actionaid

CALLING TIME

WHY SABMILLER SHOULD STOP DODGING TAXES IN AFRICA

GLOSSARY

Arm's length price. The price – or more accurately, range of prices – that a company would be expected to pay for a product when buying it from another, completely unrelated company. Transfer pricing standards require companies that are related to each other (part of the same multinational group) to use this price when trading with each other.

Corporation tax. The tax a company pays on its profits. Also called corporate income tax.

Double taxation agreement (DTA). A treaty between two countries that sets out how the right to tax income earned in one state by residents of the other is divided between them. DTAs also include provisions in other areas such as cooperation and information-sharing between tax authorities in the two countries. Two models exist, one produced by the OECD group of wealthy democracies, and the other by the United Nations tax committee; the latter contains provisions that are more beneficial to developing countries.

Intangible asset. Something that has an accounting value but that does not physically exist. Examples include intellectual property such as trademarks, patents and copyright.

Multinational company. A company operating in more than one country – and often in dozens of them. Usually, a multinational company is a group of subsidiary companies all owned by an 'ultimate parent' – either directly or via other group companies.

Profit. At its most basic, this is a company's turnover in a year, less the amount it spends. But there are lots of different ways to measure it. Two are important here. Profit before tax takes into account all forms of revenue and expenditure (except taxes on profits). This allows us to see the effects of everything that is going on in a company.

Operating profit only includes things that relate to the ordinary operations of the business, so it excludes things like interest payments and investment gains or losses. That allows us to see how well the company is running its core business.

Subsidiary. A company that is part of a multinational group, because at least 50% of it is owned by the ultimate parent, which therefore controls it.

Tax avoidance. The starting point is that tax avoidance activities are designed to comply with the letter of the law, not to break it, as in the case of tax evasion. We use the term to cover strategies that are legally permissible, but which ActionAid regards as ethically questionable.

Tax havens. These are jurisdictions (mainly countries, but sometimes dependent territories such as the Cayman Islands) that create attractive tax rules, systems of regulation and – crucially – veils of secrecy, all for the benefit of individuals and companies resident elsewhere. In Mauritius, for example, 'global business companies' pay much lower tax rates than domestic companies. Tax havens are particularly handy for tax avoidance and tax evasion. Also known as secrecy jurisdictions.

Transfer pricing. When companies that are part of the same multinational group trade with each other, for example when one company in a group owns a brand and another pays it license fees to use that brand, the group's accountants have to decide what price they should pay each other. International standards require them to do this based on the arm's length price. If they don't, that's transfer mispricing, which is tax evasion.

Turnover. All a company's income for the year. In this report we're usually referring to net turnover, or revenue, which is the company's income after VAT and excise taxes are paid, since these are taxes levied on the consumer, not the company.

Withholding tax. This is when a tax is taken from an individual or a company's income before it reaches them. You're probably familiar with this through pay as you earn, when your income tax is taken out of your salary and paid to the government by your employer. Many countries require companies that are making payments to other foreign companies to pay a withholding tax on them, especially when the two companies are related to each other.

CONTENTS

2 Glossary

4 Executive summary

10 Introduction

12 Ghana: what tax dodging means for a developing country

14 Living in the shadow of Accra Brewery

18 How SABMiller avoids tax in developing countries

Tax dodge 1: Going Dutch

Tax dodge 2: The Swiss role

Tax dodge 3: Take a trip to Mauritius

Tax dodge 4: Thinning on top

Winners, losers, and yet more losers

30 The Bill

31 A prescription for responsible tax paying

Tax and social responsibility at SABMiller

Three steps to haven: what ActionAid is calling for

Government responsibilities

36 Endnotes

EXECUTIVE SUMMARY

It is a proud part of Ghana's history that, in 1957, it became the first African state to achieve independence from colonial rule. Fast-forward to 2010, and the country is held up by many as a model of economic and political development – a 'high achiever' in the quest to attain the Millennium Development Goals. But, like most countries in Africa, its government needs much more tax revenue to provide the basic public services necessary to alleviate poverty.

The 20th century also saw Ghana achieve another, much less significant first: in 1933 its capital, Accra, become the site of west Africa's first brewery. Now owned by the multinational giant SABMiller, Accra Brewery has become a textbook example of the techniques used by big business to avoid corporate income taxes. It has paid no income tax in the past two years, but transferred millions of pounds to sister companies in tax havens. The SABMiller group makes profits of over £2 billion a year.

ActionAid's investigation used published financial information, interviews with government officials and undercover research to find out how SABMiller avoids tax across Africa and India. The cost to the governments affected may be as much as £20 million per year.

Taxes pay for the fabric of our lives – our schools, hospitals and roads, for example. They bind us together in a social contract with the governments we pay them to, and who we expect to spend them well. Taxes are a necessary precondition of a functioning state, which itself is essential for economic growth and the protection of human rights.

Multinational companies, which make billions of pounds in developing countries each year, need these taxpayer-funded schools, hospitals and roads just as much as local people. Yet tax avoidance is part and parcel of the way they invest in developing countries. The OECD, appointed by rich nations as the global centre of the fight against tax dodging, estimates that Africa loses several times more revenue to tax havens than it receives in aid.

The lucrative search for ways to pay less, creating complex corporate structures, routing money through opaque tax havens, and employing highly paid professionals to find loopholes, is legal: indeed, it is so common it is accepted as the normal way of doing business. And it gives multinational companies a distinct advantage over their local competitors.

There are signs that the tide is turning against tax dodging in developing countries. South Africa's finance minister has described "aggressive tax avoidance" as "a serious cancer eating into the fiscal base of many countries". A senior partner at accountancy firm PriceWaterhouse Coopers told the *Daily Telegraph* earlier this year that, "the issue of tax and the developing world is on the agenda and any well-planned company would be thinking about that".

SABMiller is the world's second largest beer company, with interests across six continents. Its brand portfolio includes the major international names Grolsch, Peroni and Miller, as well as iconic African beers Castle and Stone Lager and the soft drink Appletiser. Africa is its heartland, the continent where it began and whose brewing industry it dominates.

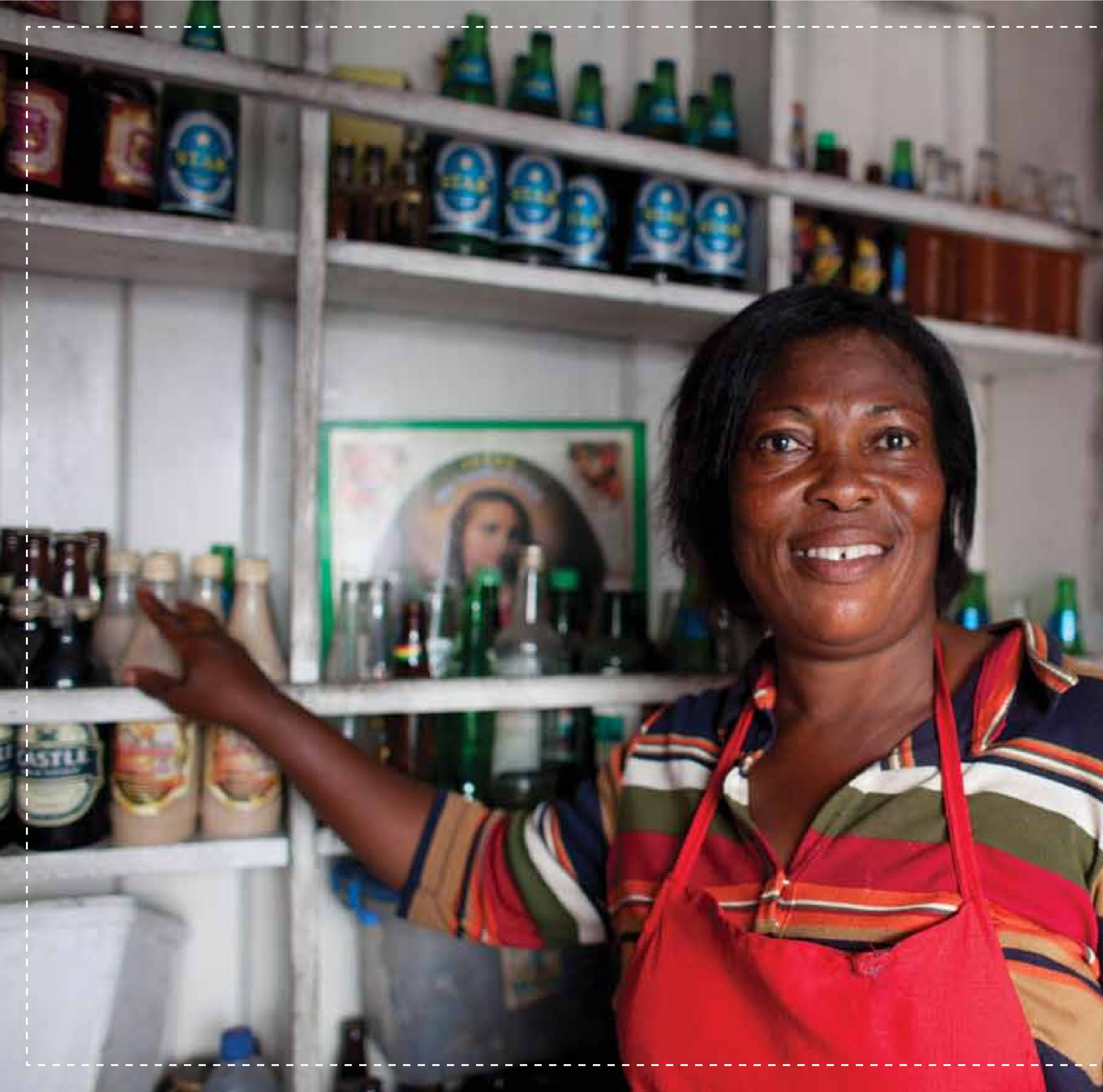
Yet the group has more tax haven companies – a massive 65 – than it has breweries and bottling plants in Africa. As our investigation shows, clever accounting allows it to siphon profits from the African and Indian companies to those in tax havens, a practice that we estimate may reduce its African corporation tax bill by as much as a fifth.

WHO PAYS MORE?

Ghana has had many social and economic successes in the past 20 years. Since 1990, the proportion of Ghanaians going hungry has been reduced by three-quarters, and primary school enrolment increased to almost eight out of every ten children – among girls as well as boys. The country has now had five consecutive free-and-fair elections. Its football team got further in the 2010 World Cup than any African side before it. And Ghana has made real progress in developing its tax revenue base, now raising taxes amounting to 22% of national income, much higher than most of its neighbours, although a way off the developed country average of 36%.

But Ghana still needs to do more to end poverty. Ghanaian women are 70 times more likely to die in childbirth than those in Britain, and children are 13 times more likely to die before the age of five. One third of the country's population is infected with malaria each year. There is much Ghana could do with more tax revenue.

AFRICA LOSES SEVERAL TIMES MORE REVENUE TO TAX HAVENS THAN IT RECEIVES IN AID



MARTA'S STORY

SABMiller subsidiary Accra Brewery is Ghana's second-biggest beer producer, pumping out £29 million (Gh¢69 million) of beer a year, and rising. Yet in the past two years it has made a loss, and it paid corporation tax in only one of the four years from 2007-10.

"Wow. I don't believe it," says Marta Luttgrodt on hearing this. Marta sells SABMiller's Club beer at her small beer and food stall, in the shadow of the brewery in which it is made, for 90p (Gh¢2) a bottle. She and her three employees work hard for this success, preparing food from 6.30am every day, and finishing at 8pm.

Marta's business makes a profit of around £220 (Gh¢500) per month. As a taxpayer she must obtain and keep two income tax stamps as proof that she has paid fixed fees of £11 (Gh¢25) per year to the Accra Municipal Authority, and £9 (Gh¢20) per quarter to the Ghana Revenue Authority. Marta's tax payments may seem small in absolute terms, but astonishingly she has paid more income tax in the past two years than her neighbour and supplier, which is part of a multi-billion pound global business.

Ghana's government wants to bring more informal sector traders like Marta into the tax system – and is taking a tough approach to stallholders who can't afford to pay their tax bills. "We small businesses are suffering from the authorities – if we don't pay, they come with a padlock," says Marta.

Marta Luttgrodt, pictured left.
PHOTO: JANE HAHN/ACTIONAID

FOUR WAYS TO AVOID TAX

How can it be that Marta Luttgrodt pays more tax than Accra Brewery? The answer lies in part with the large 'transfer pricing' payments made by SABMiller's subsidiaries in developing countries to sister companies in tax havens. These payments can reduce or even eliminate profits in one place at a stroke of an accountant's pen; a kind of financial alchemy that also shrinks the company's tax bill.

"The taxation of international transactions, in particular transfer pricing, has become increasingly difficult," says the African Tax Administrators' Forum. In fact, there are reasons to question whether the international transfer pricing guidelines set by the OECD can ever be suitable for developing countries such as Ghana. Other models, such as those in use in Brazil and the United States, may be easier for developing countries to enforce.

ActionAid looked at the accounts of a sample of eight SABMiller subsidiary companies in Ghana, Mozambique, Tanzania, South Africa, Zambia and India. Combined with research into the tax systems of these countries, we were able to estimate the cost to governments in those countries through four different tax dodging techniques. We estimate that governments in developing countries may have lost as much as £20 million to SABMiller's expert tax dodging, enough to put a quarter of a million children in school.

Approached by ActionAid, SABMiller told us: "Compliance with tax laws underpins all of our corporate governance practices. We actively engage with revenue authorities and we are open and transparent with our affairs. We follow all transfer pricing regulations within the countries in which we operate and the principles of the OECD guidelines. We do not engage in aggressive tax planning." Its full response to ActionAid's research is available to read online at www.actionaid.org.uk/schtop

TAX DODGE 1: GOING DUTCH

Under this dodge, many of the local brands sold by SABMiller's subsidiaries in developing countries are not owned by the country in which they were invented, and where they are brewed and consumed, but in the Netherlands. Rotterdam-based SABMiller International BV owns African brands such as Castle, Stone and Chibuku – and takes advantage of a novel set of tax rules offered by the Netherlands that enables companies to pay next to no tax on the royalties they earn. SABMiller International BV has negotiated a deal with the Dutch revenue that is worth tens of millions of pounds in reduced taxes.

The six SABMiller companies in Africa paid this Dutch company £25 million in royalties last year, according to their most recent accounts. If the company's African operations that do not publish accounts also make payments at the same rate, the total can be expected to be £43 million. This corresponds to an estimated tax loss to African countries of £10 million.

TAX DODGE 2: THE SWISS ROLE

In this second tax dodge, SABMiller's African and Indian subsidiaries pay whopping 'management service fees' to sister companies in European tax havens where effective tax rates are lower, mostly to Switzerland. In Ghana, the fees amount to 4.6% of the company's revenue every year; in India, they are enough to wipe out taxable profits entirely.

SABMiller says one of its strategic priorities is "to constantly raise the profitability of local businesses, sustainably" yet admits that the payments for these high value-added services are routed through tax havens. A SABMiller employee at the Swiss office address that receives millions of pounds each year from Africa for management services told us, "we don't do that kind of thing here, we're just the European head office".

In Ghana, the existence of an agreement to pay management fees can be enough to comply with local regulations, but the head of the Ghana Revenue Authority told ActionAid that "management fees is an area that we know is being used widely [to avoid tax], and it's mainly because it's difficult to verify the reasonableness of the management fee".

ActionAid estimates that management fee payments by SABMiller companies in Africa and India amount to £47 million each year, depriving these governments of £9.5 million of tax revenue

"AGGRESSIVE TAX AVOIDANCE IS A SERIOUS CANCER EATING INTO THE FISCAL BASE OF MANY COUNTRIES."
SOUTH AFRICAN FINANCE MINISTER, PRAVIN GORDHAN

TAX DODGE 3: TAKE A TRIP TO MAURITIUS

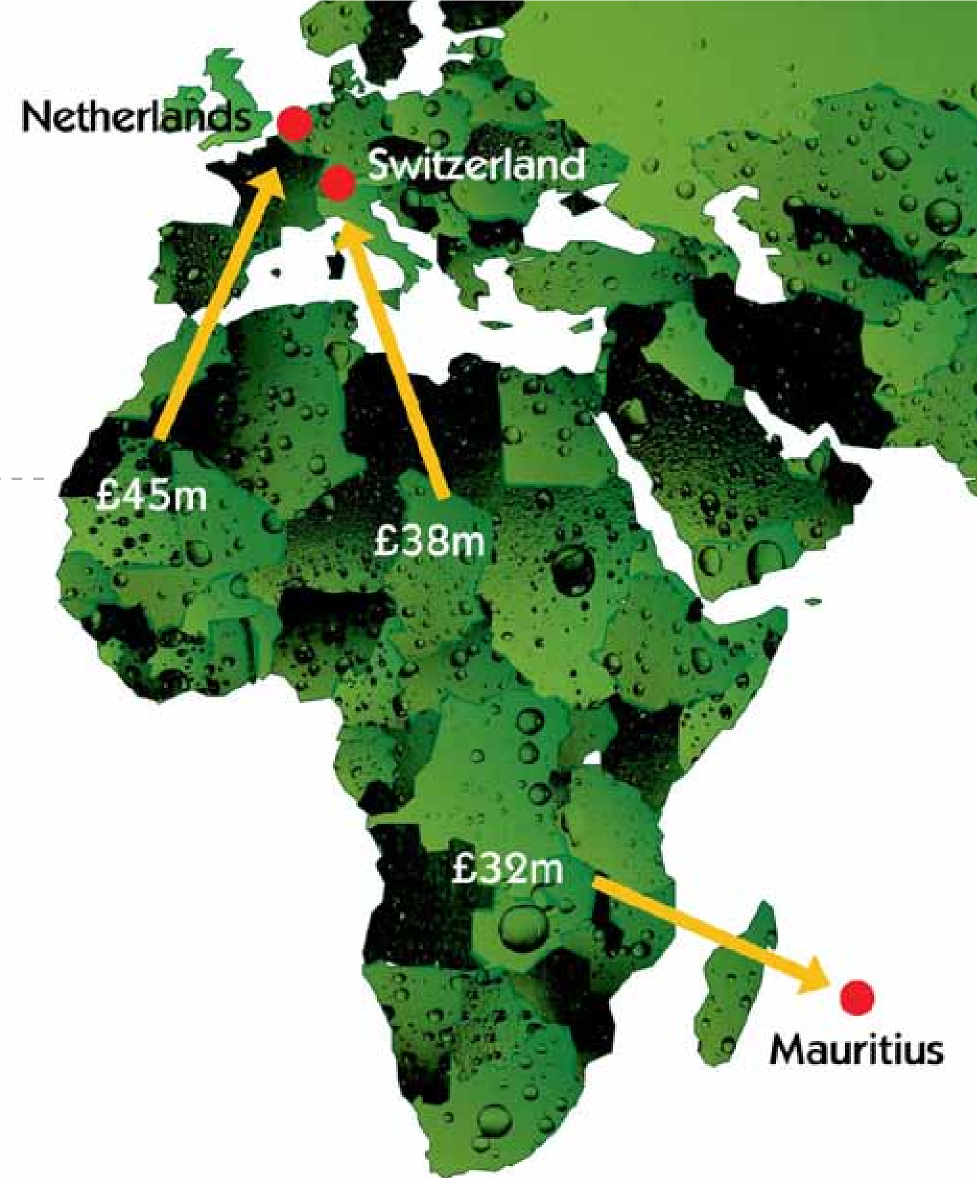
How would you ship goods from South Africa to Ghana? Ask a school geography student and you would hope to be told to turn right from the Cape and head up Africa's west coast. Ask a tax planner and he would tell you to make sure you send the paperwork in the opposite direction. In this third type of dodge, goods are procured by Accra Brewery from another SABMiller subsidiary in Mauritius, 7,000km away in the Indian Ocean.

The Mauritius company, Mubex, makes a profit on this transaction, though tax haven secrecy means we can't see how much. But when its profits are taxed at 3% compared to 25% on its trading partner in Ghana, there's plenty of incentive to ensure it makes as much profit as possible. This dodge is too new to be able to draw any conclusions about the tax lost, but it may be as much as £670,000 per year in Ghana.

TAX DODGE 4: THINNING ON TOP

In this final tax dodge, Accra Brewery borrowed a large amount of money from the same Mauritius company mentioned in tax dodge 3. The loan is bigger than any mortgage lender would permit, more than seven times Accra Brewery's capital. This means that the company is 'thinly capitalised'. We estimate that the interest costs on this loan will wipe out £76,000 of Accra Brewery's tax liability each year.

DESTINATION OF SABMILLER TAX HAVEN PAYMENTS FROM AFRICA



WHAT'S IN A DODGE? THE CRUCIAL DISTINCTION BETWEEN AVOIDANCE AND EVASION

Tax avoidance activities are designed to comply with the letter of the law, not to break it as in the case of tax evasion. We use the term to cover strategies that are legally permissible, but which ActionAid regards as ethically questionable.

Throughout this report, we use the terms 'tax dodging' and 'tax avoidance' interchangeably. There is no suggestion that SABMiller has broken the law by evading tax.

A PRESCRIPTION FOR RESPONSIBLE TAXPAYING

SABMiller isn't a lone bad apple. Its tax avoidance practices are far from unusual, conforming to the model followed by multinational companies the world over. ActionAid believes that model has to change.

SABMiller says that it takes sustainable development seriously, ensuring that it is "integrated into our decision-making and the way we run our business". According to SABMiller Chief Executive, Graham Mackay, "By far the greatest contribution business can make to development is through the very act of running its business – paying suppliers, paying wages, paying taxes."

Yet the company does not have a strategic approach to 'doing tax' sustainably. There is no mention of tax within its 10 sustainability priorities, nor in its code of business conduct and ethics. Any company that wants to claim leadership status in sustainable development must take this issue seriously.

ACTIONAID IS CALLING ON SABMILLER TO DO THREE THINGS:

1. Take a responsible approach to tax. Stop using tax havens to siphon profits out of Africa, for example by ending the huge payments for lucrative brand rights and management services to Switzerland and the Netherlands.

2. Understand and disclose the impact of its tax planning. SABMiller needs a tax code of conduct to explain how it applies its sustainable development principles to its tax affairs. It should be open and transparent about its use of tax havens and tax avoidance techniques.

3. Be more transparent about financial information. Make public the accounts of each of its subsidiaries – especially for companies in countries where accounts are kept secret – and provide a country-by-country snapshot of tax payments and other financial information.

FEES PAID BY SABMILLER COMPANIES IN AFRICA TO EUROPEAN TAX HAVENS COULD BUY ENOUGH GROLSCH BOTTLES TO STRETCH THE LENGTH AND BREADTH OF AFRICA

GOVERNMENT RESPONSIBILITIES

Every activity we found in this study took place in accordance with the way laws and regulations are routinely interpreted at national level, and frequently with the explicit agreement of government agencies. Developed and developing country governments must therefore work together in a number of areas:

1. Strengthen tax legislation and revenue administration capacity in developing countries to deal with taxing multinational companies.

2. Improve the transparency of corporate reporting, by making companies' financial reports and beneficial ownership information accessible to the public, and creating a global country-by-country financial reporting standard. Our research in many countries was inhibited by the absence of such transparency, in particular the unavailability of companies' accounts.

3. Developing countries must not give away their right to tax royalties, management fees and other foreign payments at source, especially when negotiating double tax agreements. It is striking that the likely tax loss to Ghana and Zambia's governments from the schemes we uncovered has been increased as a result of their double taxation treaties with Switzerland and the Netherlands.

4. Developed countries, meanwhile, should examine and where necessary reform the way they tax multinationals – such as tax treaty networks, withholding taxes, and Controlled Foreign Company rules – to make tax avoidance in developing countries less worthwhile, not more lucrative.

5. G20 and EU member states must also work together to bring a threat of renewed action to bear against tax havens.

6. Upgrade the United Nations Committee of Tax Experts to an intergovernmental body, in which the political issues of international taxation can be articulated.

The bigger prize must be a system that does not allow large multinational companies to strip out taxable profits from their subsidiaries, exploiting the value of their intangible assets, the ambiguity of the arm's length price, and the information asymmetry between themselves and revenue authorities. It must be a system under which developing countries are able to hold on to a bigger share of taxation from multinationals based in richer countries.

As countries around the world face gaping fiscal deficits, tax dodging has become an issue on which governments, pressure groups and ordinary people around the world are finally calling time.

"BY FAR THE GREATEST CONTRIBUTION BUSINESS CAN MAKE TO DEVELOPMENT IS THROUGH THE VERY ACT OF RUNNING ITS BUSINESS – PAYING SUPPLIERS, PAYING WAGES, PAYING TAXES." GRAHAM MACKAY, SABMILLER CHIEF EXECUTIVE

INTRODUCTION

Taxes are, as the quote emblazoned on the Internal Revenue Service in Washington, DC proclaims, "what we pay for a civilised society". They pay for the fabric of our lives – our schools, hospitals and roads. They pay for the police that keep us safe, the armies that defend us and the infrastructure that supports the business that generates our wealth. Taxes also bind us together in a social contract with the governments to whom we pay them, and which we expect to spend them well.

This is the case in all countries, rich and poor. Governments in all developed countries raise taxes to the value of at least 30% of national income, to spend on providing these services.[1] Developing countries, too, are striving to do the same: most African governments raise the bulk of their budget not from overseas aid, but through taxes. "Taxation is essential to sustainable development," declared African tax administrators in their Pretoria communiqué of 2008.[2]

Multinational companies, which make billions of pounds in developing countries each year, need taxpayer-funded schools, hospitals and roads too. Yet tax avoidance is part and parcel of the way they invest in developing countries. The OECD, appointed by rich nations as the global centre of the fight against tax dodging, estimates that tax havens costs Africa several times in tax revenue what it receives in aid.[3]

This lucrative search for ways to pay less – creating complex corporate structures, routing money through opaque tax havens, and employing highly paid professionals to find loopholes – is legal. Indeed, it is so common that it is accepted as the normal way of doing business. And it gives multinational companies a distinct advantage over local competitors.

There are signs that the tide is turning against tax dodging in countries across the globe. South Africa's finance minister has described "aggressive tax avoidance" as "a serious cancer eating into the fiscal base of many countries".[4] Britain's government minister in charge of tax administration, Danny Alexander, says tax avoidance is "unacceptable in the best of times but in today's circumstances it is morally indefensible".[5] And a senior partner at accountancy firm PriceWaterhouse Coopers told the *Daily Telegraph* earlier this year that "the issue of tax and the developing world is on the agenda and any well-planned company would be thinking about that".[6]

What does that mean for multinational businesses? This report tells the story of how one company, SABMiller, avoids tax in developing countries. SABMiller has more tax haven companies – a massive 65 – than it has breweries and bottling plants in Africa.[7] As our investigation shows, clever accounting allows it to siphon profits out of Africa and India into these tax haven companies. We estimate that this may cost governments in Africa and India as much as £20 million per year, enough to put a quarter of a million children in school.

The global scale of this tax dodging is a long way from SABMiller's 19th century beginnings as a single brewery producing Castle Lager in South Africa. The company has grown to become the world's second-largest beer company, churning out 21 billion litres of beer each year, with an annual turnover of £12 billion and profits of £2 billion.[8] Its brand portfolio includes the major international names Grolsch, Peroni and Miller, as well as iconic African beers such as Castle and Stone Lager, and the soft drink Appletiser.

Now London-based, SABMiller operates in six continents. It is the joint owner of China's biggest brewer, and India's second-biggest; it has a staggering 94% of the beer market across six Latin American countries; it is Africa's biggest brewer, operating in 31 countries on the continent.[9] Chief Executive Graham Mackay has commented, "If there were any more of Africa, we'd be investing in it."[10]

For a multinational company on that scale, as we shall see, tax dodging is as *de rigeur* as it is distasteful. In this report we will unpack the tax-dodging techniques used by SABMiller, zooming in on one country, Ghana, to demonstrate what this means in practice. For SABMiller, as for all companies, it's time to take a second look at the ethics of tax dodging.

TAX AVOIDANCE IS PART AND PARCEL OF THE WAY MULTINATIONAL COMPANIES INVEST IN DEVELOPING COUNTRIES

BOX 1: GROLSCH IN THE UK AND SABMILLER

Grolsch is SABMiller's biggest brand, selling around 100 million litres a year in the UK alone.[11] Like so much in the beer industry, however, the reality is a little more complicated than it may first seem.

When SABMiller bought Royal Grolsch NV in 2008, the Dutch brand-owner's interests in the UK were represented through a 51% stake in Grolsch (UK) Limited, a joint venture with Molson Coors UK (then called Coors Brewers Ltd), which manufactures and distributes most of the Grolsch beer sold in the UK. The arrangement dates from 1994, when the other 49% stake was held by Bass Brewers, before being sold in 2001 to Coors.[12] SABMiller and Molson Coors both have exactly 50% voting rights in the joint venture, but SABMiller owns the rights to the Grolsch brand. The set-up is helpfully explained in a Securities Exchange Commission filing by Molson Coors:[14]

"The Grolsch joint venture [Grolsch (UK) Ltd] markets Grolsch branded beer in the United Kingdom and the Republic of Ireland. The majority of the Grolsch branded beer is produced by CBL [now Molson Coors UK] under a contract brewing arrangement with the joint venture. CBL and Royal Grolsch N.V. [now owned by SABMiller] sell beer to the joint venture, which sells the beer back to CBL (for onward sale to customers) for a price equal to what it paid, plus a marketing and overhead charge and a profit margin."

BOX 2: WHAT'S IN A DODGE? THE CRUCIAL DISTINCTION BETWEEN AVOIDANCE AND EVASION

Tax avoidance activities are designed to comply with the letter of the law, not to break it, as in the case of tax evasion. We use the term to cover strategies that are legally permissible, but which ActionAid regards as ethically questionable.

Throughout this report, we use the terms 'tax dodging' and 'tax avoidance' interchangeably. There is no suggestion that SABMiller has broken the law by evading tax.

Accra Brewery is one of 37 breweries owned by SABMiller in Africa.
PHOTOS: JANE HAHN/ACTIONAID

GHANA: WHAT TAX DODGING MEANS FOR A DEVELOPING COUNTRY

It is a proud part of Ghana's history that, in 1957, it became the first African state to achieve independence from colonial rule.[14] The 20th century also saw Ghana achieve another, much less significant first: in 1933 its capital, Accra, become the site of west Africa's first brewery.[15]

Since independence, Ghana has come to be seen by many as a model for economic and political development, and was recently labelled a 'high achiever' in the quest to attain the Millennium Development Goals.[16] The proportion of Ghanaians going hungry has been reduced by three-quarters in the past two decades, and primary school enrolment increased to almost eight out of every 10 children – among girls as well as boys.[17] The country has now had five consecutive free-and-fair elections and has made real progress in developing its tax revenue base – it now raises taxes amounting to 22% of national income, much higher than most of its neighbours.[18]

But Ghana still needs to do much to end poverty. Women in Ghana are 70 times more likely to die in childbirth than women in Britain, and children are 13 times more likely to die before the age of five; one third of the country's population is infected with malaria each year.[19] Overall, Ghana ranks 130 out of 169 countries on the UN's Human Development Index, in the 'low human development' category.[20]

So there is much Ghana's government could do with more tax revenue. Half of all Ghana's government revenue comes from taxes, of which £1 in every £7 comes from corporate income tax (see Box 3). Most corporate tax income comes from the country's 365 'large taxpayers', one of which is the Accra Brewery, now owned by SABMiller.

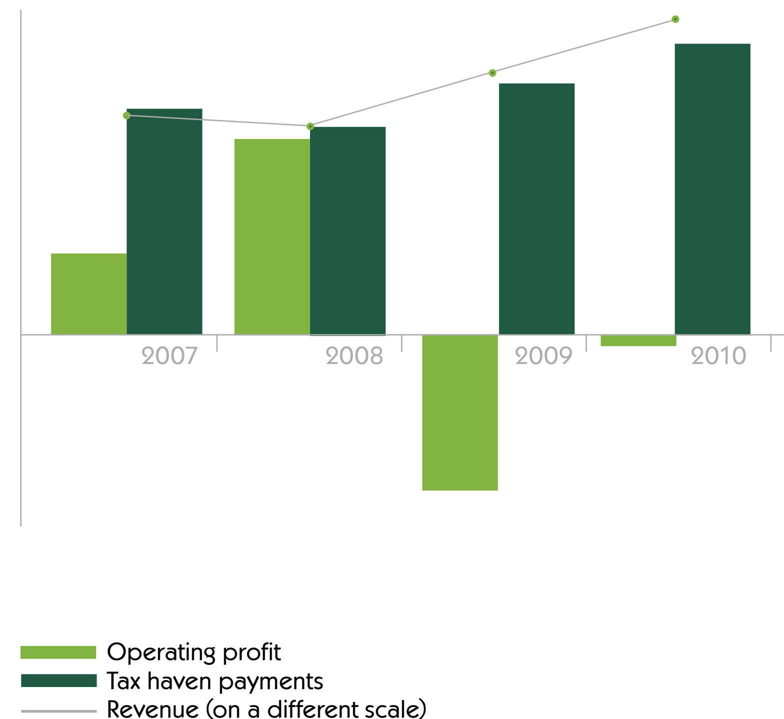
Accra Brewery controls more than 30% of Ghana's beer market,[21] yet it is remarkably unprofitable. Between 2007 and 2010, Ghanaians poured £63.3 million (Gh¢131 million) into the company's coffers. Yet over this period it managed to make an overall pre-tax loss of £3.07 million.[22] Even before the costs of financing the business it registered a mere £525,000 (Gh¢906,000) operating profit, representing just 0.69% of its income.

SABMiller worldwide, by contrast, showed profits before tax of about 16% last year.[23] Unsurprisingly, Accra Brewery's tax bills for the four years amounted to a derisory £216,000 (Gh¢423,000). For three of these four years it paid no income tax at all.[24]

SABMiller has offered up a number of factors to explain the poor performance. "The intensely competitive nature of the local market, escalating input costs and a recent increase in excise tax" are all said to be behind the prolonged slump.[25] While these factors may well be costly for Accra Brewery, ActionAid's research suggests that the company would have been profitable had it not been for the extensive payments it made to tax havens.

ACCRA BREWERY'S PAYMENTS INTO TAX HAVENS EXCEED ITS OPERATING PROFITS

SOURCE: ACCRA BREWERY ANNUAL REPORTS 2007-10



BOX 3: TAX IN GHANA

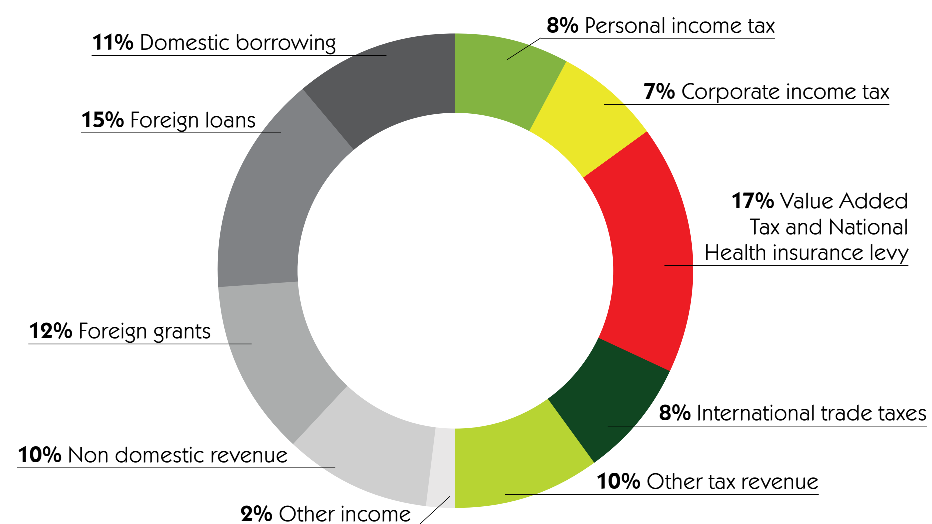
With tax revenues at 22% of GDP, Ghana is already one of Africa's star performers, though some way off the rich-country average of 36%.[26] Exactly one half of Ghana's government revenue in 2009 came from the £1.99 billion (Gh¢4.66 billion) tax revenue it collected (see below).[27] By far the biggest single contributor to that income was value added tax (VAT), followed by personal income tax, corporate income tax and import duties.

Revenue officials say their priorities are to expand taxation of the informal sector, and to reduce the administrative hassle for businesses (who until recently had to deal with different agencies for their customs, VAT and income tax payments). To do this they recently merged three tax collection agencies into one, the Ghana Revenue Authority (GRA). The GRA and the Ministry of Finance also say that they want to strengthen transfer pricing laws and the capacity to enforce them, citing concerns about tax dodging by oil producers when the country's offshore oil wells start to flow in 2011.[28]

Ministry of Finance officials told us that the government has not done any analysis of the impact of its tax system on different population groups. Although Ghana's current VAT system includes exemptions for the basic foodstuffs that they consume, heavy reliance on indirect taxes is still likely to impact more on poorer people – they spend a greater proportion of their income than rich people, who can save a greater proportion of it. Taxes on fuel hurt poorer people without electricity, and can increase food prices; import tariffs also increase the cost of foodstuffs that are not produced domestically. Such taxes frequently have a disproportionate effect on women, whose incomes are often the main means of support for families.

In the mid 1990s, an increase in fuel tax was rejected by parliament after a national outcry, while the attempt to introduce VAT at a rate of 17.5% in 1995 sparked mass protests, violent at times, under the slogan 'kume preko' – literally 'you might as well kill me now'.[29] It was several more years before VAT was successfully introduced, this time at 10%, and increases since then up to 15% were made possible by the earmarking of new revenues for education and healthcare. Such was the significance of these protests that, as the Institute of Development Studies' Wilson Prichard argues, "there is little question that the VAT protests provided an impetus for a more inclusive and open parliament after 1996".[30]

GHANA GOVERNMENT REVENUE 2009
SOURCE: MINISTRY OF FINANCE



LIVING IN THE SHADOW OF ACCRA BREWERY

Marta Luttgrodt sells Accra Brewery's beer in a market just outside the brewery.
PHOTO: JANE HAHN/ACTIONAID

A bottle of Accra Brewery's Club beer costs 90p (Gh¢2) at Marta Luttgrodt's small beer and food stall, a stone's throw from the brewery in which it is made. Marta's business makes a profit of around £220 (Gh¢500) per month. She and her three employees work hard for this success, preparing food from 6.30am every day, and finishing at 8pm.[31]

Together with her husband's salary, the business must pay for the education of two children as well as the family's living expenses. Although Marta's situation is better than many, she says, "Business is difficult. People don't have money to buy things."

Ghana's government wants to bring more informal sector traders like Marta into the tax system. Rather than filing a tax return, they pay a fixed income tax based on the size and nature of their business; Marta must obtain and keep two tax stamps as proof that she has paid £11 (Gh¢25) per year to the Accra Municipal Authority, and £9 (Gh¢20) per quarter to the Ghana Revenue Authority. These are small amounts, but as staff at the Ghana Revenue Authority explained, they're part of a longer term strategy to bring informal businesses into formal taxation.[32]

In urban Ghana, informal sector taxation is primarily a tax on women like Marta. The informal trading sector is dominated by women, while men make up the bulk of workers in formal employment.[33] Ghana has a system of tax relief for people with dependent spouses, children or relatives, but these apply to personal income tax, not to the 'tax stamp' on informal sector traders.

Marta's income tax payments may seem small in absolute terms, but astonishingly they are more than those of her neighbour and supplier – Accra Brewery has paid no income tax in the past two years. "Wow. I don't believe it," says Marta on hearing this. "We small businesses are suffering from the authorities. If we don't pay, they come with a padlock." Tina Tetteh, who runs a hairdresser's salon round the corner, concurs. "When the authorities come and you have no money, they put a padlock on the door. They come with force."[34]

The stallholders are not the only people around the brewery who pay more tax than it does. Emmanuel Korley works for the state-owned railway company, transporting wooden railway sleepers. He lives in an apartment alongside the railway track that divides the brewery in two, the apartment overlooking towering piles of beer crates.

"Yes, I pay tax," he says. "I pay Gh¢40 [£18] a month. I earn Gh¢200 [£90]." But working for a state-owned enterprise comes with problems. "It takes about four months for me to receive one month's pay. The railway company says it doesn't have enough money. The government gives it money to pay the workers, but it doesn't come regularly enough."[35]

Emmanuel and his wife, who sells a vegetable known locally as 'garden eggs' at the market, have six children. The youngest is 10 years old, and all of them are in school. "When I don't get paid, my wife supports me. When we can't pay the school fees, I go to the headmaster to apologise, and pay what I can." He adds, "If I could afford it, I would buy some land and build a house. I have six growing children. We only have one bedroom."

Like Marta and Tina, Emmanuel has paid more income tax in the past two years than Accra Brewery. But he and his family also suffer because the government doesn't have enough cash to support the subsidised railway – cash it would have if it could raise more tax revenue, and if multinational companies like SABMiller did not use tax havens to shift profits out of Ghana and into tax havens.

SMALL TRADERS MARTA LUTTGRODT AND EMMANUEL KORLEY BOTH PAID MORE INCOME TAX LAST YEAR THAN ACCRA BREWERY

Emmanuel Korley works on the railway that runs alongside the brewery.
PHOTO: JANE HAHN/ACTIONAID

Richard Boateng, headteacher at Aboasa community school.
PHOTO: JANE HAHN/ACTIONAID

Aboasa is in desperate need of a new community school.
PHOTO: JANE HAHN/ACTIONAID

"WE ARE THE HUMAN RESOURCES OF THE FUTURE" [36]

Ophelia Brakwa, 16, lives in Aboasa, a small community with which ActionAid works. Aboasa is two hours' drive from central Accra, along potholed dirt tracks. Until this summer, the last two kilometres of the journey were made almost impossible by the absence of a road; now her community has a dirt track that within months will be eroded to the same barely useable state.

Currently in her first year of junior high school, Ophelia studies science, maths, English and social studies. "My favourite is maths," she says, "because I can calculate well." She dreams of one day becoming a maths teacher. If she is to realise her dream, Ophelia must study in the evening, after dark. But because the village does not have electricity, Ophelia's family relies on a single kerosene lamp. "I use a lantern to read at night. It's not good, because it does not shine well, it is not bright. We have one lantern for my family. There are five of us. Sometimes I am stopped from studying because my mother needs the light."

Ophelia's school is over an hour's walk from her village. Younger children have to rely on the community school, little more than a sheet of fabric, hanging over a few tables in a field. "The number one problem is the building of the school," says Richard Boateng, the community school's headteacher. "It is not conducive for lessons. If there is heavy rain the children will not be able to concentrate properly; if someone is passing by they will be distracted. It was very awful the first time I saw the building. I said 'wow'."

"No water, no light, no school," says the village chief, Frederick Tudeka. "If someone is sick now they have to go [to hospital] by bicycle or call a taxi. If you are not lucky, you will die."

As Frederick and Ophelia both agree, the basic needs of the people of Aboasa should be met by the government. "We need help," says Ophelia. "The government should come to our aid. We need books, pens and blackboards. They should build our school and provide light and water, otherwise we will not achieve our dreams." More tax revenue would help the government meet these needs.

The people of Aboasa pay local taxes, collected by Frederick and passed on to the local chief's association. So what do they think about Accra Brewery, which has not paid any income tax in the past two years? "I want to send a message to the multinational companies," says Frederick. "The government should tell all the companies that are not paying their taxes to pay them so that it can satisfy the rural areas."

Ophelia agrees. "I am appealing to the companies to pay their taxes so that the government can provide our schools, and light and water, because we are the human resources of the future."

"IF SOMEONE IS SICK NOW THEY HAVE TO GO [TO HOSPITAL] BY BICYCLE OR CALL A TAXI. IF YOU ARE NOT LUCKY, YOU WILL DIE"

FREDERICK TUDEKA, ABOASA VILLAGE CHIEF

Ophelia Brakwa struggles to study in the evening because her community has no electricity supply.
PHOTO: JANE HAHN/ACTIONAID

HOW SABMILLER AVOIDS TAX IN DEVELOPING COUNTRIES

The marketing of SABMiller's beers is all about their national origins. Castle, now brewed in nine countries and sold in 40, is "South Africa's national beer".[37] Among the company's four global brands are Grolsch – "a true Dutch beer based on a recipe and brewing secrets passed down from generation to generation",[38] and Peroni Nastro Azzurro – "exemplifies the traditions of Italian craftsmanship, passion and flair upon which it was formed".[39]

Yet for SABMiller, the reality is much more complex. British Grolsch drinkers are drinking beer produced by an American company, under license from a British multinational with South African origins. The rights to Castle beer are held in the Netherlands, while the Peroni brand is owned by a group company in the Isle of Man.

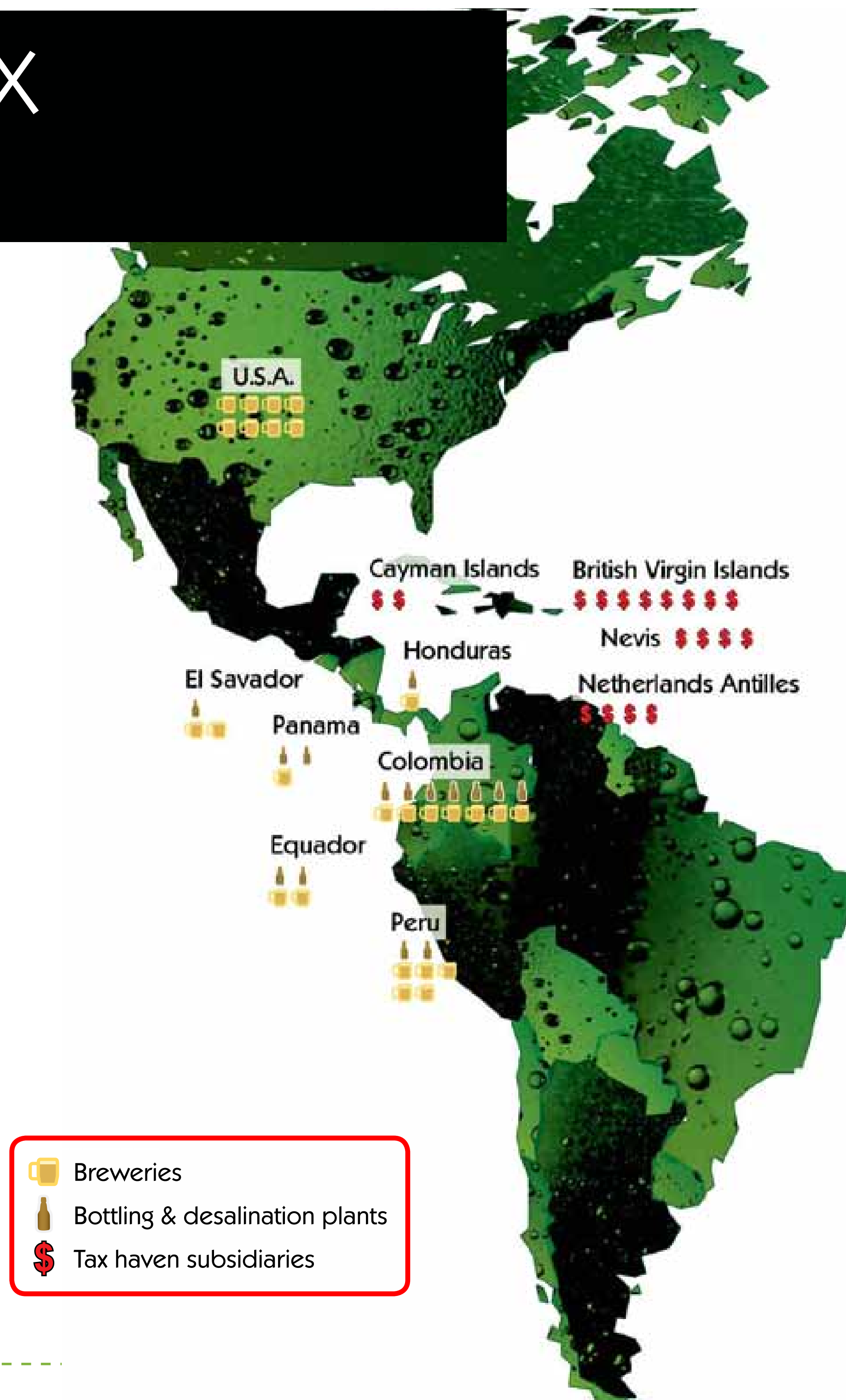
Welcome to the brewing industry, 21st century-style, a world in which four massive conglomerates control almost half of global consumption, and make three-quarters of the profits.[40] It's a world in which much of a company's market value can rest on the value of its brands, yet this value can be totally divorced from the operation of brewing itself and squirreled thousands of miles away in a tax haven.[41]

Multinational companies of this size are complex entities made up of hundreds of individual companies. It has been claimed that 60% of all world trade takes place between companies that are part of the same group.[42] These transactions play an important role, not just in distributing goods and services between group companies, but also in distributing profits and tax liabilities.

Yet the system by which they are regulated provides ample room for companies to shift their profits away from countries in which they would incur a higher amount of tax, and towards those in which the liability is much lower, all without breaking the law (see Box 6). These payments can reduce or even eliminate profits in one place at a stroke of an accountant's pen; a kind of financial alchemy that can also shrink a company's tax bill.

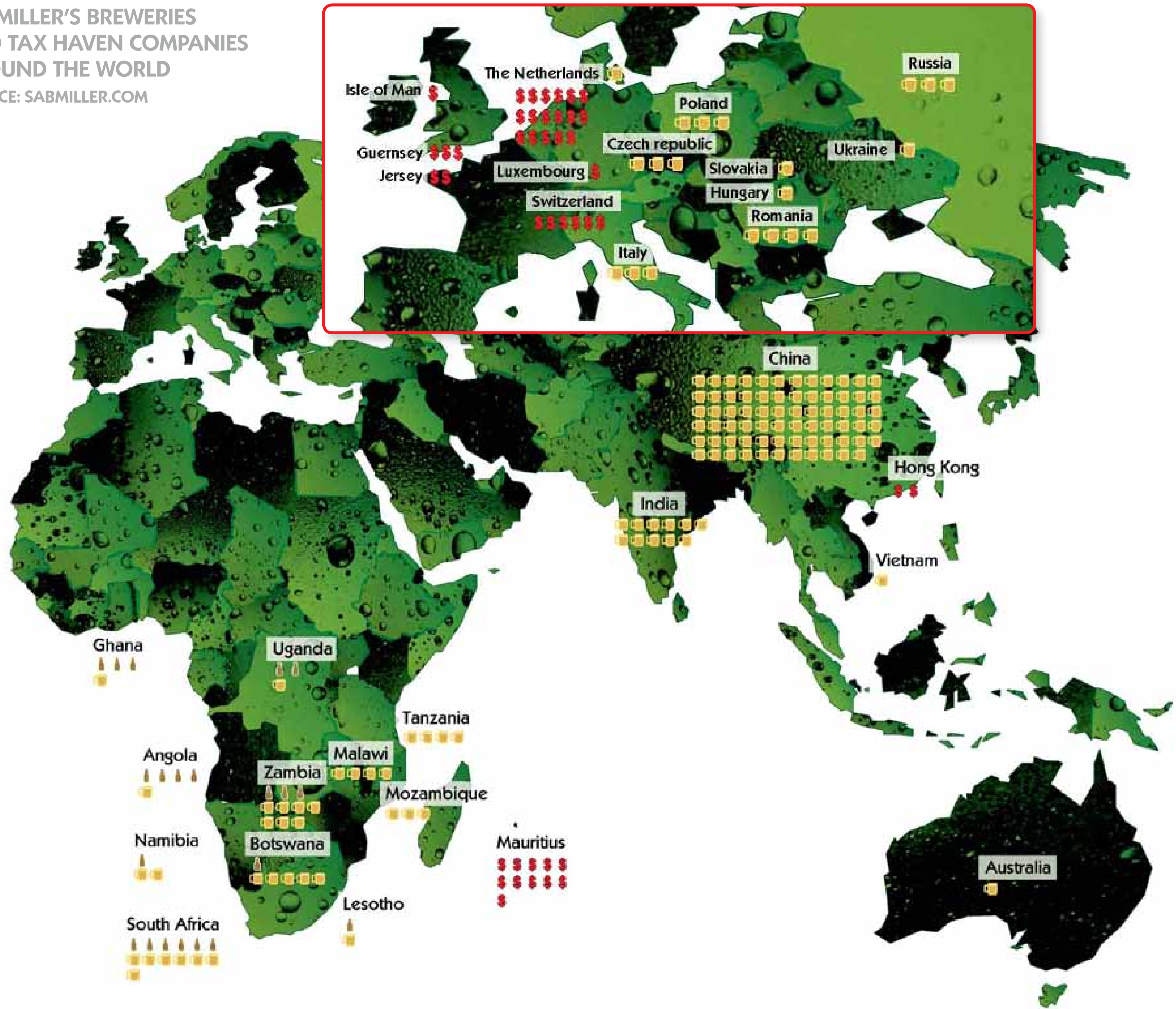
ActionAid looked at the accounts of a sample of eight SABMiller subsidiary companies across five African countries – Ghana, Zambia, Tanzania, South Africa and Mozambique – and India. Combined with research into the taxation systems of these countries, we were able to estimate the amount of tax the company saved in those countries through four different tax-dodging techniques. All of these techniques are based on payments – and therefore the transfer of profits – into tax havens.

FOUR COMPANIES CONTROL ALMOST A HALF OF GLOBAL BEER CONSUMPTION AND MAKE THREE-QUARTERS OF THE PROFITS

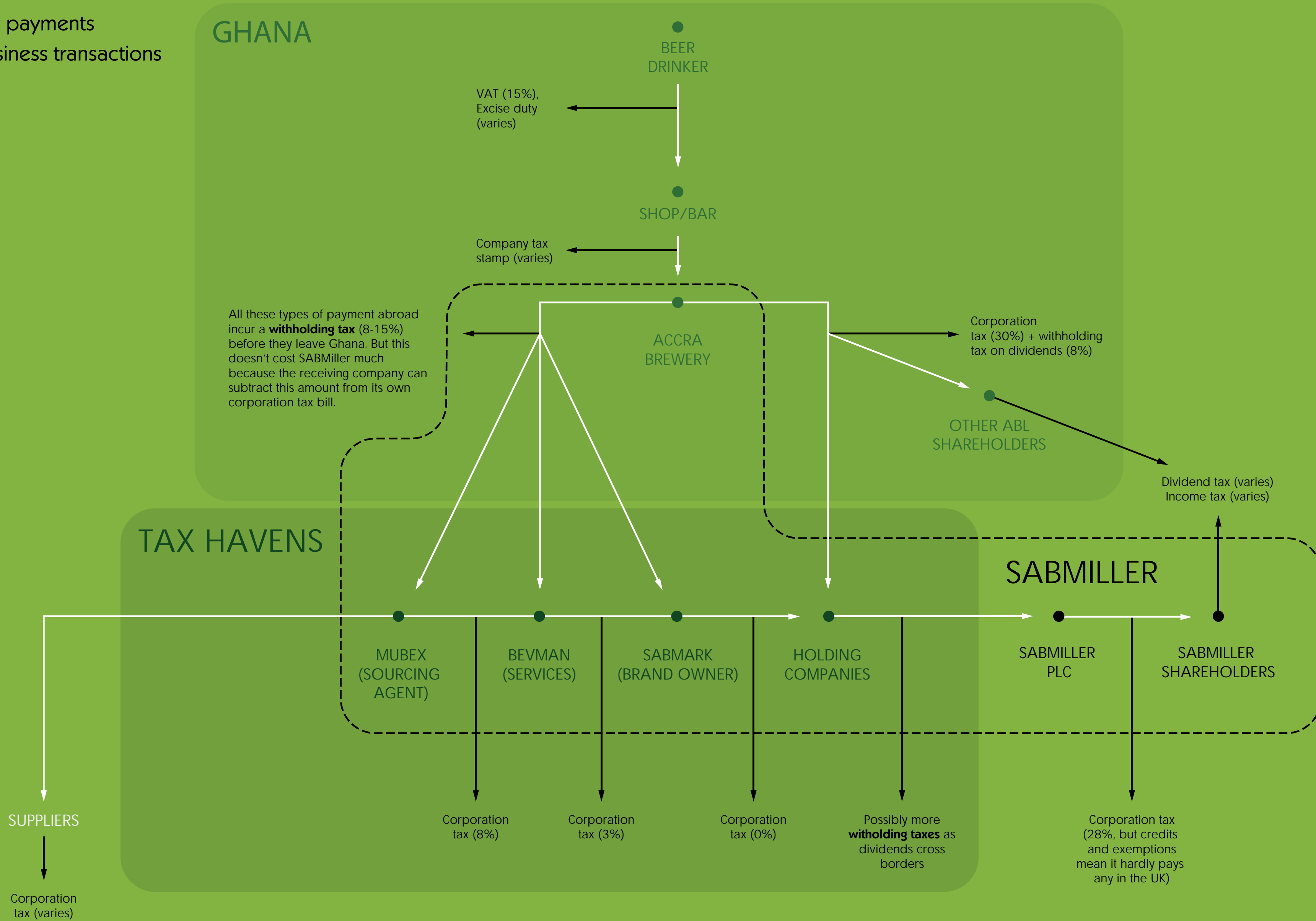


SABMILLER'S BREWERIES AND TAX HAVEN COMPANIES AROUND THE WORLD

SOURCE: SABMILLER.COM



WHO PAYS TAXES ON GHANAIAN BEER?



The trademark for Africa's Stone Strong Lager is owned in the Netherlands.
PHOTO: JANE HAHN/ACTIONAID

TAX DODGE 1: GOING DUTCH

Since its origins in 1895, SABMiller has made African beers to sell to Africans in Africa. Many of its beers are iconic in their countries of origin, not least Castle, which has been brewed in South Africa for over a century. So why would the trademark for this and many other African beers be registered and owned 9,000km away in Rotterdam?[43] The answer may be the novel set of tax rules offered by the Netherlands, which enables companies to pay next to no tax on the royalties they earn.[44]

SABMiller says that the majority of its "key brands... are held and owned by the domestic businesses where they are produced and distributed",[45] but that "there are a variety of non tax-related historic business reasons why international brands may be owned in particular locations".[46] ActionAid has identified that a large number of trademarks for SABMiller's African brands are registered in the Netherlands, as well as evidence of trademark ownership being transferred from Africa to the Netherlands. In Ghana, the company continues to register the trademarks for new brands on behalf of a Dutch subsidiary.[47]

From 2007 to 2010, Accra Breweries paid royalties of £1.33 million (Gh¢2.69 million), amounting to 2.1% of turnover, to SABMiller International BV in Rotterdam for using popular brands including Castle Milk Malt and Stone Lager.[48] These names are owned by the Dutch company – as indeed is the slogan that goes with Stone, "You've earned it!" – and under intellectual property laws the company can command royalties for their use.[49]

In the four financial years looked at by ActionAid, the arrangement appears to have saved Accra Brewery £210,000 (Gh¢420,000) in corporate income tax, which in Ghana is charged at 25%.[50] From 1 January 2009, the Ghanaian withholding tax on royalty payments to the Netherlands was reduced from 10% to 8%, under a new tax treaty between the two countries.[51] Applying the new withholding tax rate to 2010 royalty payments, the annual cost to the Ghanaian government can be expected to be £52,000 (Gh¢120,000).

This pattern can be observed in the accounts of SABMiller's subsidiaries right across Africa. For example, The South African Breweries Ltd is one of SABMiller's largest operating companies, in its oldest market. It pays £18 million (R274 million) each year in royalties to SABMiller International BV in the Netherlands.[52] That so much money should leave South Africa for northern Europe demonstrates how far tax avoidance has shaped the history of iconic African brands. While The South African Breweries Ltd pays an average of £110 million (R3.06 billion) a year in corporation tax, it saves an estimated £5.1 million (R77 million) through royalty payments.

The pattern extends to other longstanding African brands. The brand rights for Chibuku, a 60-year-old local sorghum-based beer developed in Africa, were transferred in the last financial year from Zambia to SABMiller International BV for £11 million, presumably enabling further tax-deductible royalty payments to be made from Africa.[53] The beer's markets include Zambia, Tanzania and Ghana.

The motivation behind this arrangement appears to be a Dutch tax rule that allows the cost of acquiring the underlying trademarks to be 'amortised' – gradually written off against taxable profits. Back in 2005, SABMiller International BV acquired a vast number of the group's trademarks from a sister Dutch company at their market value of well over £120 million (US$200 million).[54] Each year it can use a proportion of this amount to cancel out any taxable profits that it has made, reducing its tax bill to near zero.

In 2009-10, SABMiller International BV made pre-tax profits (from royalty payments from other SABMiller companies) of £48.6 million (US$77.9 million), creating an income tax liability of £12.4 million (US$19.9 million). But it claimed a tax reduction of £12.6 million (US$20.2 million) as part of this 'amortisation'. The only taxes it had to pay were withholding taxes, which are paid on its behalf to overseas governments by the companies paying the royalties, totalling £2.7 million (US$4.3 million) or 5.5% of its pre-tax profit.[55]

A LARGE NUMBER OF TRADEMARKS FOR SABMILLER'S AFRICAN BRANDS ARE REGISTERED IN THE NETHERLANDS

SABMiller says, "We have a range of royalty rates which are charged based on the overall equity of a particular brand. These are benchmarked internationally and applied in line with OECD transfer pricing principles." But regardless of the price charged for use of the Dutch-owned brands, the payments that result are huge. We used the same approach as for Ghana and South Africa to analyse the tax saving from royalty payments made from all five African countries, then scaled this to the whole of SABMiller's African operation. The result is royalty payments estimated at £43 million, and an estimated total tax loss to Africa of £10 million per year (see Table 1).

The Rotterdam office at which many of SABMiller's African trademarks are registered.
PHOTO: BAS BIJLSMA/ACTIONAID

BOX 4: HOW GHANA GAVE AWAY ITS TAXING RIGHTS

When a company or an individual is resident in one country, but earns income in another, which country has the right to claim the tax on its income? If both countries try to claim it, the taxpayer is trapped in the middle, subject to double taxation. That's why thousands of double taxation agreements (DTAs) have been signed between countries; these are treaties that set out how two countries divide the right to tax cross-border income between them. Many governments in developing countries consider DTAs an important means of attracting investment: the website of Ghana's Investment Promotion Centre boasts that these agreements are designed "to rationalise tax obligations of investors".[56]

In the case of corporate taxation, developing countries such as Ghana act mostly as the source of cross-border income, for example Netherlands-based SABMiller International BV's royalty income. The country of residence of the receiving company tends to be a developed country or tax haven – in this case the Netherlands, which is both. Because of this asymmetry, the balance between source and residence taxation is one of the most significant conflicts between developing countries and their economic partners in international taxation.

To defend its right to tax income at source, and to reduce the taxes lost through the types of tax avoidance described in this report, Ghana's government imposes 'withholding taxes'. These are incurred on payments made by individuals and companies resident in Ghana to those resident abroad. Dividend and interest payments are taxed at 8% and royalties at 10%; management and technical service fees are taxed at 15%.[57] In most cases, withholding taxes don't cost the individuals and companies receiving those payments anything, because they receive a credit for the withholding tax against their income tax bill in their home state.

These rates apply to transactions with countries with which Ghana has no DTA. But if the payments are made to a country that has a DTA with Ghana, the rates may be reduced. In 2008, Ghana signed DTAs with two of the countries at the centre of this report, Switzerland and the Netherlands. Both reduced the amount that Ghana could tax the royalties and technical service fees that flow out of it to just 8%.[58] As a result the tax losses identified in this report increased.

Tax officials from developing countries explain that withholding-tax rates are one of the key areas on which they must fight when negotiating double taxation agreements. Negotiators can use one of two model treaties, one produced by the United Nations tax committee, the other by the OECD group of developed countries.[59] Ghana's treaties do at least follow the UN model, which gives developing countries stronger rights to tax at source; for example, the OECD model does not provide for withholding taxes on royalty payments at all.

ActionAid interviewed a senior official in Ghana's Ministry of Finance, who acknowledged that tax treaty negotiations had not fully taken into account the way tax treaties could allow certain jurisdictions to act as conduits for tax avoidance.[60] Ghana has now begun to strengthen the way it negotiates DTAs, doing more research into the potential treaty partner beforehand and bringing more diverse expertise into its negotiating team.

TAX DODGE 2: THE SWISS ROLE

In this second tax dodge, SABMiller's African and Indian subsidiaries pay whopping 'management service fees' to sister companies in European tax havens. Most of them head to the sleepy Swiss town of Zug, renowned for the tax incentives it offers to 'management companies', where corporate income tax can work out at just 7.8%.[61]

Each year, Zug-based Bevman Services AG, a SABMiller subsidiary, receives management fees from Ghana amounting to precisely 4.6% of Accra Brewery's turnover – in 2010 this figure was £0.93 million (Gh¢2.18 million).[62] Swiss companies' accounts are not available on public record, and SABMiller said it would "not be able to supply [us] with those financial statements or information which we do not already routinely publish in the ordinary course of our communications with investors and other stakeholders".[63] It appears from ActionAid's research that a substantial proportion of the fees Bevman receives end up, via a Dutch intermediary, with another Swiss company, SABMiller Europe AG.[64]

SABMiller told us that the management fees to Bevman are "in respect of a variety of services" including 'financial consulting', 'personnel strategy', 'business advisory services', 'marketing' and 'technical services'.[65]

We visited Accra Brewery and spoke to staff working in corporate affairs, procurement, supply chain, human resources and technical services. None was aware of any Swiss involvement in the running of the firm. ActionAid looked into SABMiller's office in Zug, which is the registered address of Bevman Services AG. When we telephoned, the switchboard operator had never heard of a company by the name of Bevman.[66] An ActionAid employee then visited the office, ostensibly enquiring about employment opportunities in international human resources and marketing. "We don't do that kind of thing here; we're just the European head office," said a staff member, before stopping abruptly. "I have to be careful what I say, we have been told that the BBC or someone might come round asking questions."

SABMiller explained to us that, "Costs are routed from the service-providers to the central management company. The management company in turn charges the operating companies for the services in line with accepted transfer pricing principles."[67]

For a company whose strategic priorities include "to constantly raise the profitability of local businesses, sustainably", it seems odd that such large payments for these high value-added services should be routed through European tax havens, especially when some of them appear to end up back on the African continent. Staff at Accra Brewery told us that consultancy and training in areas such as marketing, technical assistance and human resources came from the African hub in Johannesburg.[68] Other documentation indicates that consultancies in "sales, distribution and marketing" and "operational processes" originated from third parties in South Africa.[69]

International transfer pricing standards require payments for management services to be made at market rates. The company told us that "management fees are based around the cost of providing the services and are benchmarked internationally". But, as the Ghana Revenue Authority's Commissioner General explained to us, "management fees is an area that we know is being used widely [to avoid tax], and it's mainly because it's difficult to verify the reasonableness of the management fee".[70] Another senior tax official at the GRA added that the existence of an agreement to pay management fees can be enough to comply with local regulations, even though "in most cases there is no transaction taking place" (see Box 5).[71]

The financial effect of the payments from Ghana is a reduction in taxable profits by the amount of the management fees paid, although, as with royalty fees, a withholding tax will have been deducted from them before they leave Ghana. Also as with royalty payments, the withholding tax rate applicable recently fell, dropping from 15% to 8% on 30 December 2009, under the terms of a tax treaty negotiated between Ghana and Switzerland.[72] The tax saving compared to the Ghanaian corporate income tax rate of 25% is therefore substantial. Based on 2010 figures, we estimate that the ongoing tax loss to the Ghanaian government may be as much as £160,000 (Gh¢370,000) per year.

In most cases, the withholding tax applied at source is higher than the effective tax rate usually applied to a Swiss management company of 7.8%, and so no further tax in Switzerland is likely to be payable. The tax saving to SABMiller depends on where the payments are routed, and on the size of the Swiss company's profit margin. SABMiller's use of tax haven secrecy prevents us from knowing this.

SABMILLER'S AFRICAN AND INDIAN SUBSIDIARIES PAY WHOPPING 'MANAGEMENT SERVICE FEES' TO SISTER COMPANIES IN EUROPEAN TAX HAVENS

Across the Indian Ocean, it is striking that SABMiller's two main operations in India, SABMiller Breweries Ltd and SKOL Breweries Ltd, paid no corporate income tax in the last financial year.[73] Operating profits were swallowed up in management fees equal to between 3.3% and 3.8% of turnover paid to a Dutch management company. In return, says SABMiller, assistance in technical, procurement and personnel matters is provided.[74] Oddly, though, neither the company earning the fees, SABMiller Management (IN) BV, nor the other Dutch company that SABMiller says is at the centre of technical service provision, SABMiller Management BV, has any staff.[75] When ActionAid visited the registered office of these companies in Rotterdam (also the registered address of 12 other SABMiller subsidiaries and 150 companies in total), the receptionist told us that SABMiller had just 10 staff there, and that the office deals not with the management services listed by SABMiller, but with "managing the brands". The company told us that SABMiller Management BV "has no need for employees as it procures the necessary expertise when needed". [77] How it does even this without any staff is another question altogether.

Applying the same method as our Ghana calculations across Africa and India suggests annual management fee payments such as these to tax havens of £47 million, and a tax cost to the governments affected estimated at £9.5 million (see Table 1).

The office in Zug, Switzerland, through which payments from Africa are routed.
PHOTO: MARTIN HEARSON/ACTIONAID

TAX DODGE 3: TAKE A TRIP TO MAURITIUS

How would you ship goods from South Africa to Ghana? Ask a school geography student and you would hope to be told to turn right from the Cape and head up Africa's west coast. Ask a tax planner and he would tell you to make sure you send the paperwork in the opposite direction. In this third type of dodge, goods are procured by Accra Brewery from another SABMiller subsidiary in Mauritius, 7,000km away in the Indian Ocean.

Sensible commercial reasons – including economies of scale and the management of currency and commodity price risks – lie behind the centralisation of SABMiller's purchasing across Africa. And unsurprisingly for a group with its origins and regional hub in South Africa, for a long time this was done using a South African company, Sabex.

Then in 2008 the group created a new company called Mubex, located 3,000km from SABMiller's Johannesburg regional office, in Mauritius.[78] Tax – and specifically Mauritius' maximum effective tax rate for a 'global business' company of 3% – must surely have been one reason for locating the operation there.[79]

The company says that, "There are... sound commercial reasons for why regionalised procurement may be based in a particular jurisdiction... Aggregating certain procurement

activities to enable our operations in small developing economies to get a better deal in their international procurement enables us to deliver a high quality and price competitive product to consumers. Indeed the bureaucracy and obstacles to doing business in Africa often necessitate such aggregated procurement. Where we can we have established active local sourcing programmes to promote greater local economic growth." [80]

ActionAid's investigations reinforce the impression that Mubex's location relates to tax planning. Called ostensibly for a survey of employment in Mauritius, a Mubex official said there were 15 people working at the company, "mostly on on-the-job training, with one or two specialists". [81]

This seems a small staff team for a company that SABMiller documents suggest is seen as a major strategic advantage for the Africa region.[82] By 2009-10 Accra Brewery was buying 50% of its supplies from the company, including malt originating in Belgium, maize from South Africa and sugar from Brazil.[84] Payments from Accra Brewery and Tanzanian Breweries in 2010 totalled £31.6 million, a steep increase from 2009. If we extrapolate the available 2010 figures across the company's Africa region, we can estimate that Mubex may have an income of £150 million per year from other group companies.[85]

Not that these goods appear to have gone anywhere near Mauritius. Instead, these are transactions that, as one procurement manager at Accra Brewery speculated, are "all for tax planning".[86] Profits made here, resulting from the benefits of centralising the procurement function, will be taxed at the Mauritian rate of 3% – much lower than the rate in South Africa or Ghana. That means there's plenty of incentive to ensure that Mubex makes as much profit as possible.

SABMiller can determine the prices paid by Accra Brewery and others to Mubex, subject to international rules that prevent such 'transfer pricing' from deviating too much from the market price. But these rules – which are difficult for developing countries to enforce at the best of times – leave enough wiggle room for companies to inflate prices and bump up profits in places where they will incur low taxes, all within the law.

The new supply chain arrangement coincided with a dramatic fall in Accra Brewery's gross profit (its sales less the cost of its supplies).[87] SABMiller says that other factors such as commodity price and excise duty increases explain this declining profitability,[88] but it is possible that some of it occurs as a result of profit being diverted to the Mauritius company through higher prices. Tanzania Breweries' increased use of Mubex also coincided with a falling rate of profit.[89]

If all the fall in the Ghana company's profits were attributable to such 'transfer pricing' manipulation, ActionAid estimates that the annual cost to Ghana from the practice would be £670,000 (Gh¢1.6 million).

Payments for raw materials are made to this address in Mauritius.
PHOTO: DEMOTICS/ACTIONAID

GOODS ARE PROCURED BY ACCRA BREWERY FROM ANOTHER SABMILLER SUBSIDIARY IN MAURITIUS, 7,000KM AWAY

TAX DODGE 4: THINNING ON TOP

The absence of profits at Accra Brewery meant that for years it was unable to pay its bills to companies like Sabex and Bevman, even though it was claiming tax deductions for them. The answer to this spot of financial difficulty was, as the daytime TV adverts have it, to consolidate all its separate debts into one manageable amount. Conveniently for SABMiller, it could do so in a way that will allow it to dodge yet more tax in the future.

The new debt took the form of a loan from Mubex sometime in 2009-10 of £8.5 million (Gh¢19.9m).[90] The debt is bigger than any mortgage lender would permit, more than seven times Accra Brewery's capital. It's unlikely the brewery could have secured such a loan from a third party. This means that the company is 'thinly capitalised'. SABMiller told us only that "the use of intra-group financing enables us to invest in local economies to create jobs directly and indirectly through the multiplier effect, where local financing might otherwise not be available at acceptable rates".[91]

Ghanaian tax law sets a maximum debt-equity ratio above which losses from interest costs cannot be counted against future taxable profits. Accra Brewery seems to be well in excess of this limit, yet its accounts show that it is claiming the full tax benefit from the interest costs. We estimate that the annual interest costs will amount to £445,000 (Gh¢1.04 million). This would wipe out £76,000 (Gh¢177,000) of Accra Brewery's future tax payments each year.

WINNERS, LOSERS, AND YET MORE LOSERS

The offshore payments end up in companies wholly owned by SABMiller. Meanwhile, as in other countries, a significant proportion of the Ghanaian company is owned locally, in particular through an 11% stake by the country's public pension provider, the Social Security and National Insurance Trust.[92]

SABMiller says that "outside South Africa, all of our African markets have local partners and minority shareholders, including governments or their investment agencies, who have expressly endorsed and approved our corporate structures including brand ownership, procurement and management agreements".[93]

But when money leaves Accra Brewery or another African subsidiary for tax haven companies in which they have no stake, local shareholders lose out. ActionAid estimates that the offshore payments cost these local interests between £440,000 and £1.1 million (Gh¢1 million and Gh¢2.5 million) a year in lost dividend payments. SABMiller recently bought out these minority shareholders at a price likely to have been depleted by the reduced profitability caused by the offshore payments. Ghanaian financial services company Databank suggests that "minority shareholders may feel hard done by because of the offer price".[94]

WHEN MONEY LEAVES ACCRA BREWERY FOR TAX HAVEN COMPANIES IN WHICH THEY HAVE NO STAKE, LOCAL SHAREHOLDERS LOSE OUT

HOW THE COMPANIES IN ACTIONAID'S RESEARCH ARE RELATED

SOURCE: COMPANY ANNUAL RETURNS AND ACCOUNTS

HOME COUNTRY

SABMILLER PLC UK

SABMILLER HOLDINGS EUROPE LTD UK

SABMILLER HOLDINGS LTD UK

?

SABMILLER (A&A2) UK

TAX HAVENS

INVESTRAT LUXEMBOURG

SABMILLER EUROPE AG SWITZERLAND

SABMILLER AFRICA & ASIA BV NETHERLANDS

SABMILLER FINANCE BV NETHERLANDS

SAB HOLDINGS AG SWITZERLAND

SABMILLER MANAGEMENT BV NETHERLANDS

SABMILLER INDIA HOLDINGS MAURITIUS

SABMILLER ASIA BV NETHERLANDS

SABMILLER AFRICA BV NETHERLANDS

MUBEX MAURITIUS

SABMILLER INT'L BV T/A SABMARK SWITZERLAND

OVERSEAS BREWERIES LTD SWITZERLAND

BEVMAN SERVICES AG SWITZERLAND

SABMILLER MANAGEMENT (INI) BV NETHERLANDS

DEVELOPING COUNTRIES

SABSA HOLDINGS PTY LTD SOUTH AFRICA

HEINRICH'S SYNDICATE ZAMBIA

SABMILLER BREWERIES PRIVATE INDIA

THE SOUTH AFRICAN BREWERIES LTD SOUTH AFRICA

ACCRA BREWERIES GHANA

TANZANIAN BREWERIES TANZANIA

CERVEJAS DE MOCAMBIQUE

ZAMBIAN BREWERIES ZAMBIA

NATIONAL BREWERIES ZAMBIA

SKOL BREWERIES INDIA

SABMILLER INDIA

Ownership

Payments

BOX 5: ARE TRANSFER PRICING RULES APPROPRIATE FOR GHANA?

The bulk of Ghana's £284 million (Gh¢662 million) corporate income tax revenue comes from 365 large taxpayers, many of them multinational companies. Its large taxpayers' unit (LTU) has just 52 staff to deal with them, of whom only a fraction works on tax audits.[95]

A key problem for the LTU's audit team is to police the kind of profit-shifting techniques discussed in this report. It's a well-established problem, noted by the African Tax Administrators' Forum in its 2008 Pretoria Communiqué, which states that "the taxation of international transactions, in particular transfer pricing, has become increasingly difficult".[96] The GRA's Commissioner General was of the same view: "Transfer pricing is a problem in most developing countries," he told ActionAid.[97]

Other senior officials spoken to by ActionAid concurred that this is a significant problem. One queried why multinationals would keep investing in apparently unprofitable operations, unless the losses were the result of shifting profits elsewhere. "The companies are making losses, 5 or 10 year losses, but they are still putting in investment. The question is what is the motivation? It's something we know, but we are powerless."

Under Ghanaian law, a company cannot pay royalty or management fees to a related company abroad without a formal agreement between the two companies, which must be registered with the Ghana Investment Promotion Council (GIPC).

The Bank of Ghana cannot authorise any funds transfer without the appropriate documentation from the GIPC. The agreement stipulates the amount that can be paid, and must stay within a legal limit; management fees, for example, cannot exceed 5% of a company's turnover.

GIPC authorisation allows companies to transfer funds, but, as an official told us, "in most cases there is no transaction taking place". Where transactions do take place, verifying that they are priced appropriately (at 'arm's length') becomes the problem. "It's not that we are unaware," said a senior official, "it's that you cannot tell if it is arm's length." As a local director from a major international accountancy firm put it, these fees are "never questioned, once the GIPC approves".

Improving transfer pricing implementation

There are a number of obstacles to effective enforcement of transfer pricing rules in Ghana. First, Ghana currently has just a single page of transfer pricing law, described by the officials tasked with implementing it as "too general" and "scanty". Although the law gives the GRA the power to adjust a company's taxable profits if transfer pricing abuse is suspected, this largely rests on a discretionary power granted to the Commissioner General. With limited experience and without a detailed legal framework to guide them, revenue officials naturally reserve the use of this power for the most egregious cases.

Second, they lack information. Where there are payables to related parties in a company's accounts there is likely to be profit shifting, said one revenue official, adding that the revenue is "handicapped", because it does not have the information it needs to check them out. Most developed countries deal with this problem by requiring 'contemporaneous documentation' from companies undertaking transfer pricing. Such documentation includes a description of the parts of the MNC's structure involved in the transaction, the rationale behind this structure, the nature of transfer pricing transactions, and calculations to demonstrate how the 'arm's length price' was arrived at.

New transfer pricing regulations currently under development will add much more detail to the existing law, including a requirement for contemporaneous documentation. But even then, the Revenue will come up against its third obstacle: it is quite simply outgunned by the combined expertise of multinational companies' tax departments and of their auditors, usually one of the 'big four' global accountancy firms. The GRA does not even have a specialist transfer pricing unit. A group of Ghanaian revenue officials recently spent some time in the UK, shadowing HM Revenue & Customs. But officials emphasise that the GRA needs much more transfer pricing expertise.

"THE TAXATION OF INTERNATIONAL TRANSACTIONS, IN PARTICULAR TRANSFER PRICING, HAS BECOME INCREASINGLY DIFFICULT."

AFRICAN TAX ADMINISTRATORS' FORUM

Alternatives to the arm's length price
Stronger legislation and capacity building will help the GRA to tighten up its approach to transfer pricing, but there are reasons to doubt that a system based on the ambiguous definition of an 'arm's length price' – a system that results in multi-billion-pound legal disputes even in more developed countries – can be made to work for countries like Ghana. Draft transfer pricing guidance for developing countries prepared by the United Nations tax committee sets this out in stark detail:

"Rules based on the arm's length principle are becoming increasingly difficult and complex to administer. Transfer pricing compliance today typically involves huge and expensive databases and high-level expertise to handle. Transfer pricing audits need to be performed on a case-by-case basis and are often complex and costly tasks for all parties concerned... The tax authorities of many developing countries do not have sufficient resources to examine the facts and circumstances of each and every case so as to determine the acceptable transfer price, especially in cases where there is a lack of comparables." [98]

South Africa's former finance minster, Trevor Manuel, is an outspoken critic of tax avoidance by multinationals. He told a meeting of African tax officials that "smaller, poorer countries with tax administrations that are less sophisticated cannot be expected to develop the expertise required to unravel the complex structures that multinationals and other large companies put in place to minimise tax".[99]

Michael Durst, former Director of the department of the US Internal Revenue Service that reaches advance transfer pricing agreements with multinational companies, suggests that by sticking to the arm's length price approach, tax officials are shooting themselves in the foot.[100] One reason is distortion in the system when it comes to transactions in intangibles such as trademarks. Transfer pricing takes corporate structures, even those motivated entirely by tax avoidance, for granted, only examining the prices charged rather than the structures themselves. "Multinational groups generally have been free to enter into internal contracts that shift interests in valuable intangibles to tax haven countries in which taxpayers conduct little if any real business activity," says Michael Durst.[101]

"It's difficult to verify the reasonableness of a management fee," Ghana's Commissioner General for taxation told us, because it's hard to "evaluate the quantum" supplied, let alone the correct price. "It's even worse for trademarks. A trademark is an imaginary product, an estimate of what value consumers place on the product on the basis of a name at best. How you record its value in your books is subjective."

The arm's length principle is not the only game in town. Brazil, for example, eschews the OECD model in favour of its own 'fixed margin' transfer pricing rules, which give much less room for manoeuvre. They apply to transactions between Brazilian companies and related companies abroad, and all transactions with companies based in tax havens.[102] Brazil's unilateral approach is controversial, but fixed margins offer a more easily enforced method for developing countries.

Others have argued for a wholesale abandonment of transfer pricing in favour of 'global formulary apportionment', a system under which a multinational company's total profits would be allocated for tax purposes between the countries in which it operates according to a formula.[103] In the US, companies already have to use such an approach to allocate profits between states; the 'three factor state formula' takes into account the share of a company's total property, payroll and sales in each state. The proposed European Union Common Consolidated Corporate Tax base would take a similar approach. It has also been suggested that at the very least, a formulary approach could be used as part of transfer pricing calculations.[104]

"THE TAX AUTHORITIES OF MANY DEVELOPING COUNTRIES DO NOT HAVE SUFFICIENT RESOURCES TO EXAMINE THE FACTS AND CIRCUMSTANCES OF EACH AND EVERY CASE."
DRAFT GUIDANCE FROM THE UN TAX COMMITTEE

THE BILL

The sample of African countries looked at by ActionAid shows that tax planning is a central element in SABMiller's business planning across Africa and India. Tax haven and corporate opacity mean that we cannot know exactly how much SABMiller saves from these techniques, but we can make an informed estimate of the cost to governments.

Let's look at just two of the tax dodges we have identified – royalty payments and management fees. In the four financial years from 2007 to 2010, Accra Brewery Limited alone paid £4.57m (Gh¢8.72 million) in management fees and royalties – representing 6.7% of the company's turnover and almost 10 times its operating profit – to two companies, Bevman Services AG in Switzerland and SABMiller International BV in the Netherlands.[105]

Based on the most recent years for which accounts are available, we estimate that across Africa and India, payments to these companies and to two other Dutch companies said to provide 'management services' totalled £90m (see Table 1). That amount could buy enough bottles of Grolsch to stretch the length and breadth of Africa.[106] For the five companies in SABMiller's Africa operating segment, the payments of £16 million represent 15% of operating profit.[107]

We estimate that royalties paid to the Netherlands have resulted in tax losses to African governments of £10 million, and that management fees, mostly paid to Switzerland, reduced tax revenues in Africa and India by £9.5 million. Including the estimated losses from payments to Mauritius, the total estimated tax lost by governments in developing countries is close to £20 million. Assuming that SABMiller's Africa business segment (which excludes its South African business) has the same effective tax rate as the rest of its business, the tax loss would correspond to almost one-fifth of its estimated tax bill.[108] The amounts lost in Africa are enough to put a quarter of a million children in school in the countries where SABMiller operates.[109]

TABLE 1: ANNUAL PAYMENTS TO TAX HAVENS AND THE ESTIMATED TAX LOSSES THAT RESULT

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

ActionAid has also identified mechanisms put in place by the SABMiller group that appear to ensure that profits diverted into tax havens make their way back to Britain for payment to the company's shareholders in a manner that escapes a lot of British tax, too. The clearest example is revealed in the accounts for the Dutch company SABMiller Finance BV. Immediately it transferred its trademarks to SABMiller International BV in 2005 (setting in train the "flexible" tax depreciation that makes its royalty income tax-free) SABMiller Finance BV became UK tax resident, enabling it to pay out its accumulated profits as a mammoth £2 billion (US$3 billion) dividend to its immediate parent SABMiller Holdings Ltd plc in 2009.[110] This appears to have escaped any UK tax, since dividends from UK companies are tax-exempt for other UK companies.

With relatively little income tax paid here in Britain, the profits of tax avoidance in the developing world can thus be enjoyed by the group's shareholders. Through your pension fund you could be receiving the fruits of this activity.

THE AMOUNTS LOST IN AFRICA ARE ENOUGH TO PUT A QUARTER OF A MILLION CHILDREN IN SCHOOL IN THE COUNTRIES WHERE SABMILLER OPERATES

A PRESCRIPTION FOR TAXING COMPANIES BETTER

SABMiller isn't a lone bad apple. Its tax avoidance practices are far from unusual, conforming to the model followed by multinational companies the world over. Governments in the G20 and OECD talk about taking a tough approach to tax avoidance and cracking down on tax havens, but reforms to date have left intact a global system in which developing countries are big losers. ActionAid believes that model has to change.

SABMILLER'S APPROACH TO TAX

The SABMiller group is made up of 465 subsidiary companies across 67 countries, along with a number of joint ventures and associates in others.[111] Not all of these companies are involved with the production, marketing and distribution of beer. Some may be holding and financing companies set up to manage the group's interests in its subsidiaries. Others own the group's assets, for example its trademarks and other intellectual property. These structures allow the group to manage its complex network of operations efficiently.

One observation is startling, however. SABMiller has more tax haven companies (65) than it does breweries and bottling plants in the whole of Africa (64).[112] This includes 17 Dutch finance companies, 11 companies in Mauritius, eight in the British Virgin Islands, six in Switzerland and six in the British Crown Dependencies. There may be many reasons to locate a subsidiary company in such a jurisdiction, but as the examples in this report demonstrate, the result of doing so is likely to be a reduction in SABMiller's overall tax obligation.

SABMiller says that its "strategy is to manage all taxes to provide a sustainable and competitive outcome".[113] A fall in the group's effective tax rate in 2010 was attributed, among other things, to a "more favourable geographic mix of profits between different territories" and "ongoing tax efficiency measures".[114] One recent decision, explained to Sky News by its Chief Executive Graham Mackay, demonstrates what this might look like in practice: "One of the things that attracted SAB Miller to move its HQ to London and to list on the London Stock Exchange in 1999 was the liberal and predictable tax regime… Taxation was a key part of our decision to locate a new global procurement business not in the UK but in Zug in Switzerland."[115]

SABMiller told us that this quote referred to the personal income tax paid by employees, rather than the company's own liability,[116] although the benefits in that regard from locating in Switzerland are clear. Sky News estimates that the establishment of this sourcing hub in a tax haven will cost the UK 400 jobs.

BOX 6: SUSTAINABLE DEVELOPMENT AT SABMILLER

SABMiller states that "sustainable development needs to be part of what we do every day. It needs to be integrated into our decision-making and the way we run our business." [117] To demonstrate this, one of the company's four strategic priorities has been amended, to "constantly raising the profitability of local businesses, sustainably".[118]

SABMiller puts this commitment into practice through ten sustainable development priorities, of which three – discouraging irresponsible drinking, using less water, and supporting local enterprise development in its supply chain – are global focus areas. Posters related to some of these priorities were clearly on display when ActionAid toured the Accra Brewery. SABMiller is unusual in publishing 'warts and all' performance ratings on these ten areas for each of its operating companies through its website.

On water, for example, SABMiller has partnered with the Worldwide Fund for Nature (WWF) to assess and reduce its water footprint. WWF says that SABMiller "shows a clear understanding of water issues that only a handful of multinationals have demonstrated".[119] On local supply chain development, the company spent over £1 million in southern Sudan to build up a network of 5,500 smallholder farmers to supply it with cassava as an alternative ingredient to imported barley for its beer manufacture.[120]

In its home country of South Africa, SABMiller's Broad-Based Black Economic Empowerment programme resulted in 40,000 new shareholders in its subsidiary The South African Breweries Limited, divided between SAB Ltd's employees and retailers, and historically disadvantaged groups.[121]

"BY FAR THE GREATEST CONTRIBUTION BUSINESS CAN MAKE TO DEVELOPMENT IS THROUGH THE VERY ACT OF RUNNING ITS BUSINESS – PAYING SUPPLIERS, PAYING WAGES, PAYING TAXES."

GRAHAM MACKAY, SABMILLER CHIEF EXECUTIVE[122]

BOX 7: SABMILLER'S ECONOMIC CONTRIBUTION

SABMiller says it paid US$4.445 billion in taxes globally in the financial year 2009-10.[123] The vast majority of this (US$3.825 billion or 86%) was in excise duties, which are levied on the consumption of alcohol and therefore borne by the consumer, not the company. Its 'wider tax footprint' of just under US$7 billion, which it believes to be "an appropriate indication of the tax contribution from our operations," includes the VAT borne by its consumers and the income tax borne by its employees.[124] In other economic analyses, SABMiller factors some of the taxes paid by its suppliers and clients into its 'economic contribution', claiming to be responsible for "1.7% of the South African government's total tax haul" and to be "Uganda's fourth-largest tax payer".[125]

Certainly, economic analyses like these are legitimate and useful, but a clear distinction is necessary between the taxes borne by a company, and those that it collects from other taxpayers on behalf of the government. Otherwise it is taking credit for the taxes borne by other people. Just US$620 million of the US$4.445 billion taxes paid by SABMiller were borne by the company itself in 2009-10.[126]

Companies are allowed to act as legal persons, benefitting from services provided by the state, just like individual people. They own property, and rely on the state to enforce the rule of law so that they can keep hold of it. Without publicly built roads and ports, a company like SABMiller could not function. Companies do not go to school or university, but they rely on the state to provide them with an educated workforce. Companies are also granted limited liability, meaning that their shareholders cannot lose more money than the amount they invested in the company.

All these benefits come with a quid pro quo: the tax that companies pay on their own income. In a multinational company's case, that tax obligation should correspond to the real economic activity that takes advantage of those benefits, which is why developing countries that play host to subsidiaries of multinational companies are entitled to tax their income.

TAX AND SOCIAL RESPONSIBILITY AT SABMILLER

Social responsibility consultants Accountability observed in 2006 that tax "is almost universally positioned as a credit in a company's social balance sheet, whereas the attitude to the payment itself has generally been one of tax as a cost to be avoided".[127] So how does SABMiller square its tax planning activities with its commitment to sustainable development?

SABMiller says it recognises that "there is widespread and legitimate interest in the amount we contribute directly to economies locally, regionally and globally, and particularly, in our contribution to government finances through taxation".[128] Its 2010 sustainability report claims credit for tax payments as large as £7 billion.

Yet SABMiller does not have a strategic approach to 'doing tax' sustainably. There is no mention of tax within its 10 sustainability priorities, nor in its code of business conduct and ethics. Its sustainability report takes credit for the taxes it has collected and paid, but says only that it tries to "manage all taxes to provide a sustainable and competitive outcome" and is "committed to developing constructive and transparent relationships with the tax authorities wherever we operate".[129]

SABMILLER IS IDEALLY PLACED TO TAKE THE LEAD IN DEVELOPING A SOCIALLY RESPONSIBLE APPROACH TO TAX PLANNING

Approached by ActionAid, SABMiller told us: "Compliance with tax laws underpins all of our corporate governance practices. We actively engage with revenue authorities and we are open and transparent with our affairs. We follow all transfer pricing regulations within the countries in which we operate and the principles of the OECD guidelines. We do not engage in aggressive tax planning."[130] Its full response to ActionAid's research is available to read online at www.actionaid.org.uk/schtop

A sustainable approach to tax would need to go much further. Decisions about tax planning – aggressive or otherwise – have an impact on how much tax the company pays, and where. A paper from KPMG's business school in 2007 encourages companies to "be in a position to give a reasoned justification of their approach to key tax issues such as the use of tax minimisation techniques, which is consistent with their approach to other CSR issues". [131] Like most companies, SABMiller does not yet seem to be able to do this.

THREE STEPS TO HAVEN

None of the tax dodging techniques we uncovered in this report is unique to SABMiller. "Your research findings seem to be borne out by the experience that we know in tax practice in this country," Ghana's Commissioner General for taxation told ActionAid.[132]

Indeed, this makes the problem more serious: the £20 million cost to developing country governments we have estimated is merely a fraction of the total they lose every year to tax dodging by multinational companies. SABMiller professes to take sustainable development seriously, ensuring it is "integrated into our decision-making and the way we run our business."[133] That makes it ideally placed to take the lead in developing a socially responsible approach to tax planning. ActionAid is calling on SABMiller to take three steps.

1) Take a responsible approach to tax

The bottom line is that SABMiller should stop using tax havens to siphon profits out of Africa. In practice this means the company should do at least three things:

a) Keep the lucrative intellectual property rights to African brands in the countries from which those brands originate, not in the tax-efficient Netherlands.

b) Stop paying huge management fees to Switzerland and the Netherlands. Where services are being provided for which management fees might be due, a responsible approach is to build skills and expertise in developing countries, not in Europe, and to ensure that payments for them – at market prices – go directly to the company providing them.

c) Refrain from locating group companies in tax havens unless there is a real justification based on genuine economic activity. It should be rare that a subsidiary based in a tax haven is more profitable than the group companies with which it trades.

2) Understand and disclose the impact of tax planning

SABMiller has so far not integrated tax into its 'sustainable development' programme – or rather introduced sustainable development into its tax planning. We propose that the company should begin by putting in place three measures:

a) Developing a code of conduct to show how it applies its social responsibility principles to taxation.

b) Declaring and explaining the steps it takes to reduce its tax burden, including a specific declaration of purpose for each subsidiary based in a tax haven.

c) Assessing and disclosing the impact of its profit-shifting activities on tax revenues in individual countries, for example by comparing the actual distribution of profits within the group to those arrived at using a simple formula based on the turnover, staffing and assets in each country.

THE BOTTOM LINE IS THAT SABMILLER SHOULD STOP USING TAX HAVENS TO SIPHON PROFITS OUT OF AFRICA

3) Be more transparent about financial information

"We've created a bespoke system for measuring and monitoring our performance – and we're sharing the results here on our website," says SABMiller.[134] Users can see the individual performance of each of the group's brewing and bottling subsidiaries – including most of those analysed in this report – against a range of criteria. Some of the subsidiaries' annual reports are also made available for download. None of this applies to the tax haven subsidiaries, of course. SABMiller should expand on this by including a basic set of accounts for each country and subsidiary:

a) Breakdowns of tax payments and other financial information consolidated at the country level ("country-by-country reporting"), giving a simple snapshot of its contribution to each economy. This information should include a breakdown of tax payments and other significant financial information to set them in context

b) Downloadable accounts for every subsidiary. Many countries in which SABMiller operates do not place registered companies' audited accounts on public record. Yet in other others – such as the UK, Netherlands and Ghana – this is a legal requirement. Most subsidiaries will have to prepare accounts, so making them public is a relatively easy next step.

c) All this information for every country in which it has subsidiaries, so we can see the economic activity in places like Mauritius and Switzerland, as well as in Ghana and Zambia.

GOVERNMENT RESPONSIBILITES

This report has focused on how a company can work within national and international tax systems to structure its tax liability, and how it should do so responsibly. Every activity we found in this study took place in accordance with the way laws and regulations are routinely interpreted at national level, and frequently with the explicit agreement of government agencies. Governments therefore have their own responsibilities, too. "Unacceptable domestic and international obstacles to effective taxation for development," argues the Tax Justice Network for Africa's Nairobi Declaration, are a "threat to political progress, sustainable economic development and to poverty eradication".[135]

Our research in developing countries has identified a range of policy changes needed to address the complex task of mobilising more domestic revenue through taxation, and doing so progressively. Among them are steps to clamp down on the types of tax avoidance described in this report, including:

1) Strengthening tax legislation and revenue administration capacity in developing countries to deal with taxing multinational companies.

Developing countries must make this a priority, and developed countries must support them by making available training, technical assistance and funds for infrastructure development.

In Ghana's case, the government must ensure that reforms to transfer pricing legislation and tax administration currently underway go hand in hand so that the GRA has both the powers and the capacity to close off the avenues for tax avoidance uncovered in this report, and to clamp down on transfer mispricing. Ghana should not adopt OECD transfer pricing guidelines wholesale without due regard for if and how they can be administered in a manner that maximises revenue.

2) Improving transparency around corporate reporting in two key areas:

a) Effective, accessible corporate registrar systems to make corporate financial reports accessible to the public. In many instances – developing countries such as Kenya and Uganda, as well as tax havens such as Switzerland and Mauritius – information that is on public record in places like Ghana, the UK and India is simply unavailable. This should be accompanied by the public availability of beneficial ownership information for all companies and trusts.

EVERY ACTIVITY WE FOUND IN THIS STUDY TOOK PLACE IN ACCORDANCE WITH THE WAY LAWS AND REGULATIONS ARE ROUTINELY INTERPRETED AT NATIONAL LEVEL

b) The G20 and EU should give a political mandate to the International Accounting Standards Board to create a global, mandatory standard that requires all multinational companies to include a country-by-country breakdown of key information within their published accounts.

3) Developing countries must not give away their right to tax royalties, management fees and other foreign payments at source. It is striking that the likely tax loss to Ghana and Zambia's governments from the schemes we uncovered has been increased as a result of their double taxation treaties with Switzerland and the Netherlands, which reduce the withholding taxes they can charge on such payments to levels way below the statutory rate. This should not be the price exacted by tax havens and developed countries for improved tax cooperation.

4) Developed countries, meanwhile, should examine and where necessary reform the way they tax multinationals, to make tax avoidance in developing countries less worthwhile, not more lucrative. For example:

a) In the UK, proposed reforms to a piece of UK anti-avoidance legislation called Controlled Foreign Company rules will hurt developing countries by eliminating the penalty applied to UK companies that use artificial structures to divert profits made overseas into tax havens, unless the tax avoided is UK tax.[136]

b) The Netherlands should put in place anti-avoidance arrangements to prevent the exploitation of its network of double taxation agreements as a conduit for financial flows, for example a withholding tax on interest and royalty payments to tax havens.[137]

5) G20 and EU member states must also work together to bring a threat of renewed action to bear against all countries whose fiscal and juridical frameworks facilitate harmful tax competition, tax avoidance and tax evasion, especially from developing countries. This should include the development of a global, multilateral tax information exchange agreement.

6) Upgrade the United Nations Committee of Tax Experts to an intergovernmental body, in which the political issues of international taxation can be articulated. A root and branch examination of transfer pricing and alternatives such as formulary apportionment is needed, in a political forum that gives developing countries equal weight and pays attention to their special needs.

The OECD, as an organisation of developed countries, cannot address the issue alone. Its model Double Taxation Agreement and Transfer Pricing Guidelines are, as a Ghanaian tax official suggested, designed with the interests of OECD members in mind, and have been taken further in that direction by recent revisions. Meanwhile the UN committee's equivalent projects diverge from the OECD in a number of important ways that represent the interests of developing countries (though not as far as some critics would like). "As the rules become more and more entrenched in an 'international consensus,'" argues Michael Durst, formerly senior official at the US Internal Revenue Service, "not only the wealthier industrialized countries but also developing countries face pressure to adopt the system, thereby imposing constraints on the successful developments of their own fiscal systems." [138]

The bigger prize must be a system that does not allow large multinational companies to strip out taxable profits from their subsidiaries, exploiting the value of their intangible assets, the ambiguity of the arm's length price, and the information asymmetry between themselves and revenue authorities.

This alternative system must be one in which developing countries are able to hold on to a bigger share of taxation from multinationals based in richer countries. Ending the types of practices outlined in this report is a matter not just of poverty alleviation and social justice within countries, but also of the power relations between them. As countries round the world face gaping fiscal deficits, tax dodging has become an issue on which governments, pressure groups and ordinary people around the world are finally calling time.

THE BIGGER PRIZE MUST BE A SYSTEM THAT DOES NOT ALLOW LARGE MULTINATIONAL COMPANIES TO STRIP OUT TAXABLE PROFITS FROM THEIR SUBSIDIARIES IN DEVELOPING COUNTRIES

ENDNOTES

[1]OECD. *OECD in figures 2009*. OECD Observer 2009/ Supplement 1. See http://bit.ly/7WkPz.

[2]International Conference on taxation, state building and capacity development in Africa. *Pretoria Communiqué*. See http://bit.ly/9b11PL.

[3]Owens, J. Cited in L. Jutta, *Tax havens drain poor nations, OECD says.* Reuters Alertnet, 28 November 2008. See http://bit.ly/bifviE.

[4]Gordhan, P. Cited in Dyer, G. End looms for era of cheap Chinese labour. *Financial Times*, 3 June 2010. See http://bit.ly/aQvRVz.

[5]Alexander, D. Cited in Mulholland, H. Lib Dems unveil £900m plan to tackle tax dodgers. *Guardian*, 19 September 2010. See http://bit.ly/dp0L51.

[6]Preston, J. Cited in Tyler, R. Vince Cable to target tax avoidance by businesses. *The Telegraph*, 16 May 2010. See http://bit.ly/aAM514.

[7]SABMiller.com gives total of 64 breweries and bottling plants in its Africa and South Africa segments. SABMiller's annual return 2010 gives a list of subsidiaries by country of registration. Tax haven companies include 17 Dutch companies registered at its Rotterdam and Woking offices that are finance, holding or brand management companies. The other jurisdictions are: Mauritius (11), BVI (8), Switzerland (6), Netherlands Antilles (4), Nevis (4), Cyprus (3), Guernsey (3), Cayman Islands (2), Hong Kong (2), Jersey (2), Gibraltar (1), Isle of Man (1), Luxembourg (1).

[8]SABMiller plc Annual Report 2010. Throughout this report we have used currency conversion figures from www.oanda.com in the following way: current figures are converted using the average rate on 1 November 2010; figures in financial reports have been converted using average figures for the financial years covered by those reports; average or total figures based on several years' financial reports use these same conversions and are calculated separately in the given currency and in pounds. Exchange rates for some of the currencies concerned varied significantly over the period 2007-10.

[9]Based on information from SABMiller plc. *Where we operate*. SABMiller plc. See http://bit.ly/cz1GYn.

[10]Mackay, G. Cited in Thompson, C. *Business and Development – A Case Study: SABMiller plc*. SABMiller plc, 2008. See http://bit.ly/awYwFx.

[11]Euromonitor Global Market Information Database.

[12]Shepherd, J. Bass in joint venture with Grolsch for distribution. The Independent, 25 February 1994. See http://ind.pn/bKXPxm.

[13]Molson Coors Brewing Company. *Form 10-K*. United States Securities and Exchange Commission, Edgar Online. See http://bit.ly/ckrBYz.

[14]For a much more detailed analysis of tax policy in Ghana, see Prichard, W. *Taxation and Development in Ghana: Finance, Equity and Accountability.* Tax Justice Network, 2009. See http://bit.ly/ciAsuU.

[15]Crawfurd, J. *Ghana Timeline – The Gold Coast.* The Crawfurd Homepage. See http://bit.ly/95TAXP.

[16]Overseas Development Institute (ODI). *Millennium Development Goals (MDG) Report Card: Measuring Progress Across Countries.* ODI, September 2010. See http://bit.ly/cP1cfG.

[17]UN MDG Indicators database. See http://bit.ly/Gv4s3.

[18]Based on Ghana Ministry of Finance. 2009 *Fiscal Data from January-December.* See http://bit.ly/aeLJDw.

[19]UN MDG Indicators database, op cit.

[20]UNDP. *The Real Wealth of Nations: Pathways to Human Development.* Human Development Report 2010. See http://bit.ly/zS5wi.

[21]Ellis, K et al. *Assessing the Economic Impact of Competition: Findings from Ghana.* ODI, 2010. See http://bit.ly/bBFDwF.

[22]Accra Brewery Limited annual reports 2007-10.

[23]SABMiller plc annual report 2010.

[24]Accra Brewery Limited annual reports 2007-10.

[25]Email communication from SABMiller, 30 July 2010.

[26]Ghana Ministry of Finance, op cit.

[27]ibid

[28]ActionAid spoke to 12 officials in the Ministry of Finance and Ghana Revenue Authority over a period of several days in September 2010. This section is based on those interviews, which were conducted on an off-the-record basis.

[29]Prichard, W. *The Politics of Taxation and Implications for Accountability in Ghana 1981 to 2008*. Institute of Development Studies, Brighton, 2009. See http://bit.ly/9l5xLZ.

[30]ibid

[31]ActionAid interview, 14 September 2010.

[32]ActionAid spoke to 12 officials in the Ministry of Finance and Ghana Revenue Authority over a period of several days in September 2010. These interviews were conducted on an off-the-record basis.

[33]Cited in Oduro, A. *Gender and Taxation: The Case of Ghana*. University of Ghana, 2009. See http://bit.ly/ae7uJk.

[34]ActionAid interview, 14 September 2010.

[35]ActionAid interview, 14 September 2010.

[36]This box is based on ActionAid interviews, 22 September 2010.

[37]SAB Ltd. About Castle. Castle Lager. See http://bit.ly/cuib7V.

[38]SABMiller plc. SABMiller announces Grolsch launch in South Africa. SABMiller plc, 10 June 2008. See http://bit.ly/dvdwvd.

[39]Peroni UK YouTube page. See http://bit.ly/albKjE.

[40]SABMiller plc. *Global beer market trends.* SABMiller plc. See http://bit.ly/arAEns.

[41]The brand value of Heineken is cited as more than 50% of the company's market capitalisation: Brandirectory. *Brands within industry group: beverages.* Brandirectory. See http://bit.ly/d1rCLN.

[42]Neighbour, J. Transfer pricing: Keeping it at arm's length. *OECD Observer*, 2002. See http://bit.ly/9SvXyN.

[43]WIPO. *Madrid Express global trademark search.* See http://bit.ly/bOiJ9f.

[44]For a good outline: van Dijk, M., et al. *The Netherlands: a tax haven?* Somo, Amsterdam, 2006. See http://bit.ly/aC2zuB.

[45]Email communication from SABMiller, 29 October 2010.

[46]Email communication from SABMiller, 11 November 2010.

[47]Trademark search from Ghana Registrar General, document on file.

[48]Accra Brewery Limited annual reports, 2007-2010, and email communication from SABMiller, 19 August 2010.

[49]Trademark documentation obtained from Ghana Registrar General, intellectual property office.

[50]The full calculations underlying the tax loss figures in this report are available from ActionAid on request.

[51]Governments of Ghana and Netherlands. *Convention between the Kingdom of the Netherlands and the Republic of Ghana for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital gains,* Accra, 10 March 2008.

[52]The South African Breweries Ltd financial report 2009, document on file.

[53]SABMiller International BV financial report 2010.

[54]SABMiller International BV financial report 2006.

[55]SABMiller International BV financial report 2010.

[56]Ghana Investment Promotion Centre. *Investment Incentives, Benefits, and Guarantees.* Ghana Investment Promotion Centre. See http://bit.ly/8XYHTT.

[57]Ghana Revenue Authority. *Withholding tax.* See http://bit.ly/bofHsM.

[58]Governments of Ghana and Netherlands, op cit. Governments of Ghana and Switzerland. *Convention entre la Confédération suisse et la République du Ghana en vue d'éviter les doubles impositions en matière d'impôts sur le revenu, sur la fortune et sur les gains en capital,* Accra, 23 July 2008.

[59]OECD. OECD Model Tax Convention on Income and on Capital – *an overview of available products. See http://bit.ly/cJO3Y8; UNDESA. Committee of Experts on International Cooperation in Tax Matters.* See http://bit.ly/dzCl7T.

[60]ActionAid interview, conducted off-the-record, September 2010.

[61]The effective rate for Switzerland given in Deloitte. *Quick rates finder.* See http://bit.ly/anwhnQ.

[62]Accra Brewery annual report 2010.

[63]Email communication from SABMiller, 29 October 2010.

[64]SABMiller Management BV financial report 2010.

[65]Email communication from SABMiller, 30 July 2010.

[66]Telephone call to Bevman offices, 15 October 2010.

[67]Email communication from SABMiller, 29 October 2010.

[68]ActionAid interviews, 16 September 2010.

[69]Accra Brewery Limited annual report 2008 and Hunting Dragons Consulting. *Recently Completed Projects.* Hunting Dragons Consulting. See http://bit.ly/bUwo8F.

[70]ActionAid interview, 23 September 2010. This comment, although made in response to our evidence related to Accra Brewery, was general and not in relation to a specific company.

[71]ActionAid interview, September 2010. This comment, although made in response to our evidence related to Accra Brewery, was general and not in relation to a specific company.

[72]Governments of Ghana and Switzerland, op cit.

[73]SABMiller Breweries Ltd and SKOL Breweries Ltd annual reports 2009.

[74]Email communication from SABMiller, 30 July 2010.

[75]SABMiller Management (IN) BV and SABMiller Management BV financial reports 2007-10.

[76]ActionAid visited the building on 27 October 2010.

[77]Email communication from SABMiller, 11 November 2010.

[78]Incorporation date obtained from Mauritius Ministry of Finance and Economic Planning. *Companies and business registration integrated system.* See http://bit.ly/c7HYqv.

[79]The effective rate for Mauritius given in Deloitte. Quick rates finder. See http://bit.ly/c6akGT.

[80]Email communication from SABMiller, 11 November 2010.

[81]Telephone call, 27 September 2010.

[82]For example, page 85 of: SABMiller plc. *SABMiller plc Quarterly divisional seminar series Africa and Asia.* SABMiller plc, 2009. See http://bit.ly/dw17re.

[83]ActionAid interviews, 16 September 2010.

[84]Accra Brewery Limited and Tanzania Breweries annual reports 2010.

[85]Based on the four Africa operating segment companies whose 2010 accounts are available: Accra Brewery, National Breweries Zambia, Tanzanian Breweries, Zambian Breweries.

[86]ActionAid interviews 16 September 2010.

[87]Accra Brewery Limited annual report 2010.

[88]Email communication from SABMiller, 30 July 2010.

[89]Tanzania Breweries annual report 2010.

[90]Accra Brewery Limited annual report 2010.

[91]Email communication from SABMiller, 11 November 2010.

[92]Accra Brewery Limited annual report 2010.

[93]Email communication from SABMiller, 11 November 2010.

[94]Databank Financial Services Limited. *Ghana Investor Brief: Accra Brewery.* See http://bit.ly/b1qYZL.

[95]ActionAid spoke to 12 officials in the Ministry of Finance and Ghana Revenue Authority over a period of several days in September 2010. This box is based on those interviews, which were conducted on an off-the-record basis. We shared our evidence and analysis regarding Accra Brewery with officials, but their comments are all general, rather than relating to a specific company.

[96]International Conference on taxation, state building and capacity development in Africa, op cit.

[97]ActionAid interview, 23 September 2010.

[98]UN. *Working Draft: Chapter 1 – An Introduction to Transfer Pricing.* UN, 2010. See http://bit.ly/dewglQ.

[99]Manuel, T. 4th *Meeting of the Forum on Tax Administration Cape Town, 10 January 2008. Address by Trevor Manuel, MP Minister of Finance of the Republic of South Africa.* Republic of South Africa, National Treasury Department, 2008. See http://bit.ly/9G48uJ.

[100]Durst, M. *It's Not Just Academic: The OECD Should Reevaluate Transfer Pricing.* Tax Analysts, 18 January 2010. Cited in Tax Justice Network, Michael Durst summary. See http://bit.ly/c4nMAM.

[101]ibid

[102]PricewaterhouseCoopers. *International Transfer Pricing 2009: Brazil. PricewaterhouseCoopers, 2009.* See http://bit.ly/9s4V4e.

[103]Avi-Yonah, S, Clausing, K and Durst, M. *Allocating Business Profits For Tax Purposes: A Proposal To Adopt A Formulary Profit Split,* Florida Tax Review, 2009.

[104]Avi-Yonah, S. *Between Formulary Apportionment and the OECD Guidelines: A Proposal for Reconciliation.* The John M. Olin Center for Law & Economics Working Paper Series, Paper 102, 2009. University of Michigan Law School.

[105]Accra Brewery Limited annual reports, 2007-2010.

[106]Payments from Africa totalling £83.0 million would buy 99.6 million bottles in ActionAid's local off-licence. At 23cm each, the bottles would stretch 14,200 miles. Africa's diameter is approximately 5,000 x 4,600 miles.

[107]Operating profit for the Africa segment in 2009-10 was US$313m, or £196m.

[108]Applying the company's 28.5% effective tax rate to the Africa segment's operating profit before exceptional items of US$316m gives US$90m. £13m tax loss in the Africa segment = US$21m. The calculation is 21/(90+21)=19%. See SABMiller Annual Report 2010.

[109]Combining UNESCO data on public expenditure per primary pupil as a % of GDP per capita and World Bank data on GDP per capita gives us figures per head. For example in Ghana, the figures are 17.9% and US$655, giving spending per pupil of US$117. Average estimated tax loss of £621,000 or US$994,000 gives 8,500 pupils. Figures are scaled to continental level as per those for tax loss to give 288,000 pupils in Africa, with a further 23,000 in India.

[110]SABMiller Finance BV financial report 2009.

[111]SABMiller Annual Return 2010.

[112]ibid

[113]SABMiller Sustainable Development report 2010, op cit.

[114]SABMiller Annual Report 2010.

[115]Kleinman, *M. Brewing Boss Launches Tax attack.* Sky News, 28 January 2010. See http://bit.ly/cKTITg.

[116]Email communication from SABMiller, 13 October 2010.

[117]Fellowes, R, and Mackay, G. CEO and CARAC Chairman Statement. SABMiller plc, 2010. See http://bit.ly/cVMFak.

[118]SABMiller plc. *SABMiller plc Sustainable Development Report 2010.* SABMiller plc, 2010. See http://bit.ly/9AkkXO.

[119]WWF. SABMiller. WWF. See http://bit.ly/a5HRZY.

[120]Henshaw, C. Private Sector Interest Grows in African Farming. *The Wall Street Journal*, 29 October 2010. See http://on.wsj.com/9POcBM.

[121]SAB Limited. SAB Zenzele. SAB Limited. See http://bit.ly/bZhj0z.

[122]Mackay, G. *The critical importance of the hard business case.* Financial Times, 14 September 2005. See http://bit.ly/bbmpXB

[123]SABMiller Annual Report 2010.

[124]SABMiller Sustainable Development report 2010.

[125]Kapstein, E. 2009. *The socio-economic impact of Nile Breweries in Uganda and Cervecería Hondureña in Honduras.* See http://bit.ly/fCS51R.

[126]Kapstein, E. 2009, op cit.

[127]Sustainability, 2006, *Taxing Issues.* See http://bit.ly/fg2MuM.

[128]SABMiller Sustainable Development report 2010.

[129]Ibid

[130]Email communication from SABMiller, 11 November 2010.

[131]Williams, *D. Tax and Corporate Social Responsibility.* KPMG, 2007. See http://bit.ly/bL6KnH.

[132]ActionAid interview, 23 September 2010. This comment, although made in response to our evidence related to Accra Brewery, was general and not in relation to a specific company.

[133]Fellowes, R and Mackay, G, op cit.

[134]SABMiller plc. Sam Reporting Portal. SABMiller plc. See http://bit.ly/9FxUsE.

[135]Tax Justice Network for Africa. *Nairobi Declaration on Taxation and Development.* See http://bit.ly/cxfYqW.

[136]For more information, see HM Treasury's consultations & legislation page, http://bit.ly/auxZdm.

[137]For more information, see Weyzig, F, and van Dijk, M. *Tax haven and development partner: Incoherence in Dutch government policies?* SOMO, 2007. See http://bit.ly/bvDjBL.

[138]Durst, M, op cit.

The Accra Brewery, Ghana.
PHOTO: JANE HAHN/ACTIONAID

ACTIONAID IS A PARTNERSHIP BETWEEN PEOPLE IN RICH AND POOR COUNTRIES, DEDICATED TO ENDING POVERTY AND INJUSTICE. WE WORK WITH PEOPLE ALL OVER THE WORLD TO FIGHT HUNGER AND DISEASE, SEEK JUSTICE AND EDUCATION FOR WOMEN, HOLD COMPANIES AND GOVERNMENTS ACCOUNTABLE, AND COPE WITH EMERGENCIES IN 45 COUNTRIES.

ActionAid UK
33-39 Bowling Green Lane
London
EC1R 0BJ
UK

Tel: +44 (0)20 3122 0561
Fax: +44 (0)20 7278 5667
Email: mail@actionaid.org.uk
Website: www.actionaid.org.uk

International Secretariat
Johannesburg

Asia Region Office
Bangkok

Africa Region Office
Nairobi

Americas Region Office
Rio De Janeiro

Europe Office
Brussels

Written and researched by Martin Hearson and Richard Brooks
Thanks to Emmanuel Budo-Addo, Adwoa Kwateng-Kluvitse and Anna Thomas

If you require this publication in a large print format please contact us on +44 (0)1460 23 8000.
Read the full report at www.actionaid.org.uk

Printed on 100% recycled paper
November 2010
ActionAid is a registered charity no. 274467