

Discussion paper:

GETTING TO GOOD – Towards Responsible Corporate Tax Behaviour

A discussion paper
examining why and
how approaching tax
responsibility beyond
legal compliance benefits
companies and the
developing countries in
which they operate



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Forewords

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As organisations working to end poverty and build fairer and more equitable societies that are financially, socially and environmentally sustainable, we understand the importance of business, and its ability to shape and transform lives around the world. Much of our work is focused on developing countries, where millions of women and men live in poverty and are denied their rights. The pressing problems of ending poverty and tackling economic inequality require businesses to be part of the solution.

In our work we also see how vital it is for developing country governments to collect revenues from taxation, and in particular corporate tax revenue. This funds essential public services to fulfil people's rights such as healthcare and education, and the public infrastructure needed to raise living standards, increase equality and build well-functioning economies. This is why advocating for government-led reforms and binding rules underpins our tax justice work and the work of the wider tax justice community of which we are a part.

But tax is also an issue of good corporate governance and responsible business practice. There are immediate and meaningful steps companies can take to improve the impact of their tax behaviour on the developing countries in which they do business.

The paper contains a wide range of positive behaviours and actions companies can undertake on their journey towards responsible corporate tax behaviour – some are immediately implementable (and perhaps already being implemented), while others may evolve over a longer time. The spectrum of propositions and examples (though not exhaustive) reflects a conscious decision on our part not to limit the ambition of the paper – allowing multiple entry points for businesses, and more importantly, resulting in significant gains for developing countries.

Companies, too, will benefit because responsible tax behaviour helps mitigate risk and is in companies' own long-term interest. The best companies – and their investors – recognise that their success is inseparable from the success of the society in which they operate. Paying tax is an investment by companies because it supports the development of the type of societies in which profitable, sustainable companies can thrive. These are peaceful, stable societies that have sustainable transport networks and power systems, educated, gender-balanced, healthy and productive workforces, prosperous economies and strong consumer bases with purchasing power.

By promoting effective governance, responsible tax behaviour also helps tackle corruption, which is harmful to the business-enabling environment. Those who understand this will appreciate our call for tax responsibility beyond legal compliance, by which we mean conduct that reflects a company's broader duties to contribute to public goods on which companies depend.

We acknowledge that the need to inform the public on this issue has sometimes resulted in debate that has been polarised, often adopting a 'pass or fail' approach to evaluating corporate tax practices. With this paper we seek to progress the discussion and to establish a genuine, constructive dialogue between our organisations and business, in order to move towards a better understanding of what 'good' looks like in responsible corporate tax behaviour. We hope this paper provides a practical approach (as opposed to a one-size-fits-all standard) for companies working to improve their tax behaviour, and that it also serves as a useful resource for investors seeking to ask the right questions of companies to guide their investment decisions.

It's time to place tax management squarely at the heart of responsible and truly sustainable business.

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There continues to be much interest in the responsible tax behaviour of individuals and business. This is a challenging subject, not only because it is inherently subjective and therefore there is a range of opinions on the topic, but also because the debate is evolving as attitudes and tax policies change. For tax-compliant

businesses, less objective rules – which are often open to different interpretations by authorities – also present the problems of double taxation and large amounts of time spent on tax audits.

It is clear that corporate tax revenues are disproportionately important for the sustainable development of lower income countries, where tax compliance in the rest of the economy is generally lower. As a result, it is critical to identify ways to close tax collection gaps, and invest in promoting a culture of compliance across all taxpayers, individuals and business alike.

International tax reform, through the OECD's Base Erosion and Profit Shifting (BEPS) project, aims to better align taxation with value creation. Again, improving the tax revenues of lower income countries through this reform, whether as a consequence of deliberate business investment or organisational decisions (as discussed in this paper), or through investments in capacity building for tax administrations, better-designed policies to support investment, or more likely a combination of all these things and more, needs thoughtful consideration. So too does the tax governance, and relationships with the authorities, in these countries.

Not all will agree with the ideas presented here, nor the extent of reporting and disclosures suggested, but this is not the point. What is important is shaping better tax policy in a constructive, solutions-orientated way, and this paper makes an important contribution to this ambition.

**Janine Juggins is Senior Vice President
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Juan Carlos Campuzano Sotomayor, ESPOL University and Ecuadorian Revenue Service



Taxation is a critical means by which developing countries can mobilise resources for financing development. At present, public revenue mobilisation remains insufficient to meet development needs, and gaps persist between the capacity of developed and developing countries to raise public financial resources.

While it is true that the debate has been driven by an increasing public interest in responsible behaviour for both individuals and companies, it is also important to take into account the differences in the impact of these behaviours or practices on countries depending on their level of development.

Usually it is in developed countries where multinational companies undertake their planning and tax-related decision-making functions, while developing countries bear the burden and consequences of those decisions.

Developing-country revenue authorities and the wider public have only limited access to information concerning corporate structures that determine whether transfer pricing laws apply in the first place, and to determine the extent to which transfer pricing corresponds to economic reality. Developing countries will apply their own methods and solutions adapted to their level of development, a process that can be helped by co-operative behaviour by multinational companies.

This is where responsible tax behaviour could help to create a situation in which differences in the level of development of the economies do not present a barrier but are rather an opportunity for the progress for all nations to achieve sustainable development. The results of the efforts of civil society, multinational companies and governments, will be rewarded if they lead to progressive change in the area of corporate taxation.

This document is valuable because it is the result of an agenda requiring hard work and research that clearly exposes the main problems in the international tax area. I personally hope that this discussion paper continues this thought-provoking debate and helps to identify the best solutions for responsible behavior, considering the different levels in countries' economic development.

Juan Carlos Campuzano Sotomayor, lecturer in economics at ESPOL University and transfer pricing specialist at the Ecuadorian Revenue Service (Servicio de Rentas Internas – SRI).

Disclaimer: The views expressed in this foreword are those of the author and this foreword should not be reported as representing the views of the Ecuadorian Revenue Service (SRI) or ESPOL University.

Chris Morgan and Jane McCormick, KPMG in the UK



We welcome the positive contribution of by ActionAid, Christian Aid and Oxfam to the debate on responsible corporate tax behaviour. Many of the themes in this paper accord with those coming out of the Responsible Tax for the Common Good project (responsibletax.org.uk) curated by independent think tank CoVi and sponsored by KPMG for the last year.

Although most companies would not agree with everything in this report, we have found that more and more of them accept that while tax is one of many business costs which need to be managed, it is also part of a social contract – and therefore not something to reduce by any means possible. This is a concept of responsible tax behaviours.

Each of the eight propositions has a number of examples of responsible behaviour. Many companies will already be abiding by a good number of these, at least in part; although to follow certain ones would require a significant (perhaps unwarranted) increase in management time, cost and information production and disclosure.

Many companies will acknowledge the merit in increasing public disclosure of tax information, especially as it is recognised that this should tailored to the company's circumstances and stakeholders' needs rather than being a prescriptive one-size-fits-all approach. There will be agreement over such matters as aligning tax and economic activity, maintaining an open relationship with tax authorities, having strong governance, and not abusing tax incentives in developing countries. The proposal to include tax impact assessments within the UN Guiding Principles on Business and Human Rights is a bold and challenging one. However, there are other areas – such as negotiating tax agreements which are needed to give stability to investment or calling for the removal of tax exemptions on corporate reorganisation – which will spark necessary discussion to ensure that legitimate business interests are not being overlooked or undermined.

There will always be different views when it comes to taxation. Some of the proposals here will generate robust debate. It is welcome though that the document indicates a direction of travel not a checklist which companies must adhere to. We would encourage all stakeholders to engage in this debate.

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Sudip Hazra, Senior Sustainability Analyst, Kepler Cheuvreux



Tax avoidance has only recently entered the arena of business social responsibility in any public way. It remains an area of large uncertainty for both companies and their investors. The reputational, human capital, litigation and business damage that can accompany certain forms of corporate tax avoidance

has clear impacts on the societies in which companies operate, but they also increasingly threaten shareholder value in a way never before seen.

There is no doubt that we are undergoing regulatory tightening of the most aggressive forms of tax minimisation, and the companies likely to emerge best from this process are more likely to be those that go beyond their minimum legal obligations in relation to tax payments. Those that go beyond the minimum obligations will potentially be recipients of a greater social licence to operate, better relationships with regulators and will effectively be investing in the local communities upon which they rely for financial returns.

A variety of stakeholders – particularly in developing economies with already greater challenges around essential services, infrastructure and income inequality – bear the burden of corporate tax minimisation activity. This is despite the fact that tax funds the infrastructures and services that business models depend upon to generate the very revenues that are part of the rationale for both firms and their investors to enter some emerging economies in the first place.

Investors are also negatively affected when regulatory tightening translates into unanticipated litigation costs or legislative requirements to adjust (often systematic) tax behaviours. Nonetheless, great difficulty exists for investors wishing to engage with companies around their tax behaviours as a result of information barriers surrounding the subject. This study makes an important contribution to identifying aspects of tax process and transparency that are highly relevant to investors not just wishing to access a greater social responsibility, but who also simply wish to better understand their potential risk exposures.

Sudip Hazra is an analyst looking at social and governance issues and the risks they can pose to investors. His report, *Tax Me if You Can: Game Over*, won the UK Farsight award this year for the best piece of investment research looking at environmental, social and governance issues with a long-term scope.

About this paper

This discussion paper seeks to advance the debate about ‘what good looks like’ when assessing the tax behaviour of multinational companies (MNCs). It does so by examining the different (while often overlapping) elements of MNC tax responsibility, and by making recommendations for measurable and progressive improvement.

We start, in **Part I**, by describing the significance of corporate taxation for sustainable development. We then explain why this paper is addressed to MNCs, not policymakers – setting out the role that companies themselves must play in being part of the solution to address tax avoidance. We also explain why companies should care about being responsible in their tax behaviour; **both from a risk management perspective and taking into account the impact of corporate tax behaviour on human rights and sustainable development**. Finally, we describe how a company should approach tax responsibility as a process.

In **Part 2**, we put forward an overarching recommendation or ‘proposition’ for tax-responsible behaviour across eight areas of corporate tax responsibility. For each proposition we provide examples: suggestions for behavioural changes that reflect the practical application of the proposition. Both the overarching propositions and the example behaviours focus on good practice in (or as they affect) developing countries, but they are not confined to that context. Some issues will be common to all economies and some will be particular to, or particularly acute in, developing countries.¹

The propositions put forward are intended to indicate **directions of travel**, and the positive behaviours we describe are **simply examples of ‘what good looks like’**. They are not intended to be exhaustive, not listed in any particular order (of importance or progressiveness) and will not necessarily be relevant or applicable to all MNCs. We address questions about confidentiality, costs and competitiveness that are likely to arise in the Q&A on pages 34-35.

We recognise that certain behaviours will have greater or lesser significance for an MNC’s overall tax responsibility, depending on the business sector or the company’s

business model. This paper does not provide sector-specific recommendations but the overall approach and directions of travel that are elaborated in the paper are intended to generate constructive conversations between companies and their stakeholders across multiple sectors.

We further recognise that this paper is directed at MNCs as taxpayers themselves, and so does not discuss the specific roles and additional responsibilities of the various actors, entities and intermediaries on which companies (and individuals) rely for advice and services that impact upon their tax liabilities. These businesses, such as banks, accountancy firms, wealth managers and other finance sector institutions, have responsibilities that extend beyond their own tax liabilities. For example, some parts of the finance sector have played a particular role in facilitating tax abuse by others, helped by the growing ability of companies and individuals to move money across borders. We hope that this paper will spur further reflection, research and progressive problem solving to include, for example, more tailored guidance for companies that fall broadly within the finance sector and those with advisory business models.

Also, as this paper is focused specifically on MNCs rather than individuals, we do not delve into issues such as the payment of personal income taxes on salaries and dividends on business profits which are, of course, important responsibilities of the individuals who own businesses.

Not everyone who reads this paper will be a tax expert. We recognise (and welcome the fact) that issues of tax responsibility now engage a broad range of individuals within MNCs – from tax directors to corporate social responsibility professionals and to senior management – and this is why our propositions are presented in a non-technical way where possible. The tables in Part 2 containing example behaviours and the related commentary are, unavoidably, more technical and are intended to speak more directly to tax experts and practitioners. We also hope this paper will be of interest to responsible investors thinking about the tax risk and tax-related impact of MNC behaviour and will help them ask the right questions of MNCs, to guide their investment decisions.

We invite feedback from readers of this discussion paper; and encourage companies to engage in further debate on the issue of responsible corporate tax behaviour within their own companies, with their peers, and with their various external stakeholders.

Part 1:

The case for responsible corporate tax behaviour

A. The significance of corporate taxation for sustainable development

Governments need sufficient and sustainable revenues from taxation to fund essential public services for their citizens, including healthcare and education, and to pay for the public infrastructure needed to raise living standards, increase gender equality and build well-functioning economies. In developing countries, where millions of women and men live in extreme poverty, these tax-funded public services are particularly important. From a rights-based perspective, transparent and accountable interactions between governments and their citizens are at the root of prosperous and fair societies. Taxes play a central role in this interaction as they embody the social contract between states and citizens, and represent key sources of investment in the progressive fulfilment of human rights.

In recent years developing countries have collected more tax than before, but levels of tax collection remain much lower than in rich countries. Companies are just one of a number of different types of taxpayer from which developing country governments need to collect more. But taxing companies is more important in low- and middle-income countries where, according to the International Monetary Fund (IMF), corporate income taxes make up 16 per cent of government revenues compared to just over 8 per cent in high-income countries.²

Given the importance of corporation tax for countries seeking to raise funds to pay for their sustainable development, **people everywhere** are increasingly taking an interest in corporate tax behaviour – wanting to know if MNCs are exploiting their ability to move across borders and their political and economic power to avoid tax. **Investors**, concerned about the diverse and significant risks that tax avoidance creates for the companies they invest in, are raising their voices on the issue. And **policymakers**, pressed to respond to public concerns, are looking afresh at rules on corporate taxation, generating a stream of new regulation at national and regional levels, and from multi-lateral policymakers, including the OECD.

The interest of this diverse group of stakeholders in corporate tax avoidance shows no sign of abating. The issue looks set to stay at the top of the global development agenda and, while it does, tax policy and practice – once siloed in finance teams and treated simply as an operating cost to be minimised – will be an issue of core risk and responsibility for companies, engaging Chief Executive Officers, Chief Financial Officers and Heads of Corporate Responsibility, Risk and Reputation.

B. A role for companies to play

When we talk about corporate tax avoidance, we are referring to a company rearranging its affairs so as to minimise the amount of tax it claims to owe. Unlike ordinary tax planning, which yields uncontroversial tax savings, tax avoidance throws onto tax authorities a burden of arguing that the saving is not available – for example on the basis that it relies on too literal an interpretation of the relevant law, or on the basis that it relies on the over-valuation of a related-party transaction. The mobility of functions within MNCs, and the availability of jurisdictions where those functions can be treated as profit centres without attracting significant amounts of tax, mean that MNCs are well positioned to minimise not only their risk of the tax savings being controversial in any particular jurisdiction but also their effective global tax rates. These systemic weaknesses in the current tax architecture clearly demonstrate that the solution to corporate tax avoidance in a globalised economy requires fundamental reform of corporate tax rules on an equally global scale.

“Tax policy and practice – once siloed in finance teams and treated simply as an operating cost to be minimised – will be an issue of core risk and responsibility for companies”

Voluntary steps vs. rule change

Voluntary behaviour change by companies is not a substitute for binding regulations with which companies can be held to account by governments. We firmly believe that the basis of a fairer, better-functioning tax system is reform of tax laws and standards, both domestic and international, and their effective implementation. Advocating for government-led reforms and binding rules underpins the tax justice work of our respective organisations and the wider tax justice community of which we are a part.

We lobby governments to engage in inclusive global discussions (involving developing countries) on issues not addressed by current initiatives, including:

- **putting an end to the race to the bottom caused by competitive granting of tax incentives and lowering of tax rates;**
- **ending the use of 'tax havens' for tax avoidance purposes;**
- **reallocating tax rights between countries;**
- **addressing avoidance of capital gains tax;**
- **stepping up work to prevent manipulation of internal transfer prices.**

Specifically, we are calling for governments and institutions to:

- **ensure the participation of developing countries in all global tax reform processes on an equal footing, under the auspices of the UN;**
- **ensure taxes are paid where the economic activity to which they relate takes place;**
- **review tax treaties, revise them where they are harming developing countries, and negotiate them so that they are coherent with public policies ;**
- **review tax rules and revise them where they are harming developing countries;**
- **adopt a common, binding and ambitious definition of what a tax haven is, as well as blacklists and sanctions to deter their use for tax avoidance purposes;**
- **ensure anti-tax-haven (controlled foreign company) rules are effective;**
- **support national, regional and global efforts to promote tax transparency at all levels, including:**
 - > mandatory public country-by-country reporting for companies;
 - > transparency of who really owns companies, trusts and foundations (through disclosure of beneficial ownership);
 - > transparent corporate structures;
 - > a multilateral system for exchanging tax information on an automatic basis, including developing countries from the start with non-reciprocal commitments;
- **measure and review tax incentives;**
- **increase penalties for tax avoiders**

But the crucial task of redesigning and renegotiating rules (internationally, regionally and nationally) that are fair and coherent – and doing so with the participation of the global community – will not be quick or straightforward. For the foreseeable future, therefore, companies will continue to face an international tax environment of inconsistent and incomplete regulation which offers huge scope for arbitrage and the minimisation of tax payments, to the continuing detriment of those who depend on tax-funded public goods.

It is also the case that, while better rules should greatly reduce uncertainty and mismatches between tax systems, other problem areas will be harder to legislate away – including the difficulty of identifying in which jurisdictions economic value (and thus taxable income) is located. Better rules will constrain companies' tax decision-making more effectively than they do at present but, within any reformed system, there will still be room (particularly for MNCs) to manoeuvre – to make choices between business structures and filing positions which result in different outcomes.

We must also recognise that enforcing rules in an international business context is and will continue to be challenging – particularly in developing countries where the capacity of tax authorities to assess and challenge complex tax structures is limited.

For all these reasons – as necessary as it is to reform international tax rules – **achieving more equitable tax outcomes also requires a change in the attitude and approach to tax taken by companies.** As is the case with many issues of corporate responsibility, it is not just regulation, but values, that must shape tax behaviour. We call this **'responsibility beyond legal compliance'** and where we refer in this paper to 'tax-responsible' companies or behaviours, we mean responsibility in this sense – conduct which reflects companies' broader duties to contribute to the public goods that help sustain their production, environment, workforce and consumer base.

C. Why companies should care about 'Getting to Good'

Why should companies think beyond compliance and care about responsibility and values in a tax context? Put differently: why should they not simply take advantage of legal arrangements which seek to maximise after-tax profit?

Investing in sustainable development and the future of business

Firstly, responsible tax behaviour is in companies' own long-term interest. Paying tax is an investment by companies in the countries in which they operate. It supports the development of the type of societies in which profitable, sustainable

companies can thrive – peaceful, stable societies that have functioning transport networks and power systems, educated, gender-balanced, healthy and productive workforces, prosperous economies and strong consumer bases with purchasing power. Responsible tax behaviour also promotes effective governance and can therefore help to prevent corruption, which harms the business-enabling environment.

Responsible companies, committed to making a contribution to sustainable development and to ensuring their own long-term success, must start thinking (and talking) about the impacts of tax avoidance, and managing them for the common good. Investors are already thinking in these terms and asking how tax policies can be incorporated within the integrated financial reporting and environmental, social and governance (ESG) reporting frameworks already widely used by companies.

Respecting fundamental human rights

Secondly, there is a growing recognition by companies and across a wider community of stakeholders that **corporate tax behaviour** (like corporate investments, operational decisions and sourcing decisions) **can have impacts – for good or bad – on the realisation of fundamental human rights.**³

These impacts can relate to government income and spending (fiscal impacts). Corporate behaviour that jeopardises revenue collection may deprive governments of the funds they need to realise the fundamental rights of their citizens. At a more local level, human rights impacts can also be economic and social: tax-motivated corporate decision-making can affect the creation of good quality jobs, the transfer of technology and skills to developing economies, and investment and prices – all of which affect the human rights of employees, customers and citizens in the countries where companies operate.

While governments are the primary duty-bearers under international human rights law, all businesses have a responsibility to respect human rights and a growing number of companies have taken action, including reporting, on how they have done so. It is becoming increasingly clear to companies and their stakeholders that tax behaviour can no longer be treated in isolation from corporate commitments to sustainable development under, for example, the United Nations Global Compact initiative – nor can it remain outside the purview of the "corporate responsibility to respect human rights" outlined in the Guiding Principles for Business and Human Rights (UNGPs).⁴ The growing calls for businesses to integrate tax behaviour into their broader sustainability and human rights-related processes are quickly gaining

momentum. This means companies are increasingly expected to manage their tax arrangements in a way that respects human rights principles even where that means abandoning or rejecting tax arrangements or practices that are technically lawful yet contravene human rights principles.⁵

Mitigating risk

Finally, companies should care because **tax avoidance creates serious risks** for companies and their investors. Reputational risk is perhaps the most obvious – a diverse range of stakeholders, including consumers, now has expectations about a company's behaviour on tax.

There is growing recognition in the business community that an approach which is limited to compliance with the rules will not be defensible if the result is seen by those stakeholders to be unfair. Companies seen to be behaving unfairly are exposed to adverse publicity and all the risks to brand that entails – regardless of whether such judgement of fairness is in itself perceived to be unfair or misconstrued by companies.

Tax behaviour can impact a company's reputation as a good corporate citizen and call into question whether its behaviour is consistent with, for example, its commitment to sustainable development or its stated social purpose. Perhaps less obvious, but just as serious, are the risks that tax avoidance poses to profit; a successful challenge to a company's filing position can reduce share price and lessen investor confidence in the good management of the company's tax affairs. Investors are also increasingly screening companies for tax risk, and a higher investor risk categorisation may increase the cost of funds needed to finance the business.⁶ Linked to reputational and profit risk is the growing scale and complexity of tax legislation which is enacted to address aggressive tax avoidance, potentially coupled with increased appetite for legal action by tax authorities. This 'regime risk' impacts the business operating environment more generally, giving rise in particular to spill-over effects in the form of additional tax risk or tax obstacles in the context of structures that are not in themselves aggressive from a tax perspective.

Responsible tax behaviour, beyond legal compliance, is the most effective tool available to companies to mitigate these risks.

D. How to approach tax responsibility

Taking stock of current proposals

In April 2015 ActionAid published a mapping and review of current proposals for responsible tax practice and corporate responsibility⁷ (**the 'ActionAid Mapping Research'**). It reviewed 45 sources of recommendations produced by a wide range of actors, from civil society and activist investors to MNCs and tax professionals. This discussion paper seeks to build on these findings to advance the debate about 'what good looks like' when it comes to corporate tax behaviour.

Responsible tax practice by companies – a mapping and review of current proposals, ActionAid, March 2015

Key findings:

- Almost all proposals for responsible practice, from all actor groups, fall into one of eight issue areas of tax responsibility: (1) tax planning practices; (2) public transparency and reporting; (3) governance of the corporate tax function; (4) relationships with revenue authorities; (5) impact assessment; (6) policy and practice in developing countries; (7) tax lobbying; and (8) tax incentives.
- There are few sources that address the particular context of developing countries and how global standards should be translated into policy and practice at local level. Only half of NGO sources reviewed – and only seven of the 45 sources reviewed overall – contain development-specific policy recommendations.
- Only four of the 45 sources we reviewed consider MNCs' lobbying for, or use of, tax incentives and exemptions. This is an important area for further thinking given that, particularly in developing countries, the impact of poorly targeted and ineffective incentives on public revenues is likely to be at least as great as (if not greater than) the impact of tax planning practices.
- Many recommendations for good practice (from all actor groups) share the same basic difficulty: **how to draw a hard, unambiguous line between acceptable and unacceptable tax practices.** To address this, a small number of sources recommend particular positive behaviours that promote sustainable public revenues and social and economic development (i.e. not simply proscribing 'bad' practices). More work is needed in this area but such approaches may help to move the debate beyond deadlocked disagreement over what behaviour is acceptable or unacceptable.

Tax responsibility as a process

It is possible to set standards and thresholds in many areas of tax responsibility: particularly transparency and reporting, and certain forms of tax behaviour. Indeed, governments routinely set such standards, whether by establishing tax reporting frameworks, or by defining 'reportable' transactions that they regard as carrying the hallmarks of tax avoidance.⁸

Nonetheless, we recognise that the choices companies make when structuring their business and determining their tax positions are diverse and highly context-specific, as are their impacts (fiscal, economic and social).

A responsible approach to tax might well demand different behaviours from businesses (or certain behaviours may be more or less key to tax-responsibility) depending on the business sector or business model. For an IT company with an intangibles-heavy balance sheet (non-physical assets such as patents, trademarks, copyrights and brand recognition), the key issue determining its tax responsibility might be the location and ownership of highly mobile intangible assets; while the focus for an extractives company developing mining concessions might instead be on holding-company structures and capital gains tax liability. A financial institution or accountancy firm will have corporate tax responsibilities encompassing both its own tax position, and those of its clients; while other companies may only have significant influence over their own tax bills.

Recognising this diversity, we have not sought to develop a single, detailed set of prescriptions or standards for 'tax-responsibility' that are uniform for all MNCs. Instead, we approach responsible behaviour as an ongoing process of **transparency, assessment and progressive and measureable improvement**.

A tax responsible company:

- Is radically and proactively transparent about its business structure and operations, its tax affairs and tax decision-making;
- Assesses and publicly reports the fiscal, economic and social impacts (positive and negative) of its tax-related decisions and practices⁹ in a manner that is accessible and comprehensive;
- Takes steps – progressively, measurably and in dialogue with its stakeholders – to improve the impact of its tax behaviour on sustainable development and on the human rights of employees, customers and citizens in the places where it does business.

Envisaging corporate tax responsibility as an **ongoing process of transparency, assessment and progressive, measureable improvement, rather than a fixed and 'one-size fits all' set of 'do' / 'don't' standards** will be both a relief and a challenge for companies and their boards. A relief because it militates against drawing up a definitive 'blacklist' of 'tax-irresponsible' companies (although companies' efforts and achievements can obviously still be compared, and some companies' tax behaviours will still be more plainly abusive than others); a challenge because it means that 'tax-responsibility' is not a state of grace that companies can attain or a box that can be ticked. It requires ongoing and progressive effort and may mean that an improving company is not exempt from criticism by stakeholders.

Nonetheless we hope that:

- in the current climate of global and national tax reforms (when what looks like market-leading responsible behaviour one month becomes a legal requirement the next), an approach based on progressive improvement and regular stakeholder engagement is a useful way of framing and future-proofing tax responsibility;
- by emphasising the **sustainable development impacts** of a company's tax practices, not only on a country's tax revenues but also on the economic wellbeing of that company's customers, workers and other stakeholders, this approach prioritises the human rights of real people and communities in line with leading international norms and principles for corporate responsibility. It should generate priorities for changes in corporate tax practices driven by the lived economic experience of women and men in poverty who are most directly affected, which current international tax reforms, important though they are, still fail adequately to acknowledge and address. Global businesses – if they are effectively to manage business risks and be considered responsible players – must step into the breach and acknowledge and address the sustainable development impacts of their tax practice.
- this approach provides a practical model for MNCs to engage with civil society on a longer-term basis to improve corporate tax behaviour.¹⁰

Part 2:

Eight propositions for responsible tax behaviour and examples

In this second part, we build on our basic approach to tax-responsibility as a **process of**

- **transparency**
- **assessment &**
- **progressive, measurable improvement.**

We set out, below, overarching recommendations or 'propositions' for progressive, measurable improvement in **eight** different (but inevitably overlapping) issue areas.

Tax responsibility as a process	
Key principles:	Key issue areas
Transparency	1. Tax planning practices 2. Public transparency and reporting 3. Non-public disclosure
Assessment	4. Relationships with tax authorities 5. Tax function management and governance 6. Impact evaluation of tax policy and practice
Progressive and measurable improvement	7. Tax lobbying/advocacy 8. Tax incentives

These eight issue areas are based on the eight areas of responsible tax behaviour identified by the Mapping Research undertaken by ActionAid in 2014/15 (see box page 12), which surveyed tax responsibility proposals from a range of actors: from businesses to NGOs and international organisations. The eight issue areas below match the areas identified by this research, with two differences. First, we do not treat the issue of 'policy and practice in developing countries' as a standalone issue, but instead seek to mainstream it through all propositions. Second, we have divided a company's relationships with revenue authorities into two areas: (i) the information it discloses to revenue authorities; and (ii) the broader ways in which it may interact with revenue authorities, from negotiating tax settlements to recruiting former revenue authority staff.

Two overarching caveats apply:

1) The eight propositions are not designed to be abstracted or taken on their own to form a set of 'tax responsibility principles'. They are intended to **indicate directions of travel** – not how far along a given trajectory of behavioural change a company or corporate group should go. They need to be translated

into practice and made measurable by specific corporate behaviours – examples of which are suggested under each proposition.

2) These example behaviours are just preliminary suggestions of what progress towards more responsible tax behaviour might look like in practice. They are not intended to be exhaustive, are not listed in any particular order, and will not necessarily be relevant to all MNCs. None is intended to be a fully-formed prescription to be transcribed into an MNC's tax policy. Instead, they are possible starting points, which would of course be subject in reality to precision and modification according to an MNC's particular situation and business model.

Informed by the ActionAid Mapping Research, and in an effort to work around the problem of defining 'tax avoidance' that generates so much heat and polarisation in the tax debate, we have also tried – as far as possible – **to identify and recommend positive tax behaviours, rather than to definitively list and proscribe bad practice.**

I. TAX PLANNING PRACTICES

Any legal framework, even after current international tax reforms are completed, will inevitably leave choices open to companies about how to structure themselves and manage their tax liabilities. The boundary between acceptable and unacceptable tax behaviour is contested – and will continue to be debated – but the core of public and government concern over corporate tax behaviour is fairly straightforward, i.e. the perception that **some corporate taxpayers may be taking steps to ensure that taxable income, profits or gains do not arise in jurisdictions where business operations are actually located, but elsewhere, particularly in jurisdictions where they will be subject to low or no tax.**

Disconnection between the place where business operations really happen and the place where income/gains are booked on paper matters for an equally simple reason: governments and citizens in the places where a company carries out its operations have a legitimate expectation that tax will be paid by the company in return for the tax-funded public goods – from functioning roads to an educated workforce – that help to create and sustain those operations. Business and investment itself is precarious and unsustainable in countries with inadequate tax revenues. Worse, the economic and social rights of citizens where those companies operate go further unfulfilled.

We therefore propose that a tax-responsible company or group should be able to:

(i) show it is taking steps progressively to align its economic activities and tax liabilities.

Aligning income and gains with the geography of a company's real-world economic activities is not a prescription against all forms of perceived tax avoidance, but it does provide a clear and positive target against which companies can measure progress.

Beneath this simple proposition, of course, lies a definitional problem. A company's stakeholders – from governments to customers – will continue to have different views about precisely how and where value is created, and how the distribution of assets and activities should be 'translated' into income, profits and tax liabilities. A company might begin pursuing objective (i) by unwinding unambiguously artificial structures: for instance, those where significant taxable income and profits arise in a low-tax jurisdiction where a company has little or no staff presence, operations, R&D, and so on.¹¹ Beyond such situations, however, there will also be tax-related structures that some will regard as artificial, some not; disagreements which will also arise when a responsible corporate group makes choices about how to modify or unwind tax-driven structures. To take a greatly simplified

example: imagine a US-headed multinational uses expatriate managers, seconded from its head office, to manage a group of factories in Ghana, who are on paper employed by a management services subsidiary registered in Mauritius. Stakeholders may come to some consensus that the income for those managers' activities should not be substantially booked in Mauritius if no significant activities take place there (and a stricter application of existing transfer pricing rules might agree); but should it instead be booked in the USA or in Ghana?

Recognising these disagreements, we propose that tax-responsible companies should at least be able to:

(ii) publicly justify their tax-planning choices against the reality of their operations.

More practically, one pro-development way of working around such disagreements is for the MNC, when reconsidering or unwinding (at least partly) tax-driven structures or transactions, to pursue a third objective of:

(iii) progressively improving the international equity of its tax payments i.e. ultimately to aim to pay a larger proportion of the group's overall global tax bill in poorer countries,¹² where that is consistent with transfer pricing rules and the reality of the group's operations.

This may appear a radical proposition, and requires some qualification and illustration. First the qualifications: it is not to propose artificially raising the group's overall tax bill, voluntarily or otherwise, but simply to change its international distribution. Nor is it to propose artificially moving assets and functions into developing countries with which those assets and functions have no prior connection just for the sake of increasing tax payments in developing countries. Rather, it is to acknowledge that current rules effectively provide a range of options to companies, even at a given level of tax risk, about where to attribute taxable income. In other words, companies have options that may be equally legally acceptable, and equally justifiable against the reality of their operations.

To illustrate: imagine that a US-headquartered group has a brand for a product it sells substantially in Bangladesh, whose legal ownership is placed in a low-tax jurisdiction which has no relation to the actual development of that intangible (as with some previous 'Double Irish' structures, for instance). When unwinding that structure, under transfer pricing rules the group may be able to justify placing the ownership of the brand either in the USA, where the group is headquartered and where funding and staffing for the brand's development

originated; or in Bangladesh where the market generates most value for it. In this case, instead of getting caught up in debates about where value is 'really created' and profits 'really generated', the MNC could simply choose the latter option of booking the income or profits in the poorer country, either by moving the legal ownership from the vehicle in the low-tax jurisdiction to its subsidiary in Bangladesh, or reflecting greater economic ownership by the Bangladeshi company in its transfer pricing arrangements. Such an approach would increase the international equity of the group's tax liabilities, shifting tax liabilities out of low-tax jurisdictions and into economies where fiscal needs are generally greater.

As a side-effect – though this is not its primary purpose – such decisions may also help ultimately to remove tax-

related disincentives in the future to actually locating high-value functions like management, or the development and management of intangible assets, in those poorer countries, thereby helping over the long-term to move poorer countries up global value chains. We fully acknowledge that such an approach involves questions of sustainable development -- about employment, investment and terms of trade -- beyond a company's tax payments. This is faithful to the reality, however; that within almost all MNCs, structuring and transaction decisions will be partly tax-driven but will also involve a range of broader economic and operational considerations.

PROPOSITION 1: A tax-responsible company or group will make incremental changes to its structures and tax-related transactions to book less of its income, profits and gains in jurisdictions and legal entities where they attract low or no tax¹⁴ and in which related assets and activities are not located.

Where a company has an operation in a poorer country, and is modifying or unwinding tax-driven transactions and structures, it may opt for more of the income, profits and gains from high-value employment, and tangible and intangible assets already associated with that operation – from the profits attributed to the work of senior managerial staff, to the income accruing to brands widely used in that country – to be booked for tax purposes in that poorer country itself.

Where taxable profits, income and gains continue to be booked in locations and entities where they attract low or no tax, and in which the related assets and activities are not substantially located, a tax-responsible company will be able to publicly demonstrate that the non-tax benefits of this arrangement cannot be achieved in other higher-tax jurisdictions, or that the decision is not primarily motivated by tax considerations.

	Example behaviour	Commentary
IA	A corporate group changes transactions, ownership structures, contractual and transfer pricing arrangements to ensure that it books income from ‘offshored’ management and procurement functions in locations where it has its production, manufacturing or retail operations.	<p>N.B. All lists of examples presented in this paper are illustrative and non-exhaustive.</p> <p>For instance, a corporate group has expatriate managers running manufacturing operations day-to-day in various countries, but employed by an ‘offshored’ management services company in a low-tax jurisdiction. The group ensures in the future that all of the income from those day-to-day management functions is booked in places where operations relating to those functions take place; perhaps by moving the legal employment of the managers to the operational companies.</p> <p>This type of change will help to reduce the risk of a company being accused of contributing to base erosion through management fees, service payments, royalties and commission payments to low-tax jurisdictions.</p>
IB	When making changes to such transactions and structures, a corporate group progressively increases the amount of taxable income and profits from high-value functions that is booked in poorer countries among those countries where such functions play a part in the group’s operations.	<p>For example, a US-headquartered corporate group has a consumer brand used primarily to brand goods produced and sold in South Asia, owned by a subsidiary tax-resident in the Cayman Islands, and with personnel protecting and managing the brand in the US. When unwinding the Cayman Islands arrangement, the group chooses not to re-attribute all of the income for that brand to the US, and instead attributes some of it to the South Asian subsidiaries whose markets generate much of the brand’s value (where possible within the realities of the group’s operations and transfer pricing rules). This may be a largely arbitrary transfer pricing choice, and so is made by seeking to increase the international equity of the geographical distribution of the brand income’s tax liabilities.</p>
IC	A corporate group makes payments for goods, services, equity and loans directly to the entities – both related and un-related – that actually provide those goods, services and financing. Where payments are made to related parties, it ensures that those payments are made to entities tax-resident in the countries where the goods, services and financing are actually generated or provided.¹⁵	<p>This will help to reduce the risk of a company being accused of ‘treaty shopping’ and some kinds of hybrid mismatches using indirect loans.</p> <p>It will also help reduce incentives for ‘offshoring’ high-value functions, particularly out of poorer developing countries.</p>
ID	A corporate group restructures its ownership and holding structures to ensure that when the group sells significant assets, the capital gains generated by the sale are taxable in the country where the asset is located (in the case of a physical asset or corporate entity) or where it has been created and developed (in the case of an intangible asset).¹⁶	<p>This will help to prevent tax-free indirect transfers of interest – perceived by civil society organisations and (for example) the IMF to be a major problem in the extractives industry and many other industries, particularly in developing countries. The IMF has estimated that such indirect transfers have made it impossible, for example, for Mauritania to tax a US\$4bn gain on the sale of a Mauritanian gold mine via a Bahamas subsidiary.¹⁷</p>

IE	Each subsidiary in a corporate group establishes a taxable presence in every jurisdiction where it has substantial operations and functions.	<p>This will help to reduce the risk of a company being accused of exploiting perceived latitude in current permanent establishment (PE) rules, where companies are perceived to have substantial operations in a given jurisdiction without crossing the minimum threshold for PE status. Some companies already recognise that such thresholds, established in domestic and treaty law, present floors rather than ceilings, and that a company can go beyond such thresholds to establish PEs where it considers it fairer or to better reflect the realities of a company's operations and profit generation.¹⁸ Importantly, establishing a taxable presence may not in every case establish substantial tax liabilities, but gives governments the ability to tax such income and profits as do arise, should they choose to do so.</p>
IF	A corporate group commits not to engage in any tax-related transactions that are notifiable to the tax authorities in those jurisdictions under mandatory disclosure regimes designed to stop particular tax avoidance schemes.	<p>Mandatory disclosure regimes rarely cover the entire scope of what tax authorities regard as tax avoidance or abuse, and sometimes cover behaviour that tax authorities do not regard as inherently constituting avoidance or abuse. It should nonetheless be a basic principle that a responsible company or group respects the views of the tax authorities where it operates, both about what tax behaviour is unlawful, and about what is undesirable; and progressively seeks to unwind its involvement in the latter.</p>
IG	<p>Where a corporate group retains income and profit centres in low-tax jurisdictions for non-tax reasons, it takes steps to demonstrate publicly:</p> <ul style="list-style-type: none"> • That the relevant income or gains should be located and taxed in that low-tax jurisdiction for non-tax reasons • Or that the arrangement is not primarily tax-motivated because its non-tax advantages cannot be achieved in other higher-tax jurisdictions. 	<p>There will be instances, even after substantial progress along the path proposed here, where corporate groups retain income and profit centres in low-tax jurisdictions for non-tax reasons.</p> <p>Groups may argue, for example, that non-tax reasons require them to put financing instruments and treasury entities providing intra-group loans or tax-deductible equity¹⁹ in locations where the corresponding returns on the loans or shares receive low or no tax: non-tax reasons such as capital controls in other operating jurisdictions, or access to particular capital markets to raise third-party finance. Or they may argue that the assets and income should be located and taxed in that low-tax jurisdiction because that is where they are really located and generated. In such cases the tax-responsible company will accept the burden of proving the non-tax necessity of the relevant arrangement.</p> <p>A corporate group can discharge that burden by showing that the relevant income or gains <u>should legitimately</u> be located and taxed in that low-tax jurisdiction because (for example) that is really where the relevant technical expertise / personnel are located, or genuinely where a patented invention was developed.</p> <p>Alternatively it can discharge the burden by showing that the non-tax advantages of the relevant arrangement cannot be obtained in any high-tax jurisdiction where the company operates. Taking this approach, a European MNC that routes an investment in a South American country via a British Virgin Islands holding company ostensibly to protect its South American assets against expropriation will have to show that similar legal protection cannot be obtained by locating the holding company in London, the relevant South American capital, or elsewhere.</p>

2. PUBLIC TRANSPARENCY AND REPORTING

The tax behaviour of many MNCs remains largely invisible to many stakeholders (beyond revenue authorities) who have legitimate reasons to scrutinise it: from analysts reporting on tax risks for potential investors, to the company's own employees seeking information about the group's global allocation of profits in negotiating wage agreements. In many cases this opacity is not a deliberate attempt to maintain secrecy, but rather the product of consolidated accounting, the absence in many jurisdictions of statutory requirements for companies to file publicly available accounts, and divergences between financial reporting accounting and tax accounting.

There is nothing inherently illegitimate about consolidated accounts and financial reporting standards but this opacity can hinder a company from publicly justifying its own tax behaviour (for instance, better disclosing its use of statutory tax incentives may allow a company to dispel allegations of tax avoidance, showing the legitimate reason for low tax charges). It also disadvantages poorer countries' revenue authorities,

whose relatively limited networks of information-exchange agreements may mean that they have to rely on public information channels to obtain tax and accounting information from other key jurisdictions.

Assessing the reasons for a company or group's tax position requires seeing in detail the two primary drivers of its tax liability:²⁰ (i) how it apportions its income and profits in each jurisdiction, and (ii) how it accounts for the difference between its annual income/profits and its tax charge in each jurisdiction.

As with Proposition 1, the precise data and formats in which a company or group publishes this information will vary according to the needs of different stakeholders, from investors to employees. A tax-responsible company will therefore work with those stakeholders to **progressively improve** its disclosures.²¹ Recognising legitimate concerns about disclosing some data to competitors, a tax-responsible company will be able to justify each specific non-disclosure individually, and show that it does not provide such information piecemeal in other contexts or jurisdictions, such as in the course of investor relations.

PROPOSITION 2: A tax-responsible corporate group will seek to publish, in an open data format, information that enables stakeholders in every jurisdiction where it has a subsidiary, branch or tax residence to see how its taxable income,²² profits²³ and gains are calculated and internationally distributed; and to understand all significant determinants of the tax charge on those profits.

It will work with customers, employees (including trade unions), legislators and civil society to determine what information needs to be provided to fulfil this goal, and how. In this process it will justify the withholding of any specific piece of tax-related information requested by stakeholders, rather than placing the burden of justification on its stakeholders.

	Example behaviour	Commentary
2A	<p>A corporate group adopts the OECD BEPS country-by-country reporting template before it is statutorily required to do so, and commits to publishing it in its entirety.</p>	<p>In some cases, statutory regulators will define reporting formats that can be adopted beyond the boundaries of statutory requirement, bringing added benefits of comparability between companies. If, for example, OECD member states adopt as a legal requirement the (non-public) country-by-country reporting template currently under development in the BEPS process, companies should use it publicly, and in non-OECD jurisdictions too.</p> <p>First-movers on comprehensive country-by-country reporting are likely to be publicly applauded by advocates of tax transparency – from civil society to the investment community – helping to build a company’s reputation for responsibility and good governance.</p>
2B	<p>A corporate group publishes, for each jurisdiction where it is liable for tax, a list of tax incentives and reliefs (both statutory and discretionary) which contribute either to a significant difference between the company’s accounting profit and taxable profit in that jurisdiction; or a significant reduction of the effective tax rate on the company’s taxable profits in that jurisdiction; or a significant reduction in the company’s liability to other taxes (e.g. VAT or excise tax).</p>	<p>While statutory frameworks such as country-by-country reporting may provide useful common templates for public transparency, tax responsibility ‘beyond compliance’ will mean that tax-responsible companies will also progressively develop their disclosure of other data legitimately demanded by stakeholders; for instance, undisclosed tax holidays or incentives, which are not typically included in country-by-country reporting templates for tax authorities (because those authorities will already be aware of the incentive) but which are not currently available to the public.</p> <p>Recent high profile cases – such as LuxLeaks – showed national governments engaged in what is perceived by the public to be unfair tax competition. Public demands for disclosure of more information so that governments can be held to account for their tax policymaking translates into risks (and opportunities) for companies.</p>
2C	<p>A corporate group publishes basic statutory accounts for every subsidiary, branch or joint venture, whose tax accounting should include pre-tax profits, a clear reconciliation between accounting profits and taxable profits, and a clear reconciliation between the nominal tax rate on taxable profits and the effective tax rate.</p>	<p>Almost all MNCs operate in some jurisdictions where they have to publicly file statutory accounts, including many European jurisdictions. Such statutory requirements do not appear to be fundamental barriers to companies investing and operating in those countries. Following the basic principle that a tax-responsible company will be able to justify all parts of its tax behaviour to its public stakeholders and to tax authorities, it will apply the highest transparency standards that it meets in any jurisdiction to its operations in all jurisdictions, and avoid reliance on particular jurisdictions’ corporate secrecy or lower standards of corporate governance.</p> <p>Preparing statutory accounts for all subsidiaries, branches and joint ventures (JVs) may generate additional costs (though most subsidiaries might at least already be expected to prepare basic, non-public management accounts to enable directors to fulfil their statutory duties). A corporate group will obviously assess these additional accounting costs. Under the kinds of impact assessment envisaged under Proposition 6 (below) they may also assess the benefits of greater public and governmental trust in the integrity of a group’s financial position and tax behaviour, which may increase sales, improve customer loyalty, reduce tax authority challenges, or even qualify the company for government contracts. This broader cost-benefit analysis may lead them to accept increased accounting demands.</p>

2D	A corporate group publishes the full group structure, including indirectly and jointly-owned entities, and an explanation of the activities and functions of every subsidiary, branch or joint venture located in a low-tax jurisdiction.	<p>Related to Proposition 1, a tax-responsible company will be able to positively justify the retention of assets, income and activities in low-tax or secrecy jurisdictions.</p> <p>Though preparing this information carries some costs, in practice some (highly popular) headquarter jurisdictions, such as the UK, already require corporate groups to prepare e.g. lists of subsidiaries and JVs.</p>
2E	A corporate group discloses the size and key details of any ‘uncertain tax position’ which its advisors believe a revenue authority is at significant risk of successfully challenging,²⁴ and identifies where such uncertain tax positions arise in connection with tax risk factors introduced pursuant to tax planning.	<p>Stakeholders, particularly investors, benefit from seeing the level of tax risk involved in a company’s tax behaviour; not only to identify potential reputational or regulatory risks from aggressive tax behaviour, but to assess tangible financial/cash-flow risks from such behaviour. If there are legitimate reasons for uncertainty in a company’s tax position, a tax-responsible company will be able to justify it, not least to its investors reading its accounts or annual report, and distinguish it from uncertainty arising from tax planning or avoidance.</p>
2F	A corporate group publishes any company-specific tax rulings it has obtained from tax authorities.	<p>Like tax incentives and tax holidays, discretionary or company-specific tax rulings can form the basis for tax avoidance and otherwise undermine the tax base of other countries without the tax advantage being apparent to other revenue authorities or to the public. The EU is developing a framework for such rulings to be automatically transmitted to other jurisdictions, and the Netherlands has considered doing so with developing countries through its tax treaty network.²⁵ In line with the general principle that tax-responsible companies will be able to justify the key determinants of their tax position to public stakeholders as well as to revenue authorities, a tax-responsible company should be able to publish such rulings.</p>
2G	A corporate group works with other companies towards publishing some or all of its annual tax return in each jurisdiction where it submits a tax return.	<p>The most straightforward, cost-effective way for a company to fulfil its tax transparency commitments may ultimately be to publish the parts of its annual tax return that show all the main elements determining its tax charge. The UK House of Lords’ Economic Committee, for instance, has recommended that large UK firms publish their UK tax returns, and that the UK government consider requiring such firms to publish at least a pro-forma summary.²⁶</p> <p>This is, of course, currently a challenging standard for companies to meet, raising considerable concerns about commercial confidentiality and competitive disadvantage. To overcome such concerns, tax-responsible companies might work with other companies, policymakers and other stakeholders towards sector-wide disclosure, perhaps also with a time-lag.</p>
2H	A corporate group provides the same information in all jurisdictions about its income, payroll, assets and profits that it provides openly in other jurisdictions – such as to investors or in statutory public accounts.	<p>A common disclosure standard across all jurisdictions means that commercial confidentiality and some jurisdictions’ weaker financial disclosure standards are not used to selectively withhold information from stakeholders. Where competitive disadvantage and commercial secrecy are particularly acute in some jurisdictions, a tax-responsible company will proactively explore workarounds in consultation with stakeholders: such as releasing some sensitive information with a time-lag.</p>

3. NON-PUBLIC DISCLOSURE

To adequately examine the tax arrangements of MNCs, revenue and judicial authorities require tax and financial information from jurisdictions outside their own. In practice, the access of different countries' authorities to such information varies widely according to staff capacity, a country's access to treaty networks and other information-exchange mechanisms, and the corporate/financial secrecy of other jurisdictions where its corporate taxpayers operate.

The authorities of poorer developing countries are at a disadvantage compared to wealthier ones in most of these areas. In addition, while many companies pursue close and pro-actively compliant relationships with revenue authorities, others may play 'cat and mouse', only disclosing information to them – particularly from foreign jurisdictions – after administrative or judicial compulsion. By taking a proactive and transparent approach to non-public disclosure, companies can help to free up the resources of stretched revenue authorities to review and investigate the practices of other taxpayers.

PROPOSITION 3: A tax-responsible company or group agrees that, in principle, it will make available any information within the group to revenue, judicial or law enforcement authorities in any jurisdiction where it operates. It will go beyond statutory disclosure requirements, working with tax authorities in poorer developing countries where it operates to identify what information they need: not only to respond to those authorities' current information needs, but to alert them proactively to tax events and transactions of interest.

3A	A corporate group provides the entire country-by-country reporting (CBCR) mandated by the OECD BEPS project directly to the tax authorities of any country where it has a subsidiary, taxable branch or tax residence – even if this is not required by OECD standards.	<p>The limited tax information-exchange networks of some countries – particularly smaller developing countries – may make it difficult for their tax authorities to obtain the full CBCR ‘master file’ through information-exchange if this is the dissemination mechanism recommended by the OECD. Tax-responsible companies can act in good faith by providing the ‘master file’ directly, and thereby help disadvantaged revenue authorities to overcome this deficiency.</p>
3B	A corporate group notifies tax authorities about significant transfers of interest in any subsidiary company or other significant asset, even when the transfer is indirect and takes place in another country or territory.	<p>When assets such as mines or factories are owned offshore, tax authorities – particularly in poorer developing countries – often find it difficult to determine when they change ownership, generating a gain which might otherwise be taxable in their jurisdiction. Voluntary notification will help tax authorities to assess particular companies’ tax liabilities, and also help governments more generally to develop tax policy on indirect transfers of assets, identified by the IMF and others as a significant source of potential lost revenue for many developing countries.²⁷</p>
3C	A corporate group voluntarily provides the tax authorities of every jurisdiction where it has a subsidiary, taxable branch or tax residence, with a schedule of the whole group’s significant related party transactions and details of intra-group royalty agreements.	<p>While tax authorities can often require schedules of related-party transactions involving their own jurisdiction, tax authorities often find it difficult to access information about intra-group payments in <u>other</u> jurisdictions that have an impact on their own tax revenues. A simple example is treaty-shopping: where a payment is made to a jurisdiction exempt from withholding tax, while a matching payment out of that jurisdiction, which could identify the transaction as treaty shopping, remains undisclosed to the first country’s authorities. <u>Global</u> schedules of groups’ related-party transactions could also help under-resourced revenue authorities to better target resources in their enquiries on transfer pricing and a range of other tax issues.</p>
3D	A corporate group voluntarily discloses to tax authorities any filing position where advisors believe there is a material probability of it being unsuccessful.	<p>As with the public reporting of uncertain tax positions already required in some jurisdictions (above), non-public disclosure to revenue authorities can help them to target investigative resources and provides a disincentive to aggressive tax behaviour.</p>

4. RELATIONSHIPS WITH TAX AUTHORITIES

Large companies often enjoy advantages of both power and capacity over the revenue authorities seeking to tax them, particularly in poorer developing countries. In an era of growing 'cooperative compliance' and 'enhanced' revenue authority relationships with large taxpayers, such power and

capacity can be deployed to support the capacity of countries' tax authorities and the integrity of their tax systems, or to undermine them: for instance through negotiating special tax treatment which may provide an unfair competitive advantage, or through 'poaching' revenue staff into their own tax functions (a dramatic problem in some poorer developing countries where trained tax professionals are in incredibly short supply).

PROPOSITION 4: A tax-responsible company or group will progressively increase the transparency of its relations with the tax authority in every jurisdiction where it operates. It will seek to be treated as a taxpayer like any other, putting in place clear boundaries in any tax negotiation or dispute resolution to ensure that it does not use its economic or political power to obtain preferential or extra-statutory treatment in tax rulings or settlements. It will seek to boost the capacity of revenue authorities in poorer countries through positive and proactive disclosure and cooperative working practices, and will not undermine revenue authorities' capacity or independence through the hiring practices of its tax function.

	Example behaviour	Commentary
4A	A corporate group publishes the outcomes of any significant tax settlement with revenue authorities.	<p>Publishing details of significant tax settlements would help demonstrate publicly that laws and procedures governing such settlements were being followed, and that tax-responsible companies were not securing 'sweetheart deals' or getting special treatment. This type of disclosure will help companies working to restore public trust – both in business and in revenue authorities.</p> <p>Routine publication would undoubtedly be a significant departure from current practice, and invokes concerns regarding taxpayer and commercial confidentiality: revenue authorities generally keep such settlements confidential, and are in many cases bound by law to do so. Taxpayers, however, can waive their own anonymity where appropriate, and where such transparency will not be abused. Indeed details of some settlements have already effectively been disclosed, for instance, in the case of several large (and in practice identifiable) settlements reviewed by the UK Audit Commission.²⁸</p>
4B	A corporate group makes public, to the extent legally and practically possible, the decision of any adjudication or arbitration to which it, or any of its subsidiaries, is a party, undertaken to resolve a tax dispute, whether in a court or in an arbitration setting.	<p>Resolving unsettled disputes between corporate taxpayers and tax authorities increasingly happens outside court settings, particularly where it involves more than one tax authority and the taxpayer invokes the growing number of arbitration clauses in tax treaties. While there may be advantages to arbitration, as with tax settlements, a key challenge it presents is a potential lack of accountability about how both taxpayer and tax authorities have behaved over disputes often involving millions of dollars of tax revenues (especially in the case of transfer pricing disputes).</p> <p>A voluntary commitment to publishing the results of arbitration, where it is used as an alternative to court, would compensate for this potential accountability deficit and help to build the reputation of a company among its stakeholders as a transparent and responsible taxpayer.</p>
4C	A corporate group commits not to use economic or regulatory threats – such as the threat to withdraw investment from a country, exempt itself from a regulatory code, to seek to influence the outcome or tax negotiations or settlements with revenue authorities.	<p>Companies can use their economic or political power as a bargaining chip in tax settlements.²⁹ Tax-responsible companies will not seek to hold governments to economic or political ransom in this way, particularly those of poorer developing countries.</p>
4D	Within the boundaries of applicable labour law, a company works with other large companies in its sector to develop a code of conduct on tax staff hiring, committing not to employ revenue authority staff over a certain level of seniority, previously involved in tax audits, or previously involved in negotiating tax settlements or rulings with the company, for a set period after their service with the revenue authority.	<p>In many countries there is perceived to be a 'revolving door' between revenue authorities and large companies (particularly advisory firms). This can lead to accusations of undue influence and concerns about the 'poaching' of valuable and expensively-trained staff from already under-resourced revenue authorities in poorer countries. Even the migration of small numbers of staff can have serious impacts in small economies: in Zambia, for instance, as of 2013 a dedicated Mining Tax Unit in the Revenue Authority had only 18 staff to audit a sector with an annual turnover of some US\$10bn.³⁰</p>

5. TAX FUNCTION MANAGEMENT AND GOVERNANCE

A company's tax operation has traditionally had two main functions: (i) providing advice on how the company or group can arrange its affairs to manage and where possible reduce the company's tax liabilities;³¹ while (ii) managing tax risk, seeking to ensure that a company is in compliance with tax

law, and to minimise the exposure of its filing positions to successful tax authority challenge.

Responsible tax behaviour requires a shift in the functions, objectives, policies and working practices of an MNC's tax operation, to ensure that its tax practices pursue the company's broader 'tax responsibility' goals, not just the narrower twin goals of managing tax cost and tax risk.

PROPOSITION 5: A tax-responsible company's tax operations will become a mechanism not simply for reducing tax liabilities while managing tax risk, but also for implementing responsible tax behaviours. This broader function will be implemented through tax policy, and the performance objectives and incentives of tax staff, governance and oversight measures.

	Example behaviour	Commentary
5A	A corporate group develops a corporate responsibility / sustainability-linked tax strategy which is approved at board level, and published.	Board approval of a company's tax strategy will help to ensure that it includes inputs from other parts of the company, and is governed by board members with broader responsibility for considering social responsibility and reputational issues. ³²
5B	A corporate group includes in its tax strategy, and in the performance objectives and incentives of its tax personnel, that it will engage in no tax-related transaction or filing position judged unlikely to succeed; and seeks Board-level approval of any filing position where advisors believe there is a material probability of it being unsuccessful.	Departmental objectives and staff objectives/incentives are vital transmission mechanisms between a 'responsible tax strategy' that looks good on paper, and tax practices 'on the ground'.
5C	A corporate group applies similar measures (to those in 5B) to all its subsidiary-level tax functions, with systems put in place to ensure that local filing positions are scrutinised centrally against tax risk and corporate responsibility objectives, and that the same tax-risk limits will be applied to filing positions in all jurisdictions, including those where the tax authority has less capacity or propensity to scrutinise them.	Tax-responsible companies will apply their tax responsibility principles and practices everywhere they operate, and at a minimum will not take advantage of jurisdictions with less well-resourced revenue authorities or weaker tax governance.

5D	A corporate group includes, as part of the tax manager's job description and performance objectives, reviews of all significant tax-related transactions and business decisions against tax/corporate responsibility objectives.	Corporate responsibility and sustainability professionals may have a broad overview about the social dimensions of tax behaviour, but often do not have the tax expertise required to assess complex tax transactions. Integrating tax responsibility objectives into tax managers' functions, as is already the case with more conventional tax risk, may be more effective.
5E	A corporate group develops secure channels and protection for company staff to highlight negative impacts of the company's tax practices, or non-compliance with the company's own tax/corporate responsibility principles.	The freedom of staff to raise concerns internally and with regulators, and in extreme cases the protection of whistle-blowers, are core backstops for the implementation and accountability of ethical practices of all kinds within organisations. Although taxpayer and commercial confidentiality are particularly strong norms and deserve protection, these should not impede the establishment and maintenance of secure and free channels for raising 'red flags'.
5F	A corporate group seeks to promote responsible tax behaviour and manage the risk of irresponsible tax behaviour in its supply chain through its supplier standards and codes of conduct.	As with other areas of corporate responsibility and sustainability, large tax-responsible companies may have the purchasing power and economic influence to promote responsible tax behaviour across their supply chains. Where this is the case, they may gradually implement tax responsibility standards in supplier agreements and standards, as part of wider risk and impact assessment in supply chains. Some governments, for instance, have already sought (tentatively) to do this in public procurement. ³³

6. IMPACT EVALUATION OF TAX POLICY AND PRACTICE

Most existing proposals for responsible tax practice conceptualise and measure the impact of corporate tax avoidance in terms of tax lost to the public purse and, as a result, the constraints imposed upon government spending to fulfil the human rights of their citizens. The impact on the public purse is indeed a core consideration.

At a more local level the impacts of tax-driven corporate decision-making on human rights and sustainable development may be more wide-ranging. A company hopping from jurisdiction to jurisdiction to chase a string of discretionary tax holidays for example, is less likely to invest sustainably and for the long-term in local infrastructures and economies and less likely to create good quality, highly skilled jobs than companies making more stable, non-tax-motivated decisions about where to invest. The managers of a subsidiary whose profits are artificially depressed by tax-motivated debt financing may use this 'unprofitability' as a reason for reducing employee wages, and local minority shareholders may be adversely affected through reduced distributable reserves. The integrity and governance of a tax system – and therefore the capacity of a government to collect sufficient and sustainable revenues – may be undermined by unaccountable tax lobbying, with impacts on competitors and other taxpayers.

Impact assessment and due diligence (prospective and retrospective) is the key mechanism for the application of responsibility principles to actual business practices, particularly in internationally-agreed standards for businesses to respect

human rights, crystallised in the UN Guiding Principles on Business and Human Rights (UNGPR) which were endorsed by the UN Human Rights Council in June 2011 with the support of major business associations such as the International Chamber of Commerce and International Organisation of Employers. Legal commentators have begun to argue that the obligations set out in the UNGPR should be applied to the impacts – direct and indirect – of a company's tax behaviour on the (particularly economic and social) rights of its stakeholders, from employees and consumers to the citizens of countries where it does business.³⁴ If we are to take this argument seriously, then having systems for assessing the impact of a given tax-driven decision on tax revenues, broader socio-economic effects, and ultimately the human rights of workers and citizens, is as relevant and important a tool for companies implementing tax responsibility as it is for companies knowing and showing that they respect human rights in their supply chains and core business operations.

In practice, establishing such impact assessment procedures and systems is in its infancy for almost every area of corporate responsibility, including the area of human rights due diligence. Designing and implementing such systems will be a challenging but important journey for a tax-responsible company, and will require a great deal of innovative work. In part, such systems may draw upon tax functions' existing practices for assessing the impact of business decisions on tax liabilities – though these may currently be orientated towards assessing reductions or increases of tax cost, against which they will also have to assess the broader harm done by depriving governments of revenue, and any direct negative impacts of tax-driven business decisions on employees, shareholders and customers.

PROPOSITION 6: A tax-responsible company or group will work to design and build internal systems to assess the impact of any significant tax-advantageous transaction or structure: on the tax charge to the company or group; on the revenue due to different governments; and, in line with the corporate responsibility to respect human rights, on the human rights of employees, customers and other stakeholders.

The company or group will progressively build its capacity to undertake an impact assessment both before a tax-related business decision is taken, and afterwards. As a result, the company or group will ultimately aim to use its impact assessment to make meaningful changes to proposed transactions or structures to mitigate negative impacts of high-risk tax positions. Such impact assessment is done in consultation with relevant stakeholders, including revenue authorities, investors, customers, employees and communities where the company or group has operations.

Where negative impacts are identified, the company or group will ultimately aim to mitigate such impacts on employees, shareholders, customers or government revenues.

	Example behaviour	Commentary
6A	<p>In making a tax-driven business decision (including a transaction or structure undertaken for the purpose of qualifying for a tax incentive), a tax-responsible corporate group will assess the reductions in tax revenue likely to result in different jurisdictions as a result of the new structure or transaction.³⁵ If it leads to a reduction in tax liabilities in a given country larger than a threshold determined by the company and its stakeholders, it will trigger a review. Potential outcomes of this review may range from modifying the transaction, to disclosing it to the appropriate authority and/or oversight body.</p>	<p>Even a company which does not artificially seek to avoid tax will make choices all the time about its transactions and structures; choices that will be partly tax-driven, and which will have quantifiable (and often, in designing the transactions, actually quantified) impacts on the size and distribution of its tax liabilities. To ensure that such choices reflect its tax responsibility principles, a tax-responsible company will ultimately aim to compare the tax revenues foregone by different countries, both richer and poorer, as a result of different filing positions. It will, over time, establish acceptable thresholds and limits for such foregone revenues.</p> <p>Thresholds may have to be context-specific: for instance, countries with lower tax revenues compared to their GDP, or where economic and social rights are less widely fulfilled, may have lower thresholds. Likewise additional care may need to be taken in fragile states to avoid undermining already vulnerable revenues and weak tax governance. Failure to recognise – and to tailor an approach that takes account of – differences in country context leaves a company exposed to risk and may reduce its positive impacts.</p>
6B	<p>A corporate group works to develop methodologies for assessing the socio-economic impacts of major tax-driven business decisions on employees, shareholders, consumers, tax authorities and other stakeholders. It systematically involves those stakeholders in the impact-assessment process, and publicly provides enough details to allow stakeholders to assess the adequacy of the company's response to the particular human rights impact involved.</p>	<p>Human rights impact assessments of tax decisions face a measurement challenge. Solving it will not be straightforward, and part of the practical work of introducing tax responsibility will be to progressively develop ways to measure the impacts of a tax-driven decision.</p> <p>For instance, moving the employment of a factory's managers for tax purposes from the local subsidiary to a 'management hub' in a low-tax jurisdiction will affect a corporate group's tax liabilities and tax payments in several jurisdictions, including that where the factory is located. These can be measured. It may also more broadly dis-incentivise the company from employing local managers, thereby hindering the availability of higher-skilled, better-paid employment to qualified individuals from that country. Such effects may be harder to quantify, but could still be taken into account when determining where management hubs are located and their income booked.</p> <p>Prospectively modelling and retrospectively measuring the impact of structuring decisions on tax liabilities and payments across several different jurisdictions will be complex, though tax function staff may already do so as part of their management of conventional tax risk in many cases. Measuring more direct and local impacts on stakeholders may need the participation and input of affected stakeholders themselves.</p>

7. TAX LOBBYING/ADVOCACY

Any significant taxpayer influences the application of tax rules to their own tax affairs, and the development of the rules themselves. This process of engagement is legitimate: taxpayers are, after all, the key stakeholders for tax rules and their implementation.

It can be corrosive to the integrity and governance of tax systems, however, as well as anti-competitive, when some taxpayers are disproportionately powerful and use that power to shape the rules to their particular benefit. Rules may be shaped against the interests of an equitable and administrable tax system, and the willingness of other taxpayers to comply

with the tax system may be undermined, particularly where the process and details of policymaking or discretionary tax treatment are kept confidential.

As with tax incentives (Proposition 8, pp. 32-33), responsible engagement with the tax system and tax policy involves pursuing a level playing field with other taxpayers, regardless of position and power. This basic principle should be applied across access to tax law-making and revenue authority policymaking, company-specific tax treatment and negotiations over tax settlements (addressed in Proposition 4, pp. 24-25), and restrictions on the application of tax law to a company's tax affairs such as stabilisation clauses in investment agreements with poorer developing countries.

PROPOSITION 7: A tax-responsible company is transparent in its advocacy to tax lawmakers and policymakers, and does not seek special access to tax policymaking or law-making that is not accorded to other groups of taxpayers. In the course of its advocacy it seeks to have its tax bill determined by the statutory tax regime applicable to any other similar taxpayer. It actively seeks to unwind any existing company-specific restrictions placed on governments' application of their domestic tax laws to its tax affairs, especially in investment agreements with poorer developing countries.

	Example behaviour	Commentary
7A	<p>A corporate group commits not to seek stabilisation clauses in new investment agreements and treaties it concludes with developing countries that constrain those countries' tax policymaking. It negotiates with developing country governments over time to incrementally remove stabilisation clauses applicable to tax in existing agreements and treaties.</p>	<p>Preferential or 'stabilising' tax clauses in company-specific investment agreements between large companies and governments can distort competition, impede the entrance of new investors, and undermine the democratic right of legislators to make tax policy – all of which translates into risks for business and the business-enabling environment. They are often not published, making their impact impossible for lawmakers or other observers to assess. They may in practice bind governments' corporate tax policies for decades, making it difficult for those governments to respond to what may be dramatically altered fiscal circumstances. It will, of course, take time and renegotiation to remove such clauses, as they are often embedded in legally-binding contracts and agreements.</p>

<p>7B</p>	<p>A corporate group publishes details of all meetings it or its representatives have with lawmakers, government and inter-governmental officials regarding changes to national or international tax rules and policies (where details of these meetings are not already published by governments or lawmakers). It also publishes all submissions it makes to those governments and inter-governmental bodies regarding such tax rules and policies.</p>	<p>Corporate taxpayers' engagement in tax policy processes is legitimate; but transparency promotes honesty and fairness by taxpayers and policymakers in the course of their engagement, enabling legislators, citizens and others to see that some taxpayers' views are not disproportionately reflected either in their own tax treatment or in the development of tax rules themselves.</p>
<p>7C</p>	<p>A corporate group commits not to lobby governments to conclude tax treaties particularly advantageous to its own business or structure.</p>	<p>Governments often consult businesses, as taxpayers, on tax treaty priorities. This is uncontroversial. However, there are also occasions when a single powerful group or sector may proactively lobby for a tax treaty which is specifically advantageous to them. As a result, countries, particularly those with small, capital-importing economies, sometimes negotiate tax treaties with a small group of specific investors in mind, or even at their behest, and may open up loopholes that can then be exploited by other groups and investors. Where this happens, it can fundamentally distort international investment decisions, skew countries' access to investment, and even raise the cost of that investment. 'Locking-in' the tax policy of a country for the advantage of a minority of taxpayers in this way is poor policymaking. Investment is optimised in the long term where all investors can access a market on a level playing field without the distortion of an unbalanced tax treaty network.</p> <p>Tax-responsible companies will therefore not seek to skew international tax laws for their own benefit, and to the detriment of other investors or competitors.</p>
<p>7D</p>	<p>A company or group publishes annual details of all donations and contributions it makes to governments, and all donations and contributions it makes to other tax policy influencers (lobbyists, think-tanks, NGOs, business associations).</p>	<p>Making lobbying and advocacy accountable requires stakeholders to be transparent not only about lobbying and advocating directly, but about funding and deploying influencers on their behalf.</p>

8. TAX INCENTIVES

While tax incentives as a whole may have a range of positive and negative effects, discretionary, non-public and company-specific tax incentives can distort markets, undermine democratic tax policymaking, and provide opportunities for corruption. In addition, national and international policymakers are coming to agree that excessively wide tax exemptions and blanket tax holidays can dramatically undermine public revenues, particularly in poorer developing countries (in some cases foregoing revenues equivalent to several percent of GDP), without commensurate benefit in terms of investment, employment and economic activity.³⁶

Some prospective investors may argue that certain company-specific tax incentives are essential to the viability of

investments in developing economies – in which case there is no reason why they should not be available to all taxpayers, rather than only to particular investors.

Of course, tax incentives remain part of sovereign government tax-policymaking: corporate taxpayers, however influential, cannot take entire responsibility for them. But tax-responsible companies can make choices about which incentives, and incentives processes, they pursue; particularly those outside statutory, universally available reliefs and exemptions. For instance, they can choose not to participate in and sustain opaque and extra-statutory processes for awarding incentives, or abstain from seeking company-specific incentives that provide an unfair competitive advantage.

PROPOSITION 8: A tax-responsible company or group seeks a tax-level playing field: to be treated under a country's tax regime like any other, similar corporate taxpayer.

It establishes rules and frameworks for identifying and using tax incentives and reliefs offered by governments, which require the tax incentives and reliefs it uses to be available to its competitors on the same terms, approved by legislators, and disclosed to the public. It will progressively seek to reduce its use of tax incentives that are not publicly disclosed, have not been agreed by legislatures, and are not available to competitors.

	Example behaviour	Commentary
8A	A corporate group commits not to request or use company-specific tax incentives.	Individual companies cannot be held solely responsible for government tax policies. But companies do influence tax incentive regimes, and sometimes negotiate directly with finance ministries and investment agencies to create and exploit company-specific tax incentives and reliefs. In view of their negative impacts on government revenues, distorting investment patterns and tax policy governance, corporate tax responsibility will – for a tax-responsible company – address the disclosure and (over time preclude) the use of such company-specific incentives and reliefs.
8B	A corporate group publishes all tax incentives, reliefs and rulings it currently enjoys in any jurisdiction where it operates – ranging from investment certificates granting tax holidays, to company-specific tax rulings – and the impact of each on the company’s tax charge.	<p>Tax incentives and arrangements can have a significant bearing on a company’s tax charge. Publishing information about them will therefore help to mitigate the risk of a company being perceived to be – or accused of – avoiding tax (see Proposition 2).</p> <p>Investors too are increasingly calling for information about incentives and arrangements to be disclosed, so that they can assess the viability of businesses – not least their ability to remain profitable in the event that significant incentives or arrangements are challenged or unwound.³⁷</p> <p>Publishing information about the use and impact of incentive arrangements also enables policymakers and the public to quantify government tax expenditures, providing vital information to inform the policymaking and legislative process surrounding tax incentives.</p> <p>A tax-responsible company will make disclosure of incentives and arrangements part of its public transparency on the determinants of its tax charge.</p>
8C	A corporate group audits its use of tax incentives and reliefs on a regular basis to ensure that it has delivered the required investment, employment or other input, even where such inputs are not audited by the tax authority or finance ministry.	Tax incentives and reliefs are obviously designed to attract particular economic activities, employment and investment. Their use is sometimes contingent on the taxpayer delivering a specific amount of foreign investment, new jobs, R&D, and so on. Governments, particularly poorly-resourced ones, sometimes lack the will or capacity to ensure that such conditions are actually fulfilled. Tax-responsible companies will themselves take responsibility for doing so.

Q&A: What we're asking of companies and what we're not

Some of the propositions and example behaviours discussed are already being implemented by some MNCs. Several, indeed, are already legal requirements in some jurisdictions. Several, though, are likely to be significant departures from current practice for most MNCs and, like any challenging new area of CSR, are likely to raise understandable questions about confidentiality, costs, and competitiveness. It is useful, therefore, to tackle some key limits and potential misconceptions of what we are proposing.

Are we suggesting that companies should artificially 'maximise' their tax liabilities in higher-tax jurisdictions, or make 'voluntary' tax payments?

No. We are not advocating that a company should make voluntary tax payments or take artificial steps inconsistent with the reality of its operations – for instance, artificially increase the value of its sales in high-tax jurisdictions; or physically move its headquarters from, say, the Netherlands to France or India. We expect that some of the propositions and example behaviours will result in increasing a company's tax bill, and some will result in shifting the geographical distribution of a company's tax bill without increasing it overall. Indeed, if the behaviour changes that we are proposing do not result in more tax being paid in some circumstances, then we will not have achieved our overarching objective of making more public revenues available for the fulfilment of economic and social rights, particularly in developing countries.

However, these outcomes will arise not because of artificially 'maximising' tax liabilities, but rather because the company will be making more responsible choices – within the range of options that is available to it, at a given level of tax risk – about how it books taxable income and gains, and how it calculates its tax liabilities. This reflects the current reality of tax rules and laws, which do not simply mandate a single unalterable figure for 'tax due'. Any multinational corporate taxpayer may perfectly legally situate their tax position within a range of possible liabilities. If this is true even for the basic pricing of intra-group transactions, which can vary within legally ordained limits by hundreds of millions of dollars,³⁸ then options for structuring transactions, assets and subsidiaries provide an MNC with an even greater range of

possible tax positions. This situation may be constrained by forthcoming international tax reforms, but is very unlikely to be eliminated altogether. Greater tax responsibility may therefore move companies' filing positions within the legal range consistent with its operations, but does not require artificial behaviour or voluntary tax payments.

If a tax incentive or relief, or a particular tax structure, is necessary to make a new investment viable, then if a company refrains from pursuing such incentives or such a structure for new investments, won't they put those investments at risk?

We are not suggesting that tax incentives or reliefs offered by governments are universally negative, nor that companies should voluntarily refrain from claiming tax reliefs.

Rather, we propose that responsible companies should progressively seek to improve the effectiveness and accountability of tax incentive regimes in collaboration with governments, particularly by only pursuing incentives that are publicly transparent, approved by legislatures, and available to competitors; and by making data available for governments and external stakeholders to assess the revenue and economic impacts of incentives and reliefs.

Work by the IMF, governments, economists and campaigners suggests that the revenue losses from many poorly targeted or excessively wide incentives are not in practice compensated by additional jobs, investment or economic activity; and that this poor targeting or excessive latitude is sometimes perpetuated by lack of scrutiny when tax incentives are discretionary, non-public, and their impacts not assessed by companies or governments.³⁹ Incentives specific to particular companies, meanwhile, can skew investment, provide opportunities for corruption, and are hard to justify in terms of making investments viable – if an incentive or relief is required to make the return on an investment acceptable, it should be available to all potential investors without discrimination.

Shouldn't it be up to governments to fix some of the dysfunctions of the tax system, not taxpayers voluntarily refraining from or pursuing particular behaviours?

We firmly believe that the basis of a fairer, better-functioning tax system is reform of tax laws and standards, both domestic and international. Government-led reform is the primary focus of all the organisations responsible for producing this document. But as we describe above, any international tax system will, almost inevitably, allow transnational taxpayers to choose their tax positions to some extent, even at a particular level of tax risk. Within any tax regime, taxpayers will always have choices to make, which to some extent invoke responsibility and ethics.

More practically, governments' efforts to tax are often constrained by: capacity in the case of many poorer governments; existing frameworks of tax treaties and international standards that cannot be changed overnight; and in some cases by inequalities of power, or an absence of political will. Governments' inability or unwillingness to fix problems does not justify private entities ignoring the negative impacts of their activities, in tax as in any other area of social responsibility. Just as a clothing manufacturer should not be exempt from providing decent working conditions to its workers even in countries without a minimum wage or legally protected labour rights, so corporate taxpayers cannot be exempt from the consequences of the tax-behaviour choices they make within an inadequate and imperfect tax system.

If more responsible companies make voluntary disclosures or change their tax behaviour without their competitors being required to do so, do they risk losing competitive advantage?

As already explained, some of the example behaviours will inevitably generate some costs: costs of compliance, indirect costs created by releasing information useful to competitors, or even greater tax liabilities in some cases. Such behaviours may also generate benefits, though, which are not so often measured, and which corporate taxpayers may decide balance their upfront costs. For instance, greater disclosure of an MNC's tax affairs may increase the trust that regulators have in the integrity of the group's financial position and tax behaviour. This may ultimately reduce other costs, such as the costs of poorly informed tax authority challenges to ultimately correct tax positions. Or it may improve a company's public reputation, brand value and customer retention. These are just some examples of the business case for tax responsibility, also discussed in Section 1 of this paper.

Such broader cost-benefit analysis, indeed, may explain why corporate tax behaviour and disclosure already varies widely, with some companies choosing rationally to accept 'voluntary' costs or sensitive disclosures beyond those made by their competitors: as, for instance, when Barclays Plc voluntarily undertook some public country-by-country reporting in 2014, a year ahead of the statutory requirement to do so under the EU Capital Requirements Directive IV.⁴⁰

Conclusion: What next?

For too long, the debate about the responsible – and irresponsible – tax behaviour of multinational companies (MNCs) has focused on what companies should avoid doing in order to be responsible. This, and a host of other factors, has left the debate somewhat deadlocked in disagreement about definitions of, for example, 'tax avoidance', 'tax havens' and how to draw the line between acceptable and unacceptable corporate tax practices.

With this discussion paper ActionAid, Christian Aid and Oxfam seek to advance the debate by focusing on 'what good looks like' within key issue areas of corporate tax behaviour. We seek to dispel myths on both extremes of the spectrum: the argument, on one end of the spectrum, that mere compliance with the law is enough to be 'tax responsible', and, on the other end, that the way forward for companies wanting to be responsible on tax is clearly marked and paved.

The reality is more complex. Tax-responsibility is more than the amount of tax paid at year end, and by no means a clear-cut state of grace which companies can attain short-term. Nor is it a one-size-fits-all for all companies across industries. However, there are multiple concrete steps companies can take today that will put them on a path to tax-responsibility – the test of which is ultimately how well corporate tax behaviour contributes not only to profit maximisation short term, but also how well it contributes to global and corporate sustainable development longer term.

We therefore propose that it is more helpful to think about tax-responsibility as an ongoing process of transparency, assessment, and progressive and measureable improvement in dialogue with a broader range of stakeholders than merely revenue authorities.

To promote discussion and action, we have outlined a range of propositions and example behaviours that can benefit both companies and (not least, developing) countries in the short and long term within eight key issue areas of responsible corporate tax behaviour: 1) tax planning practices; 2) public transparency and reporting; 3) non-public disclosure; 4) relationships with tax authorities; 5) tax function management and governance; 6) impact evaluation of tax policy and practice; 7) tax lobbying/advocacy; and 8) tax incentives.

The propositions and example behaviours are not intended to be exhaustive and will not necessarily be relevant or applicable to all MNCs. They are 'directions of travel' and not turn-key technical suggestions ready to be implemented straight into corporate tax policies and practices. Lots of work and dedication will be required by companies and their stakeholders to get tax responsibility right.

The mission to achieve 'responsible corporate tax behaviour' will be a challenging but necessary journey which involves a change of culture and capabilities around tax in most MNCs. Without this, even the best of international tax reform is unlikely to succeed in improving the sustainability and inter-nation equity of corporate tax behaviour impacts which both businesses and citizens depend on in the long run. Responsible companies committed to sustainable development and long-term business success will start thinking, acting and talking about this now. And many stakeholders – including our organisations – are interested and willing to engage further with companies on this important agenda.

Annex A

How our approach corresponds to elements of the corporate responsibility to respect human rights (UNGP Pillar 2)

Key principles A tax responsible company:	Key issue areas	Corporate responsibility to respect human rights, including but not limited to:
Transparency Is radically and proactively transparent about its business structure and operations, its tax affairs and tax decision-making	All: 1. Tax planning practices 2. Public transparency and reporting 3. Non-public disclosure 4. Relationships with tax authorities 5. Tax function management and governance 6. Impact evaluation of tax policy and practice 7. Tax lobbying/advocacy 8. Tax incentives	<ul style="list-style-type: none"> • Having a publicly available human rights policy approved at the most senior level of the business enterprise (UNGP 16 a) • Communicating how human rights impacts are addressed (UNGP 17)
Assessment Assesses and publicly reports the fiscal, economic and social impacts (positive and negative) of its tax-related decisions and practices in a manner that is accessible and comprehensive		<ul style="list-style-type: none"> • Assessing actual and potential human rights impacts (UNGP 17)
Progressive and measurable improvement Takes steps – progressively, measurably and in dialogue with its stakeholders – to improve the impact of its tax behaviour on sustainable development and on the human rights of employees, customers and citizens in the places where it does business.		<ul style="list-style-type: none"> • Avoid infringing on the human rights of others (UNGP 11) • Addressing’ adverse human rights impacts with which the business is involved (UNGP 11) • Integrating and acting upon findings of human rights impacts and tracking responses (UNGP 17) • Engaging in remediation (UNGP 22): • Provide for or cooperate in remediation through legitimate processes

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This discussion paper is endorsed by IBIS, a Danish non-governmental organisation that is working actively on responsible corporate tax policy and practice, including through engagement and dialogue with Danish companies and investors in The Tax Dialogue, a multi-stakeholder forum for debate and discussion on this issue. IBIS is in the process of becoming a member of the Oxfam confederation.

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1. Applying a 'development lens' to tax responsibility might, for example, demand a greater focus on a company's pursuit of, and use of, discretionary tax incentives, rather than on its tax structuring within statutory tax regimes. Equally, where a choice between two different tax positions may – overall – be tax-neutral for the company, but will lead to a different geographical distribution of tax liabilities, a 'development lens' to tax responsibility may mean choosing the position that allocates higher value functions and thus taxable profits and activities in developing countries.
2. Figures from 2012; IMF Policy paper: Spillovers in International Corporate Taxation, (9 May 2014), p.7, figure 1.
3. See IBA Report; Report of the UN Special Rapporteur on Extreme Poverty and Human Rights.
4. The "corporate responsibility to respect human rights" is drawn from existing international human rights law and is explained in the UN Guiding Principles on Business and Human Rights (also known as the Ruggie Principles) which were unanimously endorsed by the UN Human Rights Council in June 2011: <http://business-humanrights.org/en/un-guiding-principles/text-of-the-un-guiding-principles>. The Guiding Principles clarify that while States are the primary duty-bearers under international human rights law, all businesses have a responsibility to respect human rights. This entails taking proactive steps to identify, prevent and, if necessary, mitigate any adverse impacts that businesses cause or to which they may contribute. This is known as human rights 'due diligence'. "Respecting human rights" also entails being transparent about how businesses address their human rights impacts and remediate negative human rights impacts. Cf. Annex A to see how the approach to responsible tax outlined in this paper corresponds to elements of the corporate responsibility to respect human rights (UNGP Pillar 2).
5. As articulated in the Lima Declaration on Tax Justice and Human Rights launched in June 2015 by a broad-based group including advocates, practitioners, civil society organisations, academics and jurists. The Lima Declaration on Tax and Human Rights emerged from the international strategy meeting "Advancing Tax Justice through Human Rights," held in Lima, Peru, convened by the Center for Economic and Social Rights, the Global Alliance for Tax Justice, Oxfam, Red Latinoamericana sobre Deuda, Desarrollo y Derechos (LatinDADD), Red de Justicia Fiscal de América Latina y el Caribe and the Tax Justice Network. Full text available at: http://www.cesr.org/downloads/Lima_Declaration_Tax_Justice_Human_Rights.pdf.
6. See, for example: Tax me if you can: game over – turning grey areas into red flags for investors, Kepler Cheuvreux, ESG Sustainability Research, October 2014.
7. Responsible Tax Practice by Companies – A Mapping and Review of Current Proposals, ActionAid, March 2015.
8. For the former, see the CBCR frameworks developed by the OECD's BEPS process and the European Union's Capital Requirements Directive IV, as well as non-governmental initiatives like the Fair Tax Mark. For the latter, see for example the 'hallmarks' established by the UK's Disclosure of Tax Avoidance Schemes (DOTAS) regime.
9. Due diligence – before and after a business decision – is central to rights-based Corporate Responsibility frameworks that emphasise companies' obligations to respect human rights by knowing, showing and addressing actual and potential adverse human rights impacts on rights-holders (see for example OECD Guidelines for Multinational Enterprises incorporating the UN Guiding Principles on Business and Human Rights, and Annex A to this paper). Human rights, and not least economic and social rights, may be affected both by corporate tax behaviours contributing to undermine state revenues needed to finance the fulfilment of those rights, and in some cases caused by the economic fallout of such tax behaviours on investment, employment and prices, as discussed below.
10. As a model, cf. Oxfam's long-term corporate responsibility work on Unilever's supply chains.
11. Changes in domestic and treaty law currently under discussion in the BEPS process, particularly around Action Points 5 and 6, may not eliminate the possibilities of engineering such situations in the future but will likely accelerate their unwinding in some circumstances.
12. The use of the word 'poorer countries' rather than 'developing countries' follows from the observation that some developing countries such as the 'BRICS' (Brazil, Russia, India, China and South Africa) are now major competitors to western economies and are themselves 'headquarter' jurisdictions for MNCs investing in other developing countries; not all developing countries are the same.
14. The term low-tax jurisdiction is used in this paper to mean a jurisdiction where preferential tax rules (of whatever nature) or secrecy provisions may lead to a substantial reduction in the overall amount of corporation tax paid.
15. As in other areas, BEPS proposals under Action Point 6 (Treaty Abuse) may prevent some indirect transactions of this kind; but it will take time for such measures to diffuse through tax treaty networks, particularly in their more comprehensive (e.g. LOB) forms rather than through more interpretable purpose tests.
16. This would not be to require a company to 'elect' to pay capital gains tax artificially in a 'source' country where domestic provision for taxing indirect transfers of assets does not exist, but simply to ensure that such gains are taxable if the country chooses to do so.
17. IMF, Spillovers in International Corporate Taxation (IMF Policy Paper, 9 May 2014), Appendix VI, <https://www.imf.org/external/np/pp/eng/2014/050914.pdf>.
18. 'Amazon starts to book UK sales in Britain', Financial Times, 22 May 2015.
19. For instance, Belgium's notional interest deduction (NID) regime.
20. These two components cover the range of tax transparency items proposed by the 45 sources examined in the ActionAid Mapping Research: profit allocation/country-by-country reporting (recommended by the OECD and many NGOs); enhanced reconciliation between accounting and taxable profits (recommended by several MNCs and tax professionals); and, as part of the previous item, reporting of tax incentives (recommended by several NGOs/civil society organisations).
21. The benefits of broad and proactive stakeholder engagement in this context – helping to rebuild public trust, enhancing corporate accountability and promoting good risk management – are increasingly recognised by businesses, most recently by KPMG in its August 2015 paper on tax transparency: Developing a common framework for disclosing tax information.
22. For gross income taxes such as withholding taxes.
23. For net income taxes such as corporate income tax.
24. Cf. US accounting standard FIN48, which requires company accounts to declare the size of tax positions which the company or its advisors believe the revenue authority is more likely than not to succeed in challenging.
25. See proposals for reforms to the Directive on Administrative Cooperation in the EC's Tax Transparency package released in March 2015: http://europa.eu/rapid/press-release_MEMO-15-4609_en.htm.
26. House of Lords Select Committee on Economic Affairs, First Report of Session 2013-14, Tackling corporate tax avoidance in a global economy: is a new approach needed? (HL Paper 48, 23 July 2013), para. 86.
27. For an illustration of the importance of this issue for many developing countries, see the recent work of the UN Tax Committee's Subcommittee on Extractive Industries' Taxation Issues for Developing Countries (Note by the Secretariat, E/C.18/2014/2, 15 August 2014, http://www.un.org/ga/search/view_doc.asp?symbol=EC.18/2014/2&Lang=En); and for particular problems of information/notification regarding indirect transfers of interest, see the working draft on 'Capital Gains Taxation and Indirect Sales' dated 24 September 2014, circulated by the Subcommittee's coordinator; http://www.un.org/esa/ffd/wp-content/uploads/2014/10/10STM_CRP3_AttachmentB_CapitalGains.pdf. The paper notes that such notifications are already a mandatory requirement in Peru, for instance.
28. National Audit Office (NAO), HM Revenue and Customs: Settling Large Tax Disputes (14 June 2012), <http://www.nao.org.uk/wp-content/uploads/2012/06/1213188.pdf>.
29. See, for instance, the threat made by a major bank to withdraw from the UK's Banking Code of Practice on Taxation for Banks if they were forced to repay interest on avoided tax claimed by the tax authority as part of a settlement negotiation – a threat subsequently taken into account by the tax authority in waiving the interest. UK High Court, Queens Bench Division, [2013] EWHC 1283 (Admin), 16 May 2013.
30. Patrick Nshindano (ActionAid Zambia), presentation to UN Tax Committee, 28 May 2013, http://www.un.org/esa/ffd/wp-content/uploads/2013/05/20130528_Panel1Nshindano.pdf.
31. Or sourcing such advice from external advisers.
32. See, for instance, the governance proposals that form part of the UK government's draft Code of Practice for 'Improving Large Business Tax Compliance' – see https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/447313/Improving_Large_Business_Tax_Compliance.pdf.
33. For example, see the UK Cabinet Office, Procurement Policy Note: Measures to Promote Tax Compliance (Note 03/14), February 2014. Such statutory measures are an initial step, though limited by EU procurement law in particular: Voluntary measures could go considerably further.
34. See, for instance, the International Bar Association, Tax Abuses, Poverty and Human Rights: a report of the International Bar Association Human Rights Institute's Task Force on Illicit Financial Flows, Poverty and Human Rights (October 2013), <http://www.ibanet.org/Article/Detail.aspx?ArticleUid=4A0CF930-A0D1-4784-8D09-F588DCDDFE4> pp.117-125.
35. Some tax advisers have argued that beyond entirely artificial structures and transactions, such 'foregone revenues' cannot easily be measured, since structuring a 'real' business transaction to avoid a tax charge leads to the same tax outcome as if the business transaction had not taken place. See, for instance, the evidence of Bill Dodwell (Deloitte LLP) to the UK Public Accounts Committee (January 2013), arguing that corporate de-mergers designed so that the resulting gains are tax-free are not a real revenue loss to the exchequer, because the de-merger "will not cost tax. If [the group] stayed as they were, they would not pay anything [either]." House of Commons, Evidence Taken Before the Public Accounts Committee, 31 January 2013, <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmpubacc/uc870-i/uc87001.htm>. Nonetheless it is clear that in most cases tax advisers will present a range of possible filing positions to a corporate taxpayer, and be able to quantify the tax liabilities in each case; differences between these tax liabilities will therefore be quantifiable.
36. See, for example, International Monetary Fund (IMF), Revenue Mobilization in Developing Countries (2011), <http://www.imf.org/external/np/pp/eng/2011/030811.pdf>; IMF/OECD/UN/World Bank, Supporting the development of effective tax systems: a report to the G20 (2011), <http://bit.ly/WeS2T9>, pp. 19-20; Alexander Kusamba Dzonzi/Malawi Economic Justice Network, A study on Malawi's taxation system and its implications on the poor (2012), http://www.mejnmw.org/index.php?option=com_content&view=article&id=61&Itemid=219&smallfif=1&dir=JSROOT/Reports&download_file=JSROOT/Reports/Malawi-Taxation-System-Report.pdf
37. See, for example, As investor concerns about tax avoidance hit an all-time high: what do the experts say? Tax specialists gather at a seminar in Paris to discuss an investor response, Sudip Hazra, Kepler Cheuvreux, Responsible Investor, April 2015, https://www.responsible-investor.com/home/article/s_t_p/.
38. As former IRS official Mike Durst has noted, "even in routine situations" corporate taxpayers' transfer pricing documentation can indicate an acceptable inter-quartile arms-length range varying 300% from top to bottom, allowing a U.S. MNC effectively to elect the annual taxable income of a typical manufacturing or distribution subsidiary within an acceptable arms-length range of anything from US\$100 million to US\$300 million. Michael C. Durst, 'Analysis of a Formulary System for Dividing Income, Part III: Comparative Assessment of Formulary, Arm's Length Regimes', Tax Management Transfer Pricing Report, Vol. 22, No. 9, 5 September 2013, p. 5.
39. See, for example, International Monetary Fund (IMF), Revenue Mobilization in Developing Countries (2011), <http://www.imf.org/external/np/pp/eng/2011/030811.pdf>; IMF/OECD/UN/World Bank, Supporting the development of effective tax systems: a report to the G20 (2011), <http://bit.ly/WeS2T9>, pp. 19-20; Alexander Kusamba Dzonzi/Malawi Economic Justice Network, A study on Malawi's taxation system and its implications on the poor (2012), http://www.mejnmw.org/index.php?option=com_content&view=article&id=61&Itemid=219&smallfif=1&dir=JSROOT/Reports&download_file=JSROOT/Reports/Malawi-Taxation-System-Report.pdf
40. Barclays plc, Country Snapshot 2013 (2014), <http://www.barclays.com/content/dam/barclayspublic/docs/Citizenship/Reports-Publications/CountrySnapshot.pdf>.



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