, "Tax Spillover: A New Framework", by Andrew Baker and Richard Murphy[57]

The APPG/SPERI framework is broader than the IMF's and allows for a more comprehensive assessment of the vulnerabilities a national tax system faces from international spillover effects and the spillover risks it generates for other countries. Baker and Murphy stress that their model is provisional and aims to address the challenges of the IMF-inspired quantitative approach that both the Netherlands and Ireland applied.

Methodologically it recommends a model using qualitative survey inputs and perception data. To address the inherent weakness of perception indices the APPG/SPERI framework suggests using complementary assessment questionnaires completed multiple times across a representative sample of informed respondents across stakeholder groups. This would enable the construction of an index to rank states and, by allowing scores to be compared, to rank the relative risk that one country poses to other countries. It suggests a comparative international benchmarking exercise producing a scorecard system that would be a prototype for ranking countries' tax systems.

Methodological considerations

Based on the models above and our own research, we believe there are certain key methodological considerations which should be included in shaping spillover analyses. We highlight seven below.

1. The indirect nature of tax spillovers

The experts interviewed for this report all emphasised how important indirect spillovers are. One reason is that corporate tax planning often involves the exploitation of tax rules and treaties in multiple jurisdictions, not just the home country of the corporation and the destination country for its investment. Another reason is that, as the IMF points out, tax rules and practices in one country can help to drive down effective tax rates in all other countries – an effect which is distinct from the direct effect of those rules or practices on any specific country. There is an indirect dimension both in the *origin* and in the *impact* of tax spillovers. These indirect spillovers need to be a key part of any national analysis.

One weakness of the Dutch and Irish studies is that they both used a quantitative analysis linked only to direct investments in and capital flows to selected developing countries. But there are other ways in which spillovers occur.[58] If data only points to direct effects,[59] an analysis may ignore the indirect systemic effects like the "Dutch Sandwich"[60] or "Double Irish",[61] which involve an interaction between these countries and other jurisdictions, not just between them and the destination countries for corporate investment.

2. Analyses must be country-specific

Specifying in advance the precise mechanisms through which spillovers can occur and the precise tax rules and policies to be analysed is difficult due to the potentially dynamic, multivariate nature of tax processes and the diverse nature of tax systems in different countries.[62] It is obvious that instead of a one-size-fits-all recipe, spillover analyses must be designed according to the country-specific interplay between rules, regulations and policy objectives of both developed and developing countries.[63]

3. Benchmarking should not primarily be used to assess tax spillover effects

The Dutch and Irish studies compare the national tax system in question to those of similar countries. ActionAid argues that spillover effects should not primarily be assessed by benchmarking them to "similar countries" or to an international average.[64] Spillovers need to be assessed in absolute terms, otherwise any tax rule or treaty following an international norm could be deemed as acceptable and not having undue spillovers. Yet, certain harmful practices which encourage tax avoidance, such as tax treaties that severely limit withholding taxes or offer ultra-low tax rates for certain types of corporate income (such as "patent box" regimes for income from intellectual property), are so common that they have become international norms. So too has the relentless cutting of corporate tax rates in many countries, which, we would argue, produces negative spillovers.

4. Different impacts on different parts of society

Tax spillover analyses should consider <u>who</u> is impacted by tax policy changes. The impacts of tax spillovers on human lives are also complex and indirect, and different types of taxes can affect different parts of society in different ways. International tax spillovers influence the volume, composition and relative financial contributions of different types of taxes and the nominal and effective rate of different types of taxes.[65] Developing countries have often responded to changes in international tax regimes by offering tax incentives to foreign investors while at the same time increasing tax revenues from taxes paid by ordinary people, such as value added tax.[66] In some cases, this, in effect, transfers revenues from people to corporations.

The effects of tax spillovers can also felt by people – either positively or negatively - because the tax system influences fiscal transparency, public accountability and public expenditure, which again impacts on basic democratic rights and the fulfilment of human rights such as health and education.[67] It is also important to consider this in analyses.

5. The importance of an interpretive approach

The origin of many tax spillovers is tax avoidance, which, by definition, uses legal regulations that are not intended to give rise to such tax avoidance.[68] Thus, merely looking at the <u>intended</u> objectives of a tax rule will not necessarily reveal how it can be misused for tax avoidance purposes. This means that a spillover analysis needs to include an interpretive approach to how tax rules are being misused not just a narrow assessment of the national legislation.

This also leads to the next point:

6. A purely <u>quantitative</u> methodology has its limitations

For a number of reasons many spillovers are difficult to measure quantitatively:

- By definition, tax avoidance uses legal regulations in unforeseen ways. Thus, and as noted above,

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spillover analyses cannot only focus on the "letter of the law" but also need an interpretive approach.

- There are data limitations due to the inherent complexity of taxation, and/or institutional limitations preventing data from being collected or shared even where it is technically possible to obtain it.
- Many important aspects of tax have a moral dimension and are thus inherently subjective. An example is the value placed by a democratic society on being able to decide its own policies rather than being unduly influenced by others.
- There are practical constraints including available resources. Given the nuanced nature of tax spillovers, pursuing a quantitative methodology will often require sizable human and institutional resources, and there is no guarantee that a final conclusion will be reached. Thus, resources can often be better spent on a method using quantitative analysis in combination with case studies and/or qualitative methods.

Although there are limitations to using a quantitative methodology, the latter can still be useful. Analyses should at the very least evaluate techniques for assessing the quantitative impact on (i) capital investment and trade in goods/services, (ii) other countries' tax revenues from: strategic spillovers from CIT rate changes, bilateral tax treaty variables, various IP tax breaks, and a range of anti-avoidance measures (such as CFC rules).

7. A purely qualitative methodology has its limitations

The weaknesses of a purely qualitative approach include:

- Relying on the subjectivity of the experts and informants who conduct the analysis and/or respond in surveys
- Increased risk that the conclusions will lack substantiation by, for example, failing to provide hard figures or solid evidence of impacts
- Risk of focusing too much on qualitatively harmful rules and regulations without knowing the practical relevance of those same rules and regulations, i.e. how much they are actually exploited by companies and individuals

We therefore believe that it is essential to use a combination of a quantitative and qualitative approaches.

Recommendations for an analytical framework for national tax spillover analyses

This *Guiding Framework* does not prescribe an exact methodology (cookbook or checklist) for how EU member states should conduct their spillover analyses. However, drawing on the IMF's quantitative framework and the APPG/SPERI's qualitative framework, and our own research, ActionAid recommends a holistic research design that includes the following elements:

1. A clear and detailed formulation of the **intended objectives** of the spillover analysis. This would strengthen accountability and enable a clearer evaluation of the outcome.

2. A **broad qualitative analysis of policy areas** (listed in Chapter 2) most likely to have spillover effects on the tax revenues of developing countries and their capacity to meet sustainable development goals and human rights obligations. It goes without saying that the objectives and focus of the analyses need to be reasonably comprehensive – a too limited focus may lead to an overly light research process leading to politically convenient conclusions.

3. Use of **quantitative methods** whenever feasible to make the findings as rigorous and objective as possible. The quantitative analysis should focus on those policy areas identified by the qualitative analysis as the most risky. The types of effects to be analysed should include the financial volume, rate and composition effects in developing countries.[69] It could include using dummy variables to inform and guide an interpretive analysis of more indirect impacts on human rights and democracy in developing countries.

4. An **interpretive and comparative analysis** of the qualitative and quantitative findings should provide the basis for assessing the commitment to policy coherence for development of the country in question. Overall, the analysis should answer the key question: what is the influence of the member state's tax policies on developing countries, especially in light of its international commitments? This part of the analysis should include inputs from different stakeholders (including perspectives from business, human rights and developing countries) to ensure there is a range of views in the analysis.

5. Identification of one or more **case studies**, such as particular tax treaties, that can subsequently be conducted.

Chapter two: Scope and content recommendations

If an EU member state decides to undertake a spillover analysis, it follows that it should direct the focus and methodology towards analysing those policy areas that have the greatest potential impacts on the tax systems of developing countries and should not restrict the scope to areas of less relevance. This chapter outlines indicative sets of issues to consider in undertaking spillover analyses and suggests questions that need to be posed to mitigate the risk of an analysis not capturing all of a member state's tax spillover impacts sufficiently rigorously.

The chapter presents questions concerning potential spillovers from the domestic regulations and international engagements/agreements of EU member states. All questions are listed only once although some could apply to several of the categorised areas.

Domestic rules of EU member states – aggressive tax planning structures

In 2012, the European Commission's Directorate-General for Taxation and Customs Union put forward a recommendation on aggressive tax planning (ATP), noting that the EU Commission "sees a strong need to obtain increased knowledge of the tax laws and practices of all 28 EU Member States…"[70] Here, "aggressive tax planning" was defined as:

> *"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. It may result in double deductions (e.g. the same cost is deducted both in the state of source and residence) and double non-taxation (e.g. income which is not taxed in the source state is exempt in the state of residence)."*

The 2012 recommendation came together with the European Commission's *Action Plan to strengthen the fight against tax fraud and tax evasion*[71] and its *Recommendation regarding measures intended to encourage third countries to apply minimum standards of good governance in tax matters.*[72]

In 2015, the Commission commissioned a study which identified 33 indicators of ATP structures.[73] The indicators that are relevant to developing countries are included in the policy measures listed below, which are divided into those with potentially negative spillovers, and those with potentially positive spillovers.

Negative spillovers

Has the analysis considered potentially negative spillovers from the policy areas and measures listed below? If not, why not?

Table 2: **Sources of potentially negative spillovers in relation to domestic rules**

Capital Gains tax **Corporate Income Tax**	• the headline tax rate for CIT or capital gains • rules decreasing the tax base of CIT or capital gains • the signalling effect (tax competition) of recent or planned changes in tax rates. • group taxation with acquisition holding company allowed • excess profits rulings
Residence Rules	• permitting non-resident companies • having nationally incorporated companies deemed not tax-resident if management or company control is in another state
Intellectual property rules and Research and Development rules	• minimal/negligible taxation of capital gains (fair market value) upon transfer of IP patent box or other preferential tax treatment of income from IP • R&D tax incentive going beyond direct cost reimbursement
Transfer Pricing rules (TP)	• ineffective TP rules or ineffective enforcement of these
Interests, Royalties and Dividends	• generous tax exemptions or deductions for dividends received • generous tax exemptions or deductions for dividends paid • tax deduction from intra-group interest costs • tax deduction allowed for deemed interest costs on debt with low or no interest • notional interest deduction for share capital • low or no WHT on royalties, interests, dividends paid and on their various equivalents e.g. buy-back of shares • non-uniform WHT rates on different types of payments
International cooperation	• punishing developing countries for having low administrative capacity, for instance by demanding reciprocity or full implementation of OECD's BEPS actions as a requirement for bilateral or international information exchange arrangements
General	• rules likely to favour income arising outside the member state (ring-fencing of domestic economy) • any rule, regulation or administrative practice directly or indirectly affecting the effective tax rate for CIT negatively, capital gains or other type of income including income from royalties, interests or dividends • features of the tax system that have been negatively reviewed in the financial secrecy index (FSI), www.financialsecrecyindex.com

Positive spillovers

Many tax policy measures enacted by EU countries can have substantial positive spillovers in developing countries, as outlined in the following table.

Has the analysis considered potentially positive spillovers from the policy areas and measures listed below? If not, why not?

Table 3: **Sources of potentially positive spillovers in relation to domestic tax rules**

Residence Rules	• rules for controlled foreign corporations (CFC)
Interests, Royalties and Dividends	• taxation of benefits from no/low interest on debt • interest-limitation rules
Withholding Taxes	• beneficial-owner test for reduction of withholding tax on dividends
Transparency measures	• implementing country-by-country reporting (CBCR) requirement and making it available to the public • publishing core elements of advanced pricing agreements (APAs) and other tax rulings including annual overviews of how many have been made and with which companies, and how many have been exchanged and with which countries • requiring financial accounts of all limited liability entities to be on public record, including trusts and foundations recorded on a central register which discloses the trust accounts, donors, trustees and beneficiaries • provisions for the identification of beneficial ownership, i.e. who benefits from ownership of an asset (for example, bank account, trust, property) and yet nominally does not own the asset because it is registered under another name • publication of annual cost of statutory and discretionary tax incentives offered to companies
International cooperation	• automatic exchange of relevant financial account information and CBCR data with tax authorities of other countries, including developing countries • automatic exchange of APAs and other tax rulings related to preferential regimes, with tax authorities of other countries, including developing countries • having routine dialogues with tax authorities in developing countries and inviting them to suggest areas of concern in relation to spillovers
General anti-abuse measures	• general anti-avoidance rules to counter hybrid structures and other ATP structures • no tax deductions independent of tax treatment in developing countries • rules to counter a mismatch in tax qualification of a domestic company or business partnership between own state and a foreign state (hybrid mismatch rules) • CFC rules on income received from investment or passive sources including interest, dividends, rents and royalties from unrelated parties; from purchasing goods from related parties or selling goods to related parties, where the goods are both produced for and used outside the CFC country; from performing services outside the CFC country for related parties; from non-operating, insubstantial, or passive businesses

EU member states' activities abroad

Tax policies promoted in international organisations like the EU and OECD generally have bigger impacts on developing countries than those of any individual EU country. Hence, supporting the formation of a truly global intergovernmental body on tax[74] should be seen as vital for all EU member states. However, in this *Guiding Framework* we have chosen to discuss only bilateral policy-making. Listed below are three areas where EU member states, unilaterally or bilaterally, can change policies to improve spillovers in developing countries: DTTs, DFIs, and state involvement in companies' overseas investments.

Spillovers from Double Taxation Treaties

DTTs are agreements between countries that divide the taxing rights of the countries that have signed and ostensibly intend to eliminate double taxation of individuals/companies operating in more than one country. DTTs determine when, how and even if developing countries can tax foreign-owned corporations that are making money within their borders. Like most treaties, DTTs commonly override other national laws. DTTs can also facilitate tax avoidance schemes, as seen in the cases of Google[75] and Amazon.[76] Some spillovers arise from the abuse of DTTs, but others come about because DTTs are meant to divide taxing rights to prevent double taxation, but often award more of them to residence countries, thus unfairly limiting the capacity of developing countries to tax companies.[77] The result is that all too often financial resources are transferred untaxed or minimally taxed from poor to rich countries. Based on research on more than 500 binding treaties signed by lower-income countries, a 2016 ActionAid report argues that EU member states should invite developing country treaty partners to renegotiate or cancel those existing DTTs that might excessively limit the taxing rights of these partners.[78]

National spillover analysis of DTTs can help to scrutinise these problems and create positive spillovers. With the Dutch and Irish spillover analyses in mind, it is important to stress that while spillovers from DTTs are important they do not provide the full picture. Often spillovers arise from DTTs in their interactions with the aggressive tax planning measures of domestic tax systems, typically some of those listed above.[79] Moreover, many developing countries have no or only few DTTs, but still suffer from various types of tax spillovers.

Has the analysis considered potential spillovers from the policy areas and measures listed below? If not, why not?

Table 4: **Sources of potential spillovers in relation to Double Taxation Treaties**

Negative spillovers	• the possible abuse of DTTs by investors from the member state and from other residence countries using the member state as a conduit • the possible abuse by businesses in developing country using DTTs to "roundtrip" and disguise their domestic investments as FDI • treating the OECD's model tax treaty as the starting point in negotiations on DTTs, and requiring developing countries to make some concessions if they want to use the UN model tax treaty as a basis instead • automatic adjustment of transfer pricing described in OECD's model convention article 9. • the 26 elements in DTTs that the ActionAid Tax Treaties Dataset identifies as crucial for developing countries, including rules on: – permanent establishment of services, delivery exceptions, stock agent, insurance, construction length and supervisory activities – WHT on dividends, royalties, interests, threshold for shareholding qualification, management and technical fees – source taxation of capital gains, earnings of top-level managerial officials, social security pensions and other income – other elements such as "force of attraction", office payments, shipping rights
Positive spillovers	• strong anti-abuse clauses in DTTs • a national code of conduct on tax treaty negotiation ensuring: – publication of the policy objectives of upcoming DTTs an impact assessment prior to negotiating DTTs – a consultation with experts and an open discussion of the overall rationale for developing countries to sign DTTs (to date empirical studies are inconclusive on the question of whether concluding a tax treaty increases FDI in a developing country) – the national legislature debates and formally ratifies any DTT • publication of a draft version prior to signature

Spillovers from development finance institutions

DFIs are bilateral or multilateral institutions supported by states and which generally have a mandate to provide finance to the private sector for investments that promote development.[80] DFIs are mandated to promote investments where commercial markets do not and thus bridge private financing and public policy by encouraging investments that yield development impacts. Thus, DFIs should also promote responsible tax practices and safeguard against harmful ones.[81]

Has the analysis considered potential spillovers from the policy areas and measures listed below? If not, why not?

Table 5: Sources of potentially positive spillovers in relation to rules concerning DFIs

Positive spillovers	• DFIs taking an active role in promoting responsible tax practices and having indicators that measure the effect of their investments on tax payments and human rights, and giving these issues a prominent place in their annual reports • DFIs implementing an effective tax haven policy that triggers appropriate action and discourages partner companies from using tax havens, including having due diligence requirements when tax havens appear in the corporate structure of a partner • DFIs having a code of conduct that requires them to have safeguard policies for the companies they partner or fund (including financial intermediaries), and which include demanding public CBCR and transparency about beneficial ownership

Chapter three: Process recommendations

This chapter briefly presents a list of recommendations on the process and practical arrangements for conducting a national tax spillover analysis. How the process is conducted is critical to the outcome. The key must be to ensure that the end goal is to turn improved knowledge into improved policy decisions.

1. The spillover analysis should cover **all of the member state's tax rules** and practices which may give rise to spillovers in developing countries, including those which have indirect effects. Thus, efforts must be made to identify which tax rules are key so that none are excluded. In this process, there should be widespread consultation among stakeholders.

2. There should be agreement among all the stakeholders on **what data needs to be collected** for the study and an assurance that all those with access to this data will provide it.

3. All **relevant government departments** should be involved in preparing the analysis, including the Ministries of Foreign Affairs, Business and Finance, and the administrative departments responsible for taxation, aid and development policies. All should agree on the objectives of the analysis and the values that guide it.

4. The analysis should include the **participation of relevant stakeholders** such as parliamentary committees, civil society groups, academics and the business community. One option is to establish a multi-stakeholder group that could guide or at least give strong input to the process. This group could help design and examine the terms of reference for the analysis, ensuring it covers all necessary areas and processes.

5. There should be a period for a **public consultation** and written submissions, and these inputs should be explicitly considered in the final report. Transparency and public accountability should be promoted in as many steps of the analysis as possible, including public access to working documents of the steering group, drafts and discussions of the research, and the selection and hiring of a contractor.

6. There should be a **period of debate** and scrutiny over drafts of the analysis produced. Some of the issues are likely to be complex, others open to differing interpretations and it is important to allow time for these discussions among the stakeholders.

7. An external, **independent party should be contracted** to conduct the spillover analysis. This party should be given access to all the necessary official data to conduct a comprehensive and rigorous study and be able to treat some of the official information it accesses on a confidential or anonymous basis if necessary.

8. The government should make a commitment to **publishing the analysis** in full.

9. There should be a commitment on the part of the government commissioning the analysis to **act on its findings.** Where the analysis identifies the existence or risk of negative spillovers in developing countries, the government should outline the actions it intends to take in response and over what timescales.

Actions needed independent of any spillover analysis

Independently of conducting a spillover analysis, all EU member states should ensure there are adequate institutional arrangements for collecting data concerning tax policy. All EU member states should ensure that their data collection at least matches that of the Netherlands, where every year the Dutch Central Statistics Bureau (DCSB) reports how much capital income the Netherlands receives from its FDI stock abroad from withholding taxes on incoming interest and dividend payments. Moreover, the DCSB distinguishes between interest and dividends, and classifies income that can be attributed to special financial institutions (mailbox companies) separately. For tax spillover analyses in most EU member states it will be relevant to collect the data on capital income received from FDI stock abroad, and to record and distinguish between the flows coming from withholding taxes on incoming interest and on dividend payments, as well as classifying the flows attributed to different types of financial entities, e.g. mailbox companies.[82]

Conclusion

In this *Guiding Framework* ActionAid presents recommendations for the method, content and process of conducting future spillover analyses. It has been developed with inputs from experts from across Europe and Africa and argues that EU member states need to conduct national tax spillover analyses to comply with their commitments on policy coherence for development (PCD), human rights and democracy. Moreover, it argues that future spillover analyses need to adopt a broader scope than the Dutch and Irish analyses did, and take into account, among others, transparency measures, international cooperation and potential positive spillover effects.

To reach the end goal of turning improved knowledge into improved policy decisions more dialogue is needed both across national borders and across ministries and institutional "silos" within the EU member states. ActionAid hopes that the recommendations will motivate such dialogues.

Methodological recommendations

Chapter 1 recommends that the analytical setup of a national tax spillover analysis includes:

- A formulation of the intended objectives, enabling a clear evaluation of the outcome.
- A broad qualitative analysis of policy areas that have the most impact on developing countries' tax revenues and their capacity to meet the Sustainable Development Goals and human rights obligations.
- Quantitative methods employed where possible including analyses of the financial volume, rate and composition effects in developing countries.
- An interpretive and comparative analysis providing the basis for a policy coherence for development analysis of the member state's commitments, policy targets and indicators in relevant development areas as well as the parallel policy targets and indicators in relevant developing countries.
- The identification of case studies, on which a discussion pointing towards required policy adjustments as well as additional research can be based.

Scope and content recommendations

Chapter 2 lists the most important policy measure a national tax spillover analysis should take into account. These include domestic rules enabling Aggressive Tax Planning, for instance "ring-fencing" structures, rules indirectly affecting the effective tax rate for corporate income, capital gains, royalties, interest, dividends, as well as intellectual property rules, research and development rules and transfer pricing rules.

Importantly, a spillover analysis should also consider the many potential positive spillover effects from: *Transparency measures* including publishing core elements of tax rulings, companies' Country-by-Country filings and the identity of beneficial ownership of bank account, trust, and property. A spillover analysis should also analyse features of the national tax system, if any, that has been negatively reviewed in the financial secrecy index.

Anti-abuse measures including Controlled Foreign Corporation rules, beneficial-ownership rules, and general anti-avoidance rules.

International cooperation including sharing of Country-by-Country reporting data, and automatic exchange of information about financial accounts, Advanced Price Agreements and other tax rulings.

Moreover, a spillover analysis should address EU member states' bilateral activities and activities abroad including Double Taxation Treaties, Development Finance Institutions, and state involvement in national companies' overseas investments and exports.

Process recommendations

Chapter 3 presents a list of principles recommended for the process surrounding a spillover analysis. The member state concerned should ensure that:

- A comprehensive analytical scope covers all tax rules which may give rise to spillovers, including those which have indirect or systemic effects.
- All the relevant government departments are included in the process and agree on the

objectives and guiding values of spillover analysis, and commit themselves to provide the necessary data.

- Relevant parliamentary committees, civil society groups, academia and the business community are included in the process, and that external submissions are considered in the final report.
- The contracted party, if applicable, is given access to all the necessary data.
- The analysis is published in full, and where there is a risk of negative spillovers on developing countries, the government commits to prompt action to curb this risk.

Note of caution: No spillover analyses should delay changing policies already known to be harmful.

References

1. To illustrate the numerous scandals, take a single 12-month period starting December 2014. It included the following scandals:
Two separate studies on the mining industry published in 2015 showed that the Netherlands had been used to minimise tax payments in Malawi and Greece. See SOMO (2015): https://www.somo.nl/fools-gold-eldorado-gold/; and ActionAid (2015),"An Extractive Affair: How one Australian mining company's tax dealings are costing the world's poorest country millions":
http://www.actionaid.org/publications/extractive-affair-how-one-australian-mining-companys-tax-dealings-are-costing-worlds-po
The LuxLeaks dossier exposed tax rulings with hundreds of multinational companies in Luxembourg. See ICIJ (2014), Luxembourg Leaks: global companies' secrets exposed: https://www.icij.org/project/luxembourg-leaks
The SwissLeaks laid bare the financial information of more than 100,000 bank clients in a Swiss bank. See ICIJ (2014), Swiss Leaks: Murky cash sheltered by bank secrecy: https://www.icij.org/project/swiss-leaks
A report showed that McDonald's reported a turnover of more than €3.7 billion in one subsidiary with 13 employees in Luxembourg from 2009–13. See EPSU et al. (2015), Unhappy meal: €1 billion in tax avoidance on the menu at McDonald's, p. 11. Published 24 February 2015: http://www.notaxfraud.eu/sites/default/files/reports/enUNHAPPYMEAL_final.pdf)
A report detailed some of the tax saving effects Walmart achieved through subsidiaries in Ireland, the Netherlands, Luxembourg, Spain, Cyprus and Switzerland, despite not having any stores there. See Americans for Tax Fairness (2015), The Walmart Web: How the world's biggest corporation secretly uses tax havens to dodge taxes, p. 2. Published June 2015:
https://americansfortaxfairness.org/files/TheWalmartWeb-June-2015-FINAL1.pdf

2. See IMF (2014), Staff Report, Spillovers in international corporate taxation, pp. 1–3, 9–5:
http://www.imf.org/~/media/Websites/IMF/Imported/external/np/pp/eng/2014/_050914pdf.ashx.
The OECD acknowledges that the impact on developing countries of cross-border tax avoidance exceeds that of official development assistance (ODA) by a considerable margin. See OECD (2015), Tax Inspectors Without Borders, An OECD–UNDP partnership to tackle domestic resource mobilisation with a practical hands-on approach:
https://www.oecd.org/dac/financing-sustainable-development/third-UN-conference-on-financing-for-development-addis-tax-inspectors-flyer.pdf.
See Global Financial Integrity (GFI) (2017): http://www.gfintegrity.org/ Global Financial Integrity (GFI) is a non-profit, Washington DC-based research and advisory organisation which in its latest report estimates that the fraudulent mis-invoicing of trade transactions is the largest component of illicit financial flows from developing countries, accounting for 83.4% of all illicit flows – highlighting that any effort to significantly curtail illicit financial flows must address trade mis-invoicing. Moreover, as a percentage of GDP, sub-Saharan Africa suffers the biggest loss of illicit capital. Illicit outflows from the region averaged 6.1% of GDP annually. Globally, illicit financial outflows averaged 4.0% of GDP.

3. For more information see United Nation's Sustainable Development Knowledge Platform (Accessed May 2017):
https://sustainabledevelopment.un.org/post2015/summit

4. See European Commission (2015), Commission Staff Working Document, Policy Coherence for Development 2015 EU Report:
http://ec.europa.eu/europeaid/sites/devco/files/policy-coherence-for-development-2015-eu-report_en.pdf

5. The European Parliament supported these measures and took an even stronger position on tax issues in its resolution on the 2015 EU Report on PCD4 (points 33 and 34).

6. Richard Murphy & Andrew Baker, 2017, "Tax Spillover: A New Framework" published in a partnership between the All-Party Parliamentary Group on Inclusive Growth (APPG) and the Sheffield Political Economy Research Institute (SPERI), written by Andrew Baker (University of Sheffield) and Richard Murphy (City University) 2017,
see https://www.inclusivegrowth.co.uk/appg_publications/tax-spillover-new-framework/

7. https://www.financialsecrecyindex.com/

8. See EU Commission (2015), Staff working document Collect more – Spend better:
https://ec.europa.eu/europeaid/staff-working-document-collect-more-spend-better_en

9. See Resolution adopted by the General Assembly on 27 July 2015: Addis Ababa Action Agenda of the Third International Conference on Financing for Development (Addis Ababa Action Agenda) (A/RES/69/313):
https://documents-dds-ny.un.org/doc/UNDOC/GEN/N15/232/22/PDF/N1523222.pdf?OpenElement

10. See above note 1.

11. See Action Aid (2015). "An Extractive Affair: How one Australian mining company's tax dealings are costing the world's poorest country millions". Published 17 June 2015:
http://www.actionaid.org/publications/extractive-affair-how-one-australian-mining-companys-tax-dealings-are-costing-worlds-po

12. Based on front line HIV/AIDS treatment costing USD100 per year:
http://www.unaids.org/en/resources/presscentre/pressreleaseandstatementarchive/2015/july/20150714_PR_MDG6report

13. Calculation assumes an annual salary of USD2,500. See e.g. https://www.theguardian.com/world/2007/aug/19/1

14. See ICIJ (2014), Luxembourg Leaks: global companies' secrets exposed: https://www.icij.org/project/luxembourg-leaks

15. Ibid.

16. Read more about the SwissLeaks scandal at https://projects.icij.org/swiss-leaks/

17. The members of the Financial Transparency Coalition are listed at: https://financialtransparency.org/

18. See the Financial Transparency Coalition, “SwissLeaks Through a Different Lens” Accessed May 2018: http://www.swissleaksreviewed.org/#viewing-swissleaks-differently

19. See OECD (2015), Tax Inspectors Without Borders: An OECD–UNDP partnership to tackle domestic resource mobilisation with a practical hands-on approach:
https://www.oecd.org/dac/financing-sustainable-development/third-UN-conference-on-financing-for-development-addis-tax-inspectors-flyer.pdf

20. IMF, Working Paper: Base Erosion, Profit Shifting and Developing Countrie, p. 21, Figure 3. Illustrative Revenue Loss Calculations:
https://www.imf.org/external/pubs/ft/wp/2015/wp15118.pdf

21. For further information about how states compete for mobile tax bases in a globalised economy, and how this tax competition undermines the fiscal self-determination of states and exacerbates inequalities of income and wealth both within countries and across borders, see Dietsch, P. and Rixen, T. (2012), “Tax Competition and Inequality – The Case for Global Tax Governance”:
http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1488066

22. For an introduction to tax competition see Tax Justice Network (2012), “Tax us if you can”, 2nd edition, p. 8: *“Nation states are not in competition with each other in the same way that firms compete for clients. Competition can only exist in that way when consumers (in this case entire populations) can choose between competing suppliers. Trying to apply the microeconomic theory of the firm to nation states is therefore false in theory and dangerous in practice; in microeconomic theory, if a company fails, it will be replaced by another company. That is not true when nation states fail; then the international community must intervene to prevent social and economic meltdown.*
What this suggests is that the notion of tax competition is based on political ideology rather than economic theory, and it promotes economic injustice. In practice, it favours the interests of the tiny number of people who own the majority of the world’s businesses. Far from promoting the efficient allocation of the financial capital, tax competition encourages mobile capital to scour the world in search of tax breaks and subsidies, which negates the entire basis of globalisation theory. As a result, tax competition invariably results in social harm and has to be curtailed.”

23. See Hearson, M. (2013), “Tax incentives cost $138 billion…?” (Accessed May 2017):
http://www.actionaid.org/2013/07/tax-incentives-cost-138-billion

24. IMF (2014), Staff Report, Spillovers in international corporate taxation, pp. 1–3, 9–5:
http://www.imf.org/~/media/Websites/IMF/Imported/external/np/pp/eng/2014/_050914pdf.ashx. The executive summary of the IMF 2014 Staff Report notes, in summary, that “The analysis also finds that spillovers are especially marked and important for developing countries. These countries typically derive a greater proportion of their revenue from corporate tax; TA experience provides many examples in which the sums at stake in international tax issues are large relative to their overall revenues; and the empirics reported here suggest that spillovers are especially strong for them.” See IMF (2014), Staff Report, Spillovers in international corporate taxation, pp. 1–3, 9–5:
http://www.imf.org/~/media/Websites/IMF/Imported/external/np/pp/eng/2014/_050914pdf.ashx

25. See UN (2014), “Report of the Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona”, p. 21:
http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session26/Documents/A_HRC_26_28_ENG.doc
The declaration that “government of the people, by the people, for the people, shall not perish from the earth” is from the Gettysburg Address, a speech by US President Abraham Lincoln delivered during the American Civil War on the afternoon of Thursday 19 November 1863.

26. See the Universal Declaration of Human Rights including Article 25 and Article 26 about everyone’s right to a minimum level of “living standards” . Universal Declaration of Human Rights (1948): http://www.un.org/en/universal-declaration-human-rights/ Article 25.
(1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
(2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.
Article 26. (1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
(2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.
(3) Parents have a prior right to choose the kind of education that shall be given to their children.

27. Ibid.

28. See Dr Attiya Waris, Senior Lecturer at Commercial Law Department, School of Law, University of Nairobi, in CONCORD (2015), “Spotlight 2015: The Role of the EU in ensuring Global Tax Justice.” by Newsroom, 30 April 2015, p. 3:
http://library.concordeurope.org/record/1632/files/DEEEP-PAPER-2016-001.pdf

29. Ibid.

30. See the United Nations General Assembly Human Rights Council, Twenty-sixth session, Agenda item 3, Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development (2014). “Report of the Special Rapporteur on extreme poverty and human rights”:
http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session26/Documents/A_HRC_26_28_ENG.doc

31. Further the UN 2014 “Report of the Special Rapporteur on extreme poverty and human rights” recommends that:
80. With regard to international cooperation and extraterritorial impact, each State should refrain from any conduct that impairs the ability of another State to raise revenue as required by their human rights commitments, and cooperate in creating an international environment that enables all States to fulfil their human rights obligations.
81.For the above-mentioned purpose, States should:
(a) Actively pursue international cooperation in tax matters, working towards a multilateral regime for tax transparency that tackles tax abuse
(b) Enact clear legislation and regulations to ensure that companies domiciled in their territory respect human rights in their operations everywhere, including in tax planning practices
©????

(d) Develop a system for more systematic and regular exchange of information between tax authorities, laying the foundations for an eventual multilateral, global system of automatic tax information exchange
(e) Promote and engage in forums for tax cooperation that guarantee participation by developing countries; in particular, commit more resources to the Committee of Experts on International Cooperation in Tax Matters, support its upgrade to intergovernmental status, and support the implementation of its Model Tax Convention and the Code of Conduct on Cooperation in Combating International Tax Evasion and Avoidance
(f) Adopt country-by-country reporting standards for all transnational corporations; in the case of extractive industries, also enforce project-by-project disclosure standards, such as those embodied in the Dodd-Frank Wall Street Reform and Consumer Protection Act and comparable European Union legislation, and apply them to all extractive industry companies listed on their stock exchanges
(g) Adopt a framework that commits it to full disclosure of beneficial ownership of registered companies through national public registries;

32. See more in CEDAW (1979), Article 2 of the Convention on the Elimination of all forms of Discrimination against Women (CEDAW): http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#article2

33. Read more about State responsibility for the extraterritorial impacts of tax abuse on women's rights in Switzerland (2016) (Accessed May 2017): https://www.yumpu.com/en/document/view/56280936/switzerland

34. The EU seeks to use policy coherence for development to take account of development objectives in all of its policies that are likely to affect developing countries. It aims at minimising contradictions and building synergies between different EU policies to benefit developing countries and increase the effectiveness of development cooperation. See EU Commission, "International Cooperation – Building partnerships for change in developing countries" (Accessed June 2017): https://ec.europa.eu/europeaid/policies/policy-coherence-development_en

35. See European Commission (2010), Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee: Tax and Development. COM, Vol. 163, final: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2010:0163:FIN

36. See EU Commission (2015), Staff working document Collect more – Spend better: https://ec.europa.eu/europeaid/sites/devco/files/swd-collect-more-spend-better.pdf and see the 2016 Spring Meetings of the International Monetary Fund (IMF) and World Bank Group: http://www.imf.org/external/POS_Meetings/SeminarDetails.aspx?SeminarId=119

37. See EU Commission (2015), "Policy Coherence for Development (PCD) 2015 EU Report": https://ec.europa.eu/europeaid/sites/devco/files/pcd-report-2015_en.pdf

38. Source: EU Commission (2015), EU Commission's 2015 EU Report on PCD: http://ec.europa.eu/europeaid/sites/devco/files/policy-coherence-for-development-2015-eu-report_en.pdf

39. See European Parliament (2016), "European Parliament resolution of 7 June 2016 on the EU 2015 Report on Policy Coherence for Development", points n. 33 and 34: http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2016-0246+0+DOC+XML+V0//EN

40. See European Parliament (2015), "Report on tax avoidance and tax evasion as challenges for governance, social protection and development in developing countries", Committee on Development Rapporteur: Elly Schlein: http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A8-2015-0184+0+DOC+XML+V0//EN

41. Source: 2015 EU Staff Working Document, *Collect More – Spend Better* https://ec.europa.eu/europeaid/staff-working-document-collect-more-spend-better_en

42. For further information visit the homepage of the Financing for Development Conference in Addis Ababa in 2015 (Accessed May 2017): http://www.un.org/esa/ffd/ffd3/

43. For further information visit the homepage for the 2030 Agenda for Sustainable Development (Accessed May 2017): https://sustainabledevelopment.un.org/post2015/summit

44. For further information visit the homepage for the Addis Tax Initiative (Accessed May 2017): https://www.addistaxinitiative.net/

45. Ibid.

46. See UNDP's Strengthening the Governance of Climate Change Finance (GCCF) (2011), Busan Partnership for Effective Development Cooperation, Outcome Document, paragraph 9: https://www.oecd.org/development/effectiveness/49650173.pdf

47. See the full report of the Dutch Spillover Analysis (IBFD) (2013), Onderzoek belastingverdragen met ontwikkelingslanden. FEZ/IM-354/DDE: https://www.rijksoverheid.nl/binaries/rijksoverheid/documenten/brieven/2013/08/30/onderzoek-belastingverdragen /onderzoek-belastingverdragen.pdf

48. Read more about Martin Hearson's reflections and critique of Irish and Dutch spillover analyses in "Is it or isn't it a spillover?", 16 April 2015 (Accessed May 2017): https://martinhearson.wordpress.com/tag/spillover-analysis/ and read more on the methodological reflections in Murphy & Baker (2017), "Tax Spillover: A New Framework" https://www.inclusivegrowth.co.uk/appg_publications/tax-spillover-new-framework/

49. See the full report of the Irish Spillover Analysis (IBFD) (2015), Possible Effects of the Irish Tax System on Developing Economies: http://www.budget.gov.ie/Budgets/2016/Documents/IBFD_Irish_Spillover_Analysis_Report_pub.pdf

50. Weyzig, F. (2015), Spillover analysis of Irish tax policy: https://francisweyzig.com/2015/10/14/spillover-analysis-of-irish-tax-policy/

51. Martin Hearson (2014) elaborates: "A fundamental weakness of the report, therefore, seems to be unwillingness to look at Ireland's role in combination with other countries. The LuxLeaks episode in 2015, for example, highlights that Ireland's interaction with Luxembourg is an important part of aggressive tax planning by some companies, some of which may have operations in developing countries. The most likely damaging spillover takes the form of hiding the profits not necessarily straight from e.g. Zambia, but from a global value chain that includes Zambia and others – including Ireland. It is Ireland's systemic rather than transaction-specific role that is likely to have greatest

costs for developing countries. Closer examination of this aspect is therefore a significant omission from the analysis."
Read more in Hearson (2014), "Ireland does spillover analysis: the proof of the pudding will be in the eating":
https://martinhearson.wordpress.com/2014/05/01/ireland-does-spillover-analysis-the-proof-of-the-pudding-will-be-in-the-eating/

52. See above note 2.

53. As Martin Hearson has noted, the IMF's traditional use of the term "spillover" invites an interpretation where the affected country is a passive victim. But the fact that a developing country is active in signing a treaty or granting tax exemptions to foreign companies does not diminish the impact on it of doing so. Follow Martin Hearson's work on spillover and double taxation treaties on his blog (Accessed May 2017): https://martinhearson.wordpress.com/tag/spillover-analysis/

54. As summarised in IBFD Spillover Analysis: Possible Effects of the Irish Tax System for Developing Economies:
"b. Base erosion due to real activities
The analysis of base erosion due to real activities is more complex. It relates changes in a country's corporate tax base to the average tax rate of all other countries one year before. The main specification finds that if the tax rates of all other countries fall by 1 point, the average country's corporate tax base is reduced by 3.7% because real activities are shifted abroad. Considering that corporate tax rates have fallen by some 5 points worldwide over the last decade, this spillover effect is quite large.

The analysis uses an implied tax base, which is estimated by taking the ratio of corporate tax revenues to GDP (from IMF country reports) and dividing it by the statutory corporate tax rate. This is because comprehensive country data on the size of the corporate tax base are not available. A simple calculation illustrates the approach. If a country's corporate tax revenues are 5% of GDP and the tax rate is 25%, then the implied tax base is 5% of GDP / 25% = 20% of GDP. The authors point out that statutory tax rates and average effective tax rates are strongly related. As mentioned above, a later extension of the analysis also used average effective tax rates for a sub-group of developing countries. The results are similar to the original analysis, which shows that the findings for tax competition among developing countries themselves are robust. (…) The main specification models base spillovers as a function of GDP-weighted tax rates of all other countries worldwide. (…) To summarise, the econometric analysis finds large spillover effects due to shifts in real activity. However, because the main specification uses GDP weights, it does not focus on tax policy in relatively small countries. The analysis provides a global estimate of spillover effects and provides little information about spillover effects caused by Ireland's tax policy in particular."
Source: Kosters, Lambert; Kool, C.J.M.; Groenewegen, J.; Weyzig, Francis; Bardadin, Anna (2015), Utrecht University Repository
https://dspace.library.uu.nl/handle/1874/327640

55. Gravelle, J.G. (2013), *Tax Havens: International Tax Avoidance and Evasion.* Congressional Research Service Report for Congress (Washington: Congressional Research Service): https://fas.org/sgp/crs/misc/R40623.pdf

56. See http://www.financialsecrecyindex.com/

57. Richard Murphy & Andrew Baker, 2017, "Tax Spillover: A New Framework" published in a partnership between the All-Party Parliamentary Group on Inclusive Growth (APPG) and the Sheffield Political Economy Research Institute (SPERI), written by Andrew Baker (University of Sheffield) and Richard Murphy (City University) 2017, see https://www.inclusivegrowth.co.uk/appg_publications/tax-spillover-new-framework/

58. Read more in Murphy, R. and Baker, A. (2017), "Tax Spillover: A New Framework". "Irish companies, one resident in that state and the other not (the so called 'Double Irish'). In that situation, the loss arose to third states that did not ever enjoy the taxes that might have been due on transactions that most would have expected to be recorded in their domains. Such transactions were not recorded as a result of the use of these abusive Dutch and Irish structures, data with regard to which never appeared in the trading relationships between those places and the countries that lost out."
https://www.inclusivegrowth.co.uk/appg_publications/tax-spillover-new-framework/

59. While the dividend and interest flows that are subject to withholding taxes can be estimated from widely available datasets, the volume of royalties and service fees, also affected by treaties' WHT provisions, is much harder to quantify, see more in Hearson, M., International Centre for Tax and Development (ICTD) (2016), *Measuring Tax Treaty Negotiation Outcomes: ActionAid's dataset:*
http://www.ictd.ac/ju-download/2-working-papers/99-measuring-tax-treaty-negotiation-outcomes-the-actionaid-tax-treaties-dataset

60. The notorious "Dutch Sandwich" tax abuse structure where royalties are routed between two Irish companies with different residence status (also called "Double Irish"). This creates a situation where the loss arises to third states that do not enjoy the taxes that might have been due on transactions that most would have expected to be recorded in their domains. See Wood, R.W., Forbes (2016):
https://www.forbes.com/sites/robertwood/2016/12/22/how-google-saved-3-6-billion-taxes-from-paper-dutch-sandwich/#40edf5721c19

61. The double Irish arrangement is a tax strategy that some multinational corporations use to lower their corporate tax liability. See for instance Hakim, D. (2014): https://www.nytimes.com/2014/11/15/business/international/the-tax-attraction-between-starbucks-and-the-netherlands.html?_r=0 or The Tax Justice Network (2014): https://www.taxjustice.net/2014/10/21/offshore-wrapper-week-tax-justice-36/

62. See above note 13.

63. Dutch Government (2013), Annex 5, result chains, Assessing the Impact of PCD in Developing Countries: https://www.rijksoverheid.nl/binaries/rijksoverheid/documenten/rapporten/2013/10/22/result-chains-to-assess-the-impact-of-policy-coherence-for-development-in-selected-partner-countries/result-chains-to-assess-the-impact-of-policy-coherence-for-development-in-selected-partner-countries.pdf

64. An analysis should not build on benchmarking. However, after an analysis has been completed, the results may be compared to those of other countries after the fact.

65. ***Volume effect*** on total investments into developing countries, and total revenue collected.
Rate effect, i.e. changes in the applicable rates of various taxes in developing countries.
Composition effect one changing the composition of expenses and income of companies operating in developing countries.
Composition effect two changing the head rates of and/or revenue obtained from different tax types in developing countries.
Read more in Weyzig, Francis (2013), "Evaluation issues in financing for development. Analysing effects of Dutch corporate tax policy on developing countries", pp. 13–14 (commissioned by the Policy and Operation Evaluation Department (IOB) of the Ministry of Foreign Affairs):
https://www.government.nl/binaries/government/documents/reports/2013/11/14/iob-study-evaluation-issues-in-financing-for-development-analysing-effects-of-dutch-corporate-tax-policy-on-developing-countries/iob-study-evaluation-issues-in-financing-for-development.pdf

66. See Itriago, Deborah. Oxfam (2011), “Owning Development Taxation to fight poverty”: https://www.oxfam.org/sites/www.oxfam.org/files/rr-owning-development-domestic-resources-tax-260911-en.pdf

67. For more information about tax, fiscal transparency and public accountability, see ActionAid, (2013), “Bringing taxation into the post-2015 development framework”, p. 7: https://www.actionaid.org.uk/sites/default/files/doc_lib/post_2015_-_tax.pdf and see Keen, Michael (2012), “Taxation and Development – Again”, IMF Working Paper 12/220, p. 21: https://www.imf.org/external/pubs/ft/wp/2012/wp12220.pdf

68. For a good introduction to tax avoidance see the homepage for the Tax Justice Network (Accessed May 2017): http://www.taxjustice.net/faq/tax-avoidance/

69. ***Volume effect*** on total investments into developing countries, and total revenue collected.
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Read more in Weyzig, Francis (2013), “Evaluation issues in financing for development. Analysing effects of Dutch corporate tax policy on developing countries”, pp. 13–14 (commissioned by the Policy and Operation Evaluation Department (IOB) of the Ministry of Foreign Affairs): https://www.government.nl/binaries/government/documents/reports/2013/11/14/iob-study-evaluation-issues-in-financing-for-development-analysing-effects-of-dutch-corporate-tax-policy-on-developing-countries/iob-study-evaluation-issues-in-financing-for-development.pdf

70. Read more in the EU Commission’s recommendation of 6.12.2012 on aggressive tax planning, C(2012) 8806 final, Brussels, p. 16: https://ec.europa.eu/taxation_customs/publications/taxation-services-papers/taxation-papers_en

71. See EU Commission (2012), An Action Plan to strengthen the fight against tax fraud and tax evasion: https://ec.europa.eu/taxation_customs/sites/taxation/files/com_2012_722_en.pdf

72. See EU Commission (2012), Recommendation regarding measures intended to encourage third countries to apply minimum standards of good governance in tax matters (C(2012) 8805): http://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/taxation/tax_fraud_evasion/c_2012_8805_en.pdf

73. Source: EU Commission (2015), The EU Commission’s Taxation Papers, Working Paper No. 61. Study on Structures of Aggressive Tax Planning and Indicators: https://ec.europa.eu/taxation_customs/publications/taxation-services-papers/taxation-papers_en

74. Read more in the position signed by more than 30 CSOs: “10 Reasons Why an Intergovernmental UN Tax Body Will Benefit Everyone”. https://www.oxfam.org.uk/blogs/2015/07/un-tax-body-is-good-for-everyone

75. See Zucman, G. (2014), Taxing across borders: tracking personal wealth and corporate profits. *The Journal of Economic Perspectives*, 28(4), pp. 121–148; in relation to tax paid by Google in the UK, see House of Commons Committee of Public Accounts, Tax avoidance – Google, Ninth Report of Session 2013–14, http:// www.publications.parliament.uk/pa/cm201314/cmselect/cmpubacc/112/112.pdf , p 7.

76. It is alleged that the UK’s treaty with Luxembourg allowed Amazon to reduce its taxable presence in the UK. (Bergin, T., “After Google, Amazon to be grilled on UK tax presence”.) Read more in Reuters 17 May 2013: http://uk.reuters.com/article/uk-britain-tax-amazon-idUKBRE94G06320130517 ; and in Reuters 15 May 2013: http://uk.reuters.com/article/uk-amazon-britain-tax-idUKBRE94E0GE20130515 and read more in *The Guardian* (2013), “Questions for Amazon over pittance it pays in tax”, 16 May 2013, https://www.theguardian.com/technology/2013/may/15/amazon-tax-bill-new-questions The Guardian 23 May 2015: https://www.theguardian.com/technology/2015/may/23/amazon-to-begin-paying-corporation-tax-on-uk-retail-sales .

77. See Martin Hearson’s PhD and blog on international tax treaties (Accessed June 2017): https://martinhearson.wordpress.com/category/the-politics-of-international-tax/tax-treaties/

78. See Hearson, M. (2016), *Measuring Tax Treaty Negotiation Outcomes: The ActionAid Tax Treaties Dataset.* Brighton Institute of Development Studies. Available at http://www.ictd.ac/publication/measuring-tax-treaty-negotiation-outcomes-the-actionaid-tax-treaties-dataset/; see also report from ActionAid (2016), “Mistreated”: http://www.actionaid.org/2016/02/mistreated-how-shady-tax-treaties-are-fuelling-inequality-and-poverty. The research paper and dataset analysing 519 tax treaties signed by low- and lower-middle-income countries in Africa and Asia. Those countries classified as low and lower-middle income by the World Bank. The analysis of each of these treaties is freely available on the websites of ActionAid and the ICTD. For further detail on the research

79. ActionAid’s report “Sweet Nothings” tells of how an old treaty between Ireland and Zambia signed in 1971 decades later results in Zambia losing millions of dollars. Lewis, Mike (2013), ActionAid. “Sweet nothings. The human cost of a British sugar giant avoiding taxes in southern Africa”: https://www.actionaid.org.uk/sites/default/files/publications/sweet_nothings.pdf or more on ActionAid homepage (Accessed May 2017): https://www.actionaid.org.uk/blog/campaigns/2013/03/13/an-irish-stew

80. Read more about DFIs under “Investors in Infrastructure in Developing Countries” at the homepage of the World Bank (Accessed May 2017): http://ppp.worldbank.org/ppp/financing/investors-developing-countries

81. OXFAM (2016), Joint Agency Briefing Paper 10 November: Development Finance Institutions and Responsible Corporate Tax Behaviour: Where we are and The Road Ahead: https://www.oxfam.org/sites/www.oxfam.org/files/bp-dfis-responsible-corporate-tax101116-en.pdf

82. The data and resources available for most EU countries will probably limit the quantitative possibilities for national spillover analyses. But the data is useful for many other purposes than tax spillover analyses on developing countries. See more in SOMO (2013). Should the Netherlands Sign Tax Treaties with Developing Countries? p. 59, https://www.somo.nl/should-the-netherlands-sign-tax-treaties-with-developing-countries/

ActionAid is a global movement of people working together to achieve greater human rights for all and defeat poverty. We believe people in poverty have the power within them to create change for themselves, their families and communities. ActionAid is a catalyst for that change.

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