Tax evasion scandals by corporations

Civil Society Statement on the leaked information on Corporations Dodging tax using deeply flawed Double Taxation Agreements

April 8th 2016

PRESS STATEMENT FOR IMMEDIATE RELEASE

Civil Society Organisations under our umbrella Network, the Tax Justice Alliance Network Uganda; Actionaid Uganda; Civil Society Budget Advocacy Group (CSBAG); SEATINI Uganda; Uganda Debt Network, Transparency International Uganda; Oxfam; Water Governance Institute; Citizens Watch IT Uganda (CEW-IT); African Centre for Trade and Development (ACTADE); are concerned about the shocking scandals uncovered in the Panama papers leak regarding multinational corporate tax evasion and avoidance. These papers explain how multinational companies are evading or avoiding paying their taxes in countries that they operate. In the case of multinational companies operating in Uganda, this denies Uganda much needed resources to fund essential public services like healthcare, agriculture, and education, as well as pay for the public infrastructure needed to raise living standards, increase equality and welbeing of Ugandans.

On Monday 4th April 2016, the world woke up to the shocking leak of confidential information by the "Panama Papers"[1] that, among other global scandals, revealed a paper trail of evidence showing how Heritage Oil and Gas Ltd attempted to avoid paying its tax liability in Uganda.

While it is already a well-known story that Heritage Oil attempted to avoid paying Capital Gains Tax in Uganda. When the company sold its stake in the country's oil fields to Tullow Oil by a last minute switching of ownership of its holding company to Mauritius that has a double tax treaty with Uganda, the act would have caused government of Uganda to lose a Capital Gains Tax (CGT) of US$404million.

Despite this act, Uganda took Heritage Oil to court to recover the $ 404 million. The Panama papers leak reveals a new angle – that multinational corporations can switch ownership of their holding to a tax haven or double tax treaty jurisdiction to avoid paying taxes in a host country. This is a wake-up call for multinational company host countries to be vigilant in exposing, with the help of lawyers and professional accountants, such acts and gaps in the double tax treaties that the countries have signed.

[1] (https://panamapapers.investigativecenters.org/uganda/)

In October 2015, a joint investigation by The Observer and Finance Uncovered, a global investigative journalism network, unearthed how between 2003 and 2009 MTN Uganda had shifted three per cent of its revenue every year to MTN International in Mauritius in the name of 'management services' even when the company itself [MTN] confirmed that the Mauritian company employs no staff at all.[2]

While these are the few documented cases, we are aware that many international corporations are taking advantage of the Double Taxation treaties and weak provisions in our tax agreements for example on management fees to dodge paying their taxes.

Uganda has signed agreements (Double Taxation Agreements) with nine countries, namely, Zambia (1968), United Kingdom (1993), Norway (2001), South Africa (2001), Denmark (2001), India (2004), Mauritius (2004), Italy (2005) and the Netherlands (2006).

The purpose of the DTT is to avoid companies domiciled and registered in these jurisdictions from paying similar taxes both in the host country where they operate and the country where the holding company is registered, but to only pay tax in the latter country where the holding country is registered. If the Heritage scum of a last minute switch of its holding company to Mauritius had not be uncovered, it would have gone without paying Capital Gains Tax to Uganda a host country where it operated.

While In June 2014, Uganda decided to suspend negotiations of new tax treaties until there were clearer guidelines on how the country should benefit from such agreements, there are also a number of treaties which are at different stages of negotiation, including those with the EAC, Egypt, China, Belgium, United Arab Emirates and Seychelles primarily to attract foreign direct investment.

The African Development Bank estimates that countries such as Uganda losses 'at least 2%' of her GDP everaging to around UShs 690 billion (US$272 million) annually due to multinational companies evading or avoiding tax by exploiting tax, legal and treaty gaps and implementation challenges.

Smaller domestic businesses that are typically responsible for the majority of employment in Uganda and the ordinary citizen have to bear the tax burden at the end of the day.

These leaks show different ways the world's elite and corporations rob poor countries of the much needed revenue in form of tax that has not been subjected to tax transparency as is enshrined in the international tax guidelines such as the Organization for Economic Cooperation and Development Base Erosion and Profit Shifting (OECD's BEPS) process and the Dodd Frank Act 1504 of the US. This tax transparency systems are riddled with gaps and

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[2] See http://www.observer.ug/business/38-business/40339-how-mtn-uganda-s-offshore-stash-sent-ura-on-the-hunt

implementation challenges that proves that the international tax system is broken and does entirely favour world's poor.

Members of Tax Justice Alliance Network Uganda would therefore recommend the following;

1) Continue to freeze negotiations on all new tax treaties until there are clearer guidelines on how the country should benefit from such agreements.
2) Cabinet needs to fast track the approval of guidelines for negotiating and entering into tax agreements.
3) The Ministry of Finance should renegotiate or revoke weak treaties, particularly on withholding tax and excessive tax deductions to prevent multinational companies from shifting their profits to tax havens. The most risky treaties in our analysis include the treaties with the Netherlands and Mauritius.
4) Government should require all inwards investors to provide annual accounts based on country-by-country and project-by-project reporting requirements, which might reveal where profits shifting is taking place and trigger a tax audit.
5) The government of Uganda should establish a mechanism for implementing the recommendations from the High level Mbeki Panel Report that was adopted by African Union in January 2015 to curb illicit financial flows.
6) Government agencies particularly the Uganda Revenue Authority; the Uganda Investment Authority and Uganda's Financial Intelligence Authority should strengthen their scrutiny of all Multinational Corporation (MNC) and foreign investments in Uganda to ensure they are not siphoning away would be tax revenues to tax havens.
7) Leaders from African and other developing countries should push for the establishment of a UN global tax body where all countries would have equal say and decision making powers, instead of relying entirely on the OECD and Dodd Frank Act tax frameworks which currently dominates global tax rules, but serve isolated interests of Europe, the US and their member states

actionaid

Civil Society Budget Advocacy Group