



Denmark's tax treaties

Time for change

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A woman with a headwrap, wearing a yellow textured top and a red patterned skirt, stands in a village setting. She is holding a mobile phone. The background shows traditional buildings and a dirt path.

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Executive summary

Tax is high on the current agenda both globally and in Denmark. How, and how much, governments can tax multinational corporations in one country versus another country is governed by a huge network of thousands of international treaties: bilateral taxation treaties. But they are largely unknown to legislators and citizens. However, like most treaties they override national laws.

The global network of tax treaties began with the best of intentions, namely to provide cross-border tools against illegal tax evasion; to facilitate cooperation between tax authorities; and to prevent pairs of wealthy developed countries from taxing the same income in both countries. The idea was to stimulate international flows of investment and skills between those countries, boosting jobs and growth. However, in practice many tax treaties have opened up loopholes for aggressive tax planning and avoidance; with little evidence in many cases that they do in fact increase investment, jobs and growth. In fact in some instances treaties have led to double non-taxation and to billions of dollars of foregone tax revenues.

Hence, stopping tax avoidance and evasion presents a huge opportunity for developing countries to help finance their own development. Yet key tools to combat such tax abuse are being taken out of the hands of developing countries' revenue authorities, including through imbalanced and outdated tax treaties. Most developed countries have continued to expand networks of tax treaties with developing countries with no examination of the impact these treaties might have on development and poverty. This includes Denmark.

Meanwhile in its international aid programmes Denmark is putting more and more emphasis on increasing the ability of aid recipients to finance their own economic development and public services sustainably through strong tax systems, and by combating tax avoidance and evasion. In June 2014 Denmark pledged to strengthen developing countries' ability to finance their own development through tax revenues as part of its Policy Coherence for Development (PCD) efforts. Just three months before this statement, Denmark signed its latest developing-country tax treaty - with Ghana, one of Denmark's priority development partners. Paradoxically this treaty shrinks Ghana's taxing rights further, in some respects, than Denmark's previous tax treaties with developing countries, and further than all but two of Ghana's other tax treaties.

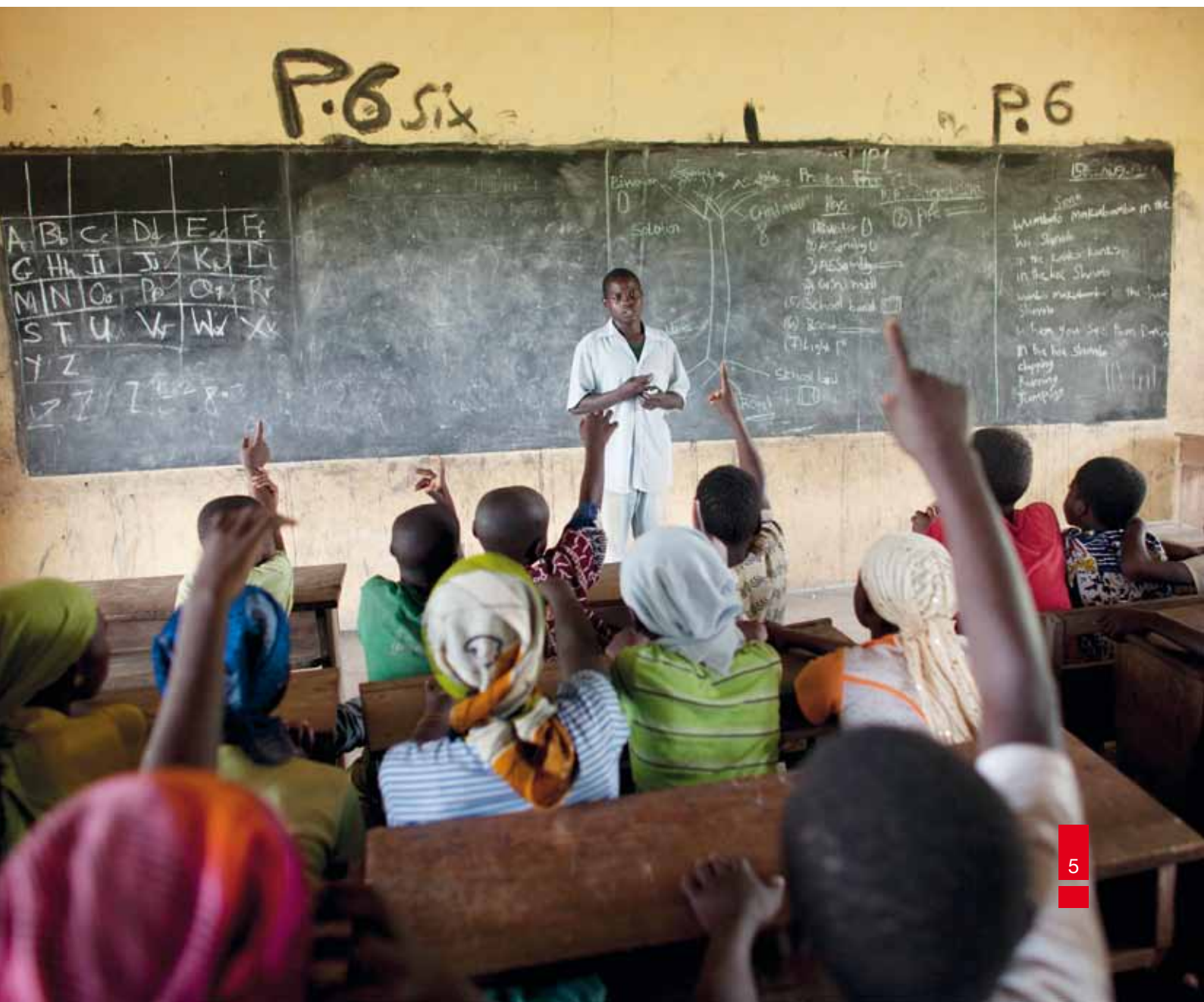
” *It is really disappointing to see a rich country like Denmark, which has been known to be a frontrunner within the development agenda sign a double taxation treaty that limits the taxing rights of Ghana more than almost all of Ghana's other Double taxation treaties do.*”

Emmanuel Budu Addo, ActionAid Ghana

Denmark has a responsibility to ensure that its tax treaties do not undermine its own international development commitments, and do not make it harder for some of the world's poorest countries to raise their own revenues. Likewise developing countries' governments, which sometimes willingly giving away their own taxing rights in the pursuit of foreign investment, should sign tax treaties on the basis of full, publicly-available analysis of the costs and benefits involved. This kind of analysis is rarely undertaken in developed or developing countries.

Therefore the recommendations are that Denmark's government and parliamentarians do the following **three things**:

- 1) Undertake an impact assessment** of Denmark's existing and prospective treaties with developing countries, as the Netherlands has done and Ireland is planning;
- 2) In the meantime, delay ratification of unratified treaties like the Ghana-Denmark treaty**, which reduces Ghanaian taxing rights on cross-border income in some areas further than any of Denmark's other tax treaties with developing countries, and all but two previous Ghanaian tax treaties;
- 3) Offer the opportunity for a fair, comprehensive and inclusive renegotiation** of Denmark's 14 treaties with developing countries, including the Ghana-Denmark treaty.



Introduction

A huge network of thousands of international treaties – largely unknown to legislators and citizens – governs how, and how much, governments can tax multinational corporations. Interest in tax and tax treaties is, however, growing both globally and in Denmark.

Bilateral tax treaties* set limits on how much a country can tax companies' cross-border income and profits: limits which override national laws. This global network of tax treaties began with the best of intentions: to provide cross-border tools against illegal tax evasion; to facilitate cooperation between tax authorities; and to prevent pairs of wealthy developed countries from taxing the same income in both countries, thereby stimulating international flows of investment and skills between those countries, boosting jobs and growth. In practice, however, many tax treaties have opened up loopholes for aggressive tax avoidance; with little evidence in many cases that they do in fact increase investment, jobs and growth.

More seriously still, tax treaties can cause more fundamental imbalances when they are signed between developed and developing countries, by design as much as by unintended effect. Almost all tax treaties impose constraints upon the right to tax cross-border income in the country where it originates. Where a tax treaty is signed by a pair of countries between which capital and income flows overwhelmingly in one direction – as with a capital-rich developed country and a capital-poor developing country - those constraints will fall much more heavily on one country than the other. The result is that taxing rights, and sometimes tax revenues themselves, are effectively shifted from poorer to richer countries, leading in some cases (discussed below) to millions or billions of dollars of foregone tax revenues from the activities of a single company, or a single transaction.

Stopping tax avoidance and evasion, moreover, presents a huge opportunity for developing countries to help finance their own development. Estimates suggest that if developing countries prevented tax avoidance and evasion by corporations alone, they could increase their own annual revenues by more than the sums needed to pay for the education of every out-of-school primary school-aged child, and all the agricultural programmes needed to end hunger by 2025.¹ Yet key tools to stop such avoidance and evasion are being taken out of the hands of developing countries' revenue authorities, including through imbalanced and outdated tax treaties.

Tax treaties are a remarkably under-scrutinised part of the international economic architecture. Their ongoing proliferation and amendment go largely undiscussed by publics and legislatures.² Where tax treaties have gained limited public attention in developed countries like Denmark,³ such attention has tended to focus on 'loopholes' – like the tax treatment of Danish employees of Irish airlines - perceived to deprive those developed countries themselves of revenues. It is time for the Danish government and the Danish people to look hard their tax treaties and make sure that, however well-intentioned, they are not tying the hands of governments in some of the world's poorest countries too.

* (formally "Conventions for the avoidance of double taxation and the prevention of fiscal evasion")

Aid in, tax out

Developed countries, including Denmark, have continued to expand networks of tax treaties with developing countries with no examination of these treaties' impact on development and poverty.

Only one developed country - the Netherlands - has systematically assessed the potential impact of its tax treaties on the public revenues of its developing-country treaty partners.⁴ It is in developed countries' own interests to do so, since they often sign revenue-limiting tax treaties with countries whose public revenues they are simultaneously sustaining through aid. Eight of the 14 tax treaties Denmark has with low- or lower-middle-income countries, including its most recent (signed with Ghana in March 2014), are with 'priority countries' for Danish development aid.⁵

In some cases, the revenue foregone as a result of a tax treaty can be a significant proportion of the overseas aid going in the other direction. For instance, ActionAid's 2013 study of tax treaty abuse in Zambia found that since 2007 a single multinational company's exploitation of Ireland's uniquely imbalanced tax treaty with Zambia – one of Ireland's nine 'development partners' - may have deprived the Zambian government of revenues equivalent to one in every €14 of Irish development aid provided to Zambia during that time, from the tax practices of one company alone.⁶

Meanwhile in a number of developing countries, from South Africa to Mongolia, parliaments, governments and citizens are beginning to rethink their tax treaties.⁷

Rwanda and South Africa have both renegotiated their treaties with Mauritius in 2013 to prevent tax haemorrhages via this emerging offshore financial centre. Mongolia and Argentina have since 2011 cancelled several tax treaties with developed countries which they judge to be conduits for tax revenue losses. In June 2014 Uganda announced that it was suspending the negotiation of any new tax treaties while it developed a new negotiating policy that more clearly defines its own interests.⁸ (Nigeria did the same in 2012, though subsequently restarted negotiations).⁹

And a May 2014 policy paper issued by the IMF – not usually known for its economic radicalism – recommends that developing countries “*would be well-advised to sign treaties only with considerable caution.*”¹⁰ It cites estimates that “[*tax*] treaties with the Netherlands led to foregone revenue for developing countries of at least EUR 770 million in 2011; similar, very rough, calculations suggest that U.S. tax treaties cost their non-OECD country counterparts perhaps \$1.6 billion in 2010.”¹¹

Denmark's tax treaties: leading the pack or racing to the bottom?

What is at stake in a tax treaty – and why should we care about Denmark's tax treaties with places with which Denmark has comparatively small economic relations, like Ghana, Zambia and Bangladesh? The significance of a tax treaty is hard to gauge based solely on current levels of investment or cross-border trade. The history of tax treaties show that they can open up new and unexpected losses of tax revenue, both directly and indirectly:

- **Many developing countries' economies and tax revenues are small, and consequently tax transactions by single firms can have a huge (and unanticipated) relative impact.** In Mauritania in 2010, according to the IMF, a Canadian company acquired a gold mine from another Canadian company via an offshore holding company in the Bahamas with a potential tax free gain of \$4 billion – slightly larger than Mauritania's entire GDP that year – from which no Mauritanian tax could be collected.¹² If even part of this gain was subject to Mauritanian tax, it would likely constitute most of the country's tax take that year. Impacts can be large even for big emerging economies: in just one case, the Indian revenue authority has claimed that a single offshore transaction, in part taking advantage of tax treaties between India, Mauritius and the Netherlands, deprived it of an estimated US\$2.2 billion of tax revenues – just short of the money needed to pay for a year's subsidised midday meals for every primary schoolchild in India.¹³
- **Tax treaties last a long time:** foregone revenues may be small when the treaty is signed, but ceding taxing rights in a treaty can grow to create lasting damage. The India-Mauritius treaty above, for instance, was signed in 1983 when Mauritius' tiny sugar-dominated economy was a tiny source of cross-border investment. As India's economy liberalised in the 1990s, and Mauritius developed as a leading offshore finance centre, Mauritius became the primary destination for routing foreign investment into India (and Indian domestic investment) to avoid capital gains tax thanks to a single clause in the Mauritius-India tax treaty. Today nearly 40% of Indian foreign investment passes through Mauritius (on paper), in part thanks to 'round-tripping' that Indian revenue officials have estimated has cost India some \$600m annually.¹⁴
- **Concessions in one tax treaty drive concessions in others:** ActionAid's discussions with revenue officials involved in treaty negotiations indicate that if a country gives away a taxing right in one treaty, subsequent negotiating countries will often demand a similar concession in the pursuit of an equally competitive investment environment. This slippery slope is reflected in a 'race to the bottom' on source countries' taxing rights, evident in treaty rates of withholding taxes that have on average fallen by a third over the past 30 years.¹⁵ As figures 2 and 3 below show, source country tax rates on cross-border income has likewise fallen steadily in Denmark's tax treaties with developing countries, and in Ghana's tax treaties.



Do taxpayers need tax treaties?

The primary stated purpose of all bilateral tax treaties is to eliminate 'double taxation'. If a Danish company generates some of its profits in Ghana, those profits may be taxed both by Ghana¹⁶ and by Denmark.¹⁷ By dividing up taxing rights over cross-border income between the two countries, and providing cooperative mechanisms for the two countries to relieve any double taxation that remains, tax treaties aim to prevent the same piece of income being taxed twice. Double taxation is undoubtedly burdensome on taxpayers, if unrelieved leading to potential effective tax rates of 50-60% or more on some income.

Yet, in practice, mechanisms are already in place to relieve much double taxation without the need to restrict a developing country's 'source' taxation rights through a tax treaty:

- **Most developed countries, including Denmark, provide their taxpayers with tax credits for taxes paid in other countries even without a tax treaty ('unilateral relief').**¹⁸ This means that a company's Danish tax bill will be reduced by the amount paid in the other country, leaving the company at no disadvantage by operating in that other country.
- Full relief may not be available in every circumstance. Sometimes countries define income in different and incompatible ways, resulting in unrelieved double taxation which tax treaties can help remove. Equally, tax due on a piece of income in Denmark may not be large enough to recoup withholding taxes paid in other countries, even if all the Danish tax is waived. This is often incorrectly referred to as double taxation, but is in fact simply the application of different tax rates in different countries. The fact that a piece of income incurs different rates of tax in different countries is a policy decision of those countries, and it is not self-evident that reducing the tax costs for a Danish company to work in a given country in perpetuity, through a tax treaty, is always more beneficial for that country than protecting its tax revenue base through withholding taxes.
- **In any case, even this problem is overcome by many developed countries, including Denmark, increasingly confining their tax bases to income generated within their own country alone (territoriality).** This makes double taxation of that income impossible in the first place, since it is exempted from tax altogether in one country.¹⁹ In Denmark's case, interest, royalties and a small subset of dividends received from a multinational's foreign subsidiaries may still be taxable in Denmark, but for these types of income unilateral tax credits for foreign tax paid are generally available in Denmark and many other developed countries, as discussed above.

This is not to argue that double taxation does not remain in some cases, nor to deny that it can sometimes place unfair tax burdens on an investor's cross-border income. But the scale and scope of double taxation is shrinking as unilateral tax credits and territorial tax systems increase across the developed world; and non-treaty mechanisms exist to relieve much remaining double taxation.²⁰

In the large number of cases where Danish tax is not levied at all on a piece of income, or where foreign tax credits are already unilaterally available, Denmark's tax treaties are in practice not relieving double taxation – their stated purpose – but simply driving down the rate of 'single taxation' on a multinational investor's income. As discussed in the next section, this may not bring the economic benefits that governments and investors often claim.

Do developing countries need tax treaties with developed countries?

Governments signing tax treaties, including developing-country governments, may often be willing partners in giving away their own country's tax base. When doing so they frequently cite the following two additional benefits of tax treaties:

1) They can provide tools to combat tax evasion, through cross-border cooperation in collecting taxes.

Though this is true, there is no reason why obtaining these tools has to be conditional on restricting one's taxing rights through a tax treaty. Information-exchange and some forms of cross-border cooperation can be obtained through a bilateral tax information exchange agreement (TIEA) instead, as Denmark has done with many 'tax haven' jurisdictions, but does not appear to have extended to any low- or lower-middle income countries except Liberia (also a tax haven).²¹ At a lower transaction cost still, developing countries can now join the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, which Denmark has already joined. Denmark's most recent (2014) developing-country tax treaty is with Ghana, also a member of the Multilateral Convention, so the tax cooperation and information-exchange aspects of the new bilateral treaty simply reiterate provisions that the two countries already enjoy through the Multilateral Convention.

2) By reducing effective tax rates and providing certainty about the tax treatment of cross-border income, they attract foreign direct investment (FDI) into developing countries.

This is often expressed as an article of faith by developed- and developing-country governments alike, but the empirical evidence for it is surprisingly mixed. There are few econometric studies of tax treaty networks that examine their impact on investment in low-income countries specifically.²² Where such studies have been conducted, they have generally found an increase in the number of new foreign businesses investing thanks to a tax treaty being signed, but not necessarily an increase in the amount invested by a given business.²³ This is consistent with wider evidence showing that tax is rarely a primary consideration for investors deciding to invest into developing countries when other aspects of good investment climate – from infrastructure to political stability – are not in place. The factors influencing investment decisions more strongly – from the availability of good roads to fair and functional police forces – are of course precisely the things paid for by tax revenues.²⁴

This is not to say that tax treaties never increase foreign direct investment: but this, and the overall economic benefits of driving down a developing country's taxing rights in a tax treaty, are not a given. They must be assessed on a case-by-case basis, an assessment which is almost never done before tax treaties are negotiated.²⁵

Danish tax treaty policy: time to revisit past practices?

Denmark's international aid programmes are increasingly prioritising the ability of aid recipients to finance their own economic development and public services sustainably through strong tax systems, and by combating tax avoidance and evasion.

Denmark's new Development Cooperation Strategy, outlined in August 2012, insists that “[a] prerequisite for development is the mobilisation of sufficient domestic revenue to finance reform and public services”.²⁶ In June 2013 the Danish government announced a raft of new Danish aid for strengthening developing countries' tax systems.²⁷ And a central part of Denmark's new Policy Coherence for Development (PCD) efforts, launched in June 2014, is to “strengthen efforts in the fight against tax loopholes, address illicit financial flows and promote fair taxation of natural resources in the world's poorest countries”.²⁸

Some of Denmark's older tax treaties with developing countries contained key provisions protecting those countries' tax bases. Policy Coherence for Development provides an opportunity to revisit some of these better deals for developing countries, which have not been included in some of Denmark's more recent treaties.

From a progressive start in the 1970s, when Danish tax treaties included what were at that time some nearly unique provisions – such as the source taxation of management fees - to protect developing countries' tax bases,²⁹ there has been a change. From the mid-1990s Danish tax treaties with poor countries have adhered more rigidly to the 'OECD' model treaty which prioritises residence (developed-country) taxing rights over source (developing country) taxing rights; driving down developing-country treaty partners' withholding tax rates on cross-border income; and restricting the scope for those countries to tax Danish companies' profits. For example:

1) Several Danish tax treaties signed with developing countries during the 1970s and 1980s permitted those countries to tax a larger proportion of the profits generated in their country by Danish companies. This was done through a so-called 'force of attraction' rule – a measure not found in the 'OECD model' but included in the alternative, more pro-development 'UN model' treaty – that ensures all the profits generated by all activities of the kind carried out by a Danish company's branch in that developing country are attributed to that (taxable) branch.³⁰ This helps to prevent companies from avoiding tax by assigning some of their profitable activities and assets – like a part of their sales, or part of a production facility - to independent agents or smaller operations that fall outside their taxable branch.

2) Likewise a number of early Danish treaties, diverging from the OECD model, permit the developing country to tax at source various forms of services and management fees. This is often a key area of revenue loss for developing countries thanks to the practice of multinational firms locating high-value management and services functions outside higher-tax developing countries, often nominally in tax havens, and charging their developing country operations large tax-deductible fees for such services.³¹ **Some Danish treaties have also followed the 'UN model' in allowing 'other income' not dealt with explicitly in**

the rest of the treaty to be taxed at source. This can help expand the range of activities of a multinational group that are taxable in the developing country, and ensure that companies cannot avoid developing-country tax by simply relabeling tax-eroding payments - like compensation payments, payments from insurance compensations and arbitration awards- as something else.

3) Some of these earlier treaties have stronger measures to stop companies avoiding tax in developing countries by disbanding and re-establishing operations like construction sites after short periods of time to get around time-limits on tax-free operations: placing stricter caps than is permitted under the 'OECD model' on the maximum length of time such operations can continue without incurring taxation.

Fig. 1: The treatment of branch taxation and services/management fees in Denmark's tax treaties with developing countries ³²

Treaty partner	Kenya	Zambia	Tanzania	Sri Lanka	Morocco	Indonesia	Pakistan	India	Vietnam	Philippines	Bangladesh	Uganda	Ghana
Year signed	1972	1973	1976	1981	1984	1985	1987	1989	1995	1995	1996	2000	2014
Some PE force of attraction?	Yes	No	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	No	No	No
Source taxation of technical services or management fees?	Yes	No	Yes	Yes	No	No	Yes	Yes	No	No	No	No	Yes
Source taxation of 'other income'?	No	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
Construction site PE time limit	6+ mths	6+ mths	6+ mths	6+ mths	6+ mths	6+ mths	6+ mths	6+ mths	6+ mths	6+ mths	6+ mths	6+ mths	9+ mths

While every treaty negotiation has individual features, overall these progressive features appear less common in Danish treaties signed since the mid-1990s, which have stuck more closely to the 'OECD model' favouring developed economies' taxing rights over developing ones. Of course, we cannot tell whether some of these developing country tax giveaways were requested by that country's government itself in the hope of attracting overseas investment. What is clear is that a 'race to the bottom' for the benefit of Danish investors runs contrary to Denmark's aspirations to help boost developing countries' tax revenues.

The UN Model vs. the OECD Model

Most tax treaty negotiations are based on standard texts developed by two bodies: the United Nations, open to all countries on an equal basis; and the OECD's Fiscal Affairs Committee, open only to 34 wealthy countries. While the OECD Model was originally intended to be used for treaties between OECD Member States at relatively similar levels of economic development, in practice the OECD Model has since the 1970s been used extensively in treaties between wealthy OECD states and much poorer countries, and between developing countries themselves.

- 1) The 'UN Model', reflecting UN Member States' broader economic interests, tends to be more favourable than the 'OECD Model' to 'source' taxation, better protecting the tax base of countries that are net importers of investment, capital and high-value services – generally the less wealthy country in any given treaty pair. The UN Model also leaves several key issues – such as levels of 'source state' withholding tax – open to negotiation, rather than prescribing them (at low rates) in a model text, as the 'OECD Model' does.
- 2) The 'OECD Model' tends to support the taxing rights of the 'residence state', thereby generally protecting the interests of wealthier countries which are the net suppliers of cross-border investments and high-value services to less wealthy countries.³³

The two models' differences should not be overstated: both involve some sacrifice of taxing rights, and neither model fully addresses some serious mechanisms through which developing and developed countries' tax bases are eroded: neither, for instance, explicitly permits the 'source' taxation of offshore payments of management and services fees, though discussions are now underway at the UN to include such a measure in the UN Model treaty.



The 2014 Denmark-Ghana treaty: an opportunity for the Folketing to act

In June 2014 Denmark pledged to strengthen developing countries' ability to finance their own development through tax revenues. Just three months before this statement, Denmark signed its latest developing-country tax treaty - with Ghana, one of Denmark's priority development partners, to which Denmark plans to phase out aid by 2017.

Yet if Denmark is seeking to help the Ghanaian government increasingly to finance its own development through its own revenues, then paradoxically this treaty shrinks Ghana's taxing rights further, in some respects, than Denmark's previous tax treaties with developing countries, and further than all but two of Ghana's other tax treaties.

” *There is a real risk that the double taxation treaty between Denmark and Ghana limits the taxing rights for Ghana in a way that will impact the tax revenue of Ghana negatively . This would be counterproductive in relation to ensuring sustainable development of Ghana.*”

Emmanuel Budu Addo ActionAid Ghana

Taxation of cross-border income

Tax treaties divide up taxing rights over cross-border payments for loans, capital, management, the use of intellectual property, and so on. This reflects the fact that both the country where those payments originate and the country of the recipient's residence have legitimate claims to tax such income.

Taxing such income 'at source' also provides a defence against the ability of multinational groups to use such payments between related companies to shift taxable profits from countries where the group has its operations, into offshore companies in low-tax jurisdictions from where the loans, capital and services are – on paper - provided.³⁴

The new treaty limits 'source' taxation of cross-border income to levels well below those established by Ghanaian domestic law, effectively shifting taxing rights from Ghana to Denmark. 'Source' tax on dividends paid to significant shareholders³⁵ is capped at 5% (when it would otherwise be charged at 8% under Ghanaian law); on interest at 8% (otherwise 10% under Ghanaian law); on royalties & technical services fees at 8% (otherwise 15% under Ghanaian law).

As Figures 2 and 3 show, no other treaty that Denmark has signed with a developing country, and only two other tax treaties signed by Ghana, sets such caps as low as those in the Ghana-Denmark treaty.

Fig 2: Maximum withholding tax rates permitted on cross-border income in Ghana's tax treaties. (The statutory WHT rates were reduced in Ghana in the mid-2000s).³⁶

Ghana treaty with:	UK	France	South Africa	Belgium	Germany	Italy	Barbados	Netherlands	Switzerland	Denmark
Year signed	1993	1993	2004	2004	2004	2004	2008	2008	2008	2014
Interest	12.5	12.5	10	10	10	10	7.5	8	10	8
Royalties	12.5	12.5	10	10	8	10	7.5	8	8	8
Dividends (FDI)	7.5	5	5	5	5	5	5	5	5	5
Dividends (portfolio)	15	15	15	15	15	15	7.5	10	15	15
Management/technical services fees⁴	10	10	10	10	8	10	7.5	8	8	8

Fig 3: Maximum withholding tax rates permitted on cross-border income in Denmark's tax treaties with developing countries

Denmark treaty with:	Kenya	Zambia	Tanzania	Sri Lanka	Morocco	Indonesia	Pakistan	India	Vietnam	Philippines	Bangladesh	Uganda	Ghana
Year signed	1972	1973	1976	1981	1984	1985	1987	1989	1995	1995	1996	2000	2014
Interest	20	10	12.5	10	10	10	15	15	10	10	10	10	8
Royalties	20	15	20	10	10	15	12	20	15	15	10	10	8
Dividends (FDI)	20	15	15	15	10	10	15	15	5	10	10	10	5
Dividends (portfolio)	30	15	15	15	25	20	15	25	15	15	15	15	15
Management/technical services fees	20	0	20	0	0	0	12	20	0	0	0	10	8

Taxing capital gains

Valuable assets like mines, factories and telecoms licences in a developing country derive value from that country's resources and markets, yet often escape taxation in those countries by being sold via offshore holding companies whose gains are not taxed. The IMF has recently warned that *"the non-taxation of [such] indirect transfers can...raise serious equity and political concerns"*, and that while *"[t]ax treaties can protect and clarify the source country's rights...in practice, many existing treaties do not make clear provision on the issue (or define source rights narrowly)."*³⁸

Such offshore holding companies are often located in classic 'tax havens'; but as many European countries (including Denmark) have sought to make themselves more attractive as locations for multinational holding companies by exempting gains from the sale of subsidiary companies from capital gains tax, they too have become convenient locations for such offshore transactions.³⁹

Many developing countries, like Ghana, seek to tax such gains under their domestic law instead.⁴⁰ But tax treaties like the Denmark-Ghana treaty may remove their right to do so, by confining capital gains tax on sales of shares in a company to the ‘residence state’ of the purchasing investor only, and prohibiting source state taxation. This is a measure purely for the benefit of multinationals: it does not help Denmark’s tax take, nor eliminate double taxation, since in most cases gains from the sale of substantial shareholdings in foreign subsidiaries are already exempt from tax in Denmark.

The new Ghana-Denmark treaty allows the source state (usually Ghana) to tax gains made from the sale of shares in a company deriving value from land and other ‘immovable property’ in Ghana.⁴¹ This is likely to be particularly helpful in preventing Denmark from being used as a platform for oil companies to avoid Ghanaian tax when they sell lucrative Ghanaian oil production operations. But by leaving out a further provision – previously included in several other Danish tax treaties – that would permit the source state to tax some of the gains from the sale of shares deriving value from other kinds of (movable) property, it potentially allows a similar kind of avoidance of gains on businesses in other hugely lucrative sectors like IT or consumer goods.

Taxing Ghanaian branches of Danish companies

As in most countries, a Danish company’s operations can only be taxed in another country if its ‘footprint’ in that country is large enough to constitute a ‘permanent establishment’ (PE), or branch. Depending on how domestic tax laws are drawn, companies may avoid tax on high-value functions like providing services, or constructing infrastructure, by ensuring that their activities fall below the permanent establishment threshold. For example, they can have expatriates provide high-value services, but not from a permanent office; or disband a building site just before the threshold time for it to become a taxable establishment – a threshold it is therefore in their interest to have as lengthy as possible.

These thresholds and definitions are established in Ghanaian domestic law. But the Denmark-Ghana treaty shrinks some of these definitions further. There is no benefit to Denmark’s tax base, since Danish companies’ foreign branches are already generally exempt from Danish tax. Instead, the winners will simply be multinationals themselves. For example:

1) Profits from to a construction site established by a Danish company in Ghana are only taxable in Ghana if the construction site operates for more than 9 months. **This limit restricts Ghana’s taxing rights on construction sites further than any previous Danish treaty with a developing country (see Figure 1); further than six of Ghana’s nine other tax treaties;⁴³ and far more than Ghanaian domestic law, under which such sites would otherwise be taxable after 90 days.⁴⁴**

2) In light of Ghana’s nascent oil boom, revenues and personal income generated by oil exploration installations established by a Danish company in Ghana will only be taxable if that installation is present for more than 9 months – a very long time to allow an exploration operation free of Ghanaian tax, and longer than any other similar provision included in previous Danish tax treaties with developing countries, which range from 6 months to just 30 days (the latter agreed with Uganda in 2001).⁴⁵

3) The Denmark-Ghana treaty also excludes from taxation some activities recommended by the UN Model for inclusion in tax treaties between developed and developing countries – such as the provision of services, a commonly ‘offshored’ function in multinational groups. This prevents Ghana from making such activities taxable in the future.⁴⁶

Ironically, these restrictions on Ghana's ability to tax Danish multinational companies have been negotiated at precisely the same time as Denmark is embarking on a four-year programme of development assistance to help the Ghanaian Tax Authority broaden Ghana's tax base.⁴⁷

The Denmark-Ghana treaty has not yet been ratified, giving the Folketing a brief window of opportunity to insist that the new treaty does not undermine Denmark's taxpayer-funded aid efforts.

Offering developing countries a bigger slice

As discussed above, Denmark's older tax treaties contain some clear concessions to developing countries' taxing rights. But all leave the door open for tax avoidance techniques like 'treaty shopping' (routing cross-border payments through a third country to take advantage of a generous tax treaty with that third country).⁴⁸ Even the 2014 Ghana-Denmark treaty does not incorporate the limited measures recently proposed by the OECD's current global efforts, backed by Denmark, to prevent such abuse.⁴⁹

And across Denmark's treaty network, fiscally vulnerable countries' rights to tax Danish investments and cross-border income are restricted in a number of ways – by design - that potentially reduce the tax that could be levied under those countries' domestic tax systems in the absence of a treaty. These include:

1) Capital gains tax: Denmark's treaties with **Kenya, Kyrgyzstan, Indonesia, Morocco, Sri Lanka, Tanzania, Uganda** and **Zambia** deny those countries the right to tax the gains made by a Danish investor selling assets in those countries, if those assets are owned by another (offshore) company. This means that an investor can avoid tax on gains made from selling their valuable factories, mines and businesses simply by ensuring that those assets are owned by a company outside the developing country's jurisdiction, and that it is the shares of the company that are sold rather than the assets themselves. This makes these eight Danish treaties more disadvantageous to developing countries than either the UN or the OECD models, both of which now partly address this major loophole.

Even where Denmark's tax treaties do address this loophole by allowing the treaty partner the right to tax the gains made by Danish investors selling subsidiary companies in that country (such as the treaties with **Bangladesh** and the **Philippines**), they limit this right to companies deriving their value from land and other 'immovable property'; which may cover companies owning mines, agribusinesses and other immovable property, but overlooks other hugely lucrative sectors from services to consumer goods.⁵⁰

2) Tax on cross-border income: As figure three (above) shows, Denmark's tax treaties with developing countries have increasingly driven down the tax rates that those developing countries can levy on cross-border income (withholding taxes). In some cases, developing countries have themselves reduced their rates even lower than the limits imposed by treaty in recent years, often to try to attract foreign investors. But in other cases, their tax treaties with Denmark still require a major cut in their current withholding tax rates:

Fig 4: Reduction of current (2014) withholding tax rate on cross-border income due to tax treaty with Denmark

Denmark treaty with:	Kenya	Zambia	Tanzania	Sri Lanka	Morocco	Indonesia	Pakistan	India	Vietnam	Philippines	Bangladesh	Uganda	Ghana
Year Signed	1972	1973	1976	1981	1984	1985	1987	1989	1995	1995	1996	2000	2014
Dividends (FDI)	0	0	0	0	-5	-10	0	0	0	-20	-10	-5	-3
Dividends (Portfolio)	0	0	0	0	0	0	0	0	0	-15	-5	0	0
Interest	0	-5	0	-5	0	-10	0	0	0	-10	0	-5	0
Royalties	0	-5	0	-5	0	-5	-3	0	0	-15	0	-5	-2

3) Permanent establishments, force of attraction: Several of Denmark’s older tax treaties sought to ensure that all the profits generated by all activities of the kind carried out by a Danish company’s branch in a given developing country are taxable in that country.⁵¹ This ‘force of attraction’ rule – recommended by the UN Model - helps to prevent companies from avoiding the developing country’s tax by assigning some of their profitable activities to independent agents, or to smaller operations not qualifying as a full-blown branch. The treaties with Zambia, Morocco, Bangladesh and Uganda have no such rule, effectively shifting a slice of taxing rights from these countries to Denmark; those with Tanzania and Kenya have more restricted rules than those recommended by the UN Model.

4) Shipping: As Denmark is the home to a significant slice of the world’s shipping industry, it is significant that some of Denmark’s tax treaties with developing countries permit them to tax some of the revenues of international shipping undertaken by Danish companies for customers in those countries, though generally at reduced rates.⁵² But other Danish treaties, including those with **Ghana, Kyrgyzstan, Morocco, Uganda, Vietnam, Indonesia** and **Zambia**, reserve all such taxation to the residence state of the shipping company (in practice, almost always Denmark).



CONCLUSION: three steps to a responsible tax treaty policy for Denmark

Denmark has a responsibility to ensure that its tax treaties are not undermining its own international development commitments, and are not making it harder for some of the world's poorest countries to raise their own revenues.

” *Tax is a central part of the social contract between the state and its people. The double taxation treaty between Denmark and Ghana poses another challenge to the Ghanaian State in relation to its accountability to its people. The treaty effectively limits the scope for delivering the public services that the government of Ghana is required to deliver.*”

Emmanuel Budu Addo, ActionAid Ghana

Likewise developing countries' governments, sometimes willingly giving away their own taxing rights in the pursuit of foreign investment, should sign tax treaties on the basis of full, publicly-available analysis of the costs and benefits involved: an analysis rarely undertaken either in developed or developing countries.

To help both, Denmark's government and parliamentarians can do **three things**:

- 1) Undertake an impact assessment** of Denmark's existing and prospective treaties with developing countries, as the Netherlands has done and Ireland is planning;
- 2) In the meantime, halt ratification of unratified treaties like the Ghana-Denmark treaty**, which reduces Ghanaian taxing rights on cross-border income further than any of Denmark's other tax treaties with developing countries, and all but two previous Ghanaian tax treaties.
- 3) Offer the opportunity for a fair, comprehensive and inclusive renegotiation** of Denmark's 14 treaties with developing countries, including the Ghana-Denmark treaty;

1) Impact Assessment/Spillover Analysis: The government cannot know whether its treaties are undermining its commitments to policy coherence without determining these treaties' (i) positive economic benefits to treaty partners, and (ii) their impact on the tax revenues of those treaty partners.

This is not a radical proposal: the IMF, World Bank, OECD and United Nations have recommended that developed countries carry out this kind of 'spillover analysis' for any major changes to their tax systems that may affect developing countries; and several other European countries are already doing so for their tax treaties, including the Netherlands and (prospectively) Ireland.⁵³

Assessments commissioned by the Dutch government for their renegotiation initiative show methodologies that might be used;⁵⁴ and a basic static analysis of tax foregone by treaty partners under existing flows of cross-border investment and income should be possible using bilateral data on investment and income flows to which Denmark's Nationalbank should already possess.

2) New treaties: Denmark should call a halt to its treaty negotiation programme until new guidelines for negotiations are drawn up, as envisaged below. And the Folketing should not ratify new treaties, such as the Denmark-Ghana treaty, unless:

a) The Danish government conducts and publishes an impact assessment of the new treaty's likely impact on (i) foreign direct investment between Ghana and Denmark; (ii) flows of dividends, interest, royalties, services and other income between Ghana and Denmark; (iii) tax revenue foregone by Ghana and Denmark as a result of the treaty.

b) The Danish government offers Ghana the opportunity - should Ghana wish to do so - to amend through a protocol the largest restrictions of source taxing rights in the treaty, as identified by this impact assessment.

3) A renegotiation programme: As the Dutch government has done, the Danish government should offer to renegotiate its 14 treaties with developing countries, should those countries wish to do so.

Going beyond the Dutch government's initiative, such a pro-development renegotiation should:

a) Not just 'update' treaties to current UN or OECD standards, but more fundamentally seek a pro-development apportionment of the international tax base between Denmark and its developing country treaty partners.

b) Review the whole text, and allow the possibility of starting with a new text, providing both Denmark and its treaty partners the space to develop a progressive new model for use in Danish tax treaty negotiations with developing countries. This model could incorporate, for example, new items of income, or wider PE definitions. Both sides should have the opportunity to incorporate freely from the UN Model, the OECD Model, and non-model clauses.

c) Ensure equal negotiating 'firepower' on both sides, given severe resource constraints within most developing countries' revenue authorities and finance ministries. For instance, in line with its existing support for 'tax and development' projects, Denmark could consider funding external legal or economic expertise for the treaty partner's negotiating team, should the treaty partner wish to recruit such external expertise.

d) Allow for external stakeholders to engage with the negotiation process: In contrast to the near-total lack of scrutiny currently given to tax treaty-making in almost all developed countries, the *UN Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries* recommends, as best practice, allowing "relevant parties in the private sector" (including business and civil society from both treaty partner countries) to review the progress of negotiations mid-way.⁵⁶ While the negotiations themselves will remain confidential, such a consultation may usefully highlight problems not yet considered in the negotiations, or issues regarding the emerging new treaty.

e) Provide the option to terminate the tax treaty altogether. This would, of course, be the most straightforward and complete way to restore developing countries' taxing rights over cross-border income. Denmark's treaty partners may not, of course, wish to do so. But if they do (as with Mongolia and Argentina since 2011), they will still be able to obtain access to tax cooperation and tax information from Denmark through the Multilateral Convention on Mutual Administrative Assistance in Tax Matters. Denmark's policy of pursuing tax treaties with developing countries should respect this decoupling of tax cooperation from taxing rights, reflecting the new opportunities for tax cooperation alone provided by the Multilateral Convention.

End notes

1 ActionAid calculations based on USAID's 'Collecting Taxes' dataset (2010 data). This estimate has been made by combining available tax revenue data from all developing countries and the smallest (most conservative) of the tax gap estimates compiled by four developed-country revenue authorities (since tax gap estimates are not publicly available from developing countries). This conservative estimate suggests a typical 'corporation tax gap' of some 20% of corporation tax take, which is also consistent with ActionAid's own two detailed investigations of tax avoidance by two large multinationals in sub-Saharan Africa and South Asia; and with the corporation tax loss from transfer pricing abuses alone in developing countries estimated by PricewaterhouseCoopers for the European Commission. For fuller details of this calculation, see IF Campaign, Enough food for everyone IF: the need for UK action on global hunger (23 January 2013). Education spending data taken from UNESCO dataset (<http://gmr.uis.unesco.org>); additional cost of agricultural interventions needed to eliminate hunger by 2025 (\$42.7bn) is estimated for the FAO in J. Schmidhuber and J. Bruinsma, 'Investing Towards a World Free of Hunger: lowering vulnerability and enhancing resilience' in A. Prakash (ed.), Safeguarding Food Security in Volatile Global Markets (FAO 2011), <http://www.fao.org/docrep/013/i2107e/i2107e27.pdf>. Full calculations available on request.

2 Some countries, such as Australia, do not require Parliamentary ratification of treaties at all: <http://www.dfat.gov.au/treaties/making/> (accessed 24 July 2014); but in many others that do require parliamentary ratification, ratifying a tax treaty is almost always a swift and undebated rubber-stamping exercise.

3 'Proposal for a parliamentary resolution on renegotiation of Denmark's double taxation agreement with Ireland', submitted by Red-Green Alliance (EL), 4 April 2013, <http://www.ft.dk/samling/20121/beslutningsforslag/t102/index.htm> (accessed 24 July 2014).

4 In 2013 the Dutch government commissioned a report by the International Bureau for Fiscal Documentation reviewing the Netherlands' tax treaties with developing countries, resulting in offers of renegotiation to add anti-avoidance provisions (though not to alter the balance of taxing rights): <http://www.government.nl/files/documents-and-publications/parliamentary-documents/2013/09/09/government-s-response-to-the-report-from-seo-economics-amsterdam-on-other-financial-institutions-and-the-ibfd-report-on-developing-countries/ifz-2013-320-brief-tweede-kamer-reactie-seo-en-ibfd-rapport-eng-def.docx> (accessed 24 July 2014). In its 2014 budget the Irish government announced that a similar 'spillover analysis' of the impact of Ireland's tax system as a whole on developing countries, but it is unclear whether this will include Ireland's tax treaties. See <http://www.finance.gov.ie/sites/default/files/Spillover%20Analysis-Public%20Consultation%20fin.pdf> (accessed 24 July 2014).

5 Bangladesh, Ghana, Indonesia, Kenya, Pakistan, Tanzania, Uganda, Vietnam (N.B. Zambia was also a priority country until 2013, and assistance to Vietnam is to be phased out in 2015). For Danida's priority countries, see <http://um.dk/en/danida-en/activities/annual-report-2012/denmarks-priority-countries-2/> accessed 24 July 2014.

6 ActionAid UK/ActionAid Zambia, Sweet Nothings: The Human Cost of a British Sugar Giant Avoiding Taxes in Southern Africa (London: ActionAid UK, 2013), http://www.ms.dk/sites/default/files/filarkiv/dokumenter/skat/sweet_nothings_0.pdf (accessed 22 October 2014).

7 For the South African parliament's scrutiny of the South Africa-Ireland tax treaty as early as 2010, see Linda Ensor, 'South Africa: Country loses out to Ireland over tax difference', Business Day, 5 August 2010 (<http://allafrica.com/stories/201008050728.html> accessed 24 July 2014).

8 Statement by Commissioner for Tax Policy to Seatini/ActionAid workshop, reported in Ismail Musa Ladu, 'Govt suspends double taxation pacts', Daily Monitor, 6 June 2014 (<http://www.monitor.co.ug/Business/Govt-suspends-Double-Taxation-pacts/-/688322/2338432/-/qc4jofz/-/index.html> accessed 24 July 2014).

9 Presentation by Belema Obuoforibo (International Bureau for Fiscal Documentation) to Maastricht University Global Tax Policy Conference, Amsterdam, 6 March 2014.

10 International Monetary Fund, Spillovers in International Corporate Taxation, IMF Policy Paper, 9 May 2014, <http://www.imf.org/external/np/pp/eng/2014/050914.pdf> (accessed 24 July 2014).

11 International Monetary Fund, Spillovers in International Corporate Taxation, IMF Policy Paper, 9 May 2014, <http://www.imf.org/external/np/pp/eng/2014/050914.pdf> (accessed 24 July 2014), p. 27.

12 For this and other examples, see International Monetary Fund, Spillovers in International Corporate Taxation, IMF Policy Paper, 9 May 2014, <http://www.imf.org/external/np/pp/eng/2014/050914.pdf> (accessed 24 July 2014), p.70 Box 1.

13 For this and other examples, see International Monetary Fund, Spillovers in International Corporate Taxation, IMF Policy Paper, 9 May 2014, <http://www.imf.org/external/np/pp/eng/2014/050914.pdf> (accessed 24 July 2014), p.70 Box 1. The central Indian government funding for its Mid-Day Meal scheme is Rs 13,215 crore (US\$2.4 billion) for 2013-14. See full text of P Chidambaram's Union budget speech, 28 February 2013 (<http://www.dnaindia.com/money/1805698/report-union-budget-2013-14-full-text-of-p-chidambaram-s-budget-speech>)

14 See e.g. 'India pushes to review Mauritius tax treaty amid revenue leaks', Reuters, 20 June 2011.

15 IMF calculations based on International Bureau of Fiscal Documentation tax treaty database, cited in International Monetary Fund, Spillovers in International Corporate Taxation, IMF Policy Paper, 9 May 2014, <http://www.imf.org/external/np/pp/eng/2014/050914.pdf> (accessed 24 July 2014), p. 146, Appendix Table 7. Averaging across WHT rates on portfolio dividends, participating dividends, royalties and interest, treaty WHT rates have fallen from an average of 11.9% in treaties 20-30 years old, to 7.9% in treaties 0-3 years old. Domestic WHT rates are falling too, but not as far: from an average of 15.4% in 2000 to 13.4% in 2013 (though these figures may not be directly comparable since they are based on samples of different numbers of countries).

16 As the profits attributable to the permanent establishment of the Danish company in Ghana.

17 As part of the worldwide income of the Danish company. Technically speaking, tax treaties aim to relieve juridical double taxation (taxing the same income twice in the hands of the same taxpayer), rather than economic double taxation (taxing the same income twice in the hands of different taxpayers, as in the taxation of both dividends and the underlying profits from which those dividends are paid).

18 Deloitte LLP, Denmark: International Tax Highlights 2014, <http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-denmarkhighlights-2014.pdf> accessed 24 July 2014.

19 The Danish tax system for companies is highly territorial, exempting Danish-resident companies' foreign branches (permanent establishments) and real estate from Danish tax. Likewise, in common with most major capital-exporting economies, income from companies' foreign equity investments (foreign-source dividends and capital gains from subsidiary companies) is generally tax-exempt in Denmark – an exemption extended since 2013 to dividends and gains from unlisted portfolio shares too.

20 Information-exchange mechanisms may also open up new opportunities to relieve remaining double taxation from e.g. withholding taxes on active income like management fees, which may not be relieved by unilateral tax credits or territorialisation. Philip Baker suggests that in the future tax information exchange may allow at-source withholding taxes to be charged on the net profits booked overseas from e.g. management fees, which can then be reported to the source tax authorities through information-exchange mechanisms. Philip Baker, 'Alternative approaches in a world without the Government of India principle', presentation to Taxing Multinationals conference, Oxford Centre for Business Taxation (UK), 18 March 2013, http://www.sbs.ox.ac.uk/sites/default/files/Business_Taxation/Events/conferences/2013/taxing_multinationals/philip-baker.pdf.

21 <http://www.skm.dk/love/internationalt/internationale-aftaler/> accessed 24 July 2014.

22 K.P. Sauvant and L.E. Sachs (eds.), *The Effect of Treaties on Foreign Direct Investment* (Oxford: 2009).

23 E.g. R.B. Davies, P.-J. Norbäck and A. Tekin-Koru, 'The Effect of Tax Treaties on Multinational Firms: New Evidence from Microdata', IFN Working Paper No. 833, May 2010, <http://ssrn.com/abstract=1752943> (accessed 24 July 2014). For further discussion of the evidence, see <https://martinhearson.wordpress.com/tag/foreign-direct-investment/> (accessed 24 July 2014).

24 T. Kinda, *The Quest for Non-Resource-Based FDI: Do Taxes Matter?*, IMF Working Paper WP/14/15, January 2014; E. Mwachinga, Results of investor motivation survey conducted in the EAC, World Bank, presentation given 12 February 2013 in Lusaka, <http://bit.ly/14B0AqE>; B.K. Kinuthia, *Determinants of foreign direct investment in Kenya: new evidence*, paper submitted to the African International Business and Management Conference, Nairobi, August 2010, <http://bit.ly/16ngfd6>

25 Crucially, most available studies simply examine whether the existence of a tax treaty increases investment, without examining whether more investment is attracted if the source state foregoes more taxing rights in that treaty. And they do not assess whether the economic benefits of increased foreign investment are greater than the loss to public revenues from signing the tax treaty.

26 Danida, *The Right to a Better Life: Strategy for Denmark's Development Cooperation* (August 2012), p.2.

27 Danida, *Implementation plan for Danish engagement in tax and development* (July 2013), http://um.dk/da/~media/UM/Danish-site/Documents/Politik-og-diplomati/Nyheder_udenrigspolitik/2013/Udmoentningsplan%20skat%20og%20udvikling.pdf (accessed 24 July 2014).

28 Ministry of Foreign Affairs, *Concept Note on Denmark's Action Plan for Policy Coherence for Development* (September 2013), <http://um.dk/en/~media/UM/English-site/Documents/Danida/About-Danida/Danida%20transparency/Consultations/Del%202%202013/PCD.pdf> (accessed 24 July 2014).

29 An example is Article 14 of the 1972 Denmark-Kenya tax treaty permitting source taxation of management fees, nearly unique at the time amongst tax treaties between developed and developing countries.

30 This is the case with Denmark's treaties with Kenya (1973), Pakistan (1987), India (1989), Tanzania (1977) and Vietnam (1996).

31 For examples of this practice, see ActionAid UK, *Calling Time: Why SABMiller should stop dodging taxes in Africa* (<http://www.actionaid.org.uk/tax-justice/calling-time-the-research>, accessed 24 July 2014).

32 In addition to these thirteen countries, Denmark also has a treaty with Kyrgyzstan which comprises its previous treaty with the Soviet Union, signed in 1987. This has not been included in this table since it was originally signed with a major economic power, not a developing country.

33 For an overview of significant differences between the two models, see Michael Lennard, 'The UN Model Tax Convention as Compared with the OECD Model Tax Convention – Current Points of Difference and Recent Developments', *Asia-Pacific Tax Bulletin*, Jan/Feb 2009.

34 For examples, see ActionAid UK, *Calling Time: Why SABMiller should stop dodging taxes in Africa* (<http://www.actionaid.org.uk/tax-justice/calling-time-the-research>, accessed 24 July 2014).

35 Shareholders owning more than 10% of the subsidiary company.

36 Ghana has also signed a tax treaty with Montenegro and Serbia, but this is not yet in force and has not been published, so cannot be included here.

37 N.B. This row reflects withholding tax (WHT) rates established by the relevant treaties on either management fees or technical services fees. These two categories are not synonymous, and in some cases WHT on one can be avoided by relabeling a fee as another type.

38 International Monetary Fund, *Spillovers in International Corporate Taxation*, IMF Policy Paper, 9 May 2014, <http://www.imf.org/external/np/pp/eng/2014/050914.pdf> (accessed 24 July 2014), pp. 28-30.

39 In Denmark, capital gains from selling a subsidiary company are generally tax-exempt. See also the respected tax advisory firm Taxand's glowing description of Denmark's holding company tax regime: "Since 1999, the combination of Denmark's extensive treaty network and beneficial tax holding company regime has meant companies have been able to route their income through Denmark without incurring withholding taxes at any stage. While some legislative restrictions of Danish tax law subsequently rendered Denmark less attractive as a holding company jurisdiction, in May 2009, this course was reversed when the Danish government adopted the 2009 Danish tax reform, which has improved the holding company regime. Particularly, the 2009 Danish tax reform improves the Danish participation exemption applicable to dividends and capital gains realised on the transfer of shares by abolishing the holding periods of one year and three years, respectively (effective as of 2010)." <http://www.taxand.com/taxands-take/news/using-denmark-holding-company-jurisdiction> accessed 24 July 2014.

40 Ghana Internal Revenue Act 2000, Section 167(1)(b)(v) (http://www.gra.gov.gh/docs/info/irs_act.pdf accessed 24 July 2014); see also Ghana Revenue Authority, Capital Gains Tax (n.d.), http://www.gra.gov.gh/docs/info/capital_gains_tax.pdf (accessed 24 July 2014).

41 Article 13.

42 Cf. Denmark's tax treaties with India, Pakistan and Vietnam.

43 Those with France (1993), UK (1993), Belgium (2004), Italy (2004), South Africa (2004) and Barbados (2008).

44 Article 5. Cf. Ghana Internal Revenue Act 2000, Section 167 (http://www.gra.gov.gh/docs/info/irs_act.pdf accessed 24 July 2014).

45 Denmark's treaties establish hydrocarbon exploration PEs with the following time limits: 60 days (Bangladesh, 1997); 30 days (Pakistan, 1987, applying to offshore exploration only); 30 days (Uganda, 2001); 183 days (India, 1989).

46 Cf. UN Model Double Taxation Convention between Developed and Developing Countries, Article 5(3)(b).

47 Ministry of Foreign Affairs Accra, Ghana: Tax and Development Programme (October 2014), <http://um.dk/en/~media/UM/English-site/Documents/Danida/About-Danida/Danida%20transparency/Documents/Grant%20committee/2014/Ext%20doc%202014/04%20Ghana%20%20Tax%20and%20Development.pdf> (accessed 23 October 2014) and Danida, Implementation plan for Danish engagement in tax and development (June 2013), http://um.dk/da/~media/UM/Danish-site/Documents/Politik-og-diplomati/Nyheder_udenrigspolitik/2013/Udmoentningsplan%20skat%20og%20udvikling.pdf (accessed 24 July 2014), p. 2.

48 While the Danish government adopted new rules in 2012 intended to stop Denmark being used as a conduit jurisdiction for dividend payments, these new rules do not affect the use of Denmark as a 'treaty shopping' conduit for other kinds of cross-border payments; and in any case are themselves relatively easily circumvented even for dividends, as this 2013 assessment prepared for the International Bar Association's Taxes Committee shows, by "(i) allowing the Danish holding company to hold the dividends for a period of time, (ii) allow[ing] the Danish holding company to always have disposal of part of the dividend payment, (iii) ...inject[ing] other activities into the Danish holding company, and (iv) ...mix[ing] up the foreign dividend payments with other funds in the Danish holding company prior to distribution further up the chain to the non-EU parent company": Ulrik Holst Hansen, Recent Developments in International Taxation – Denmark (Boston: 2013), p.3 (<http://www.ibanet.org/Document/Default.aspx?DocumentId=0FB84ACA-141D-4614-877D-66E5F6E28E01&ei=K6hLVND5CrLd7Qa6goHADw&usg=AFQjCNEZtuOrft6LP7VTK8kkZsgO1os0JQ&bvm=bv.77880786,d.ZWU> accessed 25 October 2014).

49 See the draft anti-treaty shopping recommendations of the OECD's Base Erosion and Profit-Shifting (BEPS) programme.

50 Exceptions are Denmark's treaties with India, Pakistan and Vietnam.

51 This is the case with Denmark's treaties with Kenya (1973), Pakistan (1987), Tanzania (1977) and Vietnam (1996).

52 Treaties with Tanzania, Kenya and Pakistan.

53 OECD/UN/IMF/World Bank, Supporting the Development of More Effective Tax Systems: a report to the G-20 Development Working Group (2011), p. 28, <http://www.imf.org/external/np/g20/pdf/110311.pdf> (accessed 24 July 2014). For the Netherlands' and Ireland's spillover analyses, see <http://www.government.nl/files/documents-and-publications/parliamentary-documents/2013/09/09/government-s-response-to-the-report-from-seo-economics-amsterdam-on-other-financial-institutions-and-the-ibfd-report-on-developing-countries/ifz-2013-320-brief-tweede-kamer-reactie-seo-en-ibfd-rapport-eng-def.docx> (accessed 24 July 2014), and <http://www.finance.gov.ie/sites/default/files/Spillover%20Analysis-Public%20Consultation%20fin.pdf> (accessed 24 July 2014).

54 B. Kusters, J. De Goede, K. Clemens, Onderzoek belastingverdragen met ontwikkelingslanden [Study of tax treaties with developing countries], FEZ/IM-354/DDE (<https://zoek.officielebekendmakingen.nl/blg-247787.pdf> accessed 24 July 2014); Dutch Ministry of Foreign Affairs, Evaluation Issues in Financing for Development – Analysing effects of Dutch corporate tax policy on developing countries, (IOB Study No. 386, November 2013), http://www.iob-evaluatie.nl/sites/iob-evaluatie.nl/files/IOB%20STUDY%20386%20EN_BW%20WEB.pdf accessed 24 July 2014.

55 Of course, modifying a tax treaty can have dynamic effects on such cross-border flows of income; such likely changes in FDI geography are harder to model, but not impossible. For further discussion of this point, see ActionAid International, Submission to the International Monetary Fund's Consultation on Economic "Spillovers" in International Taxation (March 2014), pp. 3-4 (<http://www.actionaid.org.uk/submission-to-the-international-monetary-funds-consultation-on-economic-spillovers-in-international-0> accessed 24 July 2014).

56 UN Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries (2003, as revised), p. 224

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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