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**PREMIUM TASTE...**

**PREMIUM TAX DODGING.**

SABMiller, owner of Grolsch,  
siphons millions into tax havens.

TELL THEM TO



**TAX DODGING**

ActionAid is a registered charity, number 274467

**SABMiller: what happened next**

**Martin Hearson**

Kepa/TJN transfer pricing conference, Helsinki,  
June 2012

## **Presentation outline**

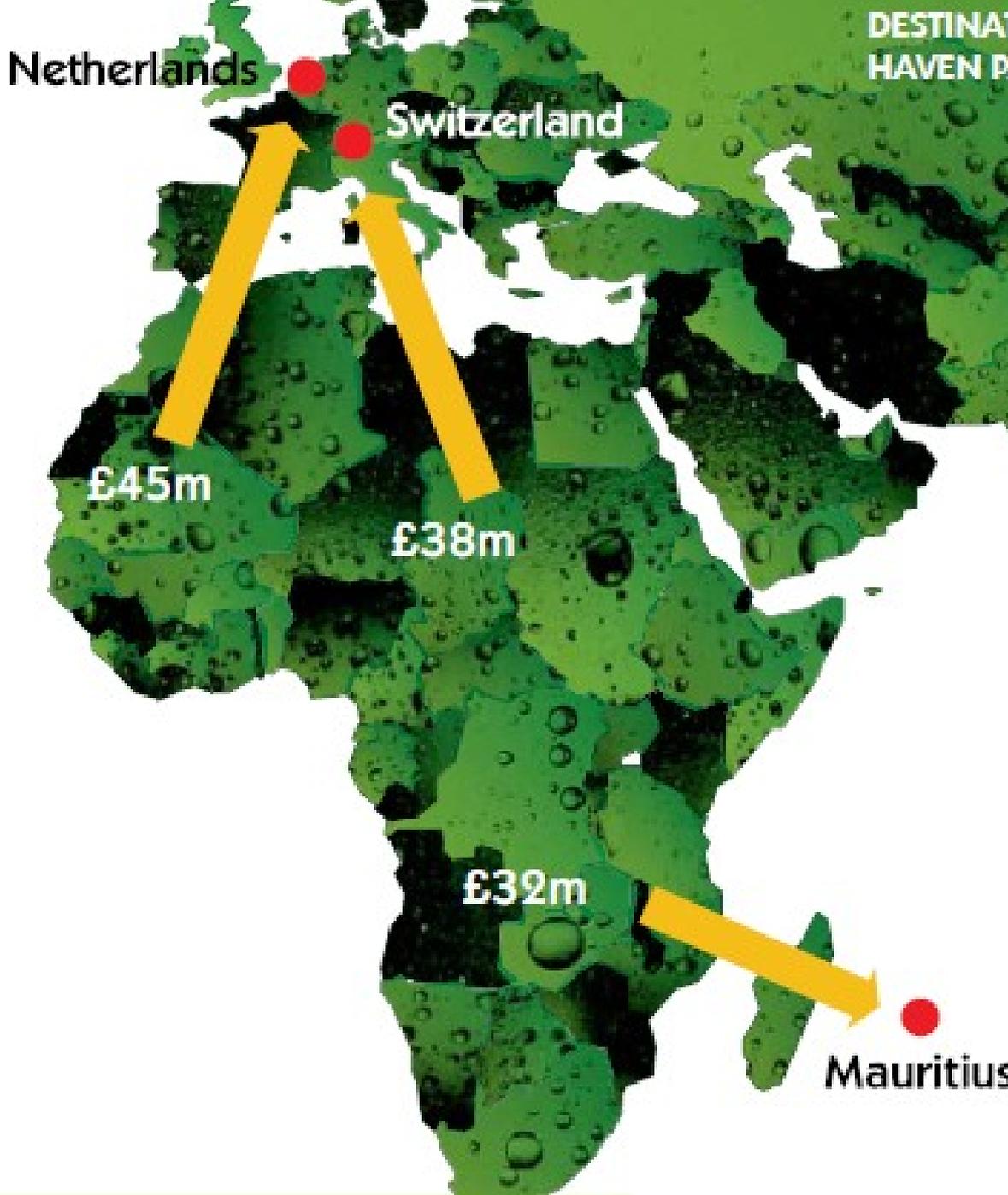
1. Recap of the case
2. What is this story really about?
3. Practical response from governments
4. Policy debate provoked

## Royalty payments for the use of brands (NL)

Most of the brands were exploited only in Africa

Some had been transferred from Africa to the Netherlands

Others newly registered

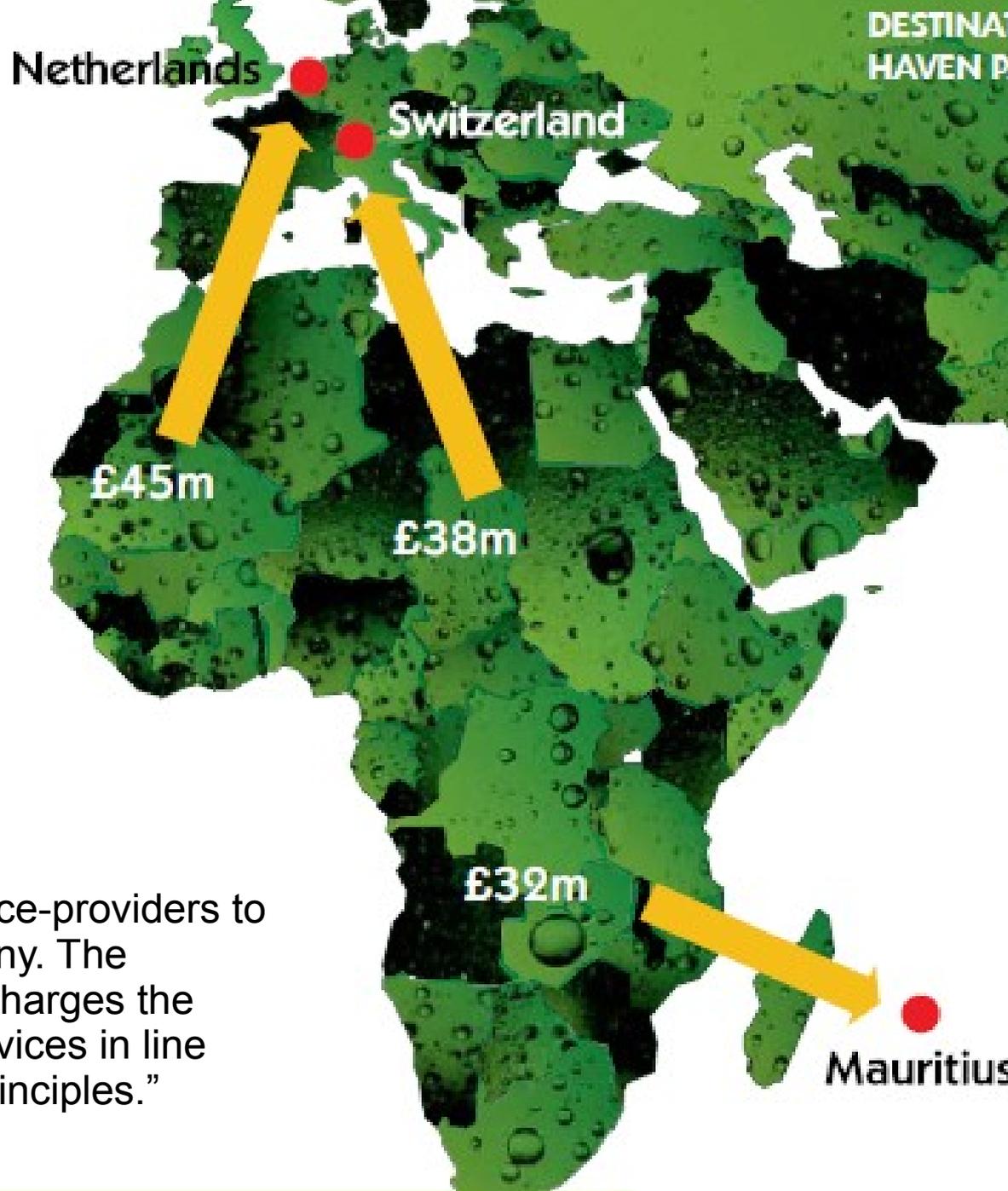


## Management service fees (CH)

Company receiving payments did not provide services

Where services provided, from South Africa

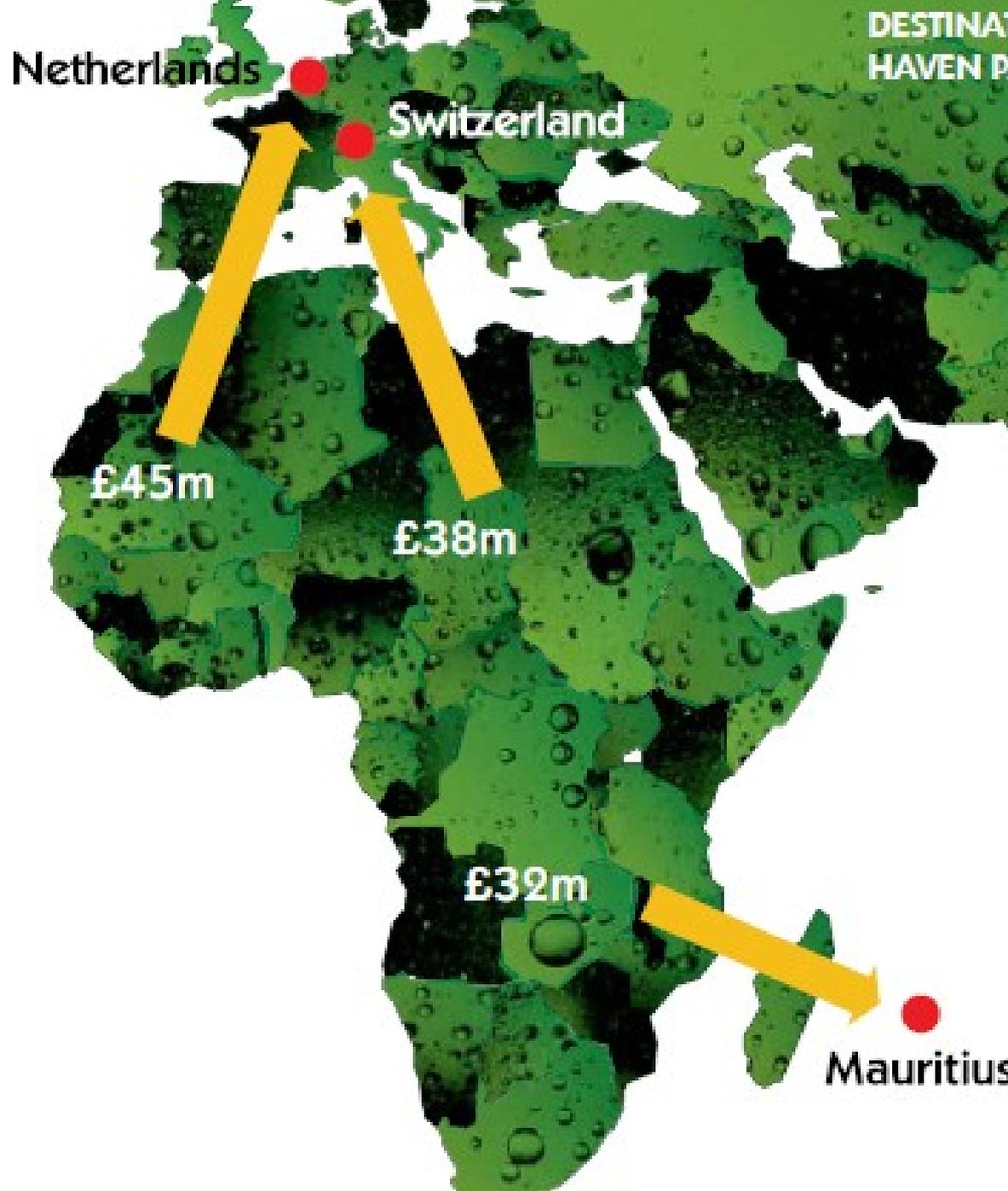
“Costs are routed from the service-providers to the central management company. The management company, in turn charges the operating companies for the services in line with accepted transfer pricing principles.”



## Procurement (MU)

Procurement hub has a very small footprint

Apparent rise in cost of sales when procurement shifted to MU



## **What made the SABMiller arrangements possible?**

- 1.Lack of detailed legislation
- 2.A common understanding that the rules are not enforced
- 3.Lack of capacity/expertise/confidence to investigate
- 4.“We are dealing with a very aggressive taxpayer”
- 5.Failure to spot clear abuses
- 6.The rules themselves...?

## What SABMiller says (1)

### **1. We follow OECD guidelines**

“We follow all transfer pricing regulations within the countries in which we operate and the principles of the OECD guidelines. We do not engage in aggressive tax planning.”

### **2. Arrangements not tax-motivated**

“Non-tax related historic business reasons why international brands may be owned in certain locations, and sound commercial reasons for why regionalised procurement may be based in a particular jurisdiction.”

## What SABMiller says (2)

### **3. Tax impact not material**

“Any effect on our overall tax rate of any of these activities is absolutely de minimis; it is not even a rounding error.”

### **4. Corporation tax is overrated anyway**

“Corporation tax is a poor guide to our total tax contribution in countries like Ghana..to focus solely on tax issues detracts from the broader economic impact that companies can have in developing markets.”

## Governments respond

### ATAF

- Ghana, Mauritius, South Africa, Tanzania and Zambia are ATAF members
- ActionAid met with SARS & ATAF to discuss our findings
- *Calling Time* was discussed twice by African tax officials (and OECD) during 2011, once at a specially convened meeting...
- ...but no legal framework exists to permit multilateral discussion of the specific allegations
- Multilateral treaty now agreed by ATAF council
- The ambition remains to conduct joint tax audits of MNCs

## Governments respond

### Ghana

- Was already developing updated TP legislation when ActionAid was undertaking research
- Following *Calling Time* ActionAid Ghana and partners organised two seminars with policymakers, media and NGOs on TP.
- Ghana is now part of an OECD capacity building project.
- OECD task force, May 2012: Ghana notes areas of difficulty for OECD to look at - intangibles, intragroup services, harmonisation of customs & TP

## **Governments respond**

### **The OECD capacity building project**

- Colombia, Ghana, Kenya, Rwanda and Vietnam.
- Tailored to countries, generally involves workshops and is in partnership with other agencies
- OECD is developing specific tools: Transfer pricing “Country Needs Assessment Tool” and draft “model” legislation on Advanced Pricing Agreements (APAs) and on thin capitalisation.
- An OECD “train the trainers” event is planned for October 2012.

## **Governments respond**

### **OECD taskforce work on public registers of accounts and access to comparables**

- Creation of comparables databases for developing countries is now seen as a priority.
- Prerequisites are publicly-disclosed accounts of independent companies
- (Though for some industries there may be no independent companies to act as comparables)
- The OECD taskforce report has not yet been published.

## **What an ex OECD official said (1)**

“The central question is not at all trivial: Are the rules of the game so permissive that even if applied correctly, multinationals can decide the amount of taxes they pay...or is it that the rules are not being applied and thus, as any feature of a tax code that is not enforced, ignored by taxpayers?”

- Roberto Schatan, Tax Notes International, January 2012

## **What an ex OECD official said (2)**

### **Royalties**

In the case of transferred brands, ALP requires that the ensuing royalty payments are consistent with the value at which the intangible was originally transferred abroad.

In the case of newly-registered brands, a functional analysis is sufficient.

## What an ex OECD official said (3)

### Management fees

“Could the taxpayer document the existence of a service under those circumstances? Would an independent party pay for what may be documented? If a service is received, is it really provided by the Swiss affiliate or is it simply “routed” through them? Which fees are charged by the ultimate and real provider of the service in that case? **The arm’s-length principle would require a convincing answer to all these questions.**”

“Frivolous deduction claims to reduce the tax bill are an old trick, and tax authorities should be able to fend them off with the most elemental antiavoidance rules; none of that should confuse the debate on transfer pricing standards.”

## What an ex OECD official said (4)

### Procurement

“It is conceivable that SABMiller’s intermediary in Mauritius obtains a profit for itself thanks to the discount in prices it may get, like any commodity broker would do...[this] would call for a discussion on how to share the benefits with other subsidiaries.”

## **Tax efficient supply chain management**

“once the multinational company has centralized the functions which add the highest value and trigger the major risks within one separate legal entity, a significant amount of the income that it derives from the relevant supply chain can be attributed to that entity as well.” - KPMG

**Or...**

# Supply Chain Planning – First Principles

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- ▶ Allocation of profits:
  - Operating entities entitled for normal profits
  - Hub entity entitled for residual (entrepreneurial) profits
- ▶ Hub entity
  - Located in Low Tax Jurisdiction (“LTJ”)
  - Centralization of management, control & business risks
  - Entitled for residual (entrepreneurial) profits
- ▶ Operating entities
  - Location based on business & tax considerations
  - Perform routine functions and bear subordinate risks
  - Receive a stable and relatively low profit level
  - Profit level can be controlled

## **Cost of this trend to developing countries**

- Corporation tax
- High quality, higher paid jobs
- Knowledge & technology transfer
- Backwards supply chain linkages
- Demand for local business services

**...in other words lower quality FDI**

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## A final thought

“It is clear that some developing countries find the implementation of the internationally developed approach to transfer pricing to be difficult. It is important that mechanisms are in place for developing countries to input into the development of international approaches and guidance.”

- OECD task force document reviewing lessons learned from capacity building work, May 2012