[Lake Albert, Uganda. Copyright : Andrew Bogrand]

THE MONEY PIPELINE

Cursed by Design: How the Uganda-Netherlands Tax Agreement is denying Uganda a fair share of oil revenues

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Oxfam Uganda, Oxfam Novib and Oxfam France investigated on the mega project led by the French energy giant TOTAL along with its partner the China National Offshore Oil Company (CNOOC) which will allow for the exploitation of 1.4 billion recoverable barrels of oil located on the shores of Lake Albert.

This exclusive case study reveals the magnitude of Dutch investments in Uganda and how the Tax Agreement between Uganda and the Netherland will benefit oil companies but deprive Uganda of essential resources to finance essential public services and fight poverty and inequality, particularly vital in the context of the COVID-19 pandemic.

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EXECUTIVE SUMMARY

The COVID-19 crisis has exposed the critical need for governments to ensure that they retain sufficient means of actions to support their populations in a time of crisis. If more proof was ever needed – there is no more ambiguity: health budgets in particular must not be slashed. This is however easier said than done: government's fiscal revenues and budgets need to be big enough so that no piece of the cake is too small, which requires diligent Domestic Revenue Mobilization. UNCTAD estimates that developing countries lose up to $100 billion each year in tax avoidance by multinational companies.[1] The 2019 Mauritius Leaks have exposed how treaty shopping is part of this issue – or when multinational companies structure their investments through shell companies to benefit from the advantages of a specific double tax agreements between two countries. When money leaves the country, when taxes are avoided – it actually costs someone: governments and their citizens.

Like many other countries – Uganda has been blessed with large oil resources, the 4th largest in sub-Saharan Africa. Only discovered in 2006, the Lake Albert 1.4 billion recoverable barrels have yet to transform the landlocked country into a full-fledged oil producer – which will require the construction of a 1,445 km pipeline through Tanzania, the longest heated pipeline ever built. Expectations have been flying high and 2020 is now a turning point for Uganda as the Final Investment Decision of the megaproject led by French major TOTAL and Chinese CNOOC is on the verge of materialization. TOTAL CEO expressed that this project is part of their strategy of developing 'cheap' projects.

Timing could have been better: oil prices have recently plunged and energy markets are now quickly shifting as the reality of climate change becomes tangible. For the government of Uganda to derive adequate revenues from this project – there is no room for error and all fiscal levers will need to be activated. What does 'cheap' mean for TOTAL in this context?

The country has already lost – according to its revenue authority – more than $3 billion in tax incentives and exemptions to multinational companies in a period of 6 years,[2] and has failed to materialize its promises to dedicate at least 15% of its budget to the health sector. **Uganda is also marred by a specific issue: none of its current nine Double Tax Agreements (DTAs) comply with international best standards according to the IMF**, a situation regularly denounced by many in Ugandan civil society. Of particular concern is its agreement with the Netherlands – a European Union member State considered by many, including members of the European Parliament as a tax haven. According to the Dutch Office of Statistics, more than 14 000 letter box companies are used to channel out investments – using the Netherlands as a conduit jurisdiction only. **95% of the Dutch investments in Uganda – the country's top investor partner – would have actually originated from a third country. The DTA with the Netherlands is clearly very attractive: one of its perks being that dividends paid from Uganda to an investor owning more than 50% of the shares will purely and simply not be taxed** – against a 15% statutory rate. Against the common belief that a country needs to concede on many advantages in their treaties to attract investments, researchers at the London School of Economics who have studied the DTA between Uganda and the Netherlands found that "When private sector tax advisers were asked what would happen if the Dutch

treaty were cancelled, they stated that investors would simply restructure, and were unlikely to withdraw their investments."

After all, oil is not found everywhere and unlike investment vehicles, cannot be delocalized.

The two project partners – French energy giant TOTAL and Chinese CNOOC have however structured their investment in the four blocks – in which they respectively now own 66.67%[3] and 33.33% of the shares - composing the Tilenga upstream portion of the Lake Albert project, through Dutch subsidiaries. For TOTAL, this is part of a wider network of Dutch entities: 25% (or 56) of its Exploration & Production subsidiaries are incorporated in the Netherlands.

In this case study, we use a standard discounted cash flow model to estimate future revenues for project's partners for block EA1, and give an estimate of taxes avoided by TOTAL and CNOOC as a result of the favourable dispositions of the Uganda-Dutch DTA.

Overall, Oxfam estimates that the government of Uganda will miss out on $287 million over the 25 years of exploitation of the project – for one Exploration Area (or block) only out of the four of the project. This amount – which represents only a likely very small portion of all tax leakages for the 4 Exploration Areas - would already be close to 5.7% of the overall potential government revenues stemming from the project and represents a very partial estimate of the potential missing revenues from the Dutch-Uganda DTA, as based on one block only. This figure should also be subject to caution as oil prices are highly volatile, and is based on a 50 USD/Brent barrel price scenario.

As the DTA is currently being renegotiated and as the Dutch government has promised to upgrade dividends taxation rates in its DTAs with developing countries, recommendation is to increase the rate to a minimum of 10% - which will allow the government to collect an additional revenue of at least $174 million.

INTRODUCTION

The current COVID 19 crisis has exposed, all around the world, the critical need for governments to guarantee the proper financing of essential services, including public health systems as well as the provision of strong social safety nets for the most vulnerable in a time of crisis. Governments also need to retain sufficient means of action to support their economy when facing external shocks. Without those, any future crisis will accelerate the rise of inequalities. **Governments have to, more than ever, ensure that proper domestic revenue mobilization is conducted: this will have to go through a renewed effort on the prevention of tax leakages. Uganda is no exception.**

The current crisis is already taking its toll: revenue collection by the Ugandan Revenue Authority (URA) could fall by more than $350 million in 2020.[4] The country has recently received direct budget support from the World Bank ($300 million)[5] and a $491.5 million in emergency assistance from the IMF[6] to tackle the COVID-19 crisis and respond to the economic shock. The COVID-19 crisis also has the potential to further imbalance already precarious situations: according to the World Bank, the poverty rate could increase by 2.7 points to 8.2%.[7]

This is putting additional stress on an already degrading national economic situation: the public debt to GDP ratio had already increased from 38% for FY 2016/17[8] to 45.7% (projected) for FY 2018/19, and could rise up to more than 50% by FY 2021/22 because of Uganda's large fiscal expenditure.[9] The World Bank has also expressed concerns over Uganda's rising fiscal deficit which could stand between 7 and 8.9% of the Gross Domestic Product (GDP) for FY 2020/2021.[10] This is happening as the Ugandan tax system is viewed as being too regressive and not able to address inequalities. Tax to GDP ratio is still too low (11.739% in 2018[11]), and not enough revenue is collected from those individuals and companies best able to contribute. **According to the URA, the country lost (from 2010/2011 to 2016/17) about $3 billion in tax incentives and exemptions** – or 16% of its total tax revenues, mostly to multinational companies (MNCs).[12] The Tax Justice Alliance in Uganda estimates that tax incentives and exemptions have cost the country around 4 to 5% of its GDP.[13] According to the 2018 Fair Tax Monitor report published by Oxfam and SEATINI,[14] 64% of the total tax burden in the country is borne by the poor.

The Government of Uganda has however committed to fund key social sectors such as the health sector to a tune of 15% of the national budget annually, in line with the Abuja Declaration.[15] However, in FY 2019/20, the sector was allocated only 6.4% of the total national budget, a drop from the 7.1% allocation in FY 2018/2019.[16] **Underfunding of key social sectors like health and social protection translates into poor health care affecting the life expectancy of its citizens: in 2017, the maternal mortality ratio was 375 per 100,000 live births – one of the highest rates in the world[17]** - which is still far above the Ugandan Health Sector's development plans target of 121 deaths per 100,000 live births.[18] Uganda civil society organizations have notably pointed out that the Ugandan Blood Bank is significantly underfunded, which leads to the death of over 1000 women and girls annually.[19] The COVID-19 crisis has further increased gender inequalities in the country and has also led to an increase of maternal mortality and blood shortage due to the lockdown and consequences on mobility.

But Uganda is also at a crossroad: for many years, the country has been counting on the massive Lake Albert oil discoveries – the 4th largest reserves in sub Saharan Africa - to materialize into revenues to boost up its economy and its budget. **Commercialization of Ugandan oil is expected to generate cumulative government revenues between $5 and 9 billion over the project lifetime**.[20] The country is betting on future oil revenues to finance its Vision 2040 development which aims at transforming Uganda into an upper/middle-income society.

The super-project, led by French oil major TOTAL (originally alongside with Tullow Oil[21] and China National Offshore Oil Corporation - CNOOC) has been in development since its commercial discovery in 2006. As of September 2020, the Final Investment Decision still has not been taken in spite of TOTAL's last move to acquire the whole of Tullow's assets. Patrick Pouyanné, TOTAL CEO, recently stated in an interview to French media *Le Monde*, that TOTAL's mandate was now to carry out explorations "whose budgets have shrunk over the past 5 years – only where cheap petrol can be produced".[22]

But if hopes are high – so could be disillusions for the new oil producer country. In a context where oil prices have recently plunged, and where global climate change is structurally affecting energy markets; power relations between oil majors, MNCs and national governments are further imbalanced. **What does "cheap petrol" mean for the French oil major?** Could tax avoidance strategies result in lost revenues for the Ugandan government – in a search for cost optimization?

Civil society organizations in Uganda have long been warning that Ugandan domestic revenues are plagued by a number of detrimental double tax agreements (DTAs)[23] and that the country's revenue collection is hampered due to the abuse of DTAs by multinational corporations (MNCs). The 2018 Fair Tax Monitor also strongly highlighted the need for the country to review its treaty network.

As TOTAL and CNOOC have structured its investment in Uganda through Dutch subsidiaries, we first examine here the central role played by the Netherlands in facilitating investments of MNCs in Uganda as well as the impact of the DTA between the Netherlands and Uganda on future government revenues.

I. DOUBLE TAX AGREEMENTS, THE NETHERLANDS AND UGANDA: A MATCH NOT MADE IN HEAVEN

Ugandan context

Double Tax Agreements (DTAs) are tax treaties between two countries that determine which country has the right to tax specific international (or cross-border) transactions. While DTAs do not create new taxes, they regulate taxation rights when more than one country has the opportunity to tax the same income.

Originally designed to prevent double taxation, over the past decades DTAs have incorporated additional features, including the prevention of double non-taxation and the exchange of information & mutual cooperation between countries.

Traditionally, developing countries enter into DTAs with wealthy countries as part of broader efforts to attract foreign investment and multinational companies into their countries. Due to the negotiation experience gap between wealthy and developing countries and the technical complexity of the treaty, DTAs often result in developing countries surrendering important taxation rights and generating unexpected revenue losses over the years.

In line with the objective of preventing double taxation, DTAs normally restrict the possibility of a country to tax a cross-border transaction. Often this restriction is imposed on the developing countries where the economic activity originated, known as the *source country*.

DTAs restrict or fully prevent the capacity of a source country to levy taxes – known as withholding taxes (WHT) – on different forms of cross-border payments, including dividends, interest, royalties and technical fees.[24] As a result, multinational companies are able to shift profit out of developing countries paying very little or no tax.

Uganda currently has nine DTAs in place: Denmark, India, Italy, Mauritius, The Netherlands, Norway, South Africa, the United Kingdom and Zambia. An additional treaty with Belgium is not yet in force.

According to the IMF, none of those treaties conforms to current international best practices.[25]

A recent Global Financial Integrity report found that “the tax rates for the non-resident investors deriving passive income from Uganda (such as dividends, interests, royalties, and technical fees) are far too low, most of them having been negotiated

over 10 years ago without being adjusted for economic changes over time". The report also noted that the Government of Uganda "recognizes the perils of some of its DTAS"[26] and was interested in renegotiating its agreements with Mauritius and the Netherlands.

Mauritius grabbed significant headlines in 2019 due to the International Consortium of Investigative Journalists (ICIJ) publication of the *MauritiusLeaks*, which demonstrated the devastating impact of DTAs between Mauritius and other African countries. Mauritius, which in 2016 was exposed by Oxfam as one of the world's 15 worst corporate tax havens,[27] has positioned itself as Africa's offshore investment hub by allowing global companies to divert revenue away from low-income African countries.

In the three decades since the island became a tax haven, Mauritius has woven an intricate web of DTAs which are used by multinational corporations to shift their profits to countries where they pay little or no taxes.[28] The findings by the ICIJ and the heavy impact caused by Mauritius DTAs on domestic revenue have led to both Senegal and Zambia recently terminating their tax treaties with the island.[29]

Most recently, Uganda has enacted a series of amendments to its tax legislation with the objective of closing loopholes and preventing tax leakages.[30]

In addition, the government is currently working on a new policy paper to guide its DTA negotiations, however there are no plans to publish such guidelines.

Box 1 Double Tax Agreements and Treaty Shopping – The Great Escape

Double Tax Agreements should not be seen as necessarily harmful or beneficial for developing countries. The real impact of a DTA in a country's economy and revenue collection is dependent on the specific clauses in the agreement, which vary greatly due to negotiating strategies, national interests and technical knowledge of both parties.

Besides the intended reduction in withholding tax rates, DTAs are also frequently abused by multinational corporations and wealthy individuals for the reduction of taxes. **Treaty shopping** is a technique frequently utilized that results in staggering revenue losses.

DTAs provide reduced tax rates on certain cross-border financial transactions (dividends, interests, royalties and others) between the two signatory countries, which should be exclusively enjoyed by persons (individuals and companies) that are residents in those jurisdictions. Treaty shopping is the attempt by a person that is not a resident of one of those countries to benefit from that treaty and effectively reduce its tax rate. Let's look at the following example:

Resourceland is a developing country with large reserves of oil. In its tax legislation, Resourceland imposes a 15% withholding tax rate on all dividend payments leaving the country. In order to attract foreign investment, Resourceland signs a DTA with Havenland.

The technical clauses of the DTA effectively reduces the WHT rate on cross-border dividend payments from 15% to 5%, providing an important advantage for oil companies from Havenland operating in Resourceland. Any dividend payment made between both countries will be taxed in a more favourable way, benefiting Havenland's extractive companies.

An oil company called Petrolea based in Gaul is also interested in operating in Resourceland. However, Gaul does not have a DTA with Resourceland. This means that any future dividend payments from Resourceland to Gaul would be subject to the 15% WHT rate. This is clearly disadvantageous for Petrolea in comparison with Havenland's

extractive companies.

Despite not being a resident from Havenland, Petrolea is interested in benefitting from the favourable tax rate of the Resourceland-Havenland DTA. With that in mind, Petrolea establishes a subsidiary in Havenland that has the exclusive objective of benefitting from the tax rates of the DTA, without any other economic purpose or real economic activity. This is known as treaty shopping.

As seen above, treaty shopping is the attempt by a person to access the benefits of a DTA to which it is not entitled to. Treaty shopping has disastrous results for developing countries, as they lead to wealthy individuals and multinational companies claiming treaty benefits that were not originally intended. In this way, treaty shopping deprives developing countries of much needed public revenue.

The most common way that multinational companies practice treaty shopping is through the establishment of subsidiaries without real economic purpose in tax havens with well-developed tax treaty networks. Called **letterbox companies** as they are simply registered in a mailing address,[31] these entities often have no employees, no actual office space and no real economic activity. The only purpose of such companies is to benefit from the domestic tax legislation and DTAs of specific countries.

Why is the Netherlands the number one investor country in Uganda?

As of late 2018, the Netherlands was the top investor country in Uganda with 39% of all FDI in Uganda, with a significant advantage to the following countries. [32] According to the IMF, the top 5 investor countries in Uganda were as follows:[33]

Table 1 – Top 5 investor countries in Uganda (source: IMF) - In million $

	Inward direct investment positions (a+b)	Inward equity positions (a)	Inward debt positions (b)
Netherlands	3 668	4 033	-364
Australia	1 519	1 511	7
United Kingdom	840	665	175
Kenya	778	559	219
Mauritius	654	450	204
Total world	**9 294**	**8 317**	**977**
Netherlands as a %	**39.4%**		

Also in 2018, the Bank of Uganda published the following data on financial flows:[34]

Table 2 – FDIs financial flows in Uganda (source: Bank of Uganda). In million $

	2009	**2010**	**2011**	**2012**	**2013**	**2014**	**2015**	**2016**	**2017**	**TOTAL**
Netherlands	16.2	121.5	164.4	611.2	493.5	491.4	236.7	278.4	227.5	2 640.8
UK	227.8	126.7	115.8	116.8	78.9	250.3	4.5	80.9	56.2	1 057.9
Australia	189.3	120.1	201.1	203.1	81.8	81.9	60.1	32.1	64.9	1 034.4
Kenya	55.5	86.1	172.6	99.4	44.5	109.6	61.7	230.1	114.5	974
Mauritius	54	90.6	104.5	6.3	71.3	67.1	51.3	-87.7	163.2	520.6
Total	*849.7*	*539.1*	*894.2*	*1 205.5*	*1 097.3*	*1 001.4*	*538*	*625.7*	*802.6*	*7 553.5*
Netherlands %	**2%**	**23%**	**18%**	**51%**	**45%**	**49%**	**44%**	**44%**	**28%**	**35%**

According to the Bank of Uganda, the Netherlands represents 35% of all Foreign Direct Investments (FDIs) flows into Uganda for the 2009-2017 period. The Bank of Uganda also highlighted that the economic sector that most benefited from FDI in 2017 was the mining & quarrying sector, with a little over 55% of all FDI stocks – or $5.3 billion.[35]

In 2018, UNCTAD noted that global FDI inflow into Uganda reached $1.3 billion – a 67% increase compared to 2017 – driven by the oil and gas sector, particularly investments in the Tilenga project,[36] the upstream part of the TOTAL-led project.

The numbers published by the IMF and the Bank of Uganda demonstrate the total amount of FDI that flowed from the Netherlands to Uganda over the past years, placing it at the top of investor countries. However, it is essential to consider the role played by the Netherlands as a tax haven in the global corporate scenario – a qualification acknowledged by many in civil society and within the European Parliament.[37] **Home to more than 14 000 letterbox companies, the Dutch national office for statistics has estimated that 80% of all investments into the Netherlands are immediately channelled out to other countries.** [38]

A 2016 working paper by M. Hearson and J. Kangave at the London School of Economics and Political Science highlighted how data from the Netherlands that excluded investment from letterbox companies established at $179 million the FDI from Dutch companies into Uganda. When compared with the $3.7 billion presented by the IMF, **it is estimated that 95% of Dutch FDI into Uganda does not originate in the Netherlands, but simply flows through Dutch letterbox companies for tax purposes.**[39]

Uganda's DTAs with the Netherlands and Mauritius are specifically mentioned by the IMF as presenting clear potential for treaty shopping:

The laws of Mauritius and The Netherlands present clear potential for treaty shopping advantage to be taken of lower withholding tax rates and other treaty benefits. A Mauritius or a Dutch company has potential to be used as a conduit company. The DTA withholding rates from Uganda are reduced thus offering clear advantages over direct investment from a non-treaty country and even other treaty countries.[40]

Unfortunately this is not an exclusive issue of the Dutch-Uganda DTA. In 2011, Mongolia unilaterally terminated its DTA with the Netherlands, arguing that the

frequent utilization of letterbox companies by multinational corporations in the Netherlands resulted in staggering revenue losses for the country.[41] The case of the Mongolian Oyu Tolgoi mine – and related treaty abuse by Rio Tinto (see BOX 3), is particularly instructive of how common and severe are the impacts of treaty shopping for resource-rich countries.

Box 2 Where is the investment?

The utilization of empty companies by multinational corporations has effectively created a global economic scenario where a large share of Foreign Direct Investment is channeled through tax havens and conduit jurisdictions with the exclusive purpose of reducing taxation. According to research by the IMF, almost 40% of global FDI – close to $12 trillion – is essentially artificial, consisting of financial investments passing through letterbox companies without any actual economic activity taking place. [42]

The MauritiusLeaks publication has exposed how 2.5% (or $12 billion) of all companies' loans in Africa flow through Mauritius – a country whose GDP only represents 0.6% of the continent economy.[43] Company loans from Mauritius and nine other tax havens to African countries total over $80bn. This means that for every $6 of FDI in Africa, $1 was a company loan from a tax haven.

The BEPS[44] project – launched by the OECD in 2013 to address pending reforms of international taxation through a 15 actions plan – looked into the issue of DTA abuse through its Action 6. Among other recommendations, the final report endorsed the inclusion of Limitation of Benefits (LOB)[45] or Principal Purpose Test (PPT)[46] clauses in DTAs for the prevention of treaty shopping. While LOB and PPT clauses are distinct in their application, both seek to ensure that DTA benefits are exclusively enjoyed by taxpayers that have a sufficient economic nexus with the signatory countries.

Despite international efforts to tackle DTA abuse over the past years, treaty shopping remains an urgent issue to be solved. Developing countries continue to lose substantial amounts of public revenue that are desperately needed for essential public services.

There are a number of tax and non-tax reasons for multinational companies to use Dutch letterbox companies as intermediaries to channel investments between countries.[47] This briefing note will now focus on the reduced withholding tax rates enacted by the DTA between the Netherlands and Uganda.

A sweet deal: the DTA between the Netherlands and Uganda

The present DTA between the Netherlands and Uganda – agreed on in 2004 and in force since 2007 – provides a generous tax environment for companies based in the Netherlands. Particularly focused on withholding tax rates, Articles 10 and 11 of the DTA establish reductions related to the taxation of cross-border dividend and interest payments.

On the taxation of dividends, Article 10 establishes distinct rates dependent on the amount of capital control the Dutch company has in the Ugandan subsidiary:

- For Dutch companies holding at least 50% of the capital of the Ugandan paying entity (known as **Participation Dividends**), dividend payments are exempt from any amount of withholding taxes; and

- For Dutch companies holding less than 50% of the capital of the Ugandan paying entity (known as **Portfolio Dividends**), dividend payments are taxed at

the rate of 5%.

As a result of Article 10, cross-border dividends paid out by a Ugandan resident company to a Dutch company that has 50% or more of control of the paying entity **will not be taxed in Uganda**.

If the same dividend payment was made from a Ugandan entity to a shareholder established in a country that has no DTA with Uganda, a **15%** withholding tax rate would be levied.[48]

Regarding interest payments, Article 11 establishes a **10%** withholding tax rate for payments made by a Ugandan company to a Dutch entity. If the interest payment is guaranteed by the government or is made to a Dutch financial institution, full exemption would apply.

If the same interest payment was made to an entity established in a country that has no DTA with Uganda, a **15%** withholding tax rate would be levied.[49]

Table 3 - Terms of the Uganda Netherlands Double Tax Agreement, as compared to Uganda Tax Law

	Uganda Tax Law	Uganda - Netherlands Double Tax Agreement
Interest Payments	15%	10%
Participation Dividend Payments (shares>50%)	15%	0%
Portfolio Dividend Payments (shares<50%)	15%	5%

A preliminary estimate of the annual amount of revenue foregone as a result of the reduced withholding tax rate on dividend payments in the Netherlands-Uganda DTA was calculated in 2016 by LSE researchers between $8 million and $24 million.[50] However, and given recent uptakes in Dutch FDIs in Uganda, as well as expected start of oil operations by 2025 – those amounts are likely to significantly increase.

Researchers further stated that "*the only treaty for which there is evidence of a major impact on investment into Uganda is the Dutch one, but this effect has been to encourage treaty shopping rather than to stimulate significant amounts of Dutch investment. When private sector tax advisers were asked what would happen if the Dutch treaty were cancelled, they stated that investors would simply restructure, and were unlikely to withdraw their investments*." [51]

So if there is a good reason to invest in Uganda – such as commercially viable oil reserves – a savvy investor would go for it, regardless of tax incentives which are actually a cherry on the cake, although an expensive one for Uganda.

Box 3 The Netherlands, a tax haven for extractive companies?

The Netherlands is broadly recognized by civil society organizations as a tax haven. In 2019, a report by the European Union Parliament called the European Commission to recognize five Member States, including the Netherlands, as tax havens.[52] In 2020, reports by the European Commission stated that in five Member States (the Netherlands, Luxembourg, Ireland, Cyprus and Malta), "economic evidence suggest that tax rules appear to be used by multinationals engaged in aggressive tax planning structures.[53]

Extractive companies have a long history of using Dutch subsidiaries to minimize tax payments. In 2018, a report by SOMO and Oyu Tolgoi Watch exposed how Canadian mining giant Rio Tinto managed to avoid large sums of taxes from its operations in Mongolia through Dutch letterbox companies. Due to a fiscal stabilization clause in the Oyu Tolgoi investment agreement, Rio Tinto was able to make use of the defunct DTA between the Netherlands and Mongolia, which helped the company in reducing withholding tax rates on interest payments from 20% to 6.6%. The abuse of Dutch letterbox companies by Rio Tinto resulted in estimated revenues losses for the Mongolian government of $230 million and for the Canadian government of $470 million. Back in 2013, SOMO also examined the role played by the Netherlands in facilitating tax avoidance by eight large extractive companies which were also suspected of human rights violations.[54] In 2018, the Dutch trade union FNV filed a complaint before the Dutch National Contact Point of the OECD against Chevron's alleged use of letterbox companies in the Netherlands and consequent treaty abuses that resulted in loss of revenues in Nigeria, Argentina and Venezuela.[55] In 2020, another complaint was filed by SOMO and Oxfam against Argentine oil company Pluspetrol, including alleged violations of human rights and environmental standards in their operations in Peru, through a corporate structure based on the widespread use of letterbox companies.[56]

Recent domestic and international policy initiatives by the Dutch government demonstrate a willingness to implement changes in their tax treaty network. In May 2020, the Dutch government released a revised memorandum on its Tax Treaty Policy, which will be subject to parliamentary debate and vote in the fall of 2020. One of the important aspects of the new memorandum is the willingness to accept higher WHT rates in DTAs concluded with developing countries, however only when they are in line with rates applicable in DTAs between such developing nation and another 'comparable' (high-income) countries.

In the proposed text, the Dutch government also signals a differentiated approach to developing countries that could lead to stronger measures against treaty abuse[57] – although it already had adopted a similar position since 2013. The previous Tax Treaty Policy Memorandum (2011) already stated that the Netherlands would take into consideration 'the particular interests of developing countries by enabling them to provide their own resources'.[58]

By 2016, the Netherlands had notably proposed to include anti-abuses clauses in their tax treaties with 23 developing countries, including Uganda. Such clauses have already been inserted in a number of them and other positive outcomes have been achieved – such as renegotiations of withholding tax rates. **However, a recent study of DTAs signed or amended after 2011 highlighted that double standards seemed at work as WHT rates on participation dividends generally remain low.[59]**

In 2019, civil society organizations in the Netherlands and Uganda mediated between both national governments and eventually successfully moved them towards the

renegotiation of the DTA between both countries. In September 2019, a delegation of Dutch negotiators travelled to Kampala to begin renegotiation procedures. Before the initial meeting with their Ugandan counterparts, the Dutch delegation met with civil society organizations under the leadership of Tax Justice Alliance Uganda (TJAU) for a discussion of treaty priorities for the prevention of treaty abuse and an increase in revenues for Uganda. TJAU has also shared its perspectives with the Tax Policy Team at the Ugandan Ministry of Finance. Building on those initial engagements, TJAU is scheduled to engage with the Ugandan government over the next years on the broader renegotiation.[60]

In January 2020, the Dutch Ministry of Finance announced its intention to continue to renegotiate DTAs throughout 2020, including with Uganda.[61]

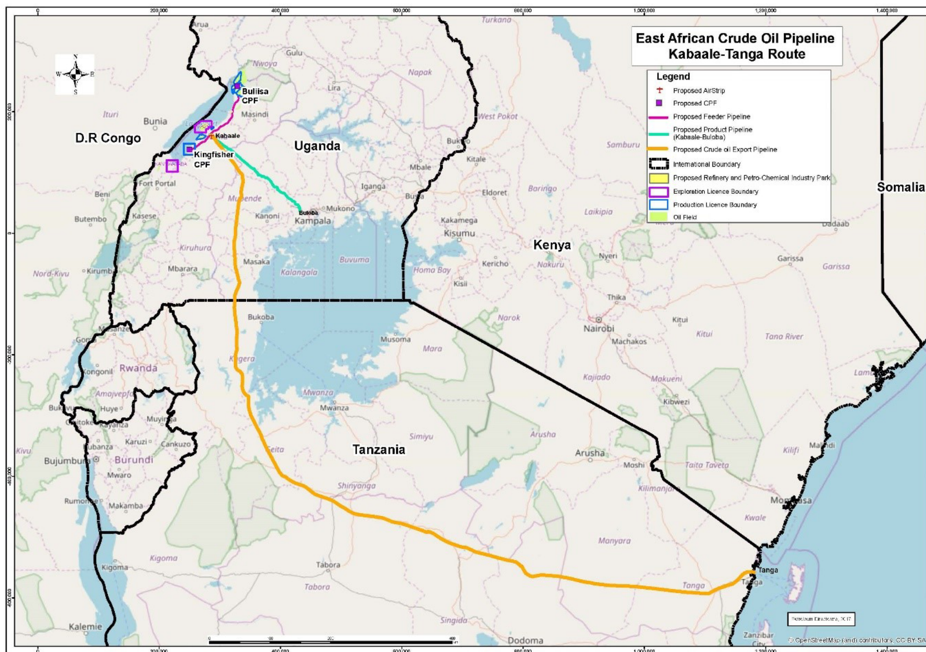
Given Netherlands' prominent position as an investor country in Uganda and the continual abuse of the DTA by MNCs, a revision of the DTA leading to more favourable terms for Uganda would allow the country to significantly increase its revenues. Whereas it is beyond the scope of this briefing note to give an estimate of the additional resources that would become available to the government of Uganda, those would undoubtedly help match funding requirements for currently underserved essential services such as health and its ongoing blood crisis,[62] education and social protection.

II. GREAT EXPECTATIONS: THE LAKE ALBERT PROJECT

A long awaited project in a troubled context

The oil industry has been in the making in Uganda for more than a decade. Commercially viable reserves were discovered in the Albertine Graben region in 2006: the country would have a total of 6.5 billion barrels of oil in the ground, of which 1.4 billion are economically viable.[63] Reserves – the 'upstream' part of the operations - have been allocated to four different blocks (EA1, EA1A, EA2, EA3) [64] located in two main areas bordering Lake Albert: Tilenga (to the north east) and Kingfisher (south, eastern side).

Figure 1. From Lake Albert to the port of Tanga in Tanzania. The Tilenga up-stream fields are located around the Buliisa Central Processing Facility ("CPF") to the North of the Albert Lake and the Kingfisher fields are to the South.
Source: https://pau.go.ug/about-us/resources/maps/



In 2016, the decision to transport oil through Tanzania (as opposed to the Kenyan route which also was under consideration for some time) was taken by Uganda.[65] An undisclosed Intergovernmental Agreement (IGA) was ratified by Tanzania and Uganda in May 2017. This will require the construction of the 1445 km long EACOP (East African Crude Oil Pipeline) traversing Tanzania– the longest heated pipeline ever built. EACOP commercial structure – the 'midstream' part - is separated from the blocks' exploitation, and each partner will hold shares. The Ugandan government has also planned to build a small refinery to process petrol to be sold in national/regional markets.

Box 4 A precedent, Heritage vs Uganda and the abuse of the DTA between Mauritius and Uganda

From 2004, Tullow and Heritage Oil operated in Uganda as explorers and developers of oil fields in blocks EA1– the very same block studied in this briefing note, and EA3 – a block today operated by TOTAL.

In 2010, Tullow purchased Heritage's share in a number of co-owned assets for $1.45 billion. Following the transaction, the Uganda Revenue Authority (URA) charged Heritage for $434 million, based on the rate of 30% for Capital Gains Taxes (CGT).[66] Heritage argued that the transaction was not taxable in Uganda as it took place through the sale of a subsidiary based in the Channel Islands and because Heritage itself is not incorporated in Uganda. Besides litigating against the tax charge in courts, Heritage also opted to change its residence from the Bahamas to Mauritius to benefit from the favourable DTA between Mauritius & Uganda.

According to Panama Papers leaked documents, the residence change to Mauritius was made to defeat the tax charges in Uganda, being undertaken "primarily due to the double tax agreement between Uganda and Mauritius".[67] A February 2010 e-mail from a Heritage accountant states the following: "Heritage is due to complete the sale of an asset in Uganda. Due to tax reasons emanating from Uganda, the directors have been advised to re-domicile Heritage to Mauritius before the sale. The group is working hard to eliminate potential tax charges by Uganda without Heritage having to move, but as a second line of defence the directors have been advised to move to Mauritius so that the process can be completed if it becomes necessary".

John Christensen, co-founder of the Tax Justice Network, argued that "the proposal to re-domicile its operations is clearly an attempt at aggressive tax avoidance since the only motive is to dodge a potential tax liability". Following an initial partial payment by Heritage in order to unblock the deal and posterior lawsuits in Uganda and the United Kingdom, Uganda was able to successfully collect the full amount of 434 million from Tullow.[68]

The Heritage/Tullow case is illustrative of issues faced by developing countries when they endeavor to tax Capital Gains on the sales of assets.[69] MNCs have been using a specific tax avoidance technique known as Offshore Indirect Transfer to avoid paying CGT: instead of directly selling the actual asset, the MNC will sell the shares it holds in a subsidiary located in a business friendly jurisdiction – which effectively owns the local subsidiary holding the asset, thus avoiding the CGT entirely as the asset will not have changed hands in country.

Blocks have changed hands a few times since licenses have been allocated.[70] TOTAL is now the operator for blocks EA1, EA1A, EA2 and CNOOC is the operator for block EA3 as a result of the now completed farm-down on Tullow's assets. TOTAL entered into discussions with Tullow in 2017 to acquire 21.57% of Tullow's shares on all blocks. However, the deal was called off on the 29th of August 19,[71] as a result of a long-standing disagreement with the URA. The URA had asked oil companies to pay a total Capital Gain Tax on the transaction of $167 million (for a $900 million transaction). Companies however argued on the nature of the transaction itself as merely a transfer of shares to another investor for further reinvestment in the project.[72] Additionally, Tullow and TOTAL maintained that the $617 million Tullow had invested (and that were being sold) should be considered as recoverable costs and thus tax deductible for the purpose of income tax calculations– a position not shared by the URA.[73] TOTAL then abruptly announced that it will stop all works on the EACOP as a result of the farm-down cancellation. Information on the exact nature of the dispute in the media has been quite limited and civil society organizations have denounced the excessively forceful tactics used by the oil major.[74]

In April 2020, TOTAL finally acquired 100% of Tullow's shares in all blocks and in the EACOP structure[75] "in line with our strategy of acquiring long-term resources at low cost", declared Patrick Pouyanné.[76] The deal has been deemed as "highly favourable" to buyer TOTAL by analysts:[77] $500 million payable now to Tullow, and $75 million to be paid when the Final Investment Decision will be taken, plus additional payments depending on oil production and a barrel price being above $62.[78] The transaction was contingent on TOTAL securing an agreement with the URA on Capital Gain Tax to be paid as a result – which is reported to be $14.6 million.[79] TOTAL now owns 66.66 % of the 4 blocks, and CNOOC 33.33%. The Uganda National Oil Company (UNOC) however has a 15% back-in right[80] which it could exercise when the final investment decision (FID) is taken – but this has not been yet confirmed.

Table 4: Summary of contracts and current ownership structure as of September 2020

Block	Name	Date	Signatory	Current Operator	Other JV partners
EA1	Paara	July 1 2004	Heritage	TOTAL[81] (66.66%)	CNOOC (33.33%)
EA1A	Pakwach (Lyec)	Feb 3. 2012	Tullow	TOTAL[82] (66.66%)	CNOOC (33.33%)
EA2	Buliisa/Kaiso-Tonya	Nov.1 2001	Hardman	TOTAL[83] (66.66%)	CNOOC (33.33%)
EA3A	Kingfisher	Sept 8. 2004	Heritage	CNOOC (33.33%)	TOTAL (66.66%)

Due to the fiscal dispute and the COVID-19 pandemics, the project has suffered significant delays. However, TOTAL CEO reassured it shareholders during their Annual General Meeting on the 29th of May 2020: the Final Investment Decision – which would mark the finalization of all preparatory works and unlock the remaining investments as well as construction of the EACOP, will be taken before the end of the year.

If things are now speeding up, the context in which this is taking place is more volatile than ever: the COVID-19 crisis has resulted in a massive fluctuations in the barrel price. Brent crude now stands at about $40 per barrel after having fallen as low as $20. According to recent Rystad data, the breakeven price for the Tilenga upstream part now stands $40.35.[84] **The Government of Uganda is thus walking a thin line: there is no space for aggressive tax optimization practices if it wants to generate sufficient revenues**.

Our case study or how cash will also be flowing out

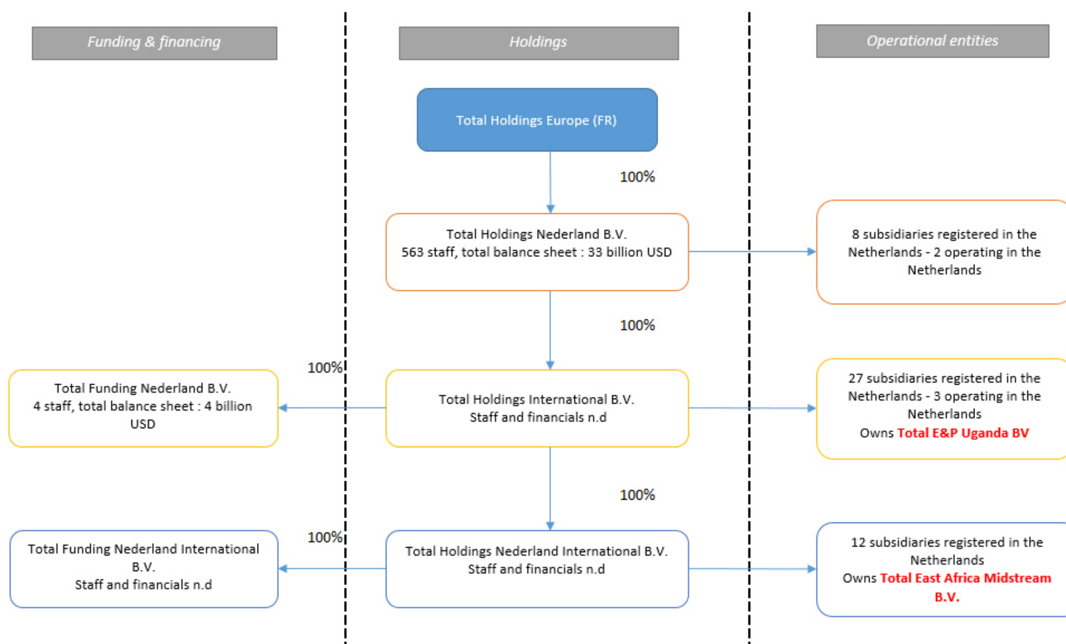
Both partners hold their shares in the upstream part of the project through subsidiaries registered in the Netherlands. CNOOC on the one hand, has set up a subsidiary in Uganda Ltd – CNOOC Uganda Ltd – which is owned at 99.99% by CNOOC Netherlands B.V., a Dutch company.[85]

TOTAL holds its shares in the project upstream and midstream parts through two subsidiaries registered in the Netherlands: TOTAL Uganda E&P Uganda B.V (for the upstream part) and TOTAL East Africa Midstream B.V. (for the midstream part).

This is not an isolated practice for TOTAL: according to its own annual registration document, TOTAL has 56 subsidiaries representing 25% of their subsidiaries for the Exploration and Production segment which relates to oil upstream and midstream operations) legally registered in the Netherlands. Those subsidiaries effectively operate in countries as diverse as Uganda, Mozambique, Angola, Kenya, Cote d'Ivoire etc.[86]

The two Ugandan subsidiaries are part of a wider network of Dutch subsidiaries – whose corporate ownership structure is as follows:

Figure 2: Total (partial) corporate structure. Information from TOTAL Registration Document & ORBIS[87]



Financial statements for TOTAL E&P Uganda BV and its direct parent company, TOTAL Holdings International B.V. could not be retrieved from the Dutch Chamber of Commerce.[88] No information could be retrieved for TOTAL Holdings International B.V. According to information available in ORBIS TOTAL E&P Uganda the three holdings as well as TOTAL E&P Uganda B.V. and TOTAL East Africa midstream B.V., are registered at the same address which corresponds to TOTAL E&P Nederland, an

entity that manages the exploration and production of natural gas in the Netherlands and the North Sea Continental Shelf. In its response to Oxfam, TOTAL specified that this project is operated through an operational branch of TOTAL E&P Uganda B.V, while their entity in the Netherlands retained a few administrative and management functions.[89]

Methodology and main assumptions

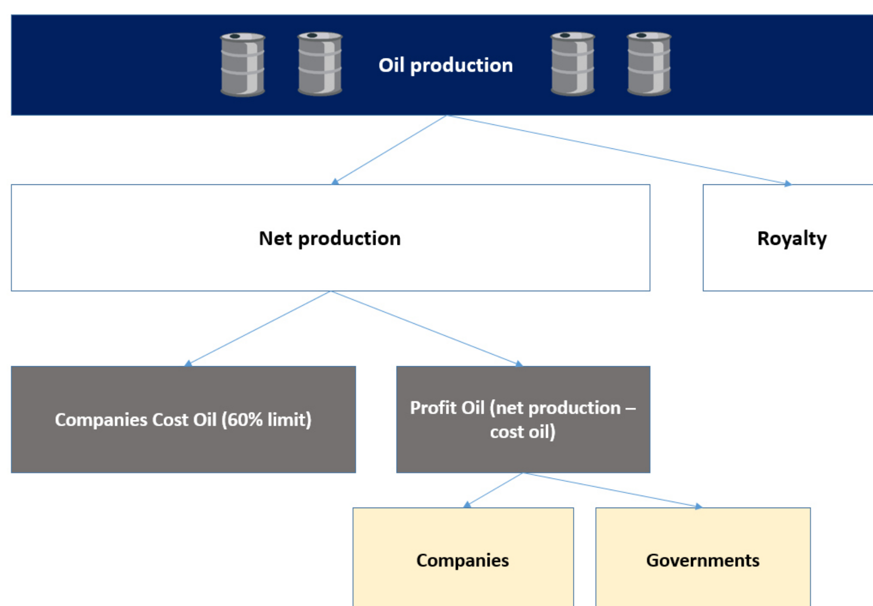
We focus here only on the risks associated with the upstream structure only (TOTAL E&P Uganda B.V. and CNOOC Netherlands B.V.) – as the midstream part (the pipeline) will be operated through a different corporate structure.

Production Sharing Agreements

The fiscal terms of the upstream operations – which will determine proceeds received by the Government of Uganda – are governed by Production Sharing Agreements (PSAs) signed at the block level, and complemented by the Special Provisions on the Taxation of Petroleum Operations contained in the Income Tax Act. Those agreements are said to be "ring-fenced": their conditions apply independently to each block.

PSAs – a type of contracts originally designed by Indonesia in the 1960s – are relatively common in the oil industry. They are based on an essential original parameter: part of the oil produced will be allocated to companies to recover their costs (incurred during the exploration phase, to develop facilities and to operate the project), after deduction of royalties.[90] The remaining share of production (profit oil) will be shared between companies and the governments.

Figure 3: Allocation of Oil in a PSA (simplified, no State participation). The 60% cost oil limit is specific to Uganda



Contracts in Uganda are not in the public domain. It is however noteworthy that Uganda has very recently become an EITI member country[91]. The 2019 revised EITI standard mandates that all contracts signed or amended from January 1st 2021 should

be disclosed, and encourages disclosures of previously signed contracts. It however remains to be seen whether Uganda would effectively disclose contracts.

However, copies of the contracts have been leaked over the years.[92]

In 2017, Oxfam was able to consult contracts for blocks EA1, EA1A, EA2 and EA3 as well as the model Production Sharing Agreements from 1999-2016.

Financial modelling and its limitations

An independent consultant was commissioned to undertake the development of a financial model for this block, based on a standard industry discounted cash flow model. As contracts are ring-fenced, economic modelling is conducted at the block level, and in that case, was conducted for block EA1 only.

The model integrates applicable terms as per EA1 PSA as well as relevant national legislations, and apply them to a number of project assumptions and hypothesis. Various model inputs are summarized below and are available in Annex. Those relate to: fiscal and production sharing terms, future oil prices, field profiles; as well as project financing terms. They have been based either on official sources, industry standards or various external studies and updated by another independent external consultant in May 2020.[93] The model forecasts future revenues based on an estimation of yearly production until exhaustion of recoverable reserves as well as future oil prices. Based on standard production license terms in Uganda, field exploitation is assumed to take place over 25 years. As the Final Investment Decision is awaited for 2020, and as the pipeline construction works are expected to last for three years according to information released by the EACOP Company, oil production start date has been set to 2025 – factoring in one year of delay in the FID or during the construction phase.

Net Production[94] will be shared between projects' partners – TOTAL and CNOOC - and the government of Uganda, according to the PSA terms and once initial exploration and development costs as well as recurring exploitation costs have been recovered. Companies' taxable income is then determined:[95] as the project will require significant upfront investments, losses are carried forward and companies don't start paying Corporate Income Tax before year 10. Net profits after Corporate Income Tax (CIT) are then calculated for each year of the project and on a cumulative basis.

The model does not intend to give a firm and definitive estimate of all losses and tax leakages that could potentially be incurred by the Government of Uganda as the result of the reduced WHT rates, but rather provide an indication of the magnitude of impact for revenues stemming from the exploitation of Block EA1.

It should also be made clear that the findings of this report specifically address the commercial international context between Uganda and the Netherlands and that others forms of tax leakages could also be present (for example, through the erosion of the corporate income tax base due to intragroup payments). As is the case with any extractive projects, risks to government revenues are multifaceted:[96] inflated costs, undervaluation of oil are amongst others, significant issues.

As the model takes only block EA1 into consideration, such losses also only represent a portion of Uganda government potential lost revenues as the result of the DTA – which could be much larger when calculated on all blocks.

Future oil prices in the current International context

There is considerable uncertainty around future oil prices. The COVID-19 pandemics has had immediate effects on oil demand, compounded by the stalemate between OPEC members which resulted in significant drop in prices to as low as $20 /barrel in late April 2020.[97] Brent currently stands at around $45/barrel – but various long term scenarios remain highly volatile as context evolves. Markets are quickly shifting as the energy transition becomes a more and more critical necessity embraced by governments around the world. Demand scenarios developed by the International Energy Agency (IEA) in November 2019 are thus likely to need revision. However, and as TOTAL indicates that its reference for Brent future prices as of 2050 is $50[98] by 2050, according to the World Energy Outlook IEA, under the Sustainable Development Scenario,[99] we have elected to use that reference in our base model. Other sources indicate that future oil prices as of January 2025 are currently in the area of $50/barrel.[100]

Results

We present in this table below a summary of the results and figures given by the model under the assumptions described in Annex. As dividends are assumed to be fully repatriated to the parent company, the withholding rate tax base has been determined as the final share – given both partners' respective share percentages – of profits after payment of corporate income tax. Interests are presented here as the cumulative amount of interests paid on the loan contracted by TOTAL to finance the project.

We then have compared the total amount of taxes that would have resulted in Uganda from the application of statutory withholding tax rates to interests and dividends repatriated to the Netherlands, to what will be collected as the result of the reduced withholding tax rates as per the DTA between Uganda and the Netherlands.

Table 5: Comparison of taxes owed as a result of the current DTA vs as per statutory rates. All calculations presented here are based on a value of $50 / barrel as the reference Brent price (2018 dollars). In million $.

	Tax base	Statutory WHT rates	Taxes (statutory rates)	DTA WHT rates	Taxes (DTA rates)	Diff.	*Difference TOTAL (66.67%)*	*Difference CNOOC (33.33%)*
Interests	515	**15%**	77	**10%**	51	**26**	***17***	***9***
Dividends	1 740	**15%**	261	**0%**	-	**261**	***174***	***87***
Total			338		51	**287**	***191***	***96***

Despite being only indicative of the scale of the potential tax leakages associated with the project as outlined above, the result is rather striking, as **DTA provisions would allow TOTAL and CNOOC to avoid paying $287 million to the government of Uganda over the 25 years project lifetime.**

Removing entirely the tax breaks given by the DTA would thus allow the government

of Uganda to collect – at least – $287 million in additional tax revenues: $191 million from TOTAL and $96 million from CNOOC. However, and given that so far, the intention of Uganda is to renegotiate the DTA and not repel it, a few other scenarios in which the dividend withholding tax rate[101] is increased, can be studied.

Table 6: Comparison of taxes owed as a result of the current DTA vs as per 2 different scenarios. All calculations presented here are based on a value of $50 / barrel as the reference Brent price (2018 dollars). In million $.

	Current scenario		Scenario 1			Scenario 2		
	DTA WHT rates	Taxes (DTA reduced rates)	**Revised rates**	Taxes (revised rates)	**Diff.**	**Revised rates**	Taxes (revised rates)	**Diff.**
Interests	**10%**	51	**10%**	51	**0**	**10%**	51	**0**
Dividends	**0%**	-	**5%**	87	**87**	**10%**	174	**174**
Total		**51**		**138**	**87**		**225**	**174**

Should the WHT rate on participation dividends be increased to 5%, taxes owed by TOTAL and CNOOC would amount to $138 million, an increase by $87 million as compared to the current scenario. **In the event that the WHT rate on participation dividends would be increased to 10%, the government of Uganda would collect an additional $174 million in tax revenues.**

Assuming that total government revenues – in the context of the global energy transition where the Brent barrel price is likely to remain low – will be closer to $5 000 million than to $9 000 million (as per the range estimated by J. Mawejje)[102] – the amount of withholding taxes avoided by TOTAL and CNOOC ($287 million) **thus amounts to 5.7% of all potential revenues that would be foregone – for one block only, out of four in total.**

This amount also represents **almost 2% of the annual health budget** ($594 million for 2019/20[103] or only 6.4% of the general budget) – enough to increase funding going to the Blood Bank: Oxfam along with other civil society organizations have recently pointed out that it is significantly underfunded, which leads to the death of over 1000 women and girls annually.[104]

However, if the government of Uganda was to renegotiate the DTA and agree on a revised 10% WHT rate on dividends, additional tax revenues ($174 million) would represent 3.5% of the projected total government revenues. This rate would be in line with other DTAs Uganda currently has in place.

Box 5 A stable preferential treatment?

Stabilization clauses are a common feature of large investment projects, present in contracts between Uganda and extractive corporations. Stabilization clauses were originally designed to protect the legal situation of investors against abrupt changes of legislation that may potentially have a materially detrimental impact on the expected economic return from investments. It is thus important to consider whether and how a - potential – change in the WHT rates in the DTA between Uganda and the Netherlands may interact with any stabilization clauses contained in the PSAs.

While the EA1 PSA between TOTAL, CNOOC and the Government of Uganda is not publicly available an incomplete version of the EA3 PSA contract with a stabilization clause is accessible online. It must be initially recognized that it is possible that the EA3 PSA text does not match the EA1 PSA and that additional stabilization clauses are present in parts of the contract not available in the EA3 PSA online, or that the EA1 PSA has additional stabilization clauses not present in other PSAs. However, as both the EA1 and EA3 PSAs relate to Profit Sharing Agreements for oil and gas in Uganda and are from the same period (2004), we assume for the purpose of the present study that the contractual clauses have a similar structure and text.

Art. 33 of the EA3 PSA establishes that "if […] there is any change […] in the laws or regulations of Uganda which materially reduces the economic benefits derived or to be derived by the Licensee […] Parties should meet to negotiate in good faith and agree upon the necessary modifications to this Agreement to restore Licenses to substantially the same overall economic position as prevailed hereunder before such change(s)".

The potential application of this clause to limit the taxation of the parties to the EA1 (or EA3) PSA in the event of changes to the DTA that would increase or eliminate the caps on tax rates contained in the DTA is a complex legal issue, and it is beyond the scope of this report to fully address this. Nonetheless, for the purposes of the present analysis, the following points should be considered:

- Article 33 of the EA3 PSA applies only to material reductions of economic benefits. The stabilization clause would not apply to any changes in the taxes payable to Uganda that do not meet the threshold of "material," and what is "material" to a large oil company may be much less than it might be for Uganda;

- Article 33 of the EA3 PSA does not preclude any change in laws or regulations, but rather establishes that when there are changes that materially reduce economic benefits, both parties should meet in good faith with the objective of restoring an economic equilibrium;

- According to the Uganda Ratification of Treaties Act, DTAs are not formally ratified by the Parliament, and thus do not constitute "laws" per se by virtue of their legislative adoption. As the Income Tax Act mentions international agreements (Art. 88) such as DTAs, it suggests they likely supersedes regular domestic laws they conflict with domestic laws,[105] as they are incorporated "as if the Agreement was contained in this Act". If the DTAs supersede domestic laws, then they would not be within the bounds of the "laws or regulations of Uganda" of Article 33 of the EA3 PSA, as no law or regulation of Uganda is actually changed.

Based on these points, Oxfam assumes, for the purposes of the present analysis, that the stabilization clauses of the PSA would not be formally triggered by a revision to or termination of the DTA. Accordingly, recommendations to revise (or terminate) the DTA that would serve to increase or remove the preferential reduced maximum tax rates provided for in the DTA would be applicable to the EA1 project, and the potential additional government revenue generated from the imposition of that tax has been estimated in this report.

On the other hand, it is possible that TOTAL, CNOOC and other MNCs impacted by similar changes in a DTA would take a contrary position in order to limit their tax burden. They may take steps to pursue a ruling in court or in arbitration to establish that the stabilization clauses prevent the imposition of increased rates of taxation resulting from DTA revisions or termination from affecting their operations, in order to maintain the economic equilibrium originally agreed on. Therefore, this issue will likely be a source of contention between TOTAL or CNOOC and the Government of Uganda, should the DTA be revised or terminated to increase or eliminate the caps on tax rates contained in the DTA.

RECOMMENDATIONS

To the government of Uganda and the Netherlands:

1- To both governments

a) Prioritize the renegotiation process of the DTA between the Netherlands and Uganda, in consideration of the current sensitive fiscal situation in Uganda amid the COVID-19 crisis

b) Key recommendations on the revision of the DTA have already been provided in great detail by civil society organizations in Uganda such as Tax Justice Alliance Uganda, SEATINI and Oxfam Uganda and were discussed with Dutch envoys in September 2019.[106]

c) The revised DTA between Netherlands and Uganda should include – at minima:

- **An increased tax rate on dividends – at least 10% for participation dividends (large shareholders) and 15% on portfolio dividends (small shareholders)**
- Revised language to fight treaty abuse, through (i) a statement that the DTA aims not only at preventing double taxation, but also at avoiding facilitation of double non-taxation and of treaty shopping (ii) dedicated anti-abuse clauses, as recommended by BEPS Action 6.
- A revision of the language related to Capital Gains Tax (Article 13-4) which should be modelled on the UN and OECD models to prevent the use of offshore indirect transfer to avoid taxation of capital gains in Uganda.

2- **To the government of Uganda**

a) Ratify the OECD Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (MLI)[107]

b) In line with the 2019 EITI standard, publish all Production Sharing Agreements – past, present and future.

c) Increase funding allocation to the health sector (to reach 15% of the national budget) and to the blood bank to meet WHO recommendations.

d) Review the model PSA to ensure that all future PSA unambiguously state that any changes to DTAs will not be covered by stabilization clauses.

e) Publish its Model Double Tax Agreement

f) Strengthen cost control, auditing, tax administration and public oversight of the oil and gas sector; determine whether Uganda has incurred losses resulting from companies incorporating abroad; and ensure the effectiveness of anti-abuse provisions governing the double taxation agreement with the Netherlands and other DTAs with other countries.

3- **To the government of the Netherlands**

a) Ensure the implementation of the new 2020 Dutch memorandum on Tax Treaty policy, with the extension of higher WHT rates for developing countries, regardless of the country having DTAs with other comparable countries. This requirement and other similar barriers to increased taxation rights for developing countries must be removed, in line with broader purposes of granting additional tax revenues for low-income countries

b) Implement further legislative and regulatory reforms in the Netherlands to prevent corporations utilizing the Dutch legal framework and tax treaty network to avoid paying taxes in developing countries

4- To the European Union member States

a) Implement Public Country – by – Country reporting within the European Union, a policy that is yet to be voted at the EU Council

b) In light of the upcoming ECOFIN meeting, EU governments must strengthen the criteria for the inclusion of countries into the Blacklist of tax havens – ensure the screening process is free from political interference – and monitor tax reforms being implemented by countries currently in the Grey list to ensure they are effective.

c) Ban the use of letterbox companies, implementing substance requirements and including them in the definition of harmful tax practices that is currently being reviewed by the EU Council.

d) Take serious countermeasures to tackle the tax havens within the EU and apply the same criteria and treatment to tax havens both within and outside the EU. European governments must hold themselves to the same standards by which they are judging others.

5- To TOTAL and CNOOC

a) Consider transferring shares or investments to a non-Dutch subsidiary. More generally, communicate on the reasons to structure 25% of TOTAL's E&P segment through Dutch subsidiaries. When mainly motivated by tax reasons, remove the Dutch intermediary.

b) Publicly comply with B Team commitments to responsible tax practice (TOTAL)

c) Following similar initiatives from companies in the oil & gas sector, adopt the Global Reporting Initiative (GRI) 207 Tax Standard and publish a public a country-by-country report (CbCR) with information on economic activities and fiscal situation in all countries where they have a taxable presence

d) Provide a reconciliation with existing disclosures on Payments to Governments

(PtG),[108] and ensure that PtG reports are annotated to explain tax distinctions between amounts paid as Corporate income Tax, vs Withholding Tax on dividends or interests (TOTAL)

e) Communicate on engagement with URA and Uganda Tax Administration, and take a public position on envisaged steps should the DTA renegotiation result in high WHT rates.

NOTES

[1] Shaxson, N. (March 2015) “UNCTAD: multinational tax avoidance costs developing countries $100billion+”, Tax Justice Network, https://www.taxjustice.net/2015/03/26/. Accessed on the 10th of July 2020.

[2] For the period from Fiscal Year 2010/2011 to 2016/2017. The fiscal year in Uganda goes from the 1st of July to the 30th of June.

[3] The transaction is still pending government’s approval and will result in Total holding 66.66% of all blocks. For the purpose of the present case study, we assume the transaction as approved.

[4] The Government of Uganda expects that tax revenues for 2020 will decrease by UGX 1.3 trillion as a result of the COVID-19 crisis, or $351 million at the current exchange rate. Source: The World Bank (July 2020) Uganda Economic Update, 15th Edition ‘Digital Solutions in a Time of Crisis’, p. 15, http://documents1.worldbank.org/curated/en/775621594292073824/pdf/Uganda-Economic-Update-Fifteenth-Edition.pdf

[5] The World Bank (June 29, 2020), Press statement: “Uganda: World Bank Provides $300 Million to Close COVID-19 Financing Gap and Support Economy Recover”, https://www.worldbank.org/en/news/press-release/2020/06/29/uganda-world-bank-provides-300-million-to-close-covid-19-financing-gap-and-support-economy-recover. Accessed on the 10th of July 2020.

[6] IMF (May 6, 2020), Press statement: “IMF Executive Board Approves a US$491.5 Million Disbursement to Uganda to Address the COVID-19 Pandemic”, https://www.imf.org/en/News/Articles/2020/05/06/pr20206-uganda-imf-executive-board-approves-us-million-disbursement-address-the-covid-19-pandemic. Accessed on the 10th of July 2020.

[7] Preliminary estimates show that 1.07 to 3.15 million additional people could fall below the poverty line (as compared to 8.7 million as per a 2017 estimate). Source: The World Bank (July 2020), Uganda Economic Update 15th Edition, p. 9.

[8] The fiscal year in Uganda goes from the 1st of July to the 30th of June.

[9] Uganda’s large fiscal deficit is attributed to its drive to invest in large infrastructure projects yet domestic revenues mobilized are still low. The gap is filled up through external financing e.g. through loans to support these large infrastructure projects. The largest allocations have been to the Works and transport sector (e.g. FY 2018/2019 the total sector allocation was 4.7 Trillion UGX or 14.6% national allocation). Less priority has been given to social sectors allocations. Source: IMF (May 9, 2019), “IMF Executive Board Concludes 2019 Article IV Consultation with Uganda”, https://www.imf.org/en/News/Articles/2019/05/07/pr19148-uganda-imf-executive-board-concludes-2019-article-iv-consultation-with-uganda. Accessed on the 10th of July 2020.

[10] The World Bank (July 2020), Uganda Economic Update 15th Edition, p. 6

[11] The World Bank, “Tax revenue (% of GDP) – Uganda”, https://data.worldbank.org/indicator/GC.TAX.TOTL.GD.ZS?locations=UG. Accessed on the 10th of July 2020.

[12] Oxfam Uganda, Oxfam Novib, SEATINI, Tax Justice Network Africa, Make Tax Fair (October 2018), Fair Tax Monitor Study Uganda, https://maketaxfair.net/assets/Fair-Tax-Monitor-Uganda-Report-2.pdf

[13] Tax Justice Alliance in Uganda (May 30, 2020) “Rethinking the domestic revenue mobilization strategies amidst the COVID-19 Pandemic in Uganda”, https://www.tjau.or.ug/index.php/resources/press-releases. Accessed on the 10th of July 2020.

[14] Oxfam Uganda, Oxfam Novib, SEATINI, Tax Justice Network Africa, Make Tax Fair (October 2018), Fair Tax Monitor Study Uganda

[15] Ugandan Ministry of Health (September 2015), Uganda Health Sector Development plan 2015/16-2019/20, https://health.go.ug/sites/default/files/Health%20Sector%20Development%20Plan%202015-16_2019-20.pdf

[16] Wesaka, A (February 7, 2020), “Gulu residents protest over blood shortage”, *Daily Monitor* https://www.monitor.co.ug/News/National/Gulu-residents-protest-over-blood-shortage/688334-5448092-14m9jtkz/index.html. Accessed on the 26th of June 2020.

[17] Uganda ranks 157 out of 185 countries surveyed in 2017. Source: World Health Organization (19th of September 2019), “Maternal Mortality”, https://www.who.int/news-room/fact-sheets/detail/maternal-mortality. Accessed on the 10th of July 2020.

[18] Ugandan Ministry of Health (September 2015), Uganda Health Sector Development plan 2015/16-2019/20

[19] Monthly Round-Up Oxfam in Uganda Newsletter (February 2020), “Civil Society Tasks the Government to Solve the Blood Problem”, https://cng-cdn.oxfam.org/uganda.oxfam.org/s3fs-public/file_attachments/Oxfam%20in%20Uganda%20Newsletter%20February%202020.pdf

[20] Mawejje J. (2020), "Oil Revenues and Social Development in Uganda" in Langer, Arnim, et al., editors. Oil Wealth and Development in Uganda and Beyond: Prospects, Opportunities, and Challenges. Leuven University Press, p. 153, www.jstor.org/stable/j.ctvt9k690. Accessed on the 30th of June 2020.

[21] Tullow Oil – a British junior – has completely disengaged from the project in April 2020 – see section II. Chinese CNOOC remains Total's partner.

[22] Quote in the original language (French) « Notre exploration – dont les budgets ont diminué au cours des cinq dernières années – n'intervient que là où l'on peut produire du pétrole pas cher ». Source : Escande P., Garric A., Bezat J.M. and Wakim N. (June 4, 2020), "Patrick Pouyanné, PDG de Total : La question de la pérennité des compagnies pétrolières est posée », *Le Monde,* https://www.lemonde.fr/economie/article/2020/06/04/patrick-pouyanne-la-question-de-la-perennite-des-compagnies-petrolieres-est-posee_6041723_3234.html. Accessed on the 30th of June 2020.

[23] See for example: SEATINI and ActionAid (September 18, 2014), Double taxation treaties in Uganda: Impact and policy implications, https://uganda.actionaid.org/publications/2014/double-taxation-treaties-uganda-impact-and-policy-implications

[24] Dividends are the share of annual profits (after taxes) going to a company's shareholders – which can be another company within the same economic group. Interests relate to annual interest payments on loans, which can also be contracted with a company from the same economic group. Royalties are payments for the use, or the right to use, any type of intellectual work, patent, trademarks etc. Technical fees relate to payments for any technical, management or consulting service.

[25] According to the IMF, « Uganda revenue loss is likely to be substantial from DTTs ». Among other issues, the IMF notes that Ugandan DTAs don't have adequate provisions on taxation – as the source country – on immovable property indirect transfers; Uganda has recently amended its Income Tax Act to include anti-abuse provisions – those should be integrated in its DTAs. Source: IMF (July 2017), Country Report No. 17/207. Uganda, p.76 https://www.imf.org/en/Publications/CR/Issues/2017/07/12/Uganda-Selected-Issues-45070.

[26] Global Financial Integrity Uganda (September 2018) A Scoping Study of Illicit Financial Flows Impacting Uganda, p. 29, https://gfintegrity.org/report/a-scoping-study-of-illicit-financial-flows-impacting-uganda/

[27] Berkhout, E. (2016), Tax Battles: The dangerous global race to the bottom on corporate tax, Oxfam, https://oxf.am/2FNStyn

[28] Langerock, J. and Ruiz Rodriguez, S. (2019). Endless Corporate Scandals? Oxfam's 5-point plan to build a fairer global tax system, Oxfam. https://www.oxfam.org/en/research/endless-corporate-tax-scandals

[29] Fitzgibbon, W (July 6, 2020) Zambia becomes second nation to tear up Mauritius tax deal, International Consortium of Investigative Journalists, https://www.icij.org/investigations/mauritius-leaks/zambia-becomes-second-nation-to-tear-up-mauritius-tax-deal/. Accessed on the 10th of July 2020.

[30] Provisions dealing with Tax evasion include: the Ugandan Income Tax (Am) Act 2011 (ITA), Section 88, Sub-section 5. Another provision is ITA, Third Schedule, Part X on Anti avoidance: as per sub-section 91, the URA Commissioner may "re-characterize a transaction or an element of a transaction that was entered as part of a tax avoidance scheme". Any international tax agreement to which Uganda is party to does prevail over the Income tax Act in the event of any inconsistency with the exception of the above provisions. The Domestic Revenue Mobilization Strategy of 2020 also included reforms to deal with tax revenue leakages. With regards to the taxation of extractive activities, it is also worth noting that prior to 2008, the Income Tax Act, did not provide for taxation of petroleum activities in Uganda, and as such due reliance was placed on Production Sharing Agreements (PSAs). However in 2008, the Income Tax Act was amended and a specific mentions of extractive projects were inserted as Part IXA. This was a recommendable milestone in taxation of petroleum activities in Uganda.

[31] Letterbox companies are also regularly referred to as mailbox companies, shell companies, paper companies or Special Purpose Vehicles (SPVs).

[32] IMF (2018), "Coordinated Direct Investment Survey – Data for Uganda", https://data.imf.org/?sk=40313609-F037-48C1-84B1-E1F1CE54D6D5. Accessed on the 20th of June 2020

[33] In line with the IMF's Balance of Payments and International Investment Position Manual (BPM6), source countries are identified on the basis of the economy of the immediate investor and not ultimate investor. Investments can be done directly through equity or debt instruments. Source: IMF (2013), Sixth Edition of the IMF's Balance of Payments and International Investment Position Manual (BPM6), https://www.imf.org/external/pubs/ft/bop/2007/bopman6.htm.

[34] Bank of Uganda (2018), Private Sector Investment Survey 2018, https://www.bou.or.ug/bou/bouwebsite/bouwebsitecontent/statistics/Surveys/PrivateSectorCapital/PSIS/2018/Private-Sector-Investment-Survey-2018-REPORT.pdf

[35] Bank of Uganda (2018), Private Sector Investment Survey 2018, p. 18

[36] UNCTAD (2019), Chapter II Regional Trends in World Investment Report 2019, https://unctad.org/en/PublicationChapters/WIR2019_CH2.pdf

[37] European Parliament (February 2019), Press Statement: “Tax crimes: special committee calls for a European financial police force”, https://www.europarl.europa.eu/news/en/press-room/20190225IPR28727/tax-crimes-special-committee-calls-for-a-european-financial-police-force. Accessed on the 10th of July 2020.

[38]Statistics Netherlands – CBS (December 13, 2018), “80 percent of inward investments channeled out directly”, https://www.cbs.nl/en-gb/news/2018/50/80-percent-of-inward-investments-channelled-out-directly. Accessed on the 10th of July 2020.

[39] Hearson, M. and Kangave, J. (2016), A review of Uganda's tax treaties and recommendations for action, Working paper, 50. Institute of Development Studies, International Centre for Tax and Development, London, UK. http://eprints.lse.ac.uk/67868/

[40] IMF (July 2017), Country Report No. 17/207 Uganda, p.80

[41] Deutsch A. and Edwards T. (July 16, 2013), “Special Report: In tax case, Mongolia is the mouse that roared”, *Reuters,* https://www.reuters.com/article/us-dutch-mongolia-tax/special-report-in-tax-case-mongolia-is-the-mouse-that-roared-idUSBRE96F0B620130716. Accessed on the 10th of July 2020.

[42] Damgaard J., Elkjaer T., and Johannesen N. (2018). Piercing the Veil. Finance & Development, Vol. 55, No. 2. https://www.imf.org/external/pubs/ft/fandd/2018/06/inside-the-world-of-global-taxhavensand-offshore-banking/damgaard.pdf

[43] Langerock, J. and Ruiz Rodriguez, S. (2019). Endless Corporate Scandals? Oxfam’s 5-point plan to build a fairer global tax system, Oxfam

[44] “International collaboration to end tax avoidance”, OECD, https://www.oecd.org/tax/beps/. Accessed on the 10th of July 2020.

[45] The ‘Limitation of Benefits’ article is intended to prevent residents of third countries from obtaining benefits under a treaty. Residents of a signatory country are only eligible for benefits of DTAs if they satisfy specific tests.

[46] The ‘Principal Purpose Test’ article is intended to deny treaty benefits if tax administrations can reasonably conclude that one of the principal purposes of an arrangement or transactions was to obtain the benefit of the DTA, against the actual object and purpose of the treaty.

[47] See for example: Weyzig, F. (2013), International finance and tax avoidance via Dutch Special Purpose Entities, Paper for presentation at research seminar, Radboud University Nijmegen, https://www.ru.nl/publish/pages/718686/paper_weyzig_-_intl_fin_and_tax_avoidance_dutch_spes.pdf

[48] Sec 83 ITA (as amended), Third Schedule, Part IV

[49] Sec 83, (1), ITA (Amen) 2002, Withholding Tax on International Payments is imposed on every non-resident person who derives any dividend, interest, royalty, rent, natural resource payment or management charge from sources in Uganda. As per Sec 83, (2), ITA (Amen) 2006, the tax is withheld by the payer to a non-resident individual and as per IT (Am) 2013 Act Part IV of the Third Schedule: at a rate of 15% of the gross amount before payment/remittance of the amount is made. However, this does not apply to amounts from activities of a Ugandan branch of the Non Resident. This excludes interests on Government Securities.

[50] Hearson, M. and Kangave, J. (2016), A review of Uganda's tax treaties and recommendations for action, p.16.

[51] Hearson, M. and Kangave, J. (2016), A review of Uganda's tax treaties and recommendations for action, p. 13

[52] Bowers, S. (March 4, 2019), “Seven EU countries labeled ‘tax havens’ in parliament report”, International Consortium of Investigative Journalists., https://www.icij.org/investigations/luxembourg-leaks/seven-eu-countries-labeled-tax-havens-in-parliament-report/

[53] European Commission (2020), European Semester Country Reports , https://ec.europa.eu/info/publications/2020-european-semester-country-reports_en

[54] Van Os R., McGauran K. and Römgens I. (2013), Private Gain – Public Loss: Mailbox companies, tax avoidance and human rights, https://www.somo.nl/wp-content/uploads/2013/07/Private-Gain-Public-loss.pdf

[55] Deutsch A. (October 9, 2018), “Unions accuse Chevron of ‘massive’ tax avoidance via the Netherlands”, Reuters, https://www.reuters.com/article/us-netherlands-tax-chevron/unions-accuse-chevron-of-massive-tax-avoidance-via-the-netherlands-idUSKCN1MJ1C3. Accessed on the 26th of June 2020

[56] Collyns D. (March 12, 2020), “Peruvian leader appeals to watchdog over ‘terrible harm’ caused by oil firm, The Guardian, https://www.theguardian.com/global-development/2020/mar/12/peruvian-leader-appeals-to-watchdog-over-terrible-harm-caused-by-oil-firm-aurelio-chino-oecd. Accessed on the 10th of July 2020

[57] Wolters Kluwer (June 2, 2020). Notitie fiscaal verdragsbeleid 2020, https://www.taxlive.nl/nl/documenten/vn-vandaag/notitie-fiscaal-verdragsbeleid-2020/

[58] Hietland M. (2020), The 2011 Memorandum on Dutch Tax Treaty Policy: Theory and practice of the Dutch tax treaties with developing countries, SOMO, p. 1, https://www.somo.nl/theory-and-practice-of-the-dutch-tax-treaties-with-developing-countries/,

[59] For example, the DTA between the Netherlands and Zambia was renegotiated in 2018 – and now includes an anti-abuse clause, as well as a 5% WHT rate on dividends. Source: “New Tax Treaty between the Netherlands and Zambia has entered into force”, Orbitax, https://www.orbitax.com/news/archive.php/New-Tax-Treaty-between-the-Net-30497. Accessed on the 10th of July 2020.
In Hietland M. (2020), The 2011 Memorandum on Dutch Tax Treaty Policy: Theory and practice of the Dutch tax treaties with developing countries, SOMO, the author highlights that the WHT rates of DTAs signed or amended after 2011 are still generally below the average of those included in DTAs between the partner country and other OECD countries. This is the case for the WHT rates on participation dividends as per the 2015 Indonesia DTA (5%), 2015 Kenya DTA (0%), 2015 Zambia DTA (5%) and 2012 Ethiopia DTA (5%). The DTA with Malawi (2015) also includes a 5% WHT rate on participation dividends which is above the average WHT rate as per DTAs with other OECD countries – but only because those are exceptionally low (France/Sweden/Switzerland/UK: 0%).

[60] See a summary of engagement by Ugandan CSOs (TJAU, Oxfam, Seatini) with Dutch envoys at: Olwenyi J. (November 19, 2019), Blog note: “The role of Strategic Partnership in the fight against economic inequality through influencing international & domestic tax policy - a case of the Uganda-Netherlands Double Taxation Agreement”, https://uganda.oxfam.org/latest/blogs/role-strategic-partnerships-fight-against-economic-inequality-through-influencing. Accessed on the 10th of July 2020.

[61] Lomas U. (January 27, 2020), “Netherlands Sets Out 2020 Tax Treaty Goals”, Tax-news, https://www.tax-news.com/news/Netherlands_Sets_Out_2020_Tax_Treaty_Goals____97517.html Accessed on the 26th of June 2020.

[62] Oxfam in Uganda campaigned on the issue of blood shortage in Uganda. See: Oxfam in Uganda (February 11 2020), “We pay a lot of taxes in Uganda. How comes there is a shortage of blood in hospitals?” #TimeToCare4Blood, https://www.facebook.com/watch/?v=215272679607042&extid=VX9IABMUv1tTFXeK

See also a special report by NBS TV on the blood crisis in Uganda: NBS (February 10, 2020), “BLOOD FOR SALE: Opportunist Use Shortage to Sell Blood” https://www.youtube.com/watch?v=h3eGRKXgxNk&feature=youtu.be.

[63] U.S. Embassy in Uganda, “Petroleum in Uganda”, https://ug.usembassy.gov/business/getting-started-uganda/petroleum-in-uganda/. Accessed on the 10th of July 2020.

[64] ‘EA’ stands for Exploration Area. Production license are then allocated within a block. See next section for implications of the division in blocks for the fiscal regime.

[65] Mwesigwa A. (May 12, 2016), “Uganda chooses Tanzania over Kenya for oil pipeline route”, *The Guardian,* https://www.theguardian.com/global-development/2016/may/12/uganda-chooses-tanzania-over-kenya-for-oil-pipeline-route. Accessed on the 10th of July 2020.

[66] Capital Gain refers to “the rise in value of an asset – for example shares of companies, real estate property or valuable art items. When there is a change in ownership of an asset (normally through a sale), the capital gain is realized.[…] The amount considered to be a capital gain will be the value received by the final transfer of the asset minus the value initially paid”. Source: Alencar, H. & Van Neck, J. (2020) “Capital Gains Taxes and Offshore Indirect Transfers”, p. 8, https://policy-practice.oxfam.org.uk/publications/capital-gains-taxes-and-indirect-offshore-transfers-621031

[67] #Panama Papers, The African Network of Centers for Investigative Reporting, “Leaked emails expose Heritage plot to dodge Uganda tax”, https://panamapapers.investigativecenters.org/uganda/. Accessed on the 10th of July 2020.

[68] April 4, 2013,“Uganda wins case against Heritage Oil”, New Vision, https://www.newvision.co.ug/news/1316689/uganda-wins-heritage-oil. Accessed on the 10th of June 2020.

[69] More details on this case are available in Alencar, H. & Van Neck, J. (2020) “Capital Gains Taxes and Offshore Indirect Transfers”, p. 14 & 15

[70] See for example, Global Witness (2014), “A good deal better: Uganda’s secret oil contracts explained”, https://www.globalwitness.org/en/reports/good-deal-better/.

[71] Reed, E. (September 9, 2019), “Uganda deal falls apart for Tullow, pushes FID back”, *Energy Voice,* https://www.energyvoice.com/oilandgas/africa/206688/uganda-deal-falls-apart-for-tullow-pushes-fid-back/. Accessed on the 10th of July 2020.

[72] May 11, 2019, “Understanding government, Tullow-Total farm down dispute”, *The Independent,* https://www.independent.co.ug/understanding-government-tullow-total-firm-down-dispute/. Accessed on the 10th of July 2020.

[73] Musoke R. (October 7, 2019), “Total E&P frustrated but willing to go on with project”, *The Independent,* https://www.independent.co.ug/total-ep-frustrated-but-willing-to-go-on-with-project/. Accessed on the 10th of July 2020.

[74] ACODE, CSABG, CSCO, Global Rights Alert, Oxfam (September 12, 2019), Press statement: ”Civil Society Concerns on the Oil Tax Obligations Stalemate between Government and International Oil Companies over the Lake Albert Project and the EACOP”, https://www.csbag.org/download/press-statement-civil-society-concerns-on-the-oil-tax-obligations-stalemate-between-government-and-international-oil-companies-over-the-lake-albert-project-and-the-eacop/

[75] CNOOC has waived its rights to pre-empt 50% of the sale and still holds 33.3%. The transaction is still pending government’s approval and will result in Total holding 66.66% of all blocks. For the purpose of the present case study, we assume the transaction as approved.

[76] Total (April 23, 2020), Press Statement: “Total Acquires Tullow Entire Interests in the Uganda Lake Albert Project”, https://www.total.com/media/news/press-releases/total-acquires-tullow-entire-interests-uganda-lake-albert-project. Accessed on the 15th of June 2020.

[77] Africa Intelligence (June 26, 2020), “Total secures highly preferential deal on Tullow assets”, *Africa Intelligence,* https://www.africaintelligence.com/oil--gas_state-strategy/2020/06/26/total-secures-highly-preferential-deal-on-tullow-assets%2C109240739-eve?utm_source=AIA&utm_medium=email&utm_campaign=AUTO_EDIT_SOM&did=108339408&eid=524022. Accessed on the 10th of July 2020.

[78] Total (April 23, 2020), Press Statement: “Total Acquires Tullow Entire Interests in the Uganda Lake Albert Project”, https://www.total.com/media/news/press-releases/total-acquires-tullow-entire-interests-uganda-lake-albert-project. Accessed on the 15th of June 2020.

[79] April 23, 2020, “Tullow Oil : agrees sale of its entire stake in the Lake Albert Development Project in Uganda to Total for US$575 million in cash plus post first oil contingent payments”, https://www.marketscreener.com/TULLOW-OIL-9590152/news/Tullow-Oil-agrees-sale-of-its-entire-stake-in-the-Lake-Albert-Development-Project-in-Uganda-to-Tot-30462589/#:~:text=The%20total%20consideration%20for%20the,the%20Upstream%20and%20Midstream%20Segments. Accessed on the 10th of July 2020.

[80] Article 11 of the Production Sharing Agreement. The Uganda National Company can decide to acquire equity shares in the upstream part of the project at a later stage. Back-in rights refer to the possibility for a party, often a National Oil Company to acquire an equity participation without carrying the risk of exploration.

[81] Total (2018), Registration document, p. 43, https://www.total.com/sites/g/files/nytnzq111/files/atoms/files/ddr2018-en.pdf.

[82] Total (2018), Registration document, p. 43

[83] Total (2018), Registration document, p. 43

[84] June 4, 2020, “From great crash to weak bounce”, *Africa Confidential,* https://www.africa-confidential.com/article/id/12984/From_great_crash_to_weak_bounce

[85] Information retrieved from CNOOC Netherlands B.V. 2015 Financial statements, accessible on the Dutch Chamber of Commerce website KvK.nl (accessed on the 16th of September 2020). Financial statements for subsequent years use a simplified form and thus offer limited information. However, more recent (2019) information was obtained from the Ugandan Registration Services Bureau – showing that this corporate ownership structure has not evolved.

[86] Total (2018) Registration document, p. 340-359. Total classifies its subsidiaries into Exploration & Production (E&P); Gas, Renewables & Power; Refining & Chemicals; Marketing & Services; Corporate. As of the end of 2018, and as per its registration document, Total had 1192 (consolidated) subsidiaries. Out of those, 220 were declared as part of the E&P segment. 56 were declared as registered in the Netherlands, or 25.5%. Countries of operations – as per Total Registration document – are very diverse: 35 different countries are present, including Angola, Cote d’Ivoire, Guyana, Iraq, Kenya, Mauritania, Mozambique, Namibia, Nigeria, Philippines, Uganda, Venezuela, Yemen – but also Australia, the USA, Denmark, Brazil as well as the Netherlands themselves.

[87] All companies presented here are registered in the Netherlands – except for Total Holdings Europe, incorporated in France. List and number of subsidiaries have been retrieved from Total (2018) Registration Document. The ownership structure and information on staff numbers as well as total balance sheet are the last available as per ORBIS. Accessed for the last time on the 26th of June 2020.

[88] Dutch Chamber of Commerce, Kvk.nl. Accessed on the 26th of June 2020

[89] Total further explained that the company elected to set up subsidiaries in countries where it is possible to maintain financial accounts in US dollars – a possibility not offered by France. Total consolidated financial accounts are presented in dollars.

[90] Royalties are production-based taxes paid to governments in exchange for the rights to extract oil or minerals. There are either "fixed" – as a set percentage of production, or based on a "sliding scale", which evolves based on a number of factors such as level of production, internal rate of return, cumulative project revenues as compared to cumulative costs etc. Uganda PSAs use a sliding scale.

[91] August 12, 2020 "Uganda joins the EITI", EITI, https://eiti.org/news/uganda-joins-eiti. Accessed on the 18th of August 2020.

[92] Global Witness released an unsigned version of Block EA1A in 2014. Source: Global Witness (2014), "A good deal better: Uganda's secret oil contracts explained". 1991 and 2013 Model contracts, as well as parts of EA3A contracts are available here: "Search results = Uganda", Resources Contracts, https://www.resourcecontracts.org/search?q=&country%5B%5D=UG. Accessed on the 10th of July 2020.

[93] Johnny West, Open Oil. The 2ne consultant did not audit the model built by the previous consultant. Oxfam is however the sole responsible for the final analysis conducted and choice of the final set of assumptions to be used in the model.

[94] Net production is equal to the overall production minus royalties. See figure 3.

[95] Details of fiscal terms applying as the result of Ugandan national legislation are available in Annex: Capex Depreciation, Tax Deductibility of Loans interests.

[96] See for example: Hubert, D. (2016), "Mapping Risks to Future Government Petroleum Revenues in Kenya", Oxfam, http://www.res4dev.com/wp-content/uploads/2017/06/Mapping_Risks_Petroleum_Revenues_Kenya.pdf

[97] Oil price.com, "Oil Price charts", https://oilprice.com/oil-price-charts/46. Accessed on the 26th of June 2020.

[98] Expressed here in 2018 dollars.

[99] Total (2019), Registration document, p. 8, https://www.total.com/sites/g/files/nytnzq111/files/atoms/files/2019_total_universal_registration_document.pdf. Total registration document was published in late March 2020, as the COVID-19 crisis had already unfolded.

[100] Date as of January 2025. "Brent Crude Oil Futures Quotes", CME Group, https://www.cmegroup.com/trading/energy/crude-oil/brent-crude-oil.html. Accessed on the 10th of July 2020.

[101] WHT rate on dividends as per the other Ugandan DTAs typically stands at 10% or more: this is the case for Denmark (10% for participation dividends > 25%), India (10%), Italy (15%), Norway (10% for participation dividends > 25%), UK (15%). Interests' payments are typically taxed at 10%.

[102] Mawejje, J. Chapter "Oil Revenues and Social Development in Uganda" in Langer, Arnim, et al., editors. Oil Wealth and Development in Uganda and Beyond: Prospects, Opportunities, and Challenges. Leuven University Press, 2020. www.jstor.org/stable/j.ctvt9k690 Accessed on the 30th June 2020

[103] Taxes are avoided over a period of 25 years. Calculations based on figures as per: February 4, 2019, "Uganda budget 2019-20 will jump to Sh34.3 trillion", *The Independent,* https://www.independent.co.ug/uganda-budget-2019-20-will-jump-to-sh34-3-trillion/.

[104] Monthly Round-Up Oxfam in Uganda Newsletter (February 2020)

[105] Art. 88 (2) specifies that international agreements prevail over the provisions of the Income Tax Act when there are inconsistencies, to the exception of subsection (5) of Art.88, as well as Part X of the ITA on Anti-avoidance.

[106] Olwenyi J. (November 19, 2019), Blog note: "The role of Strategic Partnership in the fight against economic inequality through influencing international & domestic tax policy - a case of the Uganda-Netherlands Double Taxation Agreement"

[107] The MLI (entered into force on the 1st of July 2018) offers signatory governments solutions to rectify their DTAs – however provisions will only apply to agreements with countries also signatory to the MLI, which also needs to indicate to which treaties this would apply. Source: "Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS", OECD, https://www.oecd.org/tax/treaties/multilateral-convention-to-implement-tax-treaty-related-measures-to-prevent-beps.htm. Accessed on the 10th of July 2020. The Netherlands have however indicated that they intend to apply the MLI provisions to its treaty with Uganda. Source: IMF (July 2017), Country Report No. 17/207 Uganda, p. 82.

[108] As per Chapter 10 of the European Accounting Directive (Directive 2013/34/EU).

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