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Tax Justice in Nigeria

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The Public Services International Research Unit (PSIRU) investigates the impact of privatisation and liberalisation on public services, with a specific focus on water, energy, waste management, health and social care sectors. Other research topics include the function and structure of public services, the strategies of multinational companies and influence of international finance institutions on public services. PSIRU is based in the Business Faculty, University of Greenwich, London, UK. Researchers: Prof. Steve Thomas, Dr. Jane Lethbridge (Director), Dr. Emanuele Lobina, Prof. David Hall, Dr. Jeff Powell, Sandra Van Niekerk, Dr. Yuliya Yurchenko

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This briefing paper is in preparation for a meeting, organised by PSI and FES, to be held in Abuja on 23-24 September 2016, which will bring together public and private sector trade unions, as well as civil society allies, to address tax justice issues relevant to Nigeria and plan action.

This briefing provides an overview of:

1. Why is taxation important?
2. Statistics about tax, aid, debt, health, education and agriculture;
3. Tax havens and offshore finance;
4. Tax base erosion and profit shifting, and;
5. Provide commentary on possible ways to deal with tax evasion.

1.0 Why is taxation important?

Taxation is an essential part of a good government. It has four main goals:

- To raise **revenues** for public spending, which can be used to meet the basic needs of population – food, healthcare, shelter, provide quality public services, for example, health, education, economic development stimulus, maintain institutions and governance structures. [1]
- **Redistribution of income** between high and low income groups.
- **Representation** – an effective taxation system enables citizens to feel that they contribute and own public policies. An ineffective taxation system can lead to social exclusion and increasing levels of inequalities.
- **Changing behaviour** of individuals and companies – through taxes that shape or inhibit behaviours, e.g. taxes on alcohol & tobacco, taxes on environmental pollution.

Taxation plays an essential part in supporting the financing of quality public services. Without an effective taxation system, quality public services (QPS) will be inadequately funded and will struggle to meet the needs of the population. There are several issues that need to be addressed through an improved system of taxation: rising inequality and the underfunding of QPS, such as health and social services. The essentials of a good taxation system depend on a progressive taxation system when higher income groups pay more tax than lower income groups. The existence of an effective government tax authority, which is competent to collect taxes is also important. This depends on well-paid tax inspectors, a lack of corruption and transparency of personal and corporate financial information. Cuts in government services often affect the ability of national tax authorities to collect taxes.

The African Tax Administration Forum (ATAF), which was launched in 2009, and currently has 36 members, has an agreement on mutual assistance on tax matters. It allows for cross border assistance

and exchange of information on tax issues and so provides a mechanism which countries can use in dealing with tax evasion. [2] Recent research on taxation in Nigeria has found that tax revenue has an impact on economic development and that tax evasion and avoidance has negative consequences consequently citizens should be encouraged to pay tax. [3] [4]

Table 1: Tax revenue as % of Gross Domestic Product (GDP) 2008-2012

	2008	2009	2010	2011	2012	2013
Africa						
Burkina Faso	-	-	-	-	15.6	
Ghana	13.9	12.6	13.4	14.9	-	
Nigeria		0.3	-	-	-	1.6
Mali	-	-	-	-	13.0	
Senegal		-	-	-	-	19.2
Australia		24.3	22.2	20.7	21.3	
Sweden		21.7	21.7	21.3	21.9	26.1
UK	28.8	25.8	26.7	27.4	25.5	
US	10.4	8.5	9.2	10.1	9.8	

Source: http://data.worldbank.org/indicator/GC.TAX.TOTL.GD.ZS

Table 1 shows tax revenues as a percentage of Gross Domestic Product (GDP) for a group of African countries and high income countries. Nigeria had 1.6% of GDP originating from tax revenue in 2012, which had increased from 0.3% in 2008. There is no regular reliable data. Several countries in West Africa have tax revenues which are between 12% and 20% of GDP. Australia, Sweden and the UK have over 20% of tax revenues as % of GDP but the United States has a relative low percentage of 9.8%. The generation of funds through taxation, which can be used to fund public service infrastructure, is much greater for high income countries than for African countries. Lower levels of funds raised through taxation reduces the funds available for public services and for public service infrastructure.

As well as taxation revenues, countries are also dependent on aid, to varying degrees, although Nigeria is less dependent than many West African countries. However, Nigeria has a much higher government debt to GDP ratio than other West African countries.

Table 2: Net aid received as % of Gross Domestic Product (GDP) 2010-2014

	2010	2011	2012	2013	2014
Africa					
Burkina Faso	11.3	9.4	10.6	8.7	9.1
Ghana	5.3	4.7	4.5	2.8	3.0
Mali	10.6	10.1	8.3	10.9	8.8
Niger	13.1	10.1	13.0	10.6	11.3
Nigeria	0.5	0.5	0.4	0.5	0.4
Senegal	7.3	7.3	7.7	6.8	7.1

http://data.worldbank.org/indicator/DT.ODA.ODAT.GN.ZS

Nigeria received a much lower annual percentage of net aid as a % of GDP then other West Africa countries. In the period 2010-2014, the net aid received by Nigeria was between 0.4% and 0.5% of GDP. Although the net aid received by Ghana declined during this period, by 2014, net aid was 3% of GDP. Burkina Faso, Mali and Senegal receive higher rates of net aid.

In 2012, the total value of aid received by Nigeria from the United States was $335 million. [5] The amount of money lost through export under-invoicing by US oil companies was $69.7 billion for the period 1996-2003 and 2006-2014, which averages out at $4.6 billion a year, a much larger amount than Nigeria received for aid each year.

Table 3: Government debt to GDP ratio [6]

	2009	2010	2011	2012	2013	2014	2015
Nigeria	11.5	15.1	9.4	10.2	10.4	10.6	11.5

Source: http://www.tradingeconomics.com/nigeria/government-debt-to-gdp

Nigeria's government debt to GDP ratio fluctuated between 2009 and 2015. In 2015, the debt: GDP ratio was 10.4%. Other West African countries used as comparisons in the previous section do not record any debt: GDP ratio in this period. This ratio measures Nigeria's ability to make future payments on its debt, which affects the cost of borrowing and government bond yields. The higher the debt, the higher the cost of borrowing, so there are some benefits to be gained from reducing the debt. However, if taxes were raised or even collected more effectively, there would be more money available to invest in infrastructure and industrial development which would generate products which could be sold in the domestic market or exported. This would result in less money spent on imports. Industrial development and public services would also stimulate employment which would contribute to greater demand for domestically produced goods. Increased jobs would generate higher tax revenues, which could be spent on public services, for example, health and education, which both contribute to higher levels of economic growth.

Table 4: Expenditure on health as % GDP

	2010	2011	2012	2013	2014	
Burkina Faso	7.1	5.1	5.3	5.9	4.9	
Ghana	5.3	4.8	4.8	4.6	3.5	
Mali	6.3	6.5	6.4	6.5	6.8	
Niger	6.3	6.6	6.1	5.0	5.8	
Nigeria	3.4	3.6	3.3	3.7	3.6	
Senegal		4.6	4.4	4.3	4.5	4.6

http://data.worldbank.org/indicator/SH.XPD.TOTL.ZS

Health expenditure as a % of GDP in Nigeria fluctuated between 3.3% and 3.7% during the 2010-2014 period. Unlike Burkina Faso and Ghana, which recorded a decline in health expenditure as % of GDP, Nigeria and Senegal recorded fairly stable but low rates. Mali recorded an increase during this period.

Table 5: Expenditure on education as % GDP

	2010	2011	2012	2013	2014
Africa					
Burkina Faso	3.9	4.4	4.0	4.5	na
Ghana	5.3	5.5	8.1	7.9	5.9
Mali	3.7	4.2	4.3	4.9	6.7
Niger	3.7	4.2	4.3	4.9	6.7
Nigeria	na	na	na	na	na
Senegal		5.6	na	na	na

The patterns of education expenditure are slightly different to health because both Mali and Niger recorded increases in education expenditure as % of GDP. Ghana remained fairly stable. No data was reported for Nigeria.

Table 6: Agriculture as value added % of GDP

	2010	2011	2012	2013	2014	2015
Africa						
Burkina Faso	33.8	35.0	34.7	34.1	32.9	na
Ghana	26.0	23.6	23.1	22.3	21.0	na

Mali	36.2	37.6	41.3	39.8	40.3	40.9	
Niger	23.8	22.2	22.0	20.9	20.2	20.8	
Nigeria	18.7	20.9	18.8	17.9	19.1	18.8	
Senegal		17.6	15.6	16.7	15.6	15.8	16.2

http://data.worldbank.org/indicator/NV.AGR.TOTL.ZS

Agriculture of one of the main economic sectors for all this group of West African countries. Nigeria reported a fairly stable percentage of the value added by agriculture of GDP whereas Ghana reported a decline from 26% to 21% and Niger declined from 23.8% to 20.8% of GDP.

Taxation revenues

There are several different types of taxes:

- Personal taxes – paid on income earned, or earned interest;
- Property taxes – paid on property owned – annually or on buying/ selling;
- Service taxes (VAT) – paid on goods and services e.g. consumer durable goods;
- Commercial/ business taxes – companies pay taxes on profits;
- Import/export taxes – paid on goods being imported and/ or exported.

Table 6: Progressive and regressive taxation

Types of tax	Progressive taxation	Regressive taxation
Income tax	Income taxes – higher income groups pay more tax	Low or flat rates of tax so that lower income groups pay a disproportionate part of their income in tax. Income taxes have limited liabilities
Value Added Taxes (VAT) for good and services	Value Added Taxes operate with exemptions so that low income groups are not disproportionately affected	VAT is imposed without exemptions. Low income groups are more affected by VAT on good and services
Social security payments	Social security payments must not be capped – so that high income groups pay more contributions	Social security contributions are capped so that higher income groups pay a smaller % of their income towards social security
Capital Gains tax	Capital gains taxes are part of a tax systems – there are no exemptions when compared to income taxes	Low rates of capital gains taxes and extensive exemptions from capital gains tax
Wealth / inheritance taxes	Wealth or inheritance taxes operate effectively	Many ways of avoiding paying inheritance or other forms of wealth taxes or no wealth taxes at all
Tariffs & trade taxes	Tariffs and trade taxes are used to protect new/ young industries, exploitation of natural resources or cost effective charges on low income groups	Allowances and reliefs are only available to high income groups, e.g. tax relief on pension contributions or mortgage payments

Progressive taxation and reduction of inequalities

A recent OECD study (2012) examined different patterns of inequalities in OECD countries and assessed the causes of labour income inequality and the impact of taxes and cash transfers.[7] The study found that progressive personal taxes play a significant role in reducing inequalities. Social security contributions, consumption taxes and property taxes have a more regressive effect. In addition, policies and institutions also contribute to reducing inequalities. Education, anti-discrimination and labour market policies can make the biggest impact on inequalities and also help to boost economic growth.[8]

Personal taxation in Africa

Table 8: Personal and other taxes

Country	Value Added Tax (VAT) – sales tax	Personal income tax	Inheritance/ wealth tax/capital gains tax
Ethiopia	15%	10-35%	None
Ghana	12.5% and 2.4% National Health Insurance levy on the supply of goods and services in Ghana and the importation of goods and supply of imported services	0-25%	15%
Nigeria	**5%**	**7-24%**	**10%**

Source: KPMG Tax profiles

In Nigeria, there is a high level of personal income tax evasion as well as a relatively low rate of personal taxation. A number of studies have looked at the extent of and perceptions relating to tax evasion among personal tax players.[9] Adebisi & Gbegi (2013) found that one of the main ways to reduce tax evasion among individual tax players would be to spend sufficient government revenue on public goods and services. This would also involve providing adequate investment in tax collection services and staff.[10]

In 2013, Nigeria rebased its Gross Domestic Product from $270 billion to $510 billion. This increase was the result of new sectors of the economy, for example, telecommunications, film and retail services, being added which until then had been either ignored or under-reported. Since the 1970s, oil has been the major source of government revenue.

Table 9: Taxation income by source in Nigeria

Federal Inland Revenue Service	$30 billion
Nigeria Customs Service	$5.2 billion
States and Local Councils	$4 billion [11]
Total	**$39.2 billion**

If the new total GDP is $510 billion then this estimated tax revenue would show a tax to GDP ratio of 7%. This is higher than the figure published by the World Bank Indicators (Table 1).

Corporate tax incentives

In Nigeria, 88% of its tax base comes from taxation of multinational companies. [12] Action Aid (2014) estimated that Nigeria loses around $2.9 billion per year as a result of corporate tax incentives. [13] Nigeria is also losing $327 million a year on import duty exemptions. This is more than double the Federal budget allocation to health and more than the budget for education.

Table 12: Nigerian import duty incentives (Government figures – Naira thousand)

Sector	2013	2012
Agriculture	1,227	1,377
Aviation	2,454	1,580
Gas	18,492	18,138

Health	1,238	5,928
Mining	595	12
Power	4,403	3,052
Water	457	96
Others	22,680	24,281
Total	51,546 ($318.8m)	54,464 ($335.2m)

Source p.14 ActionAid (2014) taken from Nigerian government Budget website www.budgetoffice.gov.ng

Not all waivers go to private companies. Some of the health waivers are for national malaria control programmes. However the largest single private sector recipient is British/Dutch Shell which received 24,000billion ($149 million) in the period 2011-2013 (three years). Another oil company, Total, received naira 6.99 billion ($43 million) in the same period. [14]

Illicit payments and threats to national taxation systems

Tax evasion is a common problem in many countries in Africa and has an impact on government revenues and the supply of public services. A joint research study conducted by Global Financial Integrity and the African Development Bank (2013) found that from 1980 and 2009, between US$1.2 – 1.4 trillion dollars was lost to Africa from illicit financial flows. The report notes that tax evasion forms a significant part of these illicit financial flows, although the exact percentage is not given. Bribery, theft, kickbacks also form part of the illicit financial flows. Africa as a whole loses more in illicit financial outflows than it receives in international aid. Trade mispricing accounts for $38.4 billion of the $63.4 billion illicit outflows per year in sub-Saharan Africa. In contrast, foreign direct investment and foreign aid from OECD/DAC amount to inflows of $62.2 billion.[15] The Economic Commission for Africa (ECA) estimates that illicit financial flows are up to $50 billion a year which, they note, is about double the aid received by Africa.[16] Oxfam International estimates illicit financial flows to be about $200 billion each year.[17] Using the measure of volume of outflows, Nigeria, South Africa and Egypt are the three largest exporters of illicit outflows.[18]

Nigeria is one of the top 10 countries in the world which has the greatest outflows of illicit funds. In 2013, Nigeria was ranked 10th in the world. [19]

Table 10: Nigeria outflow of illicit funds and trade mis-invoicing (US$)

Country	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	Cumulative average
Nigeria	1,680	17,867	19,160	19,335	24,192	26,377	19,376	18,321	4,998	26,735	178,040
Illicit hot money outflows											
Nigeria	0	17,345	17,151	14,399	20,783	26,377	15,144	5,265	4,998	26,735	148,197

Source ILL 2015 Appendix Table 4 p.14

The oil industry is one of the largest economic sectors in Nigeria. Table 11 shows the top 5 destinations of outflows of illicit funds from the oil industry.

Table 11: Top five destinations by share of total illicit financial flows for Nigeria and the oil sector

Country	%
United States	29.0%
Spain	22.5%
France	8.7%

Japan	8.5%
Germany	7.7%
Top 5 total	**76.4%**

UNECE report p. 100 Table AIII.2

2.0 Tax havens/ off-shore finance

Tax havens offer individuals and companies the opportunities to pay little or no tax. They also enable both individuals and companies ways of hiding the details of wealth being accumulated, whether through company, property and other income generating activities, often as a result of corrupt and criminal practices. They provide individuals, companies, organisations a way to avoid adhering to rules, laws and regulations of different countries, 'using secrecy as their prime tool' and are often referred to as 'secrecy jurisdiction'. [20] Some examples of centres that provide this 'secrecy' are the British Virgin Islands, Cayman Islands, Jersey, Switzerland, Singapore, London, New York. There have been recent attempts in Africa to set up new off-shore tax havens in Ghana, Kenya and Mauritius.

In the case of Nigerian oil industry, maritime tax havens are set up where oil rigs obtain benefits and legal and financial exemptions from labour, environmental and financial legislation and agreements. These maritime tax havens are also called 'flags of convenience' which remove control over the rigs from the host country, where oil is being exploited, to an unrelated jurisdiction. [21]

The Nigerian oil industry has recently changed the way in which partnerships are set up between the Nigerian government and the company extracting the oil. Originally the partnerships were Joint Ventures, where the Nigerian State held 55%-60% interest. These arrangements require continuous financing arrangements from both partners for production to continue. For the Nigerian government, these demands for financing were in competition with other public sector expenditure and so the Nigerian government had to borrow money from private partners. Many of these arrangements were not transparent.

Production Sharing Contracts, particularly for deep water offshore work have been introduced recently, where output is shared in proportions agreed by the owner and operator. The investors finance their own business and come to an agreement about risk sharing with the government. Government revenues from a Production Sharing Contract would come from:

- Royalties;
- State share of profit oil;
- Profit tax of 50% levied on the international oil company;
- Proceeds from oil sales of Nigerian National Petroleum Company (NNPC).[22]

This does not mean that all revenue is collected by the Nigerian government. There are three areas when government revenue is less than it should be because of 'leakages' which occur through:

- False reporting of production volumes;
- Artificially inflated costs;
- Use of incorrect prices for oil sales in tax returns. [23]

<u>Off-shore centre - Mauritius</u>

In November 2013, the NGO ActionAid reported that Deloitte's, a global accounting company, had been advising companies on how to arrange their investments through Mauritius and so avoid paying tax. If a company sets up a holding company in Mauritius it will not have to pay tax in the country in which it operates, for example, Mozambique. Mauritius has been marketing itself to companies as 'the gateway to Africa'. [24] [25]

Corporate reporting is often opaque and lacking in transparency but many countries do not have legal requirements to make financial and company details public. This is an additional problem that has to be addressed in the search for tax justice. Table 12 shows the results of a secrecy audit for Kenya and Mauritius.

Table 12: Secrecy in Ghana and Mauritius

Country	Secrecy score	% market for global offshore services	Is there banking secrecy?	Is ownership of public companies on public record?	Are public company accounts on public record	Are records of company ownership maintained by relevant authority
Ghana	79%	1%	Yes	No	No	No
Mauritius	74%	1%	Yes	No	No	No

Source: Secrecy Jurisdictions http://www.secrecyjurisdictions.com

3.0 Tax base erosion and profit shifting (BEPS)

The cross border mobility of goods, services, capital and jobs has made it more difficult for national governments to tax individuals or companies. Competition between government authorities in attempts to attract foreign direct investment (FDI) has resulted in governments lowering tax rates for global companies. A country's tax base is eroded when multinational companies reduce the taxes that they pay in the country where their income is generated.

MNCs use cross-border payments to move profits to low or zero tax centres. These include:

- Royalties;
- Interests;
- Payments for good purchased for re-sale;
- Fees for technical and other services;
- Payments for supplies and other equipment.

The transactions involved in these types of payments allow companies to move the profits from the types of activity listed above to be moved from one country to another. As a result, companies do not contribute to paying tax in exchange for the company's use of public services and local labour force. Even if illegal activities are identified, it is extremely difficult for a national government to enforce their tax legislation. [26]

Tax base erosion on a country results in a government being unable to raise enough revenue to be able to provide for the needs of the population and to invest, build infrastructure and strengthen institutions. The government is unable to redistribute income from high to low income groups and the country has increasing polarisation between rich and poor. A lack of tax compliance weakens government institutions and tax legislation.

If companies avoid the payment of tax, other people have to pay and this increases inequalities. Local companies that only operate in national markets find it difficult to compete with MNCs because MNCs move their profits across borders to avoid tax.

Transfer pricing

"Transfer prices are significant for both taxpayers and tax administrations because they determine in large part the income and expenses, and therefore taxable profits, of associated enterprises in different tax jurisdictions." [27] They play an important part in estimating a company's profit or loss before taxation. As some countries have lower tax rates than others, the aim of a company is to allocate more profits to subsidiary companies operating in low tax countries than in high tax countries.

One of the underlying problems, exacerbated by increasingly rapid Information and Communications Technologies (ICT) systems which can move capital around the world, is that the current international legislation on transfer pricing is unable to deal with the rapid movement of capital or systems used by transnational companies to obscure internal company systems. The current arrangements for transfer

pricing are based on the 'arms-length principle', which means that companies are independent and operate on an equal footing. Usually companies can set prices and national tax authorities can intervene if they feel that prices are unrealistic but this requires expertise and capacity within tax authorities, which can be undermined by the legal power of transnational companies.

Lost tax revenues and impact on government spending

In Africa, there is widespread tax avoidance through transfer pricing. Hollingshead (2010) estimated the tax revenue losses from transfer mispricing, using national corporate income tax rates. Overall, the loss in developing countries was between US$98 billion to US$106 billion annually from 2002-2006. Although many African countries showed over 15% of government revenues was lost, Nigeria showed a loss of 5% but the value of the mid-pricing was higher.

Table 13: Countries in Africa with largest tax revenue losses as % of government income Average 2002-2006 ($ millions)

Country	Average trade mispricing (non-standardised)	Average tax revenue loss (non-standardised)	Average government revenue (excluding grants)	Loss of tax revenue (as % of government revenue)
Zimbabwe	$750.36	$225.11	$714.50	31.5%
Mali	$572.51	$200.38	$796.90	25.1%
Republic of Congo	$987.34	$375.19	$1,504.95	24.9%
Zambia	$678.42	$237.45	$1,094.26	21.7%
Cameroon	$209.69	$80.73	$471.20	17.1%
Guinea	$362.88	$127.01	$769.70	16.5%
Ethiopia	$422.90	$126.87	$782.27	16.2%
Central Africa Republic	$51.35	$15.41	$105.60	14.6%
Togo	$117.9	$43.62	$322.54	13.5%
Nigeria	**$3,401.23**	**$1,020.37**	**$19,760.00**	**5.2%**
South Africa	$3,872.00	$1,084.22	$58,470.69	1.9%
Kenya	$194.20	$48.55	$3,303.62	1.5%

Source: Hollingshead, 2010 [28]

In other countries, which did not show such high percentage losses of government revenue, there is still extensive mispricing which affects government revenues. With corruption endemic to the Nigerian economy (139 in the 2012 Corruption Perception Index), tax evasion is a serious problem.[29] It has been argued that Nigeria is the only country in the world where illicit financial flows, estimated at about 10% of GDP are larger than tax revenues levied outside of the natural resources industries.[30] Tax from non-oil revenue yielded between 6% and 6.5% of GDP from 2007 to 2011 compared to oil tax revenue of 12.7 % in 2009 and 26.5% in 2008.[31] Tax payments make up only 7% of Nigeria's GDP, as compared to 21% in Ghana.[32] According to the Federal government, more than 350 000 companies do not pay tax.[33]

Oil export mis-invoicing

A more recent report, published by UNCTAD (2016) shows the extent of trade mid-invoicing in Nigeria. The study of Nigeria shows that the pattern of oil export mis-invoicing has changed over time. In the period 1996-2003, there was estimated under-invoicing of $35.9 billion with its 17 trading partners, which represented 32% of its cumulative oil exports to this group. In the period 2006-2014, there was estimated $29.7 billion to its 17 trading partners. Oil exports during this second period had increased and so the under-invoicing was only 4.9% of its cumulative oil exports to this

group of trading partners. Although this is a reduction in the amount of under-invoicing, export under-invoicing is still a problem. [34] As an example of the difference between the illicit

Table 14: Countries involved in oil export under-invoicing and over-invoicing 1996-2003 and 2006-2014

Country	Export under-invoicing	Country	Export under-invoicing
United States	$69.7 billion	Italy	$25.1 billion
Germany	$23.9 billion	Netherlands	$20.5 billion
Swizerland	$6.9 billion	India	$8.7 billion
UK	$3.3 billion	Canada	$8.3 billion
		Ghana	$5.8 billion
		China	$4.7 billion

Source: UNCTAD (2016) p.20

Although Nigeria is a leading oil exporter, it also imports refined oil because it does not have a domestic oil processing industry. This has led to import mis-invoicing or smuggling. Unlike the oil export mis-invoicing which showed a slight decline in the period 2006-2014, oil import mis-invoicing has expanded during this period, rising from $3.4 billion to $42.2 billion. Almost half of this amount was underin-voicing by the Netherlands of $24 billion during 2006-2014. UNCTAD reported that both oil imports and oil exports to the Netherlands rarely reach their destination. Other countries involved in under-invoicing during the periods 1996-2003 and 2006-2014 were:

Table 15: Countries involved in under-invoicing in oil importing

Country	Under-invoicing
Netherland	$24,139 billion
Cote d'Ivoire	$6.3 billion
France	$4.8 billion
Brazil	$3.5 billion

Source: UNCTAD (2016) p.22

UNCTAD recommended that:

> "An investigation into the mechanisms and direction of trade mis-invoicing as a channel of capital flight should focus on these major outlets of mis-invoicing of oil exports from Nigeria. Under-invoicing of oil imports also needs attention. [35]

<u>What could be bought with lost tax revenues?</u>
Large sums of money are being lost through tax evasion and transfer pricing. These tax losses have an impact on any country. In Nigeria, the Government of Ekiti State has specifically blamed tax evasion for the underdevelopment of the state.

4.0 Addressing tax evasion

Many argue that one way of dealing with tax evasion is to reform domestic tax authorities. Weaker and less transparent institutions make the tax situation worse and what is needed is the reform of domestic tax authorities to improve their technical expertise and collection capacity.[36]

A High-Level Panel on Illicit Financial Flows from Africa was established in 2011 and inaugurated in February 2012, on the basis of a resolution of the 4th Joint Annual Meetings of the meeting of African Ministers of Finance, Planning and Economic Development which was co-convened by the UN

Economic Commission for Africa and the African Union. [37] The Panel is currently carrying out its work by conducting seven country case studies – on Nigeria, Algeria, Democratic Republic of Congo, Kenya, Liberia, Mozambique and South Africa. Another regional initiative that has been launched is a monitoring system, set up between six countries (Tanzania, Malawi, Zambia, Kenya, Uganda and Mozambique), with the aim of fighting cross border tax evasion and theft of goods.

Nigeria

In Nigeria, much of the problem stems from off-shore tax evasion, where companies set up off-shore offices, or engage in transfer pricing, to evade tax in their country of origin. PriceWaterhouseCooper (PWC), a global accounting and consultancy company, identified the lack of coordination between different structures as a major problem that facilitates tax evasion. [38] For example, it is possible to register with the Corporate Affairs Commission (CAC), in Nigeria, without registering with the Federal Inland Revenue Services (FIRS).

The FIRS is now intending to target firms to try and halt the outward flow of funds. New regulations came into effect in August 2012 governing transfer pricing, and as part of the implementation of these laws, the FIRS plans to audit the financial reports of firms operating in the country. The first returns under the new tax pricing regime will start by December, and these will then be scrutinised against the companies transactions declared on their report.

Double Taxation Agreements

A growing number of African countries have entered into Double Taxation Agreements (DTAs), for example, Kenya, which try and clarify when an individual or company moves from one country to another, which country should tax the income of either the individual or company. There are two models of Double Taxation Agreements: the OECD model and the UN model. The OECD model places more emphasis on residence based taxation, which favours OECD countries where many multinational companies are based. The UN model gives more rights to countries receiving inward investment, most often low income countries. One of the problems facing Double Taxation Agreements is the lack of transparent information exchanged between high and low income countries and with secrecy jurisdictions. Tax justice campaigners argue that Double Taxation Agreements can sometime lead to double 'no' taxation, with individuals or companies not paying tax in either their country of origin or the source of investment or income. [39]

Nigeria has 17 double taxation agreements, including a draft agreement with Mauritius, which has not been ratified. Action Aid analysed the draft agreement between Nigeria and Mauritius, which was signed by Mauritius in 2012. Mauritius has this form of treaty in place with 37 countries worldwide. In 2002, the Mauritius treaty with India was criticised between there was evidence of abuses by companies, in which the authorities in Mauritius were complicit. An examination of the draft Mauritius-Nigeria treaty found that it could facilitate companies using Mauritius as a "conduit for their investment in Nigeria by taking advantage of the Double Taxation Agreement (DTT)." [40] ActionAid concluded that "in view of the "tax haven" status of Mauritius, Nigeria will be giving away far too much by entering into a DTT with Mauritius." [41]

The Fair Share Commitment

People around the world, from the south to the north, are raising their voices in a united demand:

- *It's time for tax justice;*
- *Tax justice must be put into action to end poverty, inequality and climate change;*
- *MNCs, financiers and the very rich must pay their fair share of taxes;*
- *National and international systems that support tax avoidance and tax havens must be stopped;*
- *Governments must enforce fair, progressive, transparent and sufficiently resourced tax administrations;*
- *It's time for people of every country to receive out fair share in public services and social protection.*

In signing this declaration, we call on world and community leaders, organisations and people to join together to take action. We demand that governments deliver tax justice now
http://gatj.org/

Key players

African Tax Administration Forum (ATAF) http://www.ataftax.net/en/
Organisation for Economic Development & Cooperation (OECD) www.oecd.org
OECD - BEPS Action Plan http://www.oecd.org/ctp/BEPSActionPlan.pdf
Tax Inspectors without Borders http://www.governanceanddevelopment.com/2012/05/tax-inspectors-without-borders.html
The UN Committee of Experts on International Cooperation in Tax Matters is a subsidiary body of the UN Economic and Social Council and is responsible for keeping under review and update, as necessary, the United Nations Model Double Taxation Convention between Developed and Developing Countries and the Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries. http://www.un.org/esa/ffd/tax/

Resources

Action Aid (2012) Calling time Why SAB Miller should stop dodging taxes in Africa
http://www.actionaid.org.uk/sites/default/files/doc_lib/calling_time_on_tax_avoidance.pdf
ActionAid (2012) Review of Mauritius-Nigeria double taxation treaty Point 7
http://www.actionaid.org/sites/files/actionaid/mauritius-nigeria_double_taxation_treat.pdf
Action Aid (2013) Sweet Nothings The human cost of a British sugar giant avoiding taxes In Southern Africa
Africa Development Bank (ADB) & Global Integrity Institute (2013) Illicit Financial Flows and the Problem of Net Resource Transfers from Africa: 1980-2009
http://www.gfintegrity.org/storage/gfip/documents/reports/AfricaNetResources/gfi_afdb_iffs_and_the_problem_of_net_resource_transfers_from_africa_1980-2009-web.pdf
ANCIR (2016) Double Offshore Research Report August 2016 https://doubleoffshore.org/
Kar D. & Spanjers J. (2015) Illicit Financial Flows from Developing Countries: 2004-2013 Global Integrity Institute
UNCTAD (2016) Trade mis-invoicing in Primary Commodities in developing countries: the case of Chile, Cote d'Ivoire, Nigeria, South Africa and Zambia New York/Geneva

List of tax justice campaign websites
Global Alliance for Tax Justice http://gatj.org/
Tax Justice Network www.taxjustice.net
Christian Aid www.christianaid.org.uk
ActionAid www.actionaid.org.uk

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15 September 2016

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(in millions of nominal U.S. dollars or in percent)
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