Tax, anti-corruption and human rights

According to the World Bank and the Organisation for Economic Co-operation and Development (OECD), "corruption and tax crime remain key obstacles to sustainable economic, political and social development, particularly in developing and emerging countries." The organisations further note that "[i]t is well established that economic offences such as bribery and corruption and tax evasion reduce efficiency and increase inequality."

In accordance with the International Covenant on Economic, Social and Cultural Rights (ICESCR), states have a duty to ensure that they have the maximum available resources to progressively realize the human rights of the covenant and thereby e.g. reduce inequality. Specifically, Article 2(1) of the ICESCR mandates that states take steps to eliminate obstacles towards the realisation of human rights, which can include legislative measures to prohibit bribery and corruption. Likewise, tax is one of the main tools available for mobilising domestic resources for the protection, promotion and fulfilment of human rights as well as for SDG implementation.

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Without sufficient funds for basic services, a well-resourced and functioning judiciary and other strong public institutions, human rights will suffer. However, many developing countries do not collect enough tax to provide even basic services for its populations, such as road infrastructure, healthcare, and public safety. Research indicates that at least 15 percent of GDP in revenue is necessary to finance these basic services. However, in almost 30 of the 75 poorest countries, tax revenues are below this 15 percent threshold.

Corruption functions as one of the obstacle towards domestic resource mobilisation and manifests itself in a myriad of harmful practices that often involve companies directly or indirectly via the actions of business partners. This includes both bribery (the offering, promising or giving, as well as demanding or accepting of any undue advantage, whether directly or indirectly, to or from a public or government official, a political candidate, party or official, or any private sector employees, directors or officers or their agents or representatives) and facilitation payments (or "grease payments", fees paid to receive preferential treatment for something that the payment receiver is otherwise still required to do).

In some countries, it is customary to provide small unofficial payments, and the practice is not prohibited by leading anti-corruption legislation, such as the United States Foreign Corrupt Practices Act (FCPA), which permits payments for "routine governmental actions". However, paying facilitation payments contributes to a climate of corruption which undermines the rule of law and damages human rights. According to Transparency International, facilitation payments or "small bribes" contribute to loss of state revenue and misallocation of public resources. Further, while a company can be involved in the above impacts while still complying with local laws, there is also a risk of being involved in similar impacts without making such payments. This can be the case when business partners or subsidiaries make the payment and the company knows or should know that the conduct is occurring.

Meanwhile, states are losing large amounts of potential tax revenue to e.g. tax incentives and tax avoidance. According to an IMF Working paper from 2015, tax losses due to tax avoidance in developing countries amounts to roughly US$200 billion annually, or around 1.3% of GDP in those countries. A separate study by the UN Conference on Trade and Development (UNCTAD) estimates that developing countries lose around US$100 billion annually from foreign direct investment (FDI) being routed via tax havens. Research by development NGO ActionAid shows that developing countries give away over US$138 billion in corporate tax breaks alone every year.

This loss in domestic resources is further exacerbated by the prevalence of corruption. According to the United Nations Global Compact (UNGC), corruption is the single greatest obstacle to economic and social development around the world, in part because it limits the resources available for development and human rights interventions.

The UN Economic and Social Council (ECOSOC) has clarified that fulfilling rights requires the "mobilization of resources by the State". ECOSOC also reiterated that this is not merely a state responsibility but that according to the United Nation's Guiding Principles on Business and Human Rights (UNGPs) business entities are expected to respect economic, social and cultural rights "regardless of whether domestic laws exist or are fully enforced in practice", implying that even where states have not on their own managed to properly address tax avoidance and races to the bottom on corporate tax rates or to eradicate corruption, companies have a responsibility to make sure they are not causing or contributing to such outcomes, or are otherwise linked to such outcomes through their business relationships.

As illustrated above, companies can have negative impacts on human rights by e.g. engaging in corruption or avoiding taxes through the use of artificial tax structures or lobbying for tax incentives or tax reform that will undermine "a State's ability to mobilize resources for the delivery of services essential for the realization of economic, social and cultural rights" (including the right to education, right to development and right to health). A company which is linked to negative human rights impacts due to e.g. corruption or tax avoidance risks also being linked to impacts on the right to equal treatment and non-discrimination, as outlined by the Special Rapporteur on Extreme Poverty and Human Rights in a 2014 report on human rights and tax.

Lobbying governments for tax incentives when e.g. deciding on the future location of a factory can contribute to those governments "competing to offer the lowest taxes and most attractive tax incentives for business" (a race to the bottom), thereby failing to mobilise the necessary resources to promote, protect and fulfil human rights. Studies have confirmed that while tax incentives can in certain situations provide benefits through attracting investments that would have otherwise not occurred, they can in other cases "entail significant costs, such as revenue loss, low economic efficiency, increased administrative and compliance costs, and excessive tax planning and tax evasion, which may exceed their benefits and considerably erode the general tax base."

Companies can also be linked to negative human rights impacts through transfer mispricing, which means setting the prices of goods and services that are sold between subsidiaries in different countries in such a way as to shift profits for maximum tax benefit.

As stated by the OHCHR, "tax systems must be progressive, transparent, accountable and effective" in order to achieve equitable, people-centred development. Companies can and should act in line with this, and thereby respect human rights, by being transparent about their tax payments, the tax incentives they receive and make use of, and in what ways (if any) they lobby for tax reforms.

While aggressive tax planning, profit shifting and other tax minimising strategies – even though generally within the letter of the law – are often seen as victimless acts by companies, they can have a very concrete impact on the protection and fulfilment of human rights. As such, companies should consider the negative human rights impacts of their tax related activities (planning, lobbying, practice etc.) and address those impacts as part of their general human rights due diligence processes. Responsible business conduct in relation to tax would for example include looking to follow the *spirit* of national tax legislation and reporting requirements; complying with what is outlined by the OECD BEPS process; refraining from seeking discretionary tax incentives and from routing transactions via tax havens; making country-by-country tax reports publicly available for accountability purposes; and being transparent about advocacy to tax lawmakers and policymakers.

Similarly, corruption may divert resources from essential public services, which affects the ability of states to provide for and protect basic human rights, as well as hinder development, perpetuate marginalisation and generally reduce efficiency. As explained by the UNGC, corruption can be linked to human rights violations directly, for instance when bribery of a judicial officer results in the violation of the right to a fair trial. The link can however as explained by the OECD also be indirect, such as when a public official is given bribes, "facilitation payments" or other gifts to reward a company with a public infrastructure contract even though the offer is sub-standard, thereby leading to inefficient spending of public resources that could be used to address other human rights related issues. That includes a lack of spending on education and health care in a given country.

An illustrative example of the negative human rights impacts is that "child mortality rates in countries with high levels of corruption are about one third higher than in countries with low corruption". In such scenarios the company involved may contribute to the negative human rights impacts or otherwise be linked to negative impacts occurring as a consequence of the corrupt practices. Similarly, corruption lowers public sector efficiency and effectiveness, in that domestic resources are not allocated to the sectors or programmes where needs are the highest, or which represent the best money for value, but are rather given to those which offer the best prospects of personal enrichment to corrupt officials. OECD research found that "high levels of perceived corruption are associated with lower spending on social services, including health and education, which can undermine social welfare".

Considering the above mentioned, businesses must consider the negative human rights impacts related to corrupt practices and address the issue as part of their overall human rights due diligence. Responsible business conduct in relation to anti-corruption would include going beyond compliance with regional and international law regarding bribery and corruption and pledging to support the 10th principle of the UNGC, "*Businesses should work against corruption in all its forms, including extortion and bribery".* This may include actions such as introducing anti-corruption policies internal to the company and regarding its selection of third parties; conducting robust and frequent anti-corruption risk assessments, due diligence, and training, as well as making available internal controls such as a hot line for non-compliance; reporting on anti-corruption progress and cases of non-compliance; and collaborating with industry peers to scale-up anti-corruption efforts.

▼ Links to SDGs and targets

UNCTAD has estimated that the funding gap for the SDGs in developing countries alone is around US$2.5trillion per year globally. This implies a direct link between taxation, corruption and the SDGs. Companies must therefore see responsible tax practises that do not seek to minimise tax contributions in developing countries, as well as responsible anti-corruption practices, as part not only of their human rights efforts, but also of their SDG efforts.

Further, SDG target 17.1 requires states to “[s]trengthen domestic resource mobilization, including through international support to developing countries, to improve domestic capacity for tax and other revenue collection.” The two specific indicators focus on total government revenue as a proportion of GDP, and the proportion of domestic budget funded by domestic taxes.

Domestic revenue mobilisation refers to the generation of government revenue from domestic resources. This includes taxation in particular, but domestic resource mobilisation is also strengthened in countries with lower corruption rates, as corruption poses an obstacle to revenue mobilisation. Domestic resource mobilisation can raise much needed funds to finance the realization of the Sustainable Development Goals, but also has additional benefits in that it fosters citizen ownership and political accountability for how funds are spent and reduces reliance on increasing debt or on external assistance. Accordingly, in order for these goals to be met, it is necessary to have strong anti-corruption systems in place.

Honing in specifically on the inverse relationship between corruption and the realisation of human rights, SDG target 16.5 concerns “substantially reduc[ing] corruption and bribery in all its forms.” Indicator 16.5.2 focus on the proportion of businesses that had at least one contact with a public official and that paid a bribe to a public official, or were asked for a bribe by those public officials during the previous 12 months.

By addressing corrupt practices within companies themselves and among business partners as well as improving tax policies and practices, companies are however not only impacting on SDGs 16 and 17, they are implicitly also contributing to the full range of SDGs that are dependent on sufficient funding to be realised, such as targets related to SDG 1, SDG 3, SDG 4 and SDG 6, among others.

These are merely examples of ways in which actions to respect community rights can contribute to certain SDGs and is not an exhaustive list of such links.

Cases on Tax, anti-corruption and human rights

Case brief	Goals	Targets	Due diligence
Group of leading companies pushes for transparent tax systems The B Team is a global group of corporate leaders working together to ensure that companies must not only be driven by profit, but must also take concerted, positive action that will ensure business becomes a driving force for social, environmental and economic benefit. They have in co-operation with civil society (e.g. ActionAid UK, Oxfam and Transparency International), institutional investors and several leading businesses (e.g. Allianz, Maersk, Natura Cosméticos, Safaricom and Unilever) developed its Responsible Tax Principles. The Principles are a framework detailing what the B Team and its collaborators believe good tax practice should look like and cover areas such as tax management strategy, interactions with authorities, and reporting. The Principles outline that taxes are a critical resource to help realise the SDGs through enhanced public services and investments. The B Team also outlines other important links between responsible taxation and the SDGs, including:	17 PARTNERSHIPS FOR THE GOALS	17.1 17.16	Corporate commitment Assessing impacts Integrating and acting upon findings Stakeholder engagement

Case brief	Goals	Targets	Due diligence
Accountability to taxpaying citizens, accountability being a key principle of both human rights and the 2030 Agenda; Clear and robust tax rules promote predictability for businesses and encourages long term investments needed to realise the SDGs; Encouraging certain investment behaviours and discouraging certain negative social outcomes such as smoking; Using taxes to redistribute income, which addresses inequality and ensures that no-one is left behind.			
Energy company calls on regulators to demand increased tax transparency from peers UK energy and FTSE 100 company SSE was the first to receive the UK's Fair Tax Mark in 2015 and has since received it for 5 consecutive years. In its 2018 tax report, SSE says that "tax is the fundamental way in which businesses contribute to the societies that enabled their business success. Without it, we believe the public legitimacy of companies is diminished." SSE also explicitly links its tax contributions to the SDGs, stating that "SSE is committed to supporting the SDGs and recognises that they are not only for governments to achieve, but for business and civil society to contribute to as well." SSE further recognises the links between tax and the success of business by acknowledging that "the payment of tax by business is the fundamental way in which profitable businesses contribute to the communities and society that enabled their business success." SSE also calls on the UK energy regulator Ofgem to demand greater tax transparency from all energy suppliers in the UK due to the close links between tax payments and funding for public services. The Fair Tax Mark, a not-for-profit community benefit society, is a UK certification scheme launched in 2014 that "recognises organisations that pay the right amount of corporation tax at the right time and in the right place." One of its goals is to bridge the gap between corporate responsibility and the wide tax justice movement.	17 PARTNERSHIPS FOR THE GOALS	17.1	Corporate commitment Integrating and acting upon findings Communicating and reporting
Education company discloses tax arrangements and makes link between tax contributions and the fulfilment of the SDGs Pearson's (a UK based education company) 2018 tax report contains its tax principles, that commit to e.g. aligning tax payments with actual economic activity, as well as not using tax havens to avoid paying tax elsewhere. In the report, Pearson also accounts for why it has companies in tax havens such as the Cayman Islands, Switzerland and Delaware, and discloses a financing arrangement it has in Ireland which reduces its tax contribution, but which has been approved by the Irish and UK tax authorities. The tax report also details how much tax Pearson paid in each jurisdiction and how many employees they have in each of them. Through its tax reporting Pearson has improved its	17 PARTNERSHIPS FOR THE GOALS	17.1	Corporate commitment Communicating and reporting

Case brief	Goals	Targets	Due diligence
transparency, disclosed its tax arrangements and explained its presence in tax havens, and explicitly linked its tax contributions to e.g. funding public services and education as well as contributing to a more equal society – all of which contributes to the fulfilment of various SDGs. In its 2018 tax report, Pearson states that its tax contribution help to "fund vital public services, including education, as well as investment in infrastructure to fuel economic growth and promote a more equal society." The company further says that companies "need to strengthen public trust in the taxation system and that one way companies can do this is by being open about their tax practices." In 2018, Pearson won the PWC Building Public Trust Award for its tax reporting.			
Multinational telecommunications company publishes country-by-country tax report As part of its tax transparency, Vodafone has in addition to aggregate global figures, started publishing in its annual tax report how much tax they pay in each jurisdiction where they operate, the total revenue and profit figures and how many employees they have in that jurisdiction. This is a part of its identified responsibility to society as a whole and that taxes due should be fully paid, since governments need those funds to e.g. fund necessary infrastructure projects. The tax reports also detail at length the company's tax approach, its reasons for having operations in certain jurisdictions considered tax havens, and also provide publicly the official country-by-country report in conformity with the standards developed by the OECD-led BEPS process. In developing its tax report, Vodafone has engaged with civil society, including organisations such as Oxfam and Action Aid. By providing this information publicly in an accessible format, Vodafone provides an example of tax transparency for other multinationals. While good tax transparency does not equate with good tax practices, transparency can lead to increased accountability to citizens and tax authorities, and provides opportunities to assess corporate contributions to domestic resource mobilisation, a key component of SDG 17.	17 Partnerships for the goals	17.1	Corporate commitment Communicating and reporting Stakeholder engagement
Company prohibits facilitation payments throughout global activities Carlsberg Group's Anti-Bribery & Corruption policy contains principles which seek to go beyond compliance with customary practice in their prohibition of facilitation payments. The principles note that while facilitation payments "may be considered a customary way of doing business in some countries" they are disallowed by the company.	16 Peace, justice and strong institutions	16.5	Corporate commitment Assessing impacts

Case brief	Goals	Targets	Due diligence
The policy acknowledges exceptional circumstances, such as the threat of employee safety, which would make non-compliance unavoidable, and mandates that an incident report be submitted to the VP Group Compliance in such a case. The policy prohibits such payments whether they are made directly or indirectly through a third party.			
Company taking practical steps to imlpement zero-tolerance policy towards corruption in value-chain Coca-Cola has committed to eliminating all forms of corruption in Myanmar within its own operations and within its value chain, including bottlers. In order to protect its drivers from being forced to pay "facilitation payment", in 2015 Coca-Cola equipped the drivers of Coca-Cola trucks with an anti-corruption card highlighting Coca-Cola's commitment towards no bribery or facilitation payments. The cards were available in Burmese and English, and stated that the drivers were prohibited from paying any bribes to the traffic police or local road transport authorities. The card clarified that the drivers would be required to report to the management as any such bribes or facilitation payments would be a violation of anti-corruption laws. Though the drivers were initially met with resistance, over time the local traffic police reportedly started respecting Coca-Cola's policy against corruption and there was a decrease in bribery demands.	16 PEACE, JUSTICE AND STRONG INSTITUTIONS	16.5	Corporate commitment Assessing impacts Integrating and acting upon findings
Global multi-stakeholder group undertake cross-sectoral and collaborative efforts to end corruption The UNGC Anti-Corruption Working Group is comprised of professionals from companies, business associations, civil societies, academia, and international organisations working to facilitate cooperation and align their efforts in increasing impact. Specific issues that they work to overcome include fighting corruption in the supply chain, implementation of the UN Convention Against Corruption, anti-corruption risk assessment and reporting, and other areas targeted to members' area of business. Companies that are a part of the Working Group have an opportunity to exchange experiences and good practices around anti-corruption efforts and contribute to the development of leading guidance whilst engaging with other stakeholders to take action against corruption and serve as the voice of the private sector on issues related to transparency and accountability as it relates to sustainable development.	16 PEACE, JUSTICE AND STRONG INSTITUTIONS 17 PARTNERSHIPS FOR THE GOALS	16.5 17.16	Corporate commitment Assessing impacts Communicating and reporting Stakeholder engagement