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Influence of tax dodging on tax justice in developing countries: some theory and evidence from Sub-Saharan Africa

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Abstract

Purpose – The mobilising domestic resources, in particular, taxation, is key to unlocking the resources required for public investment in infrastructure, growth and sustainable finance. This study aims to share the perception that the tax arrangements of states and the transnational corporations (TNCs) of developed states have a critical effect on the development prospects of the less powerful states in developing countries.

Design/methodology/approach – This paper locates the role of TNCs tax practice within the broader dynamics of globalisation and the pursuit of profits, to argue that the drive of TNCs for higher profits can enrich our understanding of why some TNCs engage in tax dodging. This paper used publicly available evidence to shed light on the role played by TNCs in tax dodging practices in developing countries.

Findings – The evidence shows that tax havens and offshore financial centres, shaped by globalisation, are major structures facilitating the sophisticated tax schemes of highly mobile TNCs. This paper further shows that the corrosive effect of low-tax jurisdictions ("tax havens") continues to represent a major obstacle to a regulation of global economic relations, which is required for maintaining sustainable social and economic development of poorer states.

Research limitations/implications – This paper used publicly available evidence to illuminate the role played by TNCs in tax dodging practices in Sub-Saharan Africa.

Practical implications – This paper, therefore, advocates a radical reform that could minimise the attendant problems created by the activities of TNCs and the enabling structures that facilitate these practices.

Social implications – Tax dodging has played a major role in causing serious damage to the economic and social landscape in developing countries. This in turn, has undermined social welfare and also investment in the public services, thereby eroding the quality of life and producing a decline in average life expectancy.

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Originality/value – This paper is a general review of literature and evidence on contemporary developmental issues.

Keywords Tax justice, Tax dodging, Tax haven, Developing countries, Poverty, Growth and sustainable development

Paper type Research paper

1. Introduction

Taxation is essential to sustainable development. Mobilising domestic resources, in particular, taxation is key to unlocking the resources required for public investment in infrastructure, growth and sustainable finance (Cobham, 2005; Otusanya, 2010). Tax is the most important, sustainable and predictable source of public finance for almost countries. They bind us together in a social contract with the governments we pay them to, and who we expect to spend them. Taxes are a necessary precondition of a functioning state, which itself is essential for economic growth and for the protection of human rights. If countries are to eradicate poverty and hunger, then they will need to do so by increasing their own public finances – principally through tax revenues (ActionAid, 2013, Otusanya, 2013). Tax plays a vital role in society. Tax should redistribute wealth from corporations and rich individuals, fund public services and tackle poverty. Yet, transnational companies dodge billions of dollars in tax every year, acting as giant corporate parasites on the countries they operate in sucking profits out and leaving the rest of society paying the price. Wenzel (2002) posits that:

> The failure to comply with tax laws costs states billions of dollars each year, thus impacting severely on their provision of government services and their socio-economic functioning (p.41).

In both developed and developing countries, the tax revenues needed to cover the ongoing costs of decent public services are being undermined by the ability of some of the wealthiest taxpayers – including many transnational companies – to effectively opt out of the corporate tax system through a combination of ingenious (and lawful) tax haven transactions, and huge tax concessions awarded by governments themselves (Cobham, 2005; Otusanya, 2011; Otusanya *et al.*, 2013; Moore, Prichard and Fjeldstad, 2018). Tax dodging is used to describe all of the ways that companies and rich individuals reduce their tax bills, whether through lobbying governments for tax breaks and lower corporate tax rates, exploiting obscure loopholes in tax laws or shifting profits into tax havens (Christian Aid, 2012). Some of these are legal and some of them are not, but all increase poverty and inequality. Tax dodging on a massive scale by some transnational companies is depriving poor countries of the revenue that could fund these public services. As ActionAid (2012) puts it:

> The OECD, appointed by rich nations as a global centre of the fight against tax dodging, estimates that Africa loses several times more revenue to tax havens than it receives in aid (p. 6).

Tax dodging is a massive drain on resources in a world where one billion people go hungry and 67 million children do not go to school [Dillon, 2017; United Nations Conference on Trade and Development (UNCTAD), 2020)]. Every day the money lost through clever accountancy tricks and secrecy costs ordinary people hundreds of millions of pounds (Sikka, 2016). To have a serious impact on poverty, developing countries need tax revenue to invest in essential public services such as teachers, hospitals, roads and water.

In the world's poorer countries, more and more governments are introducing savage spending cuts while still facing debts of over £3tn. Tackling tax dodging could fund the services being cut, tackle inequality and give poorer countries a part out of poverty. Transnational companies are only able to dodge tax because the tax rules of countries allow

them to. The developed countries such as the UK plays a central role in the "offshore" system that allows transnational companies to dodge tax, through its own global network of tax havens (Palan *et al.*, 2010; Moore *et al.*, 2018; Otusanya and Adeyeye, 2022).

Tax avoidance refers to the artificial ways companies and individuals reduce their tax bills by exploiting tax rules in ways that were not intended. The lucrative search for ways to pay less, creating complex corporate structures, routing money through opaque tax havens and using highly paid professionals to find loopholes, is legal: indeed, it is so common it is acceptable as normal way of doing business. And, it gives transnational companies a distinct advantage over their local competitors. Transnational companies and elites take advantage of a novel set of tax rules offered by tax havens that enables companies to pay next to no tax on the royalties they earn. South Africa's Finance Minister [1]has described "aggressive tax avoidance" as "a serious cancer eating into the fiscal base of many countries" (ActionAid, 2012, p. 8). Another commentator [2] says that tax avoidance is unacceptable in the best times, but in today's circumstances, it is morally indefensible. Tax avoidance is fundamentally an unjust activity, as it offers advantages to rich individuals and transnational companies to dodge the tax they rightfully owe. Tax avoidance undermines the ability of the tax system to fulfil its core purpose to raise revenue for public services and to redistribute wealth.

The concept of tax justice has become a part of social and political currency in recent years (Wenzel, 2002; Kohonen and Mestrum, 2008; Leaman and Waris, 2013). It reflects an increased awareness of the centrality of taxation to the affairs of the individual state – as a fiscal jurisdiction – and to the relationship between states within the global political economy (Leaman and Waris, 2013; Moore *et al.*, 2018). Therefore, tax justice is a principle guiding how taxes should be raised and spent. Taxes should be raised progressively, based on ability to pay, and spent according to need. Tax is not only government money but also redistributed wealth. A just tax system is one where money is not only raised fairly but also spent fairly (Worthy, 2013). As Sikka (2008a, 2008b) notes:

> The availability of taxation revenues are crucial to any attempt by the state to redistribute wealth, alleviate poverty and provide a variety of public goods covering education, healthcare, security, pension, public transport, clean water and other services and make a difference to quality of life and even survival (p. 272).

It has therefore been argued that tax should be spent to reduce inequality in society and to fund universal public services – tax should not be spent on corporate welfare or on destructive and wasteful military spending. Tax should be raised and spent transparently, with real democratic oversight and control. Tax justice could help transform the lives of billions of people – poor countries would become less dependent on aid and break free from the cycle of poverty (Kohonen and Mestrum, 2008; Moore *et al.*, 2018; UNCTAD, 2020).

Every year the UK Government loses out on an estimated £25bn a year in revenue to tax avoidance by large companies and rich individuals (Worthy, 2013). Tax avoidance is less widely documented in the developing world than in the developed countries. It has been estimated that over £360b is illegally siphoned out of poorer countries. Around 80% of this is because of the illegal mispricing of imports and exports, much of it because transnational companies are able to distort the price of goods they move between subsidiaries in different countries (Worthy, 2013). In total, as much as 20 trillion is now held by rich individuals in secrecy jurisdictions. It is estimated that a third of this comes directly from poorer countries (Worthy, 2013; Murphy, 2013). Tax dodging by transnational corporations (TNCs) costs the USA approximately $111bn each year and saps an estimated $100bn every year from poor

countries, preventing crucial investment in education, health care, infrastructure and other form of poverty reduction (Oxfam, 2016).

Murphy (2013) observed further that the total sum held in tax havens is equivalent to more than 13 times the annual output of the UK economy. If this money was taxed, it could generate as much as £180bn a year in tax revenue – more than twice the amount rich countries spent on all overseas aid. Therefore, tax dodging (tax evasion and tax avoidance) as a practice undermines social solidarity, legitimacy of the sitting government, degrade the governing system and the development of a just and fair society (Amundsen, 2006; Richardson, 2006; UNCTAD, 2020).

In recent years, attention has also focused on the effect of tax dodging on the World's poorest countries (ActionAid, 2013; Christian Aid, 2014; Tax Justice Network, 2006; Moore *et al.*, 2018; UNCTAD, 2020), and the demand for reform has been aimed at taming the role of multinational companies (MNCs) and the wealthy elite's to guarantee tax justice [3] (Leaman and Waris, 2013). It has been estimated that the total cost to developing countries of these leakages is $385bn annually, dwarfing any potential increase in aid (Cobham, 2005). Kohonen and Mestrum (2008) also noted that developing countries are estimated to lose revenues greater than annual aid flows. The African Union (AU) estimates that corruption is costing the continent nearly $150bn a year, and the African Development Bank (AfDB) estimates that it leads to a loss of around 50% of domestic tax revenues, thus significantly curtailing the ability of the African Governments to fund vital public and social services (Africa Progress Report, 2009). This is large enough to make a real difference to social investment in education, transport, pension, housing, health care and free people from poverty and squalor. To distribute benefits from taxation widely, governments need to secure tax revenue through taxation and use public spending to extend opportunities and strengthen economic growth. Africa Progress Report (2015) notes that:

> Public investment in infrastructure has to be financed through some combination of tax revenues and government debt. One of the greatest barriers to the transformation of the economic sector is the low level of tax collection. With rebasing in Sub-Saharan Africa, revenue-to-GDP ratios were very low and it is evident that some governments are fundamentally failing to build credible tax systems. In 2013, Nigeria's revenue-to-GDP ratio stood at just 11 %, one of the lowest levels in the world (p. 94).

Obtaining a fair share of tax revenue wealth and allocating the proceeds equitably are two of the most pressing governance challenges in developing countries. A substantial body of literature has paid scholarly attention to these practices from a variety of competing perspectives (Sikka and Hampton, 2005; Cobham, 2005; Sikka, 2008a, 2008b; Kohonen and Mestrum, 2008; Otusanya, 2010, 2011; Leaman and Waris, 2013; Moore *et al.*, 2018). However, broader accounts of the impact of these practices on developing countries are relatively scarce. This paper therefore aims to investigate the extent of tax dodging on socio-political economic development in Africa by exploring the perspective of the stakeholders on this economic discourse.

This paper is divided as follows. Section 2 examines the literature on the use of various tax schemes and strategies adopted by TNCs (including those relating to tax evasion and tax avoidance) to dodge payment of taxes and their effect on development in developing countries. Section 3 considers corporate drives for increased profits and competitive advantages within the framework of global capitalism. Section 4 provides evidence to show that despite laws and regulations imposing tax on TNCs continue to engage in the tax strategy of shifting profits and to challenge local tax revenue sustainability. Finally, in Section 5, this paper discusses the significance of tax dodging and its implications for economic and social development in developing countries.

2. Review of literature

In a capitalist economy, taxes are not just a method of payment for government and public services, they are also the most important instrument by which the political system puts into practice a conception of economic or distributive justice (Murphy and Nagel, 2002). They noted further that:

> That is why they arouse such strong passions, fueled not only by conflicts of economic self-interest but also by conflicting ideas of justice or fairness (p. 3).

The inability of developing and emerging states to fully harness their resources through a just tax system is partly because of a poorly constructed system. Taxes are part of the structure, but they have to be evaluated not only as legal demands by the state on individuals and corporations but also as contributions to the framework within which all these individuals live. Braithwaite (2002) argues that:

> The traditional tax infrastructure of law, auditor penalties, debt collectors and court cases needs to be supplemented by measures that boost taxpayers' commitment to paying tax with or without the tax authority watching over their shoulders (p. 1).

Therefore, the concept of tax justice and fairness has become a part of social and political currency in recent years. Murphy and Nagel (2002) argued that they all come out of the attempt to describe the right and duties of a democratic state with respect to its citizens and the rights and duties of those citizens with respect to the state and to one another. Tax system cannot be evaluated by looking at its impact on private property, conceived as something that has independent existence and validity. Taxes must be evaluated as part of the overall system of property rights that they help to create. Justice or injustice in taxation can only mean justice or injustice in the system of property rights and entitlements that result from a particular tax regime. Furthermore, taxation deserves the closest scientific attention, as hardly any other legislation has such a widespread impact on our lives, from impacting personal decisions to shaping economic phenomena, political forces and institutional fabric of our society (Wenzel, 2002). Companies use a range of methods to dodge tax. Working together with accountants and lawyers, companies continue to find innovative ways to cut their tax bills (Worthy, 2013; Moore *et al.*, 2018). The most common ways big companies dodge tax and how much money poorer countries lose to tax avoidance and evasion are discussed next.

2.1 Tax dodging

Tax dodging is used to describe all of the ways that companies and rich individuals reduce their tax bills, whether through lobbying governments for tax breaks and lower corporate tax rates, exploiting obscure loopholes in tax laws or shifting profits into tax havens (Worthy, 2013; Moore *et al.*, 2018; UNCTAD, 2020). He noted further that some of these are legal and some of them are not, but all increase poverty and inequality. Tax dodging is recognised today by practically all governments as a serious threat to the integrity of tax systems in democratic societies. According to ActionAid (2008):

> Tax dodging is a massive drain on resources in a world where one billion people go hungry and 67 million children do not go to school. Every day the money lost through clever accountancy tricks and secrecy costs ordinary people hundreds of millions of pounds.

Tax reducing activities do not have clear or distinct boundaries and generally shade from one to the other (Otusanya, 2010, 2011; Fullarton, 2014). Taxpayers often demonstrate a willingness to engage in tax reducing activities of one form or another. The methods used by

taxpayers to reduce their tax liability may involve tax evasion, tax avoidance or tax planning. The focus of this study concerns the impact of taxpayers' behaviour to engage in tax reducing activities. Tax evasion may arise from an inadvertent error, omission or unintentional mistake; however if it is fraudulent, it is regarded as crime. It has been argued that tax avoidance differs from tax evasion in that a person engaged in tax avoidance may comply with the letter of the law while at the same time be trying to gain a taxation benefit not intended by the legislature. Barker (2009) argued that the term tax avoidance does not have a limiting and definite meaning. Instead, the term is a label for describing pragmatic decision-making, which by "pricking a line through concrete applications" identifies abusive situations. As Barker (2009) further notes that:

> Though the concept is sometimes explicitly used in statutes, it is more often an underlying premise for legislative, administrative, or judicial action targeting taxpayer conduct that is perceived to undermine fair and equitable taxation (p. 229).

Tax avoidance can also be unlawful – the situation where tax avoidance shades into fraud (Fullarton, 2014). Complex or otherwise non-commercial and artificial structures designed to disguise and to obtain an unintended benefit from tax relieving provisions are referred to as unacceptable avoidance. Unacceptable tax avoidance according to Lord Goff in Ensign Tankers (Leasing) Ltd vs Stokes states that:

> Unacceptable tax avoidance typically involves the creation of complex artificial structures by which, as though by the wave of a magic wand, the taxpayer conjures out of the air or loss, or gain, or expenditure, or whatever it may be, which otherwise would never have existed [4] (p. 51).

It has therefore been argued that the relevance of the distinctions between unacceptable tax avoidance and tax planning as used in this study is that mass-marketed tax avoidance scheme designers, promoters and taxpayers rely on "blurring" the distinctions to enable their unacceptable tax avoidance scheme to appear to be legitimate tax planning (Otusanya, 2011, 2013; Fullarton, 2014).

Tax avoidance has emerged as a global concern (Kohonen and Mestrum, 2008; UNCTAD, 2020). Governments – and societies – can only function if the individuals and companies who benefit from wealth generation, public investment and public goods share in the cost of financing. Large corporations and wealthy individuals are increasingly avoiding their obligation to contribute to the society through taxation. The revenue lost through tax avoidance, including those relating to corporate practices are hard to estimate, but the European Union (EU) claims the level of tax evasion and avoidance in Europe to be around €1tn (£830bn or US$1.25tn), equivalent to 7–8% of the gross domestic product (GDP) of all EU member states (Corporative Reform Collective, 2014). It was further noted that a large number of corporations, including Amazon, Apple, eBay, Facebook, Google, Microsoft and Starbucks, have been on the radar of parliamentary committees for avoiding taxes through complex organisational structures. According to Corporate Reform Collective (2014):

> The amounts are stark reminder of how tax avoidance forms an integral part of corporate profitability (p. 11).

Corporate tax avoidance is not just a problem in the EU, but an issue wherever the corporate form has taken hold. The US Treasury has estimated its tax gap (tax avoidance, evasion and arrears) to be $385bn. The US companies like Enron and WorldCom used offshore havens and artificial royalty programmes and management fees to reduce taxable profits (Corporate Reform Collective, 2014). The Chinese Government also estimated that (tax evasion through transfer pricing accounts for 60% of total tax evasion by transnational companies. Furthermore, a commentator (The Chinese Government Officials) reported that almost 90% of the foreign

enterprises are making money under the table; most commonly, they use transfer pricing to dodge tax payments (Corporate Reform Collective, 2014). The cost to developing countries is enormous, Christian Aid (2008, 2012) estimated that mispriced international trade alone cost developing countries $160bn annually. According to Spicer (1975):

> Tax evasion and tax avoidance result in a loss of tax revenues, impair the chances of realising the distributional or equity goal of taxation, and, if they become widespread, as they have in recent times, then more taxpayers may lose faith in the tax administration system and may be tempted to join the ranks of tax evaders (p. 152).

Base erosion and profit shifting have led to lost revenue of about 1% of global GDP, which is probably higher for developing countries (Moore *et al.*, 2018). It was estimated that in sub-Saharan Africa this would be equivalent to about $18–36bn in 2015. In many countries, according to Moore *et al.* (2018), the tax losses are equivalent to 50% or more of the national health budgets, which average 2.5% of GDP across Sub-Saharan Africa in 2015.

Globalisation has made it increasingly difficult to ensure that companies operating across borders provide their fair share of revenues. Behind a wall of secrecy, corporations are able to devise complex schemes to boost their profits and meet incessant stock market pressures to report higher profits. Assets held offshore, beyond the reach of effective taxation, are already estimated to equal one-third of total global assets (Kohonen and Mestrum, 2008). Networks of banks, lawyers and accountants create complex and secret financial structures, reducing transparency and enabling tax evasion. Kohonen and Mestrum (2008) concluded that:

> Such behaviour is economically inefficient, socially destructive, and profoundly unethical (p. xiii).

Resource-rich countries in Africa are highly vulnerable to aggressive tax planning and tax evasion facilitated by the extensive use of offshore companies, the high levels of intra-company trade and the commercial secrecy surrounding foreign investment activity. Loopholes in many ta treaties in Africa leave countries vulnerable to tax avoidance (UNCTAD, 2020). African governments lack the human, financial and technical resources needed to secure tax compliance, and the commercial market intelligence needed to assess company tax liabilities. As a result, they are losing significant revenue streams. Over £360bn is illegally siphoned out of poorer countries every year, mostly into offshore banks and tax havens. Around 80% of this is because of the illegal mispricing of imports and exports, much of it because transnational companies are able to distort the price of goods they move between subsidiaries in different countries (Worthy, 2013). It was further noted that this problem is getting worse in many countries, especially in Asia and Sub-Saharan Africa; the past decade has seen a dramatic increase in the scale of this loss (Worthy, 2013). To have a serious impact on poverty, developing countries need tax revenue to invest in essential public services such as teachers, hospitals, roads and water. The most common way for companies to dodge their tax bill is by shifting profits out to country they are generated in, and into a tax haven. They can declare less profit in the place they actually do business and more profit in the tax haven.

2.2 Tax havens

Tax havens are places that create legislation designed to assist persons – real or legal – to avoid the regulatory obligations imposed upon them in the place, where they undertake the substance of their economic transactions (Tax Justice Network, 2008) [5]. Tax havens [6], also known as "secrecy jurisdiction," enable people [7] or companies to escape or undermine the laws rules and regulations of other jurisdictions elsewhere, using secrecy as a prime tool

(Actionaid, 2011; Worthy, 2013; Moore *et al.*, 2018). Corporate Reform Collective (2014) noted that international tax avoidance by multinational or TNCs exploits the tax haven and offshore secrecy system that was originally devised by and for them. Tax authorities in around the world struggle to prevent the erosion of their tax bases, but developing countries particularly Africa struggles more than most. That is partly because of the restricted human, technical and financial resources available to revenue administrations (Leaman and Waris, 2013; Otusanya, 2013). It was further noted that the problem is exacerbated because companies involved are highly integrated and make extensive use of offshore centres and tax havens with limited disclosure requirements (Africa Progress Report, 2013; Moore *et al.*, 2018; UNCTAD, 2020). These are ideal conditions for tax evasion through mispricing. Tax Justice Network (2008) further noted that:

> Tax havens undermine effective democratic government and deny the supply of information that markets need if they are to operate properly. So significant is the challenge they pose to global economic and social stability that the risk cannot be assessed within the financial domain alone; it permeates the infrastructure of our society and this report reflects that perspective (pp. 12–13).

With their array of secrecy provisions, lax regulation, zero or near-zero taxation and no capital controls, tax havens proved a magnet for Euromarket transaction. In fact, developing an offshore financial centre (OFC) was a logical extension to the traditional tax haven, as both are the product of, and benefit from avoidance (Palan *et al.*, 2010). Furthermore, the lack of regulation or light supervision that characterise OFCs, can easily be used (or abused) for tax avoidance and money laundering purposes. TNCs' use of tax havens allows them to avoid an estimated $90bn in federal income taxes each year in the USA. McIntyre *et al.* (2015) therefore argued that:

> Every dollar in taxes that corporations avoid by using tax havens must be balanced by higher taxes on individuals, cuts to public investments and public services, or increased federal debt (p. 6).

In reality, OFCs [8] are thriving. Worldwide, 50–60 active havens host over 2 million companies, including thousands of banks and investment funds. The companies and the funds they control are lured by low taxation, limited regulation and secrecy. Some operate from centres such as the Cayman Islands, Belize and the British Virgin Islands. For example, the 2008 Congressional Research Service, found that:

> American transnational companies collectively reported 43 % of their foreign earnings in five small tax haven countries: Bermuda, Ireland, Lexembourg, the Netherlands, and Switzerland. Yet these countries accounted for only 4 % of the companies' foreign workforces and just 7 % of their foreign investments (McIntyre *et al.*, 2015, pp. 5–6).

Furthermore, McIntyre *et al.* (2015) reported that as of 2014, 358 of Fortune 500 companies – nearly three-quarters – disclose subsidiaries in offshore tax havens, indicating how pervasive tax haven use is among large companies. These 358 companies maintain at least 7,622 tax haven subsidiaries. Further evidence shows that most of America's largest corporations – Top 20 companies maintained 2,466 subsidiaries in offshore tax havens (Table 1).

In recent years, the US transnational companies have sharply increased the amount of money that they book to foreign subsidiaries. Cash booked offshore for tax purposes by the US transnationals doubled between 2008 and 2014. Evidence therefore shows that:

> The 286 Fortune 500 companies that report offshore profits collectively hold $2.1 trillion offshore, with 30 companies accounting for 65 % of the total (p. 10).

S/N	Company	Number of tax haven subsidiaries	S/N	Company	Number of tax haven subsidiaries
1	KKR	258	11.	Wells Fergo	98
2	Morgan Stanley	210	12.	Dow Chemical	92
3	AES	206	13.	Abbott Laboratories	91
4	Blackstone Group	161	14.	Emerson Electric	86
5	Thermo Fisher Scientific	155	15.	Mondelez International	82
6	Pfizer	151	16.	Illinois Tool Work	81
7	PepsiCo	132	17.	Ecolab	80
8	Merck	121	18.	Occidental Petroleum	80
9	Marsh and Mclenna	117	19.	Marriott International	79
10	Stanley Black and Decker	110	20.	National Oilwell Verco	76
Total					**2,466**

Source: Mclntyre, Philips and Baxandall (2015: 8–9)

Table 1. Top 20 companies with most tax haven subsidiaries

The 30 companies with the most money offshore account for $1.4tn of the total. Table 2, shows the companies that rank high for both the number of tax haven subsidiaries and how much profit they book offshore for tax purposes.

While the US corporate tax rate is 35%, the average tax rate that 57 Fortune 500 companies have paid to foreign governments on the profits they have booked offshore appears to be less than 10%. The following Table 3 shows examples of large companies paying very low foreign tax rates on offshore cash.

Corporate Reform Collective (2014) also noted that FTSE 100 companies have 34,216 subsidiary companies, joint ventures and associates, including 8,492 in tax havens that levy

S/N	Company	Amount booked offshore	Subsidiaries in tax havens
1	PepsiCo	$37.8bn	132
2	Pfizer	$74bn	151
3	Morgan Stanley	$7.4bn	210

Source: Extracted from Mclntyre, Philips and Baxandall (2015: 7)

Table 2. Ranking of companies with subsidiaries in tax havens

S/N	Company	Amount booked offshore	Amount owed	Subsidiaries in tax havens	Implied tax rate
1	Apple	$181.1bn	$59.2bn	3	2.3
2	Microsoft	$108.3bn	$34.5bn	5	3.1
3	American Express	$9.7bn	$3.0bn	23	4.2
4	Nike	$8.3bn	$2.7bn	52	2.5

Source: Extracted from Mclntyre, Philips and Baxandall (2015: 13)

Table 3. Companies implied tax rate on profits booked offshore

little or no tax on corporate profits. It was further argued that under the current practices, network of subsidiary companies and joint ventures are all treated as separate taxable entities, even though they have common shareholders, boards of director, strategy, logos and websites. This not only allows but also encourages multinationals to organise their affairs by forming entities in suitable jurisdictions to reduce their overall effective tax rate by variety of means (Corporate Reform Collective, 2014). Worthy (2013) also noted that:

> Many of the world's tax havens are British, whether overseas territories such as the Cayman Island, Bermuda and British Virgin Islands or crown dependencies such as Jersey, Guernsey and the Isle of Man. It was estimated that around £2 billion worth of assets are held through secretive trusts in the tax haven of Jersey alone. The City of London itself acts as the nerve centre for these tax havens and supports an army of lawyers and accountants dedicated to helping companies dodge tax (p. 4).

The scale of tax haven use is massive. Actionaid (2011) research revealed that 98 of the UK's 100 biggest companies listed on the London Stock Exchange use tax havens. The study further revealed that despite efforts to clean up the banking sector, banks are still doing a brisk business via tax havens [9]. The big four high street banks have 1,649 [10] tax haven subsidiaries between them – more than half of all their 3,067 overseas subsidiaries. Some other figures are particularly revealing as shown in Table 4.

It was further argued that not only the banks who are making such big use of tax havens. Other corporations can also arrange their financial affairs in a way that avoid taxes. Oil and mining companies, supermarkets comprise the other big group of tax haven users (Actionaid, 2011). Companies can use their ownership structures to effectively shift profits and avoid taxes (Corporate Reform Collective, 2014). While it is true that some of the FTSE 100 subsidiary companies do some business with real economic substance in tax havens, in most cases, the huge number of subsidiaries in a given location does not reflect the actual level of business carried out. For example, Actionaid (2011) notes:

> BP and Shell have almost 1,000 tax haven companies between them, including more than 100 in the Caribbean (hardly a major source of oil). The extractive industries often operate in developing countries, where natural resources play a central economic role. British American Tobacco has a massive 200 companies in tax havens. It is also one of the most prevalent in developing countries (p. 2).

Most big transnational companies have extremely complex structure, with different subsidiaries based in different countries. One part of the business might supply the raw materials, which will then be processed in another country, but the patent owned somewhere else. Instead of paying tax where the real business takes place, profits are moved between different parts of the company. At least 40% of all international trade takes place within transnational companies, providing ample opportunity for moving profits around. McIntyre *et al.* (2015) further noted that:

Table 4. Financial sector use of tax havens

S/N	Company	Subsidiaries in tax havens	Tax haven
1	Barclays	174	Cayman
2	Lloyds Group	97	Channel Island
3	HSBC	156	US State of Delaware

Source: Extracted from Actionaid (2011: 2)

> Offshore accounting gimmicks by transnational corporations have created a disconnect between where companies locate their actual workforce and investments, on one hand, and where they claim to have earned profits, on the other (p. 4).

In total, as much as £20tn is now held by rich individuals in secrecy jurisdictions. It is estimated that a third of this comes directly from poorer countries (Worthy, 2013). It was further argued that if this money was taxed, it could generate as much as £180bn a year in tax revenue – more than twice the amount rich countries spend on all overseas aid (Worthy, 2013). Therefore, the way tax is regulated internationally and the resources tax inspectors have at their disposal has a massive impact on whether developing countries get the revenue that is rightfully theirs (Palan *et al.*, 2010; Moore *et al.*, 2018; UNCTAD, 2020).

2.3 Tax justice

"Justice" and "tax justice" are self-evidently political constructs that are rooted not in any theocratic certainties but in the collective structures of human language; the usage of which is varied and frequently highly nuanced but which nevertheless has a significance that is identifiable in all social formations (Leaman and Waris, 2013). Wilkinson and Pickett (2009) also noted that "justice's" usage suggests a general anthropological appeal to the "social brain," which is reinforced by the social experience of coexistence, parenting, friendship, work and shared mortality and by an aesthetics of symmetry and sympathy. Leaman and Waris (2013) further argued that:

> It is no coincidence that the dominant Western image of justice involves the metaphor of balanced measuring scales in the hands of a female figure, frequently with sword in hand, implying a preparedness to defend militantly the right to fair treatment before collective (state) law, and indifference to prejudice in the form of the blindfold (p. 3).

Murphy and Nagel (2002) provided the variety of approaches to issues of tax justice, which above all questions any concept of tax justice that is not rooted in a broader conception of social justice. They make a persuasive case for the principle that "tax justice" must be part of an overall theory of social justice and of the legitimate aims of government. Justice in taxation is then seen as the fair sharing out of tax burdens among individuals as assessed from that baseline. But Leaman and Waris (2013) argued that tax justice cannot simply be a yardstick that is applied to single sovereign jurisdictions.

A number of scholars have arguably submitted that the extensive internationalisation of economic affairs, but in particular of financial transactions, has rendered individual nation states increasingly vulnerable to "tax competition" between states as a means of encouraging TNCs to (re)locate their operations (Murphy and Nagel, 2002; Sikka, 2008a, 2008b; Kohonen and Mestrum, 2008; Otusanya, 2013; Leaman and Waris, 2013). These scholars were of view that the tax arrangements of states and the western corporations have a critical effect on the development prospects of the less powerful states in developing countries. Justice in tax affairs must therefore consider the fundamental interdependence of the global economy and the very specific disadvantages facing poorer states with weaker institutions of tax governance, deriving from the sophisticated tax and regulatory arbitrage strategies of highly mobile TNCs (Murphy and Nagel, 2002; Leaman and Waris, 2013; Tax Justice Network, 2006; Actionaid, 2013).

In many developing states, Leaman and Waris (2013) further noted that there are many factors that play a part in unjust tax systems:

> Firstly, globalisation and the effects of being bound to the global economy has possibly muted domestic discourse on taxation. Secondly, the distinct absence of the existence of well- established social welfare processes has not posed the same dilemma to populations that are still mainly

> concerned with daily survival and alleviation of their poverty: citizens' awareness of taxation at times simply does not register as a cause for concern. Thirdly, the inability of developing and emerging states to fully harness their resources through a just tax system is partly due to a poorly constructed system. Finally, this is compounded by the absence of policy capacity which forces reliance on both domestic and international entities and lobby groups for whom justice and fairness are not key concerns (p. 2).

The necessary international dimension of campaigns for tax justice, as pursued by the international NGOs, [11] relates above all to the damaging effect of tax competition, of low-tax jurisdictions and of weak fiscal governance on the economic development of less developed and emerging economies. A number of scholars (Murphy and Nagel, 2002; Sikka, 2008a, 2008b; Kohonen and Mestrum, 2008; Palan *et al.*, 2010; Otusanya, 2013; Leaman and Waris, 2013; Moore *et al.*, 2018; UNCTAD, 2020) and NGOs (Tax Justice Network, Oxfam, Christian Aid, Actionaid) share the perception that the tax arrangements of states, and the TNCs have a critical effect on the development prospects of the less powerful states in Africa, Asia and Latin America. Leaman and Waris (2013) therefore suggested that justice in tax affairs must consider the fundamental interdependence of the global economy and the very specific disadvantages [12] facing poorer states with weaker institutions of tax governance, deriving from the sophisticated tax and regulatory arbitrage strategies of highly mobile TNCs.

2.4 Development and poverty

Tax is more than just a source of revenue and growth. It also plays a key role in building up institutions, markets and democracy through the state accountable to its taxpayers. However, the need for developing economics to establish sustainable revenue systems driven largely by their own domestic bases has become urgent, especially in the face of dwindling resources from natural resources and other nations (Otusanya *et al.*, 2013). Cobham (2005) stressed that:

> Tax is a central but neglected element of development policy. The structure and administration of taxation are frequently omitted from discussion and research agenda.

According to Transparency International (2009), revenue administration is very important to the state's development and economic health, as it significantly affect its capacity to spend on public projects and programmes, thus making problems of inefficiency and revenue leaking, especially damaging. Palan *et al.* (2010) noted that tax havens have played a significant role in shaping the economies of developed countries. They may play an even greater role in shaping the lives of those who live in developing countries. Most developing countries do not possess sophisticated tax systems. Typically, they are characterised by large and undertaxed informal economies and, in some of the extreme cases, economies that are not taxed at all. Research has shown that an effective tax system is a critical factor in development (Palan *et al.*, 2010; Moore *et al.*, 2018).

Taxation underpins sustainable development providing the framework that protect citizens' rights and address public needs through effective allocation of state resources. Bräutigam *et al.* (2008) note that not only does a functioning tax system raise the necessary revenues for development, it also builds the institutional capacity necessary for long-term development, and it encourages consensus and political conversation between private and public actors. Oxfam (2016) posits that:

> In developing countries in particular, where there is an immense need to strengthen health and education services for hundreds of millions of people who still live in extreme poverty, revenues from taxes provide the most sustainable way to pay for teachers, doctors and police officers.

> Every dollar a developing country can raise in taxes is a dollar it does not need to seek from donors (p. 2).

Developing countries are estimated to lose revenue greater than annual aid flows. The only way poor countries will be able to sustain themselves without relying on foreign aid is by creating a strong domestic tax base that can fund the essential public services and functioning governments their populations need (Oxfam, 2016; UNCTAD, 2020). It was therefore suggested that an increased return of just half a per cent of global assets held offshore could yield sufficient revenue to finance the UN Development Goal for 2015, halving global poverty. Instead such development is undermined by the role of MNCs through huge capital flight to tax havens. Kohonen and Mestrum (2008) espoused that these trends threaten democracy and development. A process of tax competition at the global level undermines the social contract previously set within the national arena, as states compete to offer tax exemptions to capital. In addition, it was also reported that tax havens grow more numerous, the world's richest financial centres get even richer, taxes paid by large corporation fall and ordinary citizens bear the cost. Oxfam (2016) states that the current global tax architecture is secretive and uncoordinated, weakening the ability of governments to collect the taxes that are due.

Since the 1990s, poverty reduction of individual people has been the priority of development cooperation. Despite these efforts, the number of poor people is hardly diminishing. According to Kapsos and Bourmpoula (2013), the International Labour Office reported that:

> An estimated 3 billion people, around half of all inhabitants in the developing world, remain poor, living on less than US$2 per person per day (measured at purchasing power parity). Underpinning this divide is a more than five-fold gap in labour productivity levels: measured at PPP, average output per worker in the developed world stood at nearly US$73,000 in 2011, compared with an average of US$13,600 in the developing economies (p. 1).

Kohonen and Mestrum (2008) further argued that the two side of the coin are related because the highest income earners have often placed their assets offshore and thus refuse to pay taxes that would allow launching social welfare programmes and public services for those on the flip side of global inequality. Large corporations and wealthy individuals are increasingly avoiding their obligation to contribute to the society through taxation. Further evidence shows that with the aid of governments, they are shifting the tax burden further onto ordinary citizens and small businesses. According to Kohonen and Mestrum (2008) assessment:

> An increased return of just half a per cent on global assets held offshore could yield sufficient revenue to finance development, thereby halving global poverty. Instead, such development is under threat from the huge tax breaks offered to attract large corporations, and from the vast outflow of funds from developing countries to tax havens (p. xiii).

Scholars have argued that strengthening public finance holds grater hope than development aid for curbing poverty and inequality and meeting development goals (Murphy and Nagel, 2002; Sikka, 2008a, 2008b; Kohonen and Mestrum, 2008; Otusanya, 2013; Leaman and Waris, 2013; Moore *et al.*, 2018; UNCTAD, 2020). Effort should be focused on nation-building and democratisation so that governments can take the lead in effectively taxing economic flows and provide for public goods (Kohonen and Mestrum, 2008; UNCTAD, 2020).

3. Globalisation and the pursuit of profit

Tax dodging (tax evasion and tax avoidance) practices have international connections. Thus, because of globalisation [13] and the mobility of capital, transnational companies

(MNCs) are able to cross international borders in search of low tax regimes to maximise their profits and capital returns. Globalisation has created new transnational spaces, where economic actions take place without much regulation, taxation or surveillance. These spaces were only becoming evident when lowering tariffs made it possible to rely on imports for large parts of consumption, and above all, when financial deregulation opened up the floodgates to the movements of capital and the world of offshore finance. Before trade and investment liberalisation, the potential tax base of global taxes would have been small. In globalised world, the distinction between domestic and global are blurred, and almost all big companies are able to play the tax avoidance games.

Globalisation [14] has produced a multiplicity of linkages and interconnections associated with the growing mobility of goods, services, commodities, information, people and communication across national frontiers (Harvey, 1989; Giddens, 1990; Tomlinson, 1996). The cross-country integration of economic systems through trade and investment is shaped by an interplay between corporate power, globalisation and the state (Sikka, 2008b). Such interplay and linkages can arguably be used also to craft opportunities and economic gains beneficial for both the political and economic elite, as well as corporations and professionals.

Such mobility has been promoted by a number of advanced countries (through their MNCs) and micro-states [15] that use their sovereignty and law-making powers to create an environment conducive to anti-social tax practices by the major corporations and the political elite (Palan, 2002). These micro-states offer shelter to international capital/money through light regulation, bank secrecy, confidentiality and low tax, which enables capital/money to escape regulation from larger jurisdictions and developmental states. Furthermore, footloose capital/money looks out for locations that offer political and economic stability, secrecy, confidentiality and a place, which can be used for illicit activities (such as tax evasion and tax avoidance) (Picciotto, 2007).

Globalisation is frequently associated to the ideology of free markets and free trade and the decline in state intervention. According to advocates of globalisation, reducing international regulation and barriers to trade and investment (deregulation and privatisation) [16] will increase trade and development. As a consequence, developing countries have been persuaded to deregulate and privatise their economies to attract direct foreign investment and to control anti-social practice associated with state intervention in the market (Fukasaku, 2002; Oman, 2002). Paradoxically, the conditions that promote globalisation are responsible for the expansion of anti-social tax practices. Shelley (2006) has noted that, "just as MNCs established branches around the world to take advantage of attractive labour, raw materials and markets, so do illicit businesses" (p. 43). In this competitive process, MNCs have exploited the decrease in regulation and the reduction of border controls to extend their activities across borders and to other parts of the world to increase corporate earnings and financial gain. This has been accompanied through financial engineering (Mitchell and Sikka, 2005), cartels, tax avoidance and evasion and money laundering (Sikka, 2008a; Palan *et al.*, 2010). As a consequence, the drive of developmental states to generate revenue for the domestic economy is constantly checked by a variety of anti-social tax practices (tax evasion, tax avoidance and tax fraud) carried out by MNCs and the economic elite (Willmott and Sikka, 1997; Sikka, 2008a; Otusanya, 2010).

The activity of the OFCs/tax havens is therefore integral and central to the anti-social tax practices of the TNCs and the elites of the developmental state (Hampton, 1996). This is because TNCs, the economic and political elites, can move their operations or activities to countries with ineffective or corrupt law enforcement and launder their money to countries

with bank secrecy or few effective controls. Furthermore, globalisation within this social structure has demonstrated the intertwining of TNCs, the state and the economic elite. Such interplay can be used to craft opportunities and economic gain for corporations, professionals and wealthy individuals. The pursuit of corporate profits has thus been facilitated by local infrastructures, tax havens and offshore financial centres (OFCs).

Although corporations are created through law and numerous social contracts, in their search for higher profits and financial gains, MNCs do not owe allegiance to any one particular nation, community or locality (Bakan, 2004). The mobility of TNCs is shaped by changes in contemporary capitalism where corporate performance and values are driven by higher earnings. Under pressure to compete with other companies and to increase profits, capitalist enterprises, including TNCs, constantly search for new ways of increasing their profits, and one way in which they do so is by developing complex financial structures to avoid or evade the payment of taxes. Although taxes are crucial in any nation state for the purpose of redistributing wealth, alleviating poverty and providing public services (such as education and health care), corporations often see tax avoidance and tax evasion merely as strategies for reducing costs and increasing profits, and not as practices, which undermine the development of just and fair societies (Sikka, 2008a). Behind a wall of secrecy corporations are able to devise complex schemes to boost their profits and meet incessant stock market pressures to report higher profits (Corporate Reform Collective, 2014). It was further argued that:

> Tax avoidance also personally benefits business executives because their remuneration and status is often related to reported profits. In these tasks, corporations are advised and guided by an established tax avoidance industry fronted by accountancy firms, lawyers and financial services experts (p. 12).

The sheer scale, power and complexity of globalisation pose challenges to the taxation of corporate income and profits, as TNCs have become more mobile and foreign companies have established businesses in new jurisdictions or operated joint venture or contract agreements with local companies. Such international tax strategies have also been increasingly shaped by the emergence of tax havens, which has made it possible for corporations to devise corporate structures, contracts and agreements, suited to shifting profits between subsidiaries and intermediaries (Palan, 2002; Palan *et al.*, 2010). Owing to the various tax avoidance and tax evasion strategies adopted by TNCs, and also by economic elite, the ability of developing countries to generate revenue in their domestic economies is constantly frustrated (Sikka and Willmott, 2010).

3.1 Research methods

There are considerable problems in collecting data because anti-social practices are carried out away from spying eyes, requires a certain kind of secrecy, and it is extremely rare for any of the actors to volunteer to own up to provide details. This paper does not rely on a statistical sample in any positivistic sense because companies and individuals rarely provide information about their underground practices. However, the authors recognise that, one can only discuss what is in the public domain, which depends on what comes out of court cases, reports from investigations and whistle blower account of such practices. This paper therefore does not pretend to offer any comprehensive analysis, but rather, it is constructing few case studies to illustrate the way tax dodging schemes are carried out and the actors involved.

The data for the case studies were obtained through archival documentation from the media, published documents by regulators, NGOs and other documentary sources to

provide episodes of tax dodging practices among TNCs operating in developing countries particularly Sub-Saharan Africa. The focus of this study is limited to some aspects of tax dodging practices by TNCs and their affiliates and subsidiaries. This paper focuses on three countries from Sub-Saharan Africa. Three countries were selected from among these countries with one each from West Africa, East Africa and the South African regions. Furthermore, it uses cases to illustrate some international tax strategies shaped by the emergence of tax havens, which undermine and reduce tax revenues in developing countries, with the particular focus being on tax dodging by TNCs in Sub-Saharan Africa countries.

4. Some evidence

A number of studies have attempted to quantify the amount of revenue lost as a result of tax-saving schemes and structures (Baker, 2005; Christian Aid, 2005; Cobham, 2005; Oxfam, 2004; Senator Carl Lenin Report, 2007; Sikka and Hampton, 2005; Sikka, 2008a; Tax Justice Network, 2007; Cobham and Janský, 2018, 2019). The loss of tax revenues in Africa because of tax evasion and tax avoidance has had a significant impact on the government's investment in social infrastructures and social welfare programmes and has increased poverty. This paper aims to add to the discourse on tax dodging by considering the various schemes adopted by TNCs (tax avoidance, tax evasion and tax incentives) in advancing their capital accumulation in developing countries, such as in Sub-Saharan Africa in particular, despite their professed claims in their own host countries to be socially responsible corporate entities.

4.1 Zambia case

Zambia has abundant natural resources, yet gains little tax revenue from the extraction of its resources thereby affecting investment in infrastructures essential in tackling poverty. A number of reports in recent years have highlighted how mining companies, while producing a large amount of copper, have been paying few taxes to the government.

4.1.1 Tax avoidance. In 2011, government revenues rose significantly, which was because of tax changes [17] introduced by Zambia government. Estimates show that the Zambian Government earned $1.35bn in revenues from mining, based on copper production worth $7.23bn (Curtis, 2015) (Table 5).

It was further reported that although government revenues in 2011 were greater than before, they should have been much higher. Evidence shows that over half of all the revenues from mining came from just one company, Kansanshi Mining Plc [18]. Of the other five mines, two – owned by Glencore and African Barrick Gold – paid no

Table 5. Production and tax at the five largest copper mines

Mines	Company	Production Value $	Tax Paid $	% of Production Value
Konkola Copper Mine	Vedanta	2.16 billion	105 million	4.9
Kansanshi Mining Plc	First Quantum	2.04 billion	853 million	42.0
Lumwana Mining Company	African Barrick Gold	1.03 billion	110 million	10.7
Mopani Copper Mines	Glencore	894 million	77 million	8.6
CNMC Luanshya Copper Mines	NFC Africa Mining Plc	205 million	18 million	2.3

Source: Extracted from Curtis (2015, p. 5)

corporate tax at all, whereas another owned by Vedanta, paid only a token amount. It was further reported that, excluding Kansanshi, the other five companies produced copper worth $4.28bn but paid a total of only $310mn in taxes [19] to the government (ZEITI Reconciliation Report, 2011; Curtis, 2015). In November 2012, the Zambia's Deputy Finance Minister reported that:

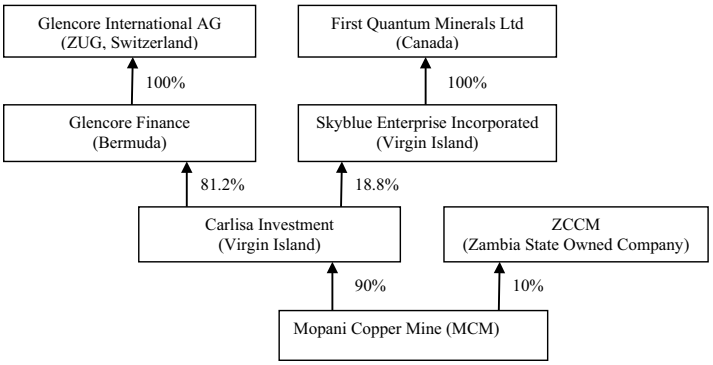
> Zambia was loosing $2 billion a year in tax avoidance, with the mining industry identified as the biggest culprit. The figure amounts to almost 10 % of Zambia's GDP. Only one or two mining operations were actually declaring positive earnings. The other mines for one reason or another, some genuine, some not, are always making losses. Most of it is due to transfer pricing or tax avoidance (p. 6).

Tax avoidance cases have recently been documented in the literature against three high-profile companies – Glencore, Vedanta and Associated British Foods.

Glencore manages Mopina Copper Mines, which consists of four underground copper and cobalt mines. A report of an audit of Mopani copper mines revealed a number of explosive findings, notable that Mopani's operations included tax planning strategies "equal to moving taxable revenue out of the country" (Curtis, 2015). The company ownership structures linking major multinational companies to assets in Africa often involve complex partnerships and linkages. The Mopani Copper mine in Zambia's Copperbelt illustrates a typical case of corporate structure used by Glencore to manipulate its tax affairs in Zambia (Figure 1). Mopani is 90% owned by a company called Carlisa Investments, which is jointly owned by Glencore Finance – a wholly owned Bermuda-registered subsidiary of Glencore – and a British Virgin Islands-listed subsidiary of First Quantum (a Canada-listed company). The other 10% of Mopani is owned by ZCCM Investment Holdings, listed in Lusaka and London, in which the Zambian Government holds an 87% stake (Africa Progress Report, 2013; Curtis, 2015).

The structures enable Glencore to design and engaged in transfer pricing activities through its sales of copper to related parties, which were not at arm's length in accordance with the agreement disclosed. Further evidence shows that:

> Mopani sold copper at artificially low prices to Glencore in Switzerland under deal struck with the firm's UK subsidiary. The metal was then sold on, allowing Glencore to take advantage of Switzerland's ultra-low tax regime. It was therefore conclude that the 'Mopani cost structure cannot be trusted to represent the true nature of the costs to Mopani mining operation' (Curtis, 2015, p. 8).



Source: Africa Progress Report, 2013, p. 49; Curtis, 2015, p. 8

Figure 1. Structure of Mopani Copper Mine

The mines ownership structure is mainly located in secrecy jurisdictions. Mopani is 90% owned by company registered in the British Virgin Islands, which in turn is a majority owned by Glencore Finance, registered in Bermuda.

Vedanta – registered in London with head office in Mumbai, India, and it manages three copper mines in Zambia, notably Konkola Copper mines. Vedanta was also accused of tax dodging through transfer mispricing. Vedanta's corporate structure includes numerous subsidiaries in secrecy jurisdictions. Its annual report for 2014 shows a list of 29 subsidiaries in tax havens of Mauritius, The Netherlands, British Virgin Islands and Jersey (Curtis, 2015). The secret mining agreement negotiated with Vedanta after it took over Konkola from Anglo American in 2000 avail the company 0.6% fixed royalty rate along with the ability to offset 100% of capital expenditures against tax and to carry forward losses. Despite this generous tax regime, Vedanta was reported to have only paid ZK54,000 ($11,111) in corporate tax in 2011, whereas its annual report revealed that its Zambia operations generated $1.7bn in revenues and an operating profits of $221mn in 2011/2012.

British company – Associated British Foods (ABF) [20] was also accused in 2013 of not paying corporate tax in Zambia despite its subsidiary, Zambia Sugar, generating $123mn profits. The investigation further revealed that ABF found legal ways to siphon $83.7mn ($13mn a year) – a third of pre-tax profits out of Zambia into tax havens including Ireland, Mauritius and The Netherlands (Actionaid, 2013; Curtis, 2015). The report estimated that Zambian public services lost around $27mn as a result of the company's tax avoidance schemes and special tax breaks, enough money to put 48,000 children in school. The revenue lost to tax havens is ten times larger than the amount the UK gives Zambia in aid for education each year (Curtis, 2015).

In addition, Zambia Sugar Plc borrowed $70mn from Citibank (the USA) and Standard Bank (South Africa), at an interest rate of over 17%. It was reported that the loan was denominated in Zambian currency (Kwacha) secured on Zambia Sugar's assets and repaid via a bank account in Lusaka; the banks made the loan to Illovo Sugar Ireland, which then made an identical loan to its sister company Zambia Sugar. This scheme allowed ABF to take advantage of the Zambia–Ireland tax treaty, which denies Zambia the right to tax interest payments. Evidence shows that the loan generated $29.4mn in interest payments. This case demonstrated tax avoidance through intra-group loan. The evidence shows that by routing the loan through Ireland and from preventing Zambia from levying its usual 10–15% withholding taxes, ABF deprived the Zambian Government of up to $3mn in tax revenue (Moore *et al.*, 2018).

Several governance problems are associated with the ownership and operating structures built around extractive investment projects. The presence of offshore-registered companies in the ownership chain limits public disclosure requirements. Meanwhile, the involvement of subsidiaries and affiliates as conduits for intra-company trade creates extensive opportunities for trade mispricing, aggressive tax planning and tax evasion, enabling companies to maximise the profit reported in low-tax jurisdictions (Africa Progress Report, 2013, p. 50)

4.1.2 Tax evasion. In addition to legal methods of tax avoidance, Zambia is losing more revenue from illegal tax evasion. Estimates show that $8.8bn left Zambia from the proceeds of crime, corruption and tax evasion in the 10 years between 2001 and 2010 – an average of $880mn a year. If this money were taxed at the prevailing corporation tax rate of 30%, Zambia would increase its revenues by around $264mn a year. These illicit outflows are in addition to the $2bn outflows from corporate tax avoidance noted by the government (Curtis, 2015).

4.1.3 Tax incentives. To attract foreign investors, many governments may have erred in providing excessive tax concessions. Tax incentives given by the government to companies, especially in the mining sector, are another cause of Zambia's lost revenue. The Zambian Government offers an array of tax incentives to domestic and foreign companies. In 2012, the Finance Minister noted that:

> Our current tax incentive regime remains one of the most generous in the region but this generosity has not translated into creation of decent employment opportunities for our people (Curtis, 2015, p. 14).

It was therefore estimated that Zambia is every year losing around $2bn in corporate tax avoidance, $264mn in tax evasion and unspecified amount in tax incentives. But it was argued that with improvement in tax administration, reduction in tax incentives and introduction of new taxes would increase the Zambian Government revenues by 4% of GDP. This would result in an increase in revenues of around $752mn a year. The overall annual revenue losses would be around $3.02bn (Table 6).

The loss of $3bn is equivalent to is equivalent to nearly half of Zambia's entire annual government budget of ZK32.2bn ($5.9bn) in 2013. It is also equivalent to nearly twice Zambia's combined spending on health and education (of ZK9.26bn or $1.69bn). Thus, recovering Zambia's lost tax revenue that could nearly double spending on schools and health care (Curtis, 2015).

4.2 SABMiller and its subsidiaries case

SABMiller, the world's second biggest brewer, owns over 200 brands including Grolsch, Peroni and Miller. This case examines the accounts of a sample of eight SABMiller subsidiary companies across five African countries – Ghana, Zambia, Tanzania, South Africa and Mozambique – and India as reported by ActionAid. The report estimates the amount of tax the company saved in those countries through different tax-dodging techniques. All of these techniques are based on payments – and therefore the transfer of profits – into tax havens.

From the African countries examined by ActionAid (2012), tax planning is a central element in SABMiller's business planning across Africa and India. Tax haven and corporate opacity mean that we cannot know exactly how much SABMiller saves from these techniques, but their estimates show the cost to governments. Royalty payments and management fees were identified as part of the techniques used in dodging taxes. The Actionaid (2012) report shows that for four financial years from 2007 to 2010, Accra Brewery Limited alone paid £4.57mn (Gh¢8.72mn) in management fees and royalties – representing 6.7% of the company's turnover and almost ten times its operating profit – to two companies, Bevman Services AG in Switzerland and SABMiller International BV in The Netherlands. It was further estimated that across Africa and India, payments to these

S/N	Schemes	Amount
1	Corporate tax avoidance	$2bn
2	Tax evasion	$264mn
3	Improvement in tax administration, reduction in tax incentives and new taxes	$752mn
Total loss		$3.02bn

Source: Extracted from Curtis (2015, p. 16)

Table 6. Zambia's annual revenue losses

companies and to two other Dutch companies who were purported to have provided "management services" totalled £90mn (Table 7).

For the five companies in SABMiller's Africa operating segment, the payments of £16mn represent 15% of operating profit. Evidence also show that royalties paid to The Netherlands have resulted in tax losses to African Governments of £10mn, and that management fees, mostly paid to Switzerland, reduced tax revenues in Africa and India by £9.5mn. Including the estimated losses from payments to Mauritius, the total estimated tax lost by governments in developing countries is close to £20mn (Actionaid, 2012).

The SABMiller group is made up of 465 subsidiary companies across 67 countries, along with a number of joint ventures and associates in others. Not all of these companies are involved with the production, marketing and distribution of beer. Some may be holding and financing companies set up to manage the group's interests in its subsidiaries. Others own the group's assets, for example its trademarks and other intellectual property. These structures allow the group to manage its complex network of operations efficiently. Actionaid (2012) further observed that:

> SABMiller has more tax haven companies (65) than it does breweries and bottling plants in the whole of Africa. This includes 17 Dutch finance companies, 11 companies in Mauritius, eight in the British Virgin Islands, six in Switzerland and six in the British Crown Dependencies (p. 33).

There may be many reasons to locate a subsidiary company in such a jurisdiction, but as the episode in this case demonstrate, the result of doing so is likely to be a reduction in SABMiller's overall tax obligation. The amounts lost in Africa are enough to put a quarter of a million children in school in the countries where SABMiller operates (Actionaid, 2012).

4.3 Case of transnational corporation in Nigeria

The transfer of intangible assets and intellectual property among TNC's affiliates and related transfer pricing issues are not new phenomena. However, what is interesting is the use of intangible assets to shift taxable income abroad and the corporate clout to challenge the enabling law in the host country to claim non-liability to some taxes in developing countries. Such schemes enable a group of companies to shift taxable profits through

Table 7. Annual payments to tax havens and the estimated tax losses that result

	Royalty payments		Management fees	
Country	Payment (£)	Estimated tax loss (£)	Payment (£)	Estimated tax loss (£)
Ghana	304,000	52,000	932,000	160,000
Zambia	3,330,000	830,000	3,140,000	720,000
Tanzania	2,280,000	340,000	5,660,000	1,100,000
Mozambique	367,000	44,000	552,000	66,000
Total	6,280,000	1,300,000	10,290,000	2,100,000
Africa Business Segment (extrapolated)	24,500,000	5,000,000	40,200,000	8,100,000
South Africa	18,300,000	5,100,000		
Africa Total	42,800,000	10,100,000	40,200,000	8,100,000
India			6,850,000	1,400,000
Africa and India Total	42,800,000	10,100,000	47,000,000	9,500,000

Source: ActionAid (2012, p. 32)

royalties and technical fees paid by their affiliates in developing countries to tax havens, thereby avoiding the host country's taxation.

4.3.1 Cadbury Nigeria Plc and Cadbury Schweppes Overseas Limited. This case involved Cadbury Nigeria Plc (CNP) (a public limited company engaged in the manufacturing and sales of beverages, chocolate- and cocoa-related products) and its parent company, Cadbury Schweppes Overseas Limited (CSOL). It provides evidence of how CSOL and their affiliates CPN in Nigeria have used the transfer of intangible property to evade VAT [21] payments. CSOL had an elaborate organisational structure for developing recipes, processes, know–how and trademarks. The centre operated as a profit centre to sell its products and technical property. The scheme was executed through an agreement between CSOL and its other subsidiaries, including CNP. In this agreement, paragraph 7(a), inter alia, stated thus:

> In consideration of the undertaking contained therein, the Nigerian company will pay to overseas an annual royalty of 2 % (or such higher rates as may be agreed between the parties) of the net sales value of the Nigerian company in respect of any financial year as endorsed by its officially appointed auditors such fees to be paid subject (to obtaining any statutory consents) as soon as reasonably possible after publication of its annual report for the relevant year.

On the bases of the above agreement between CNP and CSOL, Federal Inland Revenue Service (FIRS) reported that the affiliate had paid $21.57mn (between 1995 and 2003) to CSOL as technical fees and royalties (Court Judgment, Suit No. VTBR/W/5/2004; Nigerian Tax Note, 2006). The FIRS argued that though there are some exemptions, [22] but the services provided by CSOL and consumed by CNP are categorised as imported services, which are value added tax (VAT)able[23] services under VAT Act 2007 as amended. However, CNP contended that CSOL does not carry on business in Nigeria, and therefore, the royalty and technical fees payment made to it are not subject to VAT deduction. FIRS noted that:

> The provision of technical services and know-how by CSOL could be conceptualized as the management's strategy to create integrated corporate structure to provide a range of services to their subsidiaries and affiliated companies (Nigerian Tax Note, 2006).

Though, the CNP wished to use the non-residence rule to defend their position, but the VAT Act [24] recognised a non-resident company's entities as VATable in Nigeria. The contradictions and contentions relating to VATable services and liability of a non- resident company in Nigeria were later cleared, as the Tribunal ruled that:

> We hold that the Overseas Company (CSOL) carried on business within Nigeria within the ambit of the Value Added Tax Act. We also hold that the payment for royalty and technical services in this case are for the supply of goods and services and are VATable. Accordingly, FIRS was entitled to judgment for Value Added Tax against CNP in the sum of N134,817,258.00 ($1.08 million) and interest in the sum of N114,304,468.00 ($914,436). Thus the total indebtedness of CNP was N249,121,726 ($1.99 million) and the rate of interest on the judgment debt was 6 % per annum until it had been completely liquidated (Court Judgment, Suit No. VTBR/W/5/2004; Nigerian Tax Note, 2006).

This case has shown how technical fees and royalties can be used as a tax dodging strategy for moving taxable profits from subsidiaries to the parent company in tax havens under the pretence that the company is a non-resident company.

4.3.2 Shell Petroleum International Mattschappij B.V. Shell Petroleum International Mattschappij B.V (SPIM) is a multinational oil company incorporated in The Netherlands. Its shares are held by Shell Petroleum N. V., also incorporated in The Netherlands. Through its global network, SPIM's activities consist of rendering technical and managerial services

to over 40 companies in the Royal Shell Group operating in the oil and gas industry throughout the world.

The Shell Group, through its Nigerian affiliate, Shell Petroleum Development Company of Nigeria (SPDC), [25] had a special sharing arrangement with another affiliate, SPIM, in which services and expenditure were charged to the group's company account on a cost basis in such a way that SPIM was left with no profit. This suggests that the Shell Group designed this scheme to enable SPIM to render technical and management services to its subsidiaries in return for massive charges. However, it could, on the other hand, be seen as a tax strategy to book profit outside Nigeria, in other words in tax havens. To minimise taxes, SPIM registered in a favourable tax jurisdiction (in this case, The Netherlands) claiming ownership of technical and management services. Because the whole Shell Group relied on such services, all companies, including the Nigerian affiliate, SPDC, had to pay royalties for its use (Nigerian Revenue Law Report, 1998–1999). On careful examination of thrust of the case, the Body of Appeal Commissioners (BAC) held that:

> We have observed that SPIM had all along been adopting tax evasion practices. In one breath, it had consistently maintained that it was not liable to tax in Nigeria because it had no fixed base for carrying on business in Nigeria and that the services it rendered are rendered in its office at The Hague. Above all, the services rendered by SPIM were rendered on a cost sharing basis which involves no mark- up for profits to SPIM. So that it had no profits and did not render Annual Tax Returns, a compromise has to be made to make it pay tax. In another breath, it was the same SPIM which proposed the compromise of 71/2 % of Annual Turnover as SPIM deemed profit for tax purposes and prevailed upon FIRS to enter into the 6 February 1992 agreement (see Exhibit H). The evidence of Mr Korver (as contained in Exhibits G, H, and R) confirm our findings that the SPIM had been carrying on business in Nigeria using SPDC's office. (Nigerian Revenue Law Report, 1998–1999, p. 75).

Subsequent to the above findings, the BAC ruled in favour of FIRS that:

> The provisions of the amended Decree override the agreement between the parties. Hence, the amendment to the assessment subsists. SPIM was liable to Nigerian tax for the services it was carrying out in Nigeria and most importantly the special payment put together by it was nothing more than a scheme to avoid payment of tax in Nigeria. (Nigerian Revenue Law Report, 19981999, p. 64).

Being dissatisfied with the BAC's decision, SPIM appealed to the Federal High Court. The case was further subjected to judicial investigation by Federal High Court. After the High Court had carefully studied the various cases and decisions of the BAC, the judge held that:

> I cannot see the basis for the argument as to whether SPIM was liable or not to pay tax in Nigeria for the business they did and which they earned living from. SPIM did not deny, in fact, they affirmed that they were rendered services. They also agreed that they were paid fees for those services. By those two admitted facts, they themselves became liable to pay tax in Nigeria. (Nigerian Revenue Law Report, 1998–1999, pp. 81–82).

In addition, SPIM admitted that they used the available office of SPDC whenever they were in Nigeria to render services. The judge further emphasised that the place of their business in Nigeria need not be owned by them, or rented by them, or that the use of the place be given to them gratis. [26] Thus, the judge agreed with the findings of the BAC that '"SPIM were liable to Nigerian tax for the services they were carrying out in Nigeria, services for which they were being paid;" and that "the payments received in Nigeria were put together with other payments from other parts of the World was nothing more than a scheme to avoid payment of tax." Hence, the appeal on the increment for the 1993 year of

assessment from 71/2 to 10% was allowed, whereas the appeal that SPIM was not liable to tax in Nigeria was dismissed (Nigerian Revenue Law Report, 1998–1999).

The implication of this case was that SPIM's special sharing arrangement had deprived the Nigerian State of considerable tax revenues for the period of eight years (1981–1988) to which the assessment related. FIRS was therefore able to recover £20.09mn, which SPIM claimed had already been withheld from payments to SPIM by SPDC who had paid the same over to FIRS. Allowing SPIM to appeal to the change in rate from 71/2% to 10% of deemed profit further reduced the tax revenue on $44.75mn revenue made by SPDC to SPIM in 1992.

The above cases demonstrate the adoption of various exploitation schemes by TNCs and local companies in their continuous drive for profit. They show how strategies can be devised to move taxable funds from a developing country to a home country to avoid paying tax. This is made possible with the connivance of local directors in the affiliates in exploiting local business and institutional structures to deprive a developing country (particularly, Sub-Saharan Africa countries) of the revenue needed for social and economic development.

5. Summary and conclusions

This paper seeks to contribute to emerging discourses by focusing on the role of TNCs in tax dodging in developing countries through tax avoidance and tax evasion scheme and generous tax incentives. This study has shown how tax evasion, avoidance schemes (such as technical and management services, transfer pricing) can provide a means of shifting profits to tax havens to avoid the payment of taxes, strategies that undermine the governing system and also the quality of life of citizens. Substantial transfers of intangible assets from developing countries have been facilitated by the ability of MNCs to create hybrid entities in their affiliates abroad and to reach favourable cost-sharing agreements with these affiliates. This paper argues that transfers of taxable profits are driven by incentives to save taxes (through the relocation of profitable assets to tax havens) and to optimise profit-shifting strategies. Thus, TNCs may manipulate their corporate structure to shift taxable profits between high-tax production subsidiaries to other subsidiaries in low-tax countries.

The cases discussed above provide compelling evidence of systematic abuse by large corporations and the consequent negative impacts on both revenues and its tax cultures, underscoring the centrality of "tax justice." However, business has much more to contribute than just urgently-needed investments. It can also add social value. At a minimum, this means doing no harm, paying taxes, not partnering in corruption and implementing codes of good practice that promote tax injustice.

The activities of TNCs are facilitated by secrecy structures shaped by globalisation, weak institutional structures and weak regulation and by capitalist and capital accumulation drives by companies. Thus, as a result of globalisation and the pursuit of profit, MNCs have adopted a variety of tax strategies by using the enabling structures in offshore financial centres and tax havens; strategies that have been facilitated by creative roles played by corporate managers. The emergence of offshore financial centres and tax havens poses new challenges to nation states (Otusanya and Adeyeye, 2022).

The ability of companies to get away with tax dodging globally depends on the willingness of government around the world – especially those that presiding over tax havens. Africa loses twice as much in illicit financial outflows, as it receives in international aid. It is unconscionable that some companies, often supported by dishonest officials, are using unethical tax avoidance, transfer pricing and anonymous company ownership to

maximise their profits, whereas millions of Africans go without adequate nutrition, health and education. Strengthen revenue mobilisation, including by improving tax administration and the transparency and equity of tax policy. Many argued 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 (Moore *et al.*, 2018).

When foreign investors make extensive use of offshore companies, shell companies and tax havens, they weaken disclosure standards and undermine the efforts of reformers in Africa to promote transparency. Such practices also facilitate tax evasion and, in some countries, corruption, draining Africa of revenues that should be deployed against poverty and vulnerability (Africa Progress Report, 2013; UNCTAD, 2020). It was also observed that some extractive companies generate healthy profits that do not translate into commensurate government revenues because of excessive tax concessions, tax evasion and the undervaluation of assets.

International action can create an enabling environment for strengthened governance in Africa. Tax evasion, illicit transfers of wealth and unfair pricing practices are sustained through global trading and financial systems – and global problems need multilateral solutions (UNCTAD, 2020). African citizens should demand that their governments meet the highest standards of propriety and disclosure. Governments in developed countries should demand the same thing of companies registered in, or linked to, their jurisdictions.

Taxation is widely regarded as an essential component of a fair and compassionate society. However, it has been argued that the tax base in most developing countries has been severely eroded by tax avoidance practices (Sikka, 2008a; Otusanya, 2010, 2013; Otusanya and Adeyeye, 2022). Low-tax yields in poorer regions of the world limit the domestically generated resources available to governments for essential public services, such as health care, housing and education. Tax dodging practices in developing countries have drained tax revenues; and reductions in tax payments have increased the income gap, harmed competition, undermined free trade and entrenched poverty (Palan *et al.*, 2010; Moore *et al.*, 2018).

This paper has suggested that if the loopholes in the tax laws are not closed, then the rule of law and the effective administration of tax will not be strengthened in Africa, and that, as a result, it may continue to lose billions of dollars to the activities of TNCs and their affiliates. Although Africa and other developing countries continue to drive their economy through foreign direct investment, they should take care to ensure that they do not lose their economic power to TNCs while negotiating tax breaks and incentives, and they should also remember that they have obligations and responsibilities to their own electorates, not just to local and international capitalists. This is because the anti- social tax practices of some TNCs pose serious challenges to the development of a stable and mature democracy in developing countries.

Notes

1. Pravin Gordhan, cited in Dyer, G. End looms for era of cheap Chinese labour. Finance Times, 3 June 2010. See http://bit.ly/aQvRVz.
2. British's government minister in charge of tax administration, Danny Alexander.
3. See The international dimension of campaigns for tax justice by the Tax Justice Network, Global Financial Integrity and by NGOs like Oxfam, Christian Aid and Actionaid.
4. 1992 1 AC 655, as cited in Fullarton, 2014, p. 51
5. Tax Justice Network provided clear evidence that these places, some of them countries, some not, but all with the power to pass legislation, set out to undermine the impact of legislation passed in

other jurisdictions. These are deliberate acts of economic aggression targeted at sovereign states (Tax Justice Network, 2008).

6. Tax havens have four identifying features. Firstly, a tax haven is a jurisdiction with very low or nonexistent taxes. Second is the existence of laws that encourage financial secrecy and inhibit an effective exchange of information about taxpayers to tax and law enforcement authorities. Third is a general lack of transparency in legislative, legal or administrative practices. Fourth is the lack of requirement that activities be "substantial," suggesting that a jurisdiction is trying to earn modest fees by enabling tax avoidance (McIntyre *et al.*, 2015, p. 5).

7. The Panama paper shows the myriad ways in which the rich can exploit secretive offshore tax regimes. Twelve national leaders are among 143 politicians, their families and close associates from around the world known to have been using offshore tax havens.

8. OFCs are the commercial communities hosted by tax havens which exploit the structures that can be created using the tax haven's legislation for the benefit of those residents elsewhere. In other words, the offshore financial centre is made up of the accountants, lawyers, bankers, plus their associated trust companies and financial intermediaries who sell services to those who wish to exploit the mechanisms the tax haven has created (see Tax Justice Network, 2008, p. 3-4).

9. The FTSE 100 companies make much more use of tax havens than their American equivalents (Actionaid, 2011, p. 4).

10. Many of these companies are "mailbox" companies, which are often used as part of tax avoidance schemes.

11. Tax Justice Network, Global Financial Integrity, Oxfam, Christian Aid, Actionaid and others.

12. The specific disadvantages is exemplified by the charge that developing countries tax revenues are under relentless attack from several multinational companies and the global networks of tax havens and OFCs.

13. On globalisation and tax evasion and tax avoidance generally, see: Hampton (1996); Sikka, (2008b); Palan, (2002); Desai *et al* (2006); Tax Justice Network (2005); Palan *et al.*, 2010).

14. Globalisation has been defined as the intensification of worldwide social relations, which link distant localities in such a way that local happenings are shaped by events occurring many miles away and vice versa (Giddens, 1990, p. 64).

15. Some of these states are not very powerful, and which are often lacking in the natural, human, military or diplomatic resources needed to create successful economies, and which use their sovereignty to offer shelter to finance, and to footloose money and capital.

16. Such policy initiatives have been in many cases instigated or supported by institutions such as the World Bank, the International Monetary Fund (IMF) and the World Trade Organisation (WTO).

17. These include increased corporate tax and the royalty rate and introduced a variable profit tax and a windfall tax.

18. The company is jointly owned by First Quantum (80%) and Zambia Government (20%).

19. The taxes paid were mainly windfall taxes, royalties and VAT on imports.

20. ABF owned Silver Spoon suger, Ryvita and Primark. It is a FTSE 100 company and the largest sugar producer in Africa.

21. VAT is consumption tax administered in Nigeria on all consumable goods and services that are not specifically exempted from tax (as contained in the Value Added Tax Act 2007, as amended).

22. There are number of exemptions as contained in s.3 of the Value Added Tax Act 2007 as amended (e.g. basic foods items; baby products, books and educational materials; all medical and pharmaceutical products; medical services; services rendered by community banks, people banks

and mortgage institutions; plays and performances conducted by educational institutions as part of learning; and all exported services) (CITN 2002: 561–2).

23. VATable is a term that denotes that goods and services are subject to VAT in Nigeria.

24. See Section 8b of VAT Act 2007 as amended.

25. SPDC of Nigeria is a member of the Shell Group whose diverse activities contribute to the economies of over 140 countries. Shell is by far the largest foreign oil company in Nigeria, accounting for 50% of Nigeria's oil production; and Nigeria generates roughly 12% of Shell's oil production worldwide (Corporate Watch, available at http://archive.corporatewatch.org/publications/shell.html#2(accessed 7 October 2018); http://www.shell.com.home/content/nigeria/about_shell/who_we_are/structure/structure.html (accessed 7 October 2018)).

26. The place of their business means any identifiable place. It might be a hotel they were staying in, which is in Nigeria, once they are carrying on their business in such location. It is a place they are using at a given time (p. 82).

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