actionaid

Sweet nothings

The human cost of a British sugar giant avoiding taxes in southern Africa

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Executive summary

Taxes pay teachers. Taxes train nurses. Taxes maintain roads, deliver medicine, provide clean water. This is as true in the developing world as it is in the developed world. Tax is the most important, sustainable and predictable source of public finance for almost all countries.

If countries are to eradicate poverty and hunger, then they will need to do so by increasing their own public finances – principally through tax revenues. This should be possible. Growth in the global economy is now occurring predominantly in developing countries. Yet incomes, education, child mortality and nutrition have failed to catch up in some of the fastest-booming economies.[1] Funding continues to fall short for the public health services and agricultural assistance that can help reduce the burden of hunger; for the teachers, classrooms and schoolbooks that can help give the next generation a future free from poverty. Why?

This report explores one clear reason. In both developed and developing countries, the tax revenues needed to cover the ongoing costs of decent public services are being undermined by the ability of some of the wealthiest taxpayers – including many multinational companies – to effectively opt out of the corporate tax system through a combination of ingenious (and lawful) tax haven transactions, and huge tax concessions awarded by governments themselves.

To see how, and with what consequences, this report examines the tax practices of one of the world's largest food multinationals, the **Associated British Foods (ABF) group**, in one of the most impoverished places in which it operates. ABF produces staple brands like Silver Spoon sugar, Kingsmill bread, Ryvita and Patak's, and also owns clothing chain Primark. We look particularly at the activities of ABF's Zambian subsidiary, **Zambia Sugar Plc**.

The southern African country of Zambia demonstrates clearly the paradox of continuing hunger amidst plenty. Despite Zambia "graduating" last year from a low-income to a lower-middle-income country, poverty levels have stagnated, with the proportion of rural Zambians living in poverty increasing to nearly 90% since 2001.[2] Zambia is an exporter of foodstuffs, including sugar; yet 45% of Zambian children are undernourished to the point of being stunted.[3]

The argument of this report is simple: poverty and hunger cannot be ended if developing countries cannot raise revenues to provide for the needs of their own citizens.

A key part of this equation is stopping corporate tax avoidance and questionable corporate tax breaks, which together deny critical revenues to some of the world's poorest countries. The case of ABF's sugar operations in Zambia exemplifies a problem stretching across Africa and beyond: how countries both rich and poor are struggling to tax globally mobile profits and capital, and as a result are haemorrhaging tax revenues that might otherwise be available for the fight against poverty.

What we found

ActionAid's investigation found that ABF's Zambian subsidiary uses an array of transactions that have seen over a third of the company's pre-tax profits – over US$13.8 million (Zambian Kwacha 62 billion) a year – paid out of Zambia, into and via tax haven sister companies in Ireland, Mauritius and the Netherlands.[4] Some of these transactions reduce Zambia Sugar's taxable profits, while the structure of others avoids the Zambian taxes ordinarily levied on such foreign payments themselves. Thanks to this financial engineering, we estimate that Zambia has lost tax revenues of some US$17.7 million (ZK78 billion) since 2007, when ABF took over the Illovo sugar group.

To put this figure in perspective:

- In a country where over a third of child deaths are related to undernutrition,[5] we estimate that the tax-haven transactions of just this one British headquartered food multinational has deprived the Zambian public purse of a sum over 14 times larger than the UK aid provided to Zambia to combat hunger and food insecurity in the same period.[6]
- Add in the effect of special tax breaks received by Zambia Sugar – which we estimate will in future years reduce the company's tax bill by at least US$3.6 million a year and rising – and the foregone tax revenues in a single year could likely cover the entire cost of the interventions needed to tackle child malnourishment in Zambia.[7]
- We estimate that the amount of tax the Zambian government currently foregoes through the company's tax haven transactions is enough to put an extra child in primary school every 12 minutes.[8]

While the main corporate tax rate in Zambia is 35%, since 2007 ABF's Zambian subsidiary has, overall, paid less than 0.5% of its US$123 million pre-tax profits in corporate income tax – averaging under ZK450 million (US$90,000) a year. The company took the government to court to win a special retrospective tax break in 2007 and received a large refund of tax paid in earlier years. Between 2008 and 2010, Zambia Sugar made no corporate income tax payments at all.

From 2008 to 2010, an agricultural labourer employed by the company has paid more income tax in absolute terms than the company whose US$200 million revenues have benefitted from her labour.

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Associated British Foods told us that this tiny tax bill is the result of capital allowances that companies in Zambia are entitled to claim against their taxable profits: in the case of its Zambian subsidiary, resulting from spending on a recent expansion of its Zambian sugar mill, now the largest in Africa. Certainly generous capital allowances – the subject of current Zambian government scrutiny – may significantly reduce the company's tax liability. But we have also identified four strategies that have significantly reduced Zambia Sugar's taxable profits to begin with, and that have avoided separate Zambian taxes on the company's financing and dividends:

- **Mystery management:** Zambia Sugar has paid out large 'purchasing and management' fees to an Irish sister company – a company that seems to have no physical presence in Ireland.[9] Every year since 2006, this company's audited Irish accounts have also repeatedly stated that the company has no employees, while providing Zambia Sugar with nearly US$2.6 million worth of management services each year, though ABF has subsequently claimed that the "company employs some 20 individuals, the notes to the company's accounts failed to reflect this".[10] We also examine similar payments for 'export agency' services to a sister subsidiary company registered in Mauritius that has no employees permanently there, according to other Mauritius-based Illovo staff.
- **A Dublin dog-leg:** Large loans from South African and US commercial banks, borrowed to finance the recent expansion of the company's estate and sugar mill in southern Zambia, have been 'dog-legged' through Ireland – despite being borrowed in Zambian currency and repaid via a bank account held by the Irish company at a bank branch in downtown Lusaka. This arrangement – sometimes described as 'treaty shopping' – takes advantage of a particularly unfair tax treaty between Zambia and Ireland, which prevents the Zambian government from charging any of the tax that would normally be levied on the interest payments made on these loans.
- **Order a tax-free takeaway:** Zambia Sugar is able to send profits back to its parent company, Illovo Sugar Ltd, nearly tax-free by re-shuffling the ownership of the company through a string of Irish, Mauritian and Dutch holding companies, taking advantage of tax treaty loopholes and tax haven regimes to cancel tax on its dividend payments.

As well as these ingenious tax haven transactions, since 2007 the company has been able to enjoy **its own special low tax regime within Zambia itself**, exploiting two separate tax breaks originally intended respectively for domestic Zambian farmers and big foreign investors.

- First, taking the Zambian Revenue Authority to court in 2007, the company successfully won the right to reclassify all of its revenues as 'farming income' – despite three-quarters of its income and profits in fact deriving from industrial sugar manufacture, partly from sugarcane purchased from independent cane-growers.

  This has allowed the company to reduce its tax rate from the 35% paid by most Zambian businesses to just 15%. As well as low taxes for the foreseeable future, Zambia Sugar also received a US$6.3 million (ZK24.6 billion) rebate for previous years. In 2012 the Zambian government reduced this 'farming' tax rate further to just 10%, a reduction that in future years will push Zambia Sugar's tax rate below some of the rates its sister companies enjoy in tax havens.
- Second, since 2011 the company has been granted an additional tax break to offset the costs of an expanded factory, under a special Zambian tax regime intended to attract new foreign investment. The precise terms of this tax break remain confidential, despite a Zambian law requiring the government to make information about investment incentives granted to big companies to be publicly accessible. Despite the company already booking record profits since its expansion, Zambia Sugar can use this second tax break to keep its tax bill low for years to come.

Plain vanilla business practice

We do not allege that any of the companies in this report have done anything illegal. Indeed, sadly their tax practices are not even particularly unusual. A growing litany of examples from Europe and North America suggest that the arrangements we describe here are simply 'plain vanilla' business practice for many multinationals, thanks to loopholes in prevailing international tax rules coupled with tax competition in developing countries – an international 'race to the bottom' to attract foreign investors with huge tax breaks.

Tax avoidance is less widely documented in the developing world than in the developed, but the findings of this report and ActionAid's previous investigation of Africa's biggest brewer, the UK-headquartered SABMiller, suggest that it is no less prevalent.[12] Indeed there is evidence that the developing countries which can least afford it may be haemorrhaging more of their corporate tax revenues than countries like the UK.[13]

In many places, multinational companies and their advisers are beginning to regard paying corporate taxes as optional. When John Whiting, head of the UK Treasury's Office of Tax Simplification and policy director of the UK's Chartered Institute of Taxation – the UK trade body of tax advisers –

> “It’s not right if you have businesses [who] instead of paying some taxes somewhere are paying no taxes anywhere.”
>
> UK Prime Minister, David Cameron

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was asked recently why many large multinationals were not paying corporate tax, he replied: “In many ways corporation tax is a bit of a bonus.”[14]

For ordinary taxpayers, of course, paying tax is far from optional or a “bonus”. Ordinary people have no choice but to pay the business taxes collected directly from their shops and small businesses, the income tax deducted from their payslips, and the VAT included in the price of the goods they buy. This includes the workers who produce and sell multinational companies’ products. While the ABF group’s African sugar operations have shrunk their own tax bill through ingenious tax haven transactions, and have been granted even further tax breaks, their workers in Zambia have continued to pay their taxes on their wages.

From 2008 to 2010, an agricultural labourer employed by the company has paid more income tax in absolute terms than the company whose US$200 million revenues have benefitted from her labour. And even when Zambia Sugar has been paying some corporate income tax in Zambia, as in 2011 and 2012, it has still paid **20 times** less income tax, relative to its income, than the tax paid by its own agricultural workers; and **90 times** less than the tax paid by the small traders who sell Zambia Sugar’s products to consumers.

This report traces the international money trail to find out how this tax injustice has happened. We look at what it means for those struggling with undernourished families, overcrowded schools and underfunded health services on the doorstep of Zambia Sugar’s vast Mazabuka estate.

Where else?

Beyond Zambia, the ABF group also has sugar mills and plantations in Mozambique, Malawi, Tanzania, South Africa

Newly harvested sugar cane being hauled on the Zambia Sugar estate.

PHOTO: JASON LARKIN/ACTIONAID

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and Swaziland. So far ActionAid has only been able to access the accounts of the Malawian, Zambian and South African companies, as these are publicly listed companies.

The other subsidiaries' tax behaviour remains closed to public scrutiny. Unless ABF publishes the accounts of the rest of the Illovo Group companies, including in Mauritius and other tax havens, we cannot know whether other African countries are getting a fair tax deal from their sugar industries.

What can be done?

There is now emerging international consensus that something must be done to stop corporate tax avoidance. UK Prime Minister David Cameron has promised international action, saying that, "it's not right if you have businesses [who] instead of paying some taxes somewhere are paying no taxes anywhere".[15]

He has pledged that when the UK hosts the G8 summit in June 2013, "this G8 will seek to maintain the momentum generated by the G20 on information exchange and the strengthening of international tax standards. We will look to go further including, for example, on tax havens by improving the quality and quantity of tax information exchange. And we will work with developing countries to help them improve their ability to collect the tax that is due to them too."[16] Likewise Zambian finance minister Alexander Chikwanda has promised to toughen Zambian laws to prevent companies shifting profits into tax havens, and a comprehensive review of Zambia's "proliferation of inefficient tax incentives" during 2013.[17]

This report shows how tackling the problem will require both national and international action across three fronts: companies' ingenious financial engineering, weak international tax rules, and governments' deliberate tax policies. While the group of companies detailed in this report have taken (lawful) advantage of loopholes in international tax laws, they have also benefited from tax breaks deliberately written into countries' tax codes, responsibility for which ultimately lies with governments.

- **Responsible companies** must make paying their fair share of corporate tax a core part of their responsibilities to the countries where they make their profits.
- **Governments** must close loopholes in national tax codes and tax treaties that allow the kinds of tax haven transactions outlined in this report. **Donor and developed country governments** have a particular responsibility to ensure that their own tax regimes and tax treaties do not make it easier for corporate profits to be siphoned out of developing countries.
- **Governments** must not give away vital revenues through corporate tax breaks without evidence of real benefits to their citizens in terms of new jobs, economic opportunities and public revenues.
- Finally, **international action** is needed to end the secrecy and abusive tax regimes of tax havens around the world.

Responsible companies; stronger tax authorities; better tax laws; and, critically, public action and scrutiny – all have a part to play in protecting the revenues that Zambia and many other countries need to resource their own futures.

ActionAid's research

To understand the tax practices of ABF's sugar operations, even focusing on just one company in Zambia, ActionAid has had to obtain corporate and legal documentation from Jersey, Ireland, the Netherlands, Malawi, Mali, South Africa, the United Kingdom and Zambia; to analyse subsidiary companies' accounts covering the past six years; and to speak with Zambian tax officials and investment authorities.

While Zambia Sugar's management declined to meet ActionAid, we have spoken to individuals with an inside knowledge of ABF's subsidiaries in Ireland, Mauritius, the UK and Zambia, and put questions to the banks and company service providers involved in the tax-saving transactions we discuss in this report.[18]

Finally, we have put detailed questions to Associated British Foods and Zambia Sugar about the findings of this report. Where possible we have included their responses in this report, and are also publishing their full response, and the responses of other companies named in this report, on ActionAid's website.

Introduction

As Caroline and Isaac have duly paid taxes on their incomes, Zambia Sugar has in some years been able to make no payments of corporate income tax at all.

Meet three very different taxpayers.

Caroline Muchanga works from 5.45am to 9pm, seven days a week, in Nakambala market in the town of Mazabuka, southern Zambia. At her small *kantemba* (market stall) she sells drinks, toiletries and foodstuffs, including bags of the 'White Spoon' sugar that is produced on Zambia Sugar's vast plantation and factory less than a kilometre away. On a good day Caroline makes ZK20,000 (about US$4).

At 7am Caroline's two daughters leave for their volunteer-run community school, where Caroline says the teaching is not always reliable. "We take our children there out of desperation, as we mostly want to avoid them to be at home," she says. Government schools in Zambia have professional, paid teachers and usually better facilities, but despite her 15-hour workdays Caroline cannot consistently afford to pay the costs of the books and uniforms. The Zambian government has pledged to make primary education free, but the government education budget can still only provide around ZK32,000 (US$6.50) per child per month,[19] and so most schools still charge additional parent-teacher association (PTA) fees to cover the cost of books, teaching materials and school maintenance. Keeping up with these payments is simply beyond the means of some parents. Only 53% of Zambian schoolchildren complete their primary education, a fifth fewer than a decade ago.[20]

When her children get sick, Caroline takes them to the government-funded Nakambala Urban Health Centre, just behind the market. "We spend so much time in the queues – even three hours due to so many patients who are there... when you go to the government hospitals, you find that there is no medicine." When her smallest child was recently unwell, the clinic did not have the necessary drugs and had to give Caroline a prescription to buy the medicine at her own cost for ZK10,000 – nearly half her daily earnings.[21] Every day, Caroline pays her business taxes. Indeed, she has no choice but to do so: each evening a council official comes to collect a market levy of ZK1,000 (20 US cents), whether Caroline has made any money that day or not.[22]

Isaac Banda[23] is a seasonal cane-cutter for Zambia Sugar. He starts work at 5.30am harvesting sugar cane on Zambia Sugar's 17,000 hectare (42,000 acre) estate just outside Mazabuka town, as he has done for 10 years.[24] He provides for his wife, two sons and two daughters on a monthly salary of ZK2,213,000 (US$440).[25] Isaac makes a better living than many in Mazabuka. But in a town built on sugar, he still sometimes struggles to feed his family: with rising prices in Zambia, basic food and provisions for a family of six now costs around ZK3,500,000 (US$700) a month, over half as much again as Isaac's monthly income.[26] And he too pays his taxes, deducted from his pay at 25% on all his earnings over the Zambian personal tax threshold.[27]

Finally, meet **Zambia Sugar Plc**, a subsidiary of UK food giant Associated British Foods and part of its Illovo group of companies – Africa's largest sugar producer. Its factory just outside Mazabuka is the largest sugar mill in Africa. Zambia Sugar makes nine-tenths of all the sugar produced in Zambia, both for Zambia's growing consumer market and for export to the UK and elsewhere in Europe.[28] Over the past five years the company has had record annual revenues of over ZK1 trillion (US$200 million), and healthy profits of over ZK83 billion (US$18 million) a year.[29]

Who pays more tax: Zambia Sugar, Caroline Muchanga who sells the company's product, or Isaac Banda who helps produce it? The answer is surprising. In three of the last five years (2008-2010) both Caroline and Isaac have paid **more income tax *in absolute terms*** than the company whose US$200 million revenues have benefited from Caroline's sales and Isaac's labour. In these years, as Caroline and Isaac have duly paid taxes on their incomes, Zambia Sugar has been able to make no payments of corporate income tax at all.[30] In the last two years (2010/11 and 2011/12) the company has paid some income tax, but even then at a rate of just 0.5% of its income: **90 times** less than Caroline, and **20 times** less than Isaac, relative to their respective incomes.

A tax collector gathers taxes in Nakambala market.

PHOTO: JASON LARKIN/ACTIONAID

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Table 1: **Paying a fair share? Income tax payments of different taxpayers within the Zambia Sugar supply chain**

	Caroline Muchanga	**'Isaac Banda'***	**Zambia Sugar Plc**
	Stallholder selling sugar in Nakambala market, near the Zambia Sugar estate	Cane-cutter employed by Zambia Sugar Plc	International sugar company
Average monthly net income (Zambian Kwacha)	650,000[32] (income[31])	2,213,000	56,270,667,000
Average monthly income tax paid (Zambian Kwacha)	30,000	25,500	0 (2008-2010)
% of net income paid in income tax	**4.6%**	**1.2%**	**0** (2008-2010)

* Not his real name

PHOTOS: JASON LARKIN/ACTIONAID

> “Zambia Sugar should be paying more tax than us.”
> Caroline Muchanga, stallholder

Introduction

The real bottom line

The rest of this report explores how this extraordinary tax outcome has been achieved. Much of this analysis is based on dry financial statements and reports: black-and-white documents designed to show investors and regulators the performance and profitability of the company – the ‘bottom line’. Many multinational companies regard tax as a drain on the bottom line, an inconvenient cost of doing business which they will go to convoluted lengths to avoid.

But for those living in places where multinational companies make and sell their products, and from where the companies derive their profits, there is another bottom line. The ability of families to feed themselves, send their children to school, and keep them healthy. This, for most people, is the real bottom line. In developing countries right now, next door to some of the world’s most profitable multinationals, these basic needs and rights are too often denied in overcrowded schools, communities without running water, clinics without enough staff or medicines. Companies that rely upon decent infrastructure and an educated, healthy workforce ultimately suffer too.

Caroline’s bottom line is clear. “Zambia Sugar should be paying more tax than us.”

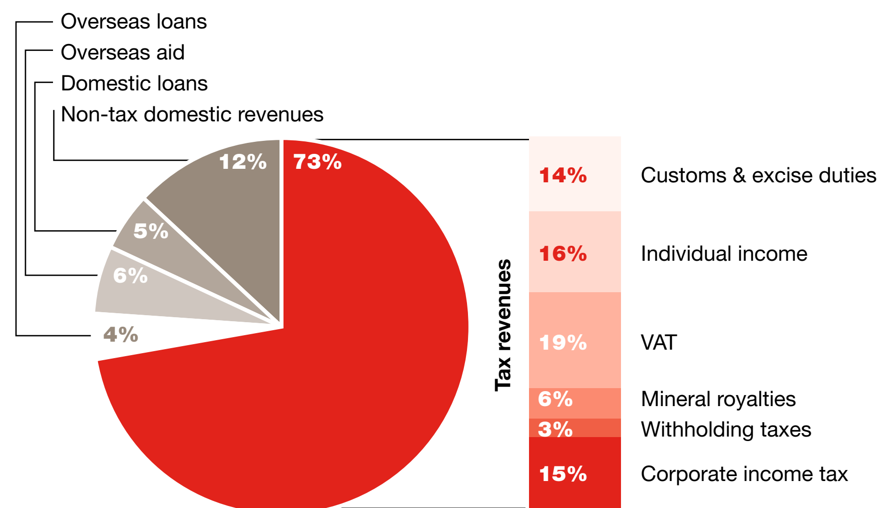
Riches unrewarded

Relative to the size of their economies, African countries’ tax receipts are on average around half those of developed countries like the UK.[33] Zambia’s economic paradox, like many other resource-rich countries, is that its tax take has steadily declined relative to its growing economy. Zambia’s GDP has grown by nearly 6% a year in the last decade, a boom which has recently seen the country reclassified from ‘low-income’ to ‘lower-middle-income’.

In the first decade after independence the Zambian government gathered taxes of around 25-30% of GDP, but today it gathers as little as 10-12%, despite hugely increased revenues in Zambia’s mining and other export sectors. These revenues finance three-quarters of the Zambian budget.[34]

Average class sizes in Zambia’s schools have increased from 37 to 57 over the past two decades.[35] There is only one doctor for every 10,000 Zambians (compared to one for every 370 people in the UK).[36] And despite Zambia’s flourishing economy, the number of Zambians living in absolute poverty increased from six million in 1991 to nearly eight million in 2010.[37]

Figure 1: **Zambian government revenues, 2012-13**



A global food giant

Associated British Foods, the Illovo group and Zambia Sugar Plc

Associated British Foods (ABF) is a hidden giant in the global food industry. You may not know its name, but its products are probably on your kitchen shelves, including well-known UK brands like Kingsmill, Ryvita and Ovaltine. ABF is Britain's second-largest food and drink manufacturer, and also owns the clothing retail chain Primark.[38] Beyond Europe, the company's operations range from yeast factories in Brazil to spice production in India. A FTSE 100 company, ABF has operations in 46 countries and an £11 billion (ZK90 trillion) turnover – almost as large as Zambia's entire GDP, and nearly three times the Zambian national budget.[39]

ABF is also the biggest sugar producer in the UK, as well as in Africa. Its subsidiary, British Sugar, sells one in every two spoonfuls of sugar consumed in the UK, from the ubiquitous UK-produced 'Silver Spoon' to Fairtrade-certified sugar processed by the group's sugar mills in Malawi and Zambia and sold in the UK under its 'Billingtons' speciality sugar brand.[40] Its 'White Spoon' sugar is consumed by most Zambian households.

ABF's move into African sugar began in 2006 when it bought a majority stake in the Illovo Sugar group, the continent's largest sugar producer. A long-standing South African sugar producer, Illovo had by the mid-2000s expanded rapidly throughout southern and eastern Africa, primarily through buying up previously state-owned sugar companies. In 1996 Illovo bought up sugar milling operations in Mozambique (Maragra Açucar), followed in 1998 by sugar estates in Malawi (the previously state-owned SUCOMA), Tanzania (the Kilombero Sugar Estate) and Swaziland (Ubombo Sugar). In April 2001 it bought a controlling interest in Zambia Sugar (privatised in 1995), now Africa's largest sugar operation. Illovo's African sugar estates now cover an area twice the size of London.[41]

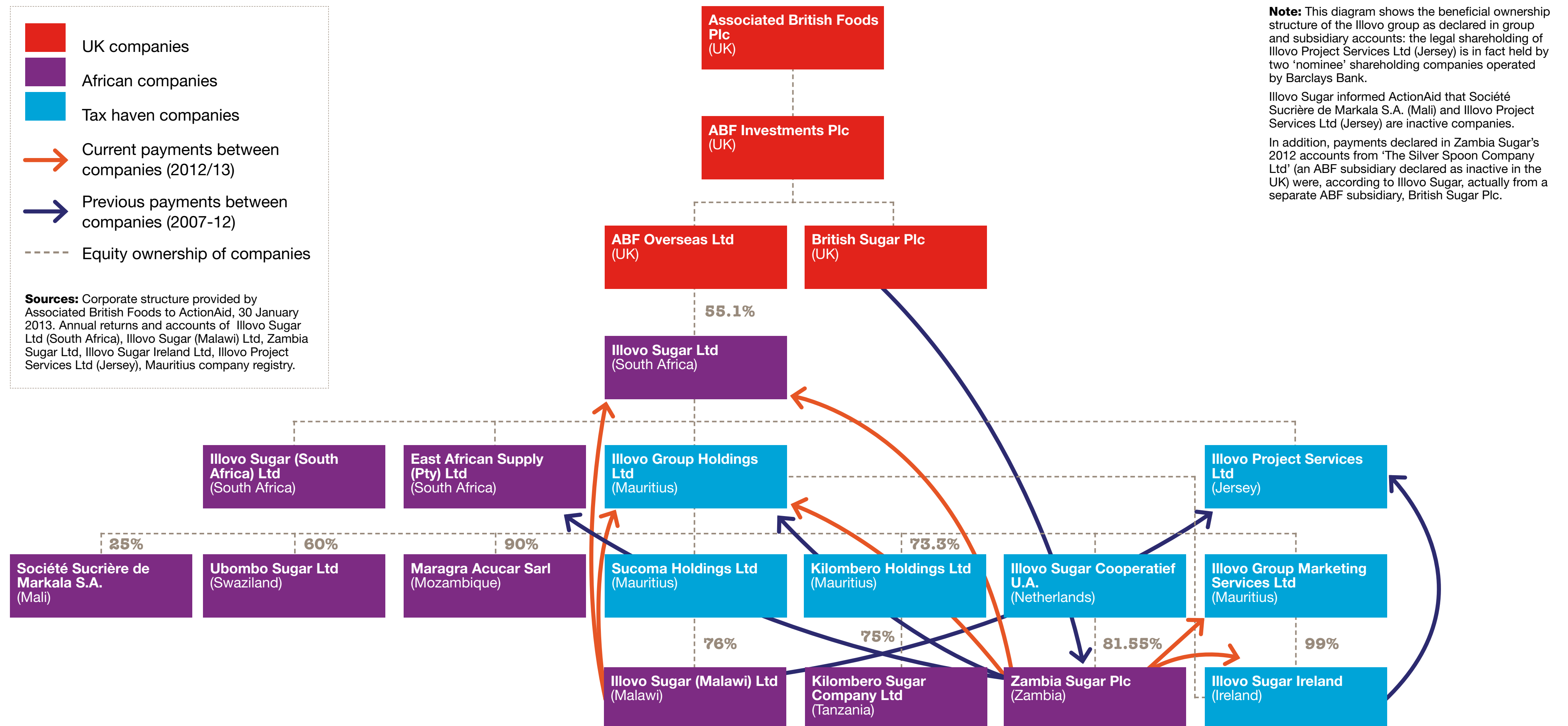
This Illovo group of sugar companies has long been an African-headed operation. The Illovo group is owned by ABF through a central parent company in South Africa, Illovo Sugar Ltd, described as the "corporate centre of the group",[42] from where Illovo's African operations have in practice been coordinated since they were established in the 1990s.[43] Yet our investigations have found that the ownership, management, procurement, finances and profits of their onshore African sugar operations are routed through a network of companies registered in the tax havens of Mauritius, Jersey, the Netherlands and Ireland.

This report shows the impact this maze of tax haven companies has on ABF's Zambian tax bill.

Associated British Foods plc

A global food giant

Figure 2: Illovo Sugar's operations and payments between companies



Sources: Corporate structure provided by Associated British Foods to ActionAid, 30 January 2013. Annual returns and accounts of Illovo Sugar Ltd (South Africa), Illovo Sugar (Malawi) Ltd, Zambia Sugar Ltd, Illovo Sugar Ireland Ltd, Illovo Project Services Ltd (Jersey), Mauritius company registry.

Note: This diagram shows the beneficial ownership structure of the Illovo group as declared in group and subsidiary accounts: the legal shareholding of Illovo Project Services Ltd (Jersey) is in fact held by two 'nominee' shareholding companies operated by Barclays Bank.

Illovo Sugar informed ActionAid that Société Sucrière de Markala S.A. (Mali) and Illovo Project Services Ltd (Jersey) are inactive companies.

In addition, payments declared in Zambia Sugar's 2012 accounts from 'The Silver Spoon Company Ltd' (an ABF subsidiary declared as inactive in the UK) were, according to Illovo Sugar, actually from a separate ABF subsidiary, British Sugar Plc.

"The sweetest town in Zambia" – a sign on the road to Mazabuka in southern Zambia, where Zambia Sugar is located.

PHOTO: JASON LARKIN/ACTIONAID

Mazabuka: the sweetest town in Zambia?

> “Our sugar factories employ loads of people. The areas around them become islands of relative prosperity.”
>
> ABF Chairman, George Weston

How tax-funded services struggle in Mazabuka

In a speech to London's Royal African Society in 2010, ABF's chairman George Weston said "our sugar factories employ loads of people. The areas around them become islands of relative prosperity."[44] ABF's Corporate Responsibility reports also describe its social investment programme in Zambia and elsewhere in southern Africa: providing employees with schooling and medical services on its estates; building a new classroom block during 2011 at the Mazabuka Girls' High School; donating sugar to school feeding projects.[45]

ABF told ActionAid that "the payment of tax is only one way in which [our] Illovo [group] supports the Government and local community in the countries in which it invests. In many countries, Illovo's most important contribution is the direct provision of services to the local community and its workers, for example, providing healthcare and educational facilities, feeding schemes and improvements to public facilities."[46]

These are welcome interventions in a country where, despite enormous natural wealth, 45% of children under five are malnourished to the point of stunting, average class sizes (at nearly 60) are amongst the highest in Africa, and two-thirds of people live below the poverty line.[47] And there is no doubt that the employment Zambia Sugar creates around its Mazabuka estate is critical to local livelihoods. Many parts of Zambia are certainly poorer than Mazabuka and its surrounding communities. But the comparison is relative. A closer look at this "island of relative prosperity" shows how jobs, philanthropy and company-sponsored social projects do not remove the need for sustainable, well-funded clinics, schools, roads and water supplies available to everyone, not just to employees or selected communities. Even amidst Mazabuka's lush green cane fields, the availability of overstretched public services is sometimes literally a matter of life and death. Such public services rely, of course, on everyone paying their due taxes.

Indeed, we found that many of Zambia Sugar's employees themselves rely on government-funded clinics and schools, since free access to the company-run schools and clinics cited in ABF's corporate social responsibility reports is not granted to the families of seasonal workers, who constitute the majority of Zambia Sugar's employees, and who are also generally the lowest paid.[48] It is many of these workers who have to pay their families' school fees and medicine charges to bridge the gap of inadequate public funding for education and healthcare. And although Zambia Sugar has told us that it "bears approximately 95% of the cost of running the [company's] medical facilities", charges are also taken out of workers' wages for their own treatment at the company's clinics.[49]

> “We do manage to eat, but not always. It happens, but not every [meal] time.”
>
> Mutinta Mulenga

Hunger amidst plenty: Nakambala Health Centre, Mazabuka

Mazabuka’s local economy may be based on calorie-rich sugar, but it has a chronic problem with undernourished children. Zambia as a whole has one of the highest rates of child malnutrition in southern and eastern Africa. The results are clear to see at the government-run Nakambala Urban Health Centre clinic.

Dailess Mwiinga, or ‘Mrs Sholoka’ as she is known to everyone, is a nutritional demonstrator attached to the public clinic. She works to help mothers improve the nutrition that their babies and children receive. “We receive up to 15 [undernourished] children per week, and if added to those other children who have been here longer… the number goes up to about 30 every Friday. Just about two children die every month.”[50]

One of the mothers with whom Mrs Sholoka has started working is Mutinta Mulenga, aged 19. Mutinta’s husband works as a miller, grinding maize. Yet they struggle to feed their own family. “We do manage to eat, but not always. It happens, but not every [meal] time,” says Mutinta. After deducting loan repayments and rent from her husband’s monthly salary of ZK300,000 (US$60), they are left with just ZK190,000 (US$38) to buy food each month. They can often only afford to eat cheap but filling nshima (maize porridge) rather than vegetables and other more nutritious but expensive foodstuffs. “The children cry a lot if they don’t get food, and they get sick eventually.”[51]

Mutinta’s youngest child, Paul, is just over a year-and-a-half old. He is seriously underweight, and chronically unwell. “Since his birth he’s been suffering from diarrhoea,” Mutinta says. “It makes me worried… Two days they are well, and two days they get sick. I fear a lot when my child gets sick because of hunger.”[52]

Nutrition demonstrator Dailess Mwiinga conducts a nutrition class for mothers at Nakambala clinic, Mazabuka.

PHOTO: JASON LARKIN/ACTIONAID

Mrs Sholoka explains that children are under-nourished in Mazabuka not because there isn’t enough food for everyone, but because low incomes force people to buy cheaper, less nutritious food; because parents have poor nutritional knowledge; because they don’t always have the land, capital, time or skills to grow food for their own families; because of the prevalence of children born with HIV; and because of other illnesses caused by and compounding undernourishment itself.

Much can be done, however, by educating families long-term on the importance of basic nutrition. But the clinic has no money to pay for nutritional demonstrators – Mrs Sholoka works as a volunteer, and is already overstretched. Nor is there enough money to pay for the

> “If that tax was being paid, maybe that money would be used...to access the hard to reach places where we are not able to reach frequently.”
>
> Sister Florence Mweemba, Nakambala

cooking oil, beans and vegetables previously given out by the clinic to mothers, paid for by charitable organisations whose programmes in Mazabuka are no longer operating.[53] “What I think is that if they [the company] did not stop paying those taxes, it would have been helping those who do not work... Tax is important because the government gives it back to us at the end of the day.”[54]

Most of the patients at Nakambala Urban Health Centre have to wait several hours to see the medical staff, who treat around 200-250 patients a day – considerably more than the clinic's intended capacity. Sister Florence Mweemba, in charge of the clinic, explains that patients from communities living on the Zambia Sugar estate and other areas outside the Nakambala catchment area come to use the clinic, since many of the workers' families are not able to access free treatment at the company's own clinics: “The temporal [temporary] workers come here to access health services because they're regarded [at Zambia Sugar's clinics] as private, and being a private patient they are being charged a lot of money... We've tried maybe to talk to them [Zambia Sugar's clinics]. They say these are not permanent workers, they're just seasonal, they come and go. The same applies with dependants [of seasonal workers] – they are not the immediate family members, so even they are regarded as private. If they are to access medical services at Zambia Sugar they [have] to pay something.”[55]

Sister Florence explains that despite this extra burden, the government can only provide enough monthly medical supplies for Nakambala clinic's immediate catchment area. “If it was only for our catchment area the drugs are going to be enough. But since we are catering even for people from outside, that's why we run short of drugs.” For example, when ActionAid visited in the middle of the month, Sister Florence explained that the clinic was already running short of the antibiotic used to treat endemic dysentery – a key cause of undernutrition among children. The nurses can sometimes substitute other drugs, but in some cases substitution is not possible, and the patients have to buy their own medicine from private pharmacists in town. “We give prescription whilst waiting for [a new monthly delivery]... For those who can afford, we give prescription to go and buy... If people can't afford to pay for their prescription they just go, there's nothing we can do and there's nothing they can do.”[56]

Sister Florence also says additional public funding could help provide enough medicines, food assistance and nutritional demonstrators in areas they cannot currently reach.

“We feel bad because if that tax was being paid, maybe that money would be used... to access the hard to reach places where we are not able to reach frequently... We may even have money for fuel for us to be going there to the people at their doorsteps. But since funding is not enough, we are not able to reach the people at their doorsteps, only the neighbouring or surrounding areas which we are able to walk [to].”

Mutinta Mulenga and her son Paul attend a nutrition demonstration at Nakambala Urban Health Centre, Mazabuka.

PHOTO: JASON LARKIN/ACTIONAID

Going, going, gone...

Four ways Zambia Sugar shrinks its tax bill

Unlike many of the families attending Nakambala Urban Health Clinic, Zambia Sugar appears to be in fine financial shape. It produces the vast majority of the sugar consumed in Zambia; it has tripled its sugar exports since 2010, its revenues have risen 250% in the past five years, and its operating profits have increased fourfold in the same period.[57]

Although the company has had to use some of these operating profits to pay off loans taken out in 2007 to finance a major expansion of its Nakambala sugar estate and mill, the cost of interest and loan repayments have already been offset by record revenues since the expansion was completed. In 2012 its profits – even after the cost of these interest and loan repayments – were already back at 2009 levels.[58]

Despite this embarrassment of riches, the corporate income tax that the company has paid to the Zambian Revenue Authority (its 'cash tax') has, since 2007, averaged less than 0.5% of its pre-tax profits – an average of less than ZK450 million (US$90,000) a year, and considerably less than the 35% rate that Zambia normally applies to companies' profits. Between 2008 and 2010 Zambia Sugar Plc made no corporate income tax payments at all, although it continued to book tax liabilities.[59]

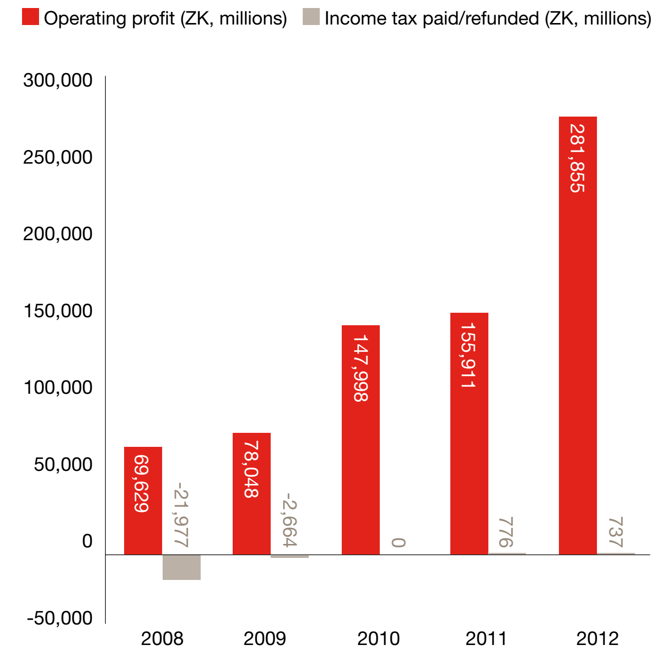
Asked about this extraordinarily low tax bill, Zambia Sugar's parent company told us that "[a]s a direct result of our investment in Zambia since 2008 [i.e. the expansion of the sugar factory], the availability of substantial capital allowances has led to virtually no corporate tax being payable".[60] This is undoubtedly a plausible explanation for some of the discrepancy between the usual Zambian rate of corporate income tax and the far lower tax rate applied in practice to the company's (continually growing) pre-tax profits. Zambia grants large capital allowances – a tax incentive permitting investors to deduct much of the value of new plant, buildings and equipment from their taxable profits – to major investors. Indeed, the government has recently sought to limit its revenue losses by reducing some especially generous capital allowances, particularly in the mining sector – the first wave in a wider Zambian review of tax breaks and incentives granted to big companies across all sectors.[61]

But we have also identified four more intricate, company-specific ways in which the Associated British Foods group's Zambian operations appear to have minimised their Zambian tax liabilities in recent years.

- **First**, large payments are being made to sister companies in tax havens (Step 1), which can be deducted as expenses in Zambia, shrinking the company's taxable profits in the country (against which capital allowances can then be deducted) while booking profits outside of Zambia.
- **Second**, Zambia's share of the taxes levied on profits sent back to Zambia Sugar's foreign parent, and on interest paid to foreign banks financing the company's expansion, is being avoided by routing those overseas payments through a maze of tax haven sister companies (Steps 2 and 3).
- **Finally** (Step 4), Zambia Sugar has negotiated to qualify for two special tax breaks – one whose terms remain secret – which has led to a massive tax refund, and for years to come will actually bring the Zambian tax rate applied to this highly profitable company below the tax rate even in some tax havens.

We do not allege that Zambia Sugar or its parent company have done anything unlawful – or even particularly unusual.

Figure 3: **An increasingly profitable company, with a tiny corporate tax bill**

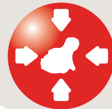


Going, going, gone…

The four steps described in this report:

Take advantage [steps 1 & 2] of international tax rules that make it easy for companies to shift profits out of poor countries and into tax havens, where those profits are recorded on paper, but where companies may have no sales, no production, and even no staff.

Use tax haven jurisdictions [steps 1-3] whose fiscal regimes and secrecy laws have in many cases been specifically designed to attract 'offshore' businesses who do not locate their physical operations there.[62]



Exploit [step 4] an opaque investment incentive regime which has become the norm for government tax policy in many developing countries, under pressure from international institutions and investors.

Mazabuka, Zambia.One of the main sugar processing factories on the Zambia Sugar plantation.

PHOTOS: JASON LARKIN/PANOS PICTURES/ACTIONAID

Going, going, gone…

Step 1: **Mystery management in Ireland (and Mauritius)**

ABF's chief executive has candidly described its sugar plantations and factories as "largely white South African managed".[63] Many of the Illovo group's specialised personnel are located in South Africa, home to the group's African headquarters, to which Zambia Sugar and its sister sugar companies elsewhere in Africa pay annual fees for management services and procurement.[64]

Yet since Illovo took over Zambia Sugar in 2001, the Zambian company has also paid separate, hefty annual fees for 'purchases and management services' to a fellow subsidiary, Illovo Sugar Ireland, registered 8,000 kilometres away in an office block in Dublin.[65] Since 2007, Zambia Sugar has paid this Irish sister company over US$47.6 million (ZK209 billion), including nearly US$2.6 million a year for management services;[66] and, since at least 2009, an additional US$6.5 million (ZK32.5 billion) received by the Irish company as 'secondment fees'.[67]

In common with many other countries, fees paid overseas for management, consultancy and similar high-value services can ordinarily be taxed in Zambia – in the form of a 15% withholding tax.[68] This would be the case for management fees paid to South African companies or individuals. And in the 2013 Zambian budget, Finance Minister Alexander Chikwanda actually raised the withholding tax on management fees to 20% "to help fund development programmes the government is undertaking".[69] By paying management fees to or via an

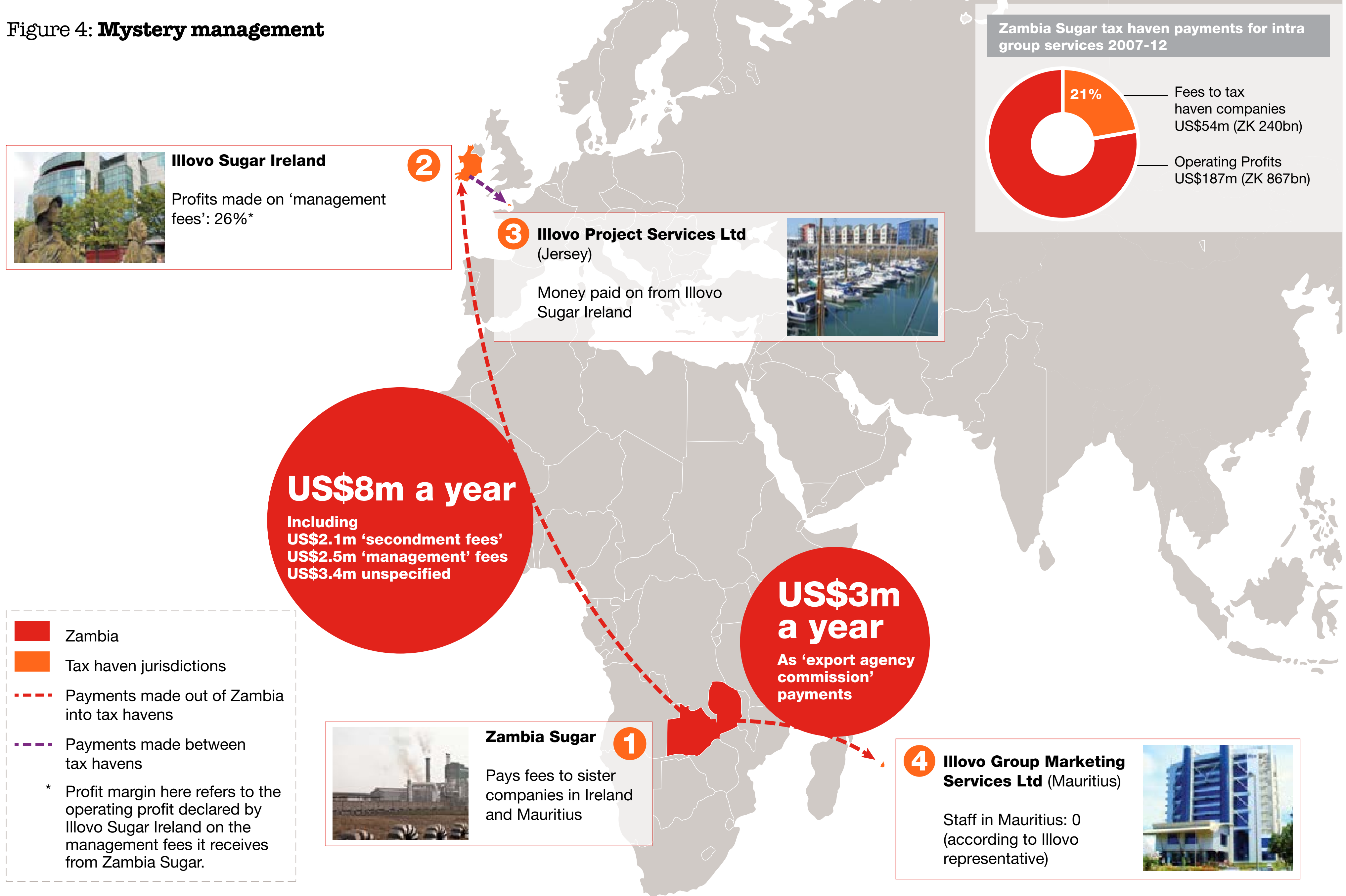
A sculpture dedicated to famine, outside the the International Financial Services Centre in Dublin, where Illovo Sugar Ireland is registered.

PHOTO: MIKE LEWIS/ACTIONAID

Irish company, however, this withholding tax is entirely avoided, taking advantage of an old treaty between Zambia and Ireland (discussed in 'Step 2') which, uniquely, cancels all such withholding taxes.

These large intra-group payments, counted as an operating expense, will also have reduced Zambia Sugar's operating profit by some 20%, while booking profits in fellow Illovo subsidiaries in low-tax jurisdictions including Ireland. A portion of these fees is taxed in Ireland at only 12.5% after substantial further deductions for expenses, compared to Zambia Sugar's 15-35% rate up to 2012. Ironically, as Zambia Sugar's own special Zambian corporation tax rate (Step 4) has headed down towards tax haven levels, this saving on profit taxes may be reduced, though only since 2012. However as withholding taxes are applied irrespective of the company's corporation tax rate, avoiding them generates a lasting tax benefit for the ABF group, while denying Zambia tax revenues supposed to be dedicated specifically for development.

Figure 4: **Mystery management**



When ActionAid visited Illovo Sugar Ireland's registered address, the receptionist had never heard of the company.

Going, going, gone…

ABF told us that this offshore Irish company is used to contract experts for Zambia Sugar because "third party service providers would not have been willing to contract directly with Zambia Sugar due to possible financial or political risk and, if they had contracted directly, the cost to Zambia Sugar would have been substantially higher".[70] They insisted that these transactions via Ireland are not "tax motivated" since "[t]ax rules require profits declared in Ireland… to be included in the Illovo South Africa tax return where they are subject to tax at 28%".[71]

Yet accounts of the South African parent company show that it too is liable for extremely little tax, booking tax liabilities in South Africa of just 0.6% of its profits in the last financial year.[72] Indeed, its entire tax liabilities in 2011/12 were only US$308,000, just 4% of the US$7 million fees paid by Zambia Sugar alone in that year to just two subsidiaries (in Ireland and Mauritius) whose profits Illovo claims are rolled up in their South African tax bill at 28%. It seems clear, therefore, that very little tax is being paid by the Illovo group either in Zambia or in South Africa on these large streams of cross-border income. At most it appears it can only be a tiny proportion of the fees – much smaller than 28% of these payments, and much smaller than the 15-20% that these Irish-routed fees have shaved off their Zambian tax bill since 2007.

To determine whether such high-value services are being provided from Ireland itself, or simply routed through this tax-convenient jurisdiction, ActionAid sought to establish the nature and scale of the services for which fees are being paid. We found it difficult to do so.

Associated British Foods told us that "Illovo Sugar Ireland provides real services…The company employs some 20 individuals… [it] facilitates various services required by Zambia Sugar including the provision of senior management, engineers and agronomists… These are real people, doing real jobs, adding real value to Zambia Sugar" and that "the notes to the [Irish] company's accounts failed to reflect this".[73] Yet Illovo Sugar Ireland's audited accounts, filed in Ireland, have every year since 2006 stated explicitly that "the company has no employees".[74] This includes the Irish company's most recent accounts, filed with the Irish company registry on 28 January 2013, 10 days after Associated British Food's letter to ActionAid explaining the company's 20 employees and their activities.

It appears from their statements to us, therefore, that for seven years in a row Illovo's Irish subsidiary, and its auditors, have prepared and given a clean bill of health to accounts that are in error on a fairly fundamental aspect of the company's operations (the existence of any employees).

It is also not clear that Illovo Sugar Ireland has any actual activities or presence in Ireland itself – despite around a third of the payments made by Zambia Sugar to the company being declared in Ireland as (taxable) income.[75] When ActionAid telephoned Illovo Sugar Ireland's registered address – an office block in Dublin's International Financial Services Centre – the telephone operator had never heard of the company.[76] Nor had the receptionist when ActionAid visited the building in person.[77] Instead, the office block houses an entirely separate company services provider, which services many different companies.

One of their staff members, responsible for filing documents relating to Illovo Sugar Ireland, told us unequivocally that the "management side of it would be based in South Africa". When asked to answer some due diligence questions relating to the company, she confirmed that Illovo Sugar Ireland had no staff physically based in Ireland, that "there would be some staff that Illovo Sugar Ireland have seconded to the plant in Zambia", and referred us to the financial director of the South African parent company in Durban.[78]

As we will see in Step 4, since 2007 Zambia Sugar has been granted a special corporate tax rate which in 2012 fell to 10% – less than that of some tax havens, including Ireland. Illovo has insisted that as a result "there is no tax advantage to Illovo moving profits from Zambia to other group companies where income is taxed at higher rates."[79] But this explanation ignores Zambian tax losses for the payments made to the Irish company over the last decade, when Zambia Sugar had a Zambian headline rate of between 15% and 35%; and also ignores the fact that routing such payments through Ireland avoids a 15% withholding tax that would otherwise be due irrespective of the tax rate on Zambia Sugar's profits.

In the absence of detailed tax reporting in all jurisdictions where Illovo has subsidiaries, it is difficult to determine how much tax is paid on these payments elsewhere in the world. Just 2% of these payments have been paid in Irish tax since 2007, since only a third of the fees appear to be 'booked' in Ireland as income (taxable at 12.5%).[80] Illovo Sugar told us that the rest of the money paid by Zambia Sugar to the Irish company is for "directly attributable costs that Illovo Sugar Ireland incurred on Zambia Sugar's behalf (for example, expatriate salary costs and third party services)."[81] However, money also appears to be paid on from Ireland to other group subsidiaries, including Illovo's South African headquarters, Illovo Sugar Ltd; and to a Jersey-registered company, Illovo Project Services Ltd, where any profits booked there presumably enjoy Jersey's famous 0% corporate tax rate.[82] In addition, ABF has not disclosed whether its Jersey company is also taxed in Illovo's South African tax bill.

“When our auditors turn up, they don’t have any information.”

Zambian tax authority adviser

Going, going, gone…

Tax haven secrecy prevents us from finding out what the Jersey company does, or how much profit it makes, as its accounts are not publicly available. Associated British Foods told us that “Illovo Project Services is no longer operational” and UK banking group Barclays, which operates ‘nominee’ shareholders in Jersey for this subsidiary likewise told us that “this company ceased to be active some time ago and is in the process of being dissolved”; although Illovo Sugar Ireland’s accounts suggest that the Jersey company received payments from Illovo Sugar Ireland in each of the latest three financial years (2010-12).[83]

While this complex and contradictory network of transactions makes it difficult to determine the substance and ultimate destination of Zambia Sugar’s payments to Ireland, we can nonetheless assess the straightforward losses to Zambia from offshoring these expensive management functions: we estimate that payments to Zambia Sugar’s Irish sister company, deducted from its own taxable profits and avoiding 15-20% Zambian withholding tax, have reduced the company’s Zambian tax bill by around US$1.2 million (ZK6 billion) a year: **US$7.4 million (ZK32.6 billion)** since 2007.[84]

An Indian Ocean shopping trip, and a future tax advantage?

Dublin isn’t the only far-flung location from where Zambia Sugar appears to get services from sister companies. Since 2011 Zambia Sugar has begun to pay even bigger fees – **US$3 million (ZK15.2 billion) annually** – as an “export agency commission” to Illovo Group Marketing Services Ltd, a sister company registered in 2000 in the Indian Ocean island of Mauritius, where companies are taxed at just 3%.[85]

ABF told us that this company provides “trade contacts with customers in the European sugar market, transportation of sugar to Europe, foreign currency management and the availability of cost effective credit terms… It contracts with Illovo in South Africa for the provision of specialist expertise.” They told us these services are provided from a Mauritian company because “[f[inancial, political and supply chain risk make direct sales of sugar from African producers to European customers commercially difficult, if not impossible. Exchange control issues prevent these services being provided directly from South Africa.”[86]

It remains unclear why contracts for Zambia Sugar’s exports cannot be arranged from Zambia itself, which has no foreign exchange controls. Nonetheless if the group does indeed have an international sales agency in Mauritius then its staff must be busy. ABF did not respond to our question about how many staff this Mauritian company had, and where they were located.[87] ActionAid called the director of Illovo’s Mauritius holding company, Illovo Group Holdings Ltd, seeking to undertake a survey of Illovo staff in the country. He told us that Illovo Group Marketing Services Ltd had no personnel in Mauritius, and that we should ask for the company’s staff in South Africa. He said, “here it’s only a small office, you would want to contact the head office in Durban”. When asked how many staff the whole Illovo group had in Mauritius, he told us, “one… it’s me”.[88]

In addition to apparently being the only Illovo staff member in Mauritius, he also finds time to be the director of four other separate companies, including Mauritius’ largest insurance company.[89] He explained helpfully that, “the [Illovo] companies are incorporated in offshore sector in Mauritius”, while confirming that management, procurement and other functions take place in South Africa. “The instructions go from Mauritius but then the physical part of it can go direct to the countries concerned.”[90]

Illovo and ABF have again insisted that these transactions are not tax motivated since “any profit recognised in Mauritius is taxed in South Africa at 28%”, removing tax advantage for the group as a whole. As before, in the absence of a detailed breakdown of tax paid in Mauritius and South Africa, we cannot tell whether the fees received from Zambia Sugar – income for real operational activities, according to its parent company – are in fact included in the South African tax charge of the parent company, but we do know that the entire tax liability of this parent company has in recent years been much less than 28% of these fees alone. And as with the payments to Ireland, whether or not tax is paid in other countries on taxable profits shifted out of Zambia into offshore sister companies does not remove Zambia’s own tax loss. In this case, however, there is additional protection that shows the critical importance of preserving Zambia’s share of tax on cross-border income. Zambian law, like that of many other countries, imposes a 15% withholding tax on such commission fees before they leave the country. Since 2007, Zambia Sugar has paid just 15% tax on its profits anyway (see Step 4, page 25). At the moment tax-deductible commission fees from Zambia to Mauritius seem unlikely to generate a major tax advantage, or a Zambian tax loss.

This protection of Zambia’s taxing rights is fragile, however. In 2011, just as Zambia Sugar’s payments to Mauritius began, Mauritius and Zambia signed a new tax treaty.[91] The treaty has received little public attention, and we cannot see its terms until after it is ratified by Zambia’s cabinet and parliament. But the tax treaties that Mauritius has previously signed with other African countries deny those countries the right to tax income such as commission fees paid from

Going, going, gone...

Zambia to Mauritius.[92] Before it ratifies this treaty, Zambia's MPs and ministers must ensure that it does not similarly deny taxing rights to Zambia. Otherwise profit shifted from Zambian companies to Mauritius subsidiaries could significantly impact Zambia's future tax take.

In Zambia Sugar's case, if Zambian taxing rights are denied under the new treaty and the company's payments to Mauritius continue on the same scale, we estimate that these payments could reduce the company's future Zambian tax bill by as much as **US$300,000 (ZK1.5 billion)** a year.[93]

Business park at Cybercity, Ebene, Mauritius, where Illovo Group Marketing Services Ltd is registered.

PHOTO: EVAN BENCH/FLICKR/CREATIVE COMMONS

Going, going, gone…

Transfer pricing: from footnote to fury

The practice of multinational companies lowering their tax bills by making large internal payments to related companies in tax havens used to be an obscure economic footnote. But austerity and scandal in recent years have propelled the issue onto the political agenda – and the front pages – in both Zambia and the UK.

In the UK, faced with a torrent of news stories alleging that some of the highest profile companies in the world, including Starbucks, Google and Amazon, are using payments to subsidiaries in tax havens to virtually opt out of paying corporation tax, UK Chancellor George Osborne has promised a crackdown on the way that "some multinational businesses are able to shift the taxation of their profits away from the jurisdictions where they are being generated".[94]

Zambia's 2011 election likewise saw heated public debate about whether the large mining companies that dominate the Zambian economy are paying their fair share, amidst allegations that at least one London-listed mining company had avoided some US$120 million (ZK600 billion) of tax annually by under-pricing minerals sold to sister companies in tax havens, and being over-charged for goods and services from other sister companies.[95] Zambian Revenue Authority (ZRA) officials told us that revisions to Zambia's transfer pricing laws, intended to ensure that intra-company transactions are not used to avoid tax, is "under active discussion".[96] Separately, one adviser to the ZRA was more candid about the challenges they face: "On transfer pricing, [the ZRA] are, pardon my language, getting f* * *ed."[97] Debates are now raging internationally about how to tackle this global problem.

A growing number of countries, including emerging powers like Brazil and China, are seeking to stop taxable profits being siphoned off by imposing either simpler or more discretionary rules for determining the price of intra-group fees and payments.[98]

Others argue that a fundamentally new method needs to be found to divide up taxable profits between the different countries in which a multinational operates, perhaps using a formula that allocates profits according to the location of a company's 'real-life' sales, staff and assets, and simply ignoring intra-group trades and transactions. Such 'unitary taxation' is currently being considered by the European Union. Expanding 'unitary taxation' internationally would probably require an international agreement, in which it is unclear whether developing countries' interests would be protected.[99]

These are 'big-picture' proposals for a large and global problem. Policy makers within the ZRA, however, told us there was much they could do with their existing legal tools and capacities, if they had access to adequate information. Existing tax law in Zambia, like many other countries, already gives the tax authority some powers to counteract transactions designed to avoid or evade tax: not only through the (difficult) process of comparing prices paid to tax haven sister companies with an independent 'arm's length price',[100] but also through broader powers allowing the tax authority to disregard transactions for tax purposes if there are "reasonable grounds to believe" that a transaction is purely or mainly for tax avoidance.[101]

Armed with these legal powers, though, Zambian tax inspectors are unable to access critical evidence. Firstly, Zambian tax law does not require companies to keep or produce documentation of their transfer pricing – evidence of the transaction, its rationale, or the way fees and payments to affiliated companies have been calculated. "The documentation is prepared in the UK, Germany, wherever, and the companies don't have to provide it here. When our auditors turn up, they don't have any information," according to one ZRA adviser.[102] As with an employee claiming business expenses with no receipt, tax inspectors can only take the company's description of the transaction and its price at face value. ZRA officials told us that introducing legislation requiring taxpayers to keep 'contemporaneous documentation' is "a priority".[103]

Secondly, a 'transfer pricing' transaction always has one end in another country. The ZRA often cannot get corroborating information from that other country to check the reality of the transaction, particularly if that country is a tax haven.[104] Stronger international legal agreements are needed to compel information exchange across borders. The IMF, OECD,[105] UN and World Bank have also recommended that developed countries such as the UK should unilaterally help to identify abusive tax transactions undertaken abroad by their own taxpayers or corporations, and help to recover any taxes due to those developing countries.[106]

Finally, aside from making it hard for tax authorities to challenge the prices of such tax-reducing transactions, the current international tax system provides an incentive for multinational companies to locate 'high-value' functions, intellectual property and expertise in low-tax jurisdictions, outside developing countries.

If multinationals are truly committed to developing the economies of the developing countries where they invest and make their profits, they should be committed to locating functions such as management, procurement, research and product development in those developing countries themselves, rather than 'offshoring' them elsewhere; and to building the necessary skills and expertise locally.

Why would a loan to expand a sugar factory in southern Zambia actually be made to a company registered in a Dublin office block over 8,000 kilometres away?

Going, going, gone…

Step 2: **A Dublin dog-leg**

In November 2007, Zambia Sugar borrowed US$70 million (ZK280.5 billion) from two commercial banks, using the money to expand its huge sugar estate in Zambia's Southern Province by 50%; and to double the size and capacity of its Nakambala sugar factory.[107] The loan, at an interest rate of over 17%, came from the US bank Citibank, and from South Africa's Standard Bank. This loan has generated some US$29.4 million (ZK135 billion) in interest payments.[108]

The loan looks local: it is denominated in Zambian currency (kwacha), secured on Zambia Sugar's estate and assets in Mazabuka, and repaid via a bank account at the downtown Lusaka branch of Citibank Zambia.[109] But on paper the loan has been sent on an 8,000-kilometre 'dog-leg' via Ireland, with the banks actually lending the money to the now-familiar Illovo Sugar Ireland, which then makes an identical matching loan to its sister company, Zambia Sugar.

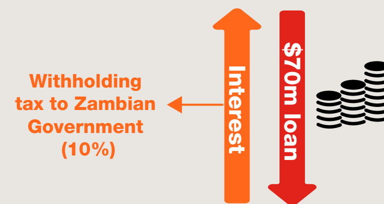
Why would a loan to expand a sugar factory in southern Zambia actually be made to a company registered in a Dublin office block over 8,000 kilometres away? ABF told us straightforwardly that in the absence of this structure, "[i]nterest on loans to Zambia Sugar from such banks would have been subject to [Zambian] withholding tax. The banks would therefore have increased their interest charge to compensate for this."[110] Zambia Sugar Plc and Citibank stressed the benefits of jobs and local economic growth generated by Zambia Sugar's loan-financed expansion, and likewise confirmed that "no tax was liable on the interest payable on the intercompany loan from Illovo Sugar Ireland

Figure 5: **The Dublin dog-leg: following the money**

Ordinary loan

PHOTO: SIMON WICKS

Citibank & Standard Bank
London branches



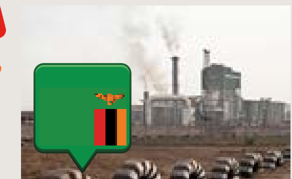
Zambia Sugar

The dog-leg

PHOTO: SIMON WICKS

Citibank & Standard Bank
London branches

Illovo Sugar Ireland,
International Financial Services Centre, Dublin



Zambia Sugar

Illovo Sugar Ireland bank account
(No. 100164045) at Citibank Zambia, Cha Cha Cha road, Lusaka

We estimate that 'dog-legging' the loan via Ireland may have deprived the Zambian exchequer of up to US$3 million.

Going, going, gone…

to Zambia Sugar, increasing the affordability of the overall financing and therefore the amount of investment Zambia Sugar was able to make in the country."[111]

In short: while the multinational company enjoys a cheaper loan, financial engineering ensures that Zambia is denied any of its share of tax on the hefty income that the loan has generated for the overseas banks financing the company's expansion.

Zambia's share of this tax – ordinarily levied at 15% on cross-border interest payments, in common with many other countries – is in this case cancelled thanks to the peculiar terms of the Ireland-Zambia tax treaty (see box, page 24). If the US and South African banks had made the loan directly to Zambia Sugar in the normal way – from the US and South Africa – then this 15% 'withholding tax' would be fully payable.[112] Even making the loan directly from these banks' UK branches – the origin of the loans in this case – would only lower this withholding tax to 10% under the terms of the Zambia-UK tax treaty.[113] But if, at least on paper, interest is repaid to an Irish company, then the Zambia-Ireland tax treaty denies Zambia any right to tax interest payments, or most other international payments from Zambia to Ireland. Routing the loan via Ireland thus cancels Zambian withholding tax on these payments.

Routing international payments and transactions through a 'conduit entity' in a third jurisdiction, in order to take advantage of the unbalanced terms of a tax treaty with that third jurisdiction, is a process sometimes called 'treaty shopping'. Treaty shopping allows an unfair tax treaty with just one country to be exploited by companies undertaking transactions with any country.

In this case, the tax benefits of the Zambia-Ireland treaty, stacked against Zambia though they are, were only ever intended to apply to transactions between Zambia and Ireland. But through the 'dog-leg', the Illovo group and its creditor banks have engineered their affairs so that the uniquely skewed Zambia-Ireland treaty effectively applies to transactions between Zambia and its US and South African creditors: something the treaty was never intended to do.

Loan repayments are made through Illovo Sugar Ireland's bank account at this Citibank branch on Cha Cha Cha Road in Lusaka, 8,000km from Ireland.

PHOTO: JASON LARKIN/ACTIONAID

Once out of Zambia, these interest payments are also likely to get a smooth tax ride back to the banks. No significant corporation tax is paid on the interest income in Ireland, since that income is immediately paid on to cover near-identical interest payments to the commercial banks.[114] Ireland usually levies a 20% withholding tax on overseas interest payments, but these are generally waived for payments to companies resident in other European Union countries,[115] as in this case where the US and South African banks have made the expansion loan from Citibank's London branch and Standard Bank's London subsidiary.[116]

We estimate that this strategy of 'dog-legging' the loan via Ireland may have deprived the Zambian exchequer of up to **US$3 million (ZK13.5 billion)** in withholding taxes.[117]

Going, going, gone…

Tax treaties: a fair slice of the pie?

It may seem strange that Zambia can't always decide how much tax it levies on income generated in Zambia. Welcome to the world of Double Taxation Conventions (DTCs) or 'tax treaties' – agreements between countries on how to divide up taxing rights over cross-border income.

When an Irish company earns income from Zambia – for example by providing a service, or lending money to a Zambian company – both Zambia and Ireland will want, legitimately, to tax that income. To prevent income being unfairly taxed twice, and to attract international investment, pairs of countries sign bilateral treaties which set limits for how much a given piece of income can be taxed by the 'source country' of the income, and by the 'residence country' of the income's recipient. These limits over-rule any tax rate that a country may otherwise decide to apply to cross-border income. For example, Zambia generally levies a 15% withholding tax on interest payments made to non-residents. In its 2012/13 budget the Zambian government announced that this would rise to 20% from 2013. But the Netherlands-Zambia tax treaty, for instance, limits 'source country' tax on interest payments to just 10%. So regardless of what the Zambian parliament decides, Zambia is not permitted to levy any more than 10% tax on interest payments from Zambian to Dutch companies; nor can the Netherlands tax interest payments from Dutch to Zambian companies at more than 10%.[118]

This seems fair at first sight. But the problem is that between developed and developing countries, cross-border income generally flows predominantly in one direction, since developing countries like Zambia are mainly importers of investment and services. This means that taxable cross-border income generally flows outwards from Zambia to investors and companies based in wealthy countries or tax havens. Thus when a developed country or tax haven negotiates a tax treaty with a developing country like Zambia, it has a clear interest in trying to limit or even cancel the taxing rights of the 'source' country, which will generally reserve more taxing rights to itself. And as a potential source of investment for the developing country, the developed country will often have the economic and political muscle to get its way.

The Ireland-Zambia tax treaty, signed over 40 years ago, is an unusually serious example of such imbalance. It is one of only two tax treaties that Zambia has signed that deny the right to tax any of the outflows of cross-border income normally subject to withholding taxes.[119]

Not only does this tend to nakedly boost Irish revenues at the expense of Zambia – ironically for a country which is one of Ireland's nine long-term development partners – but it also allows multinational companies to 'treaty shop', as we have seen, using Ireland as a tax-free conduit for transactions between Zambia and other countries. While Ireland gives aid to the Zambian government with one hand, Zambian government revenues flow out again thanks to its Irish tax treaty.

ZRA officials told us that they hope to renegotiate several "outdated" tax treaties to "make source and residence more balanced".[120] For example, a renegotiated UK-Zambia tax treaty, which since its colonial-era signature in 1955 has continued to restrict 'source country' taxing quite heavily, is currently under consideration by the Zambian cabinet.[121]

Pupils at Nakambala Basic School, next to the Zambia Sugar estate, in their unfinished classroom.

PHOTO: JASON LARKIN/ACTIONAID

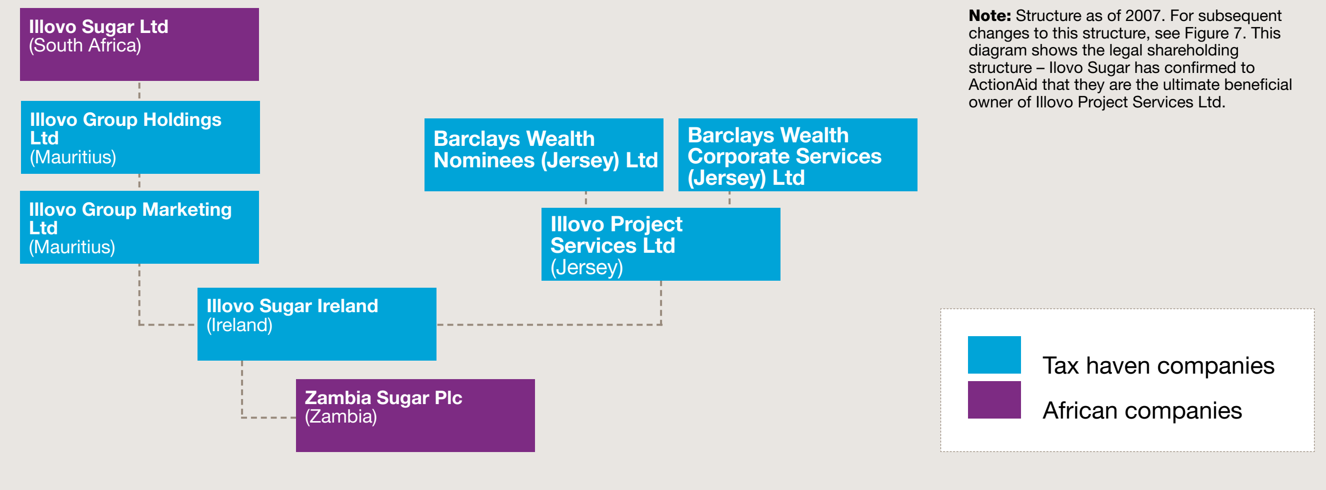
But rebalancing these treaties takes political will on both sides, and can be difficult even for much more powerful countries than Zambia. India, for example, haemorrhages an estimated US$600 million in revenue each year through loopholes in the crippling India-Mauritius tax treaty, and has been trying without success since 2006 to persuade Mauritius to renegotiate.[122] Yet despite India's predominant economic power in the region, India's finance ministry continues to report "unwillingness on the part of Mauritius to cooperate in addressing this problem".[123]

Going, going, gone...

Step 3: **Tax-free takeaway**

From the perspective of a tax-planning accountant or lawyer, the final inconvenience comes when a company distributes its profits back to its parent companies and other shareholders. Most countries levy a withholding tax on these dividends, particularly when they are paid to overseas shareholders and thereby take the company's profits out of the country for good. But by arranging the Illovo group's structure with a few twists and turns around some tax havens and advantageous tax treaties, it appears that the group can take Zambian profits home to Illovo Sugar Ltd – perfectly legally – without much fear of the Zambian taxman.

Figure 6: A nest of tax haven intermediaries



Note: Structure as of 2007. For subsequent changes to this structure, see Figure 7. This diagram shows the legal shareholding structure – Ilovo Sugar has confirmed to ActionAid that they are the ultimate beneficial owner of Illovo Project Services Ltd.

Zambia Sugar is actually owned by Illovo Sugar Ltd – the central parent company of all ABF's African sugar operations – via a complicated nest of intermediate companies in Mauritius, Ireland, the Netherlands and Jersey. This structure provides a short master-class in international tax planning.[124]

Until 2007, Zambia Sugar's immediate holding company – the company that owns the majority of its shares – was Illovo Sugar Ireland. Having an Irish holding company should allow Zambia Sugar to take advantage once again of the Zambia-Ireland tax treaty, which denies Zambia the right to tax any dividends distributed by Zambian companies to Irish companies. Congenial tax laws in Ireland and Mauritius also mean that corporate income tax, even at low Irish and Mauritian tax rates, is unlikely to be paid on the dividends as they pass through. This structure may therefore establish a nearly tax-free conduit to 'repatriate' profits from Zambia back to the Illovo group parent company. Figure 7 explains how.[125]

The only likely bump in this otherwise smooth ride of profits out of Zambia to its parent company, Illovo Sugar Ltd in South Africa, is the possible irritation of Ireland's withholding tax, normally levied at 20% on dividends paid to foreign companies.[126] But in June 2007, shortly after ABF acquired the Illovo group, a way round this seems to have been found too, by transferring the immediate ownership of Zambia Sugar from an Irish to a Dutch subsidiary. The Irish subsidiary 'sold' Zambia Sugar to a new holding company registered in the Netherlands, Illovo Sugar Cooperatief U.A. This 'sale' appears to have been tax-free in Ireland, likely because Irish tax law provides that capital gains of Irish companies from selling shares in other companies are not taxed.[127] And the move didn't cost the Illovo group anything, since Illovo Sugar Ireland in practice bought its own Zambian subsidiary: giving the new Dutch company a €203m interest-free loan, which the Dutch company then used to 'buy' Zambia Sugar from the same Irish company that had just loaned it the money.[128]

Confused? The upshot of all this internal reshuffling – transferring the ownership of Zambia Sugar from one Illovo holding company in Ireland to another in the Netherlands – may be an even smoother tax ride for Zambia Sugar's dividends. The cooperatief, a peculiar legal entity previously used mainly by Dutch farmers' cooperatives and some charitable organisations, was 'discovered' by tax-planning accountants and lawyers around 2007, when they began to market a raft of tax schemes using Dutch 'co-ops' as a conduit to avoid taxes on dividends.[129]

Going, going, gone...

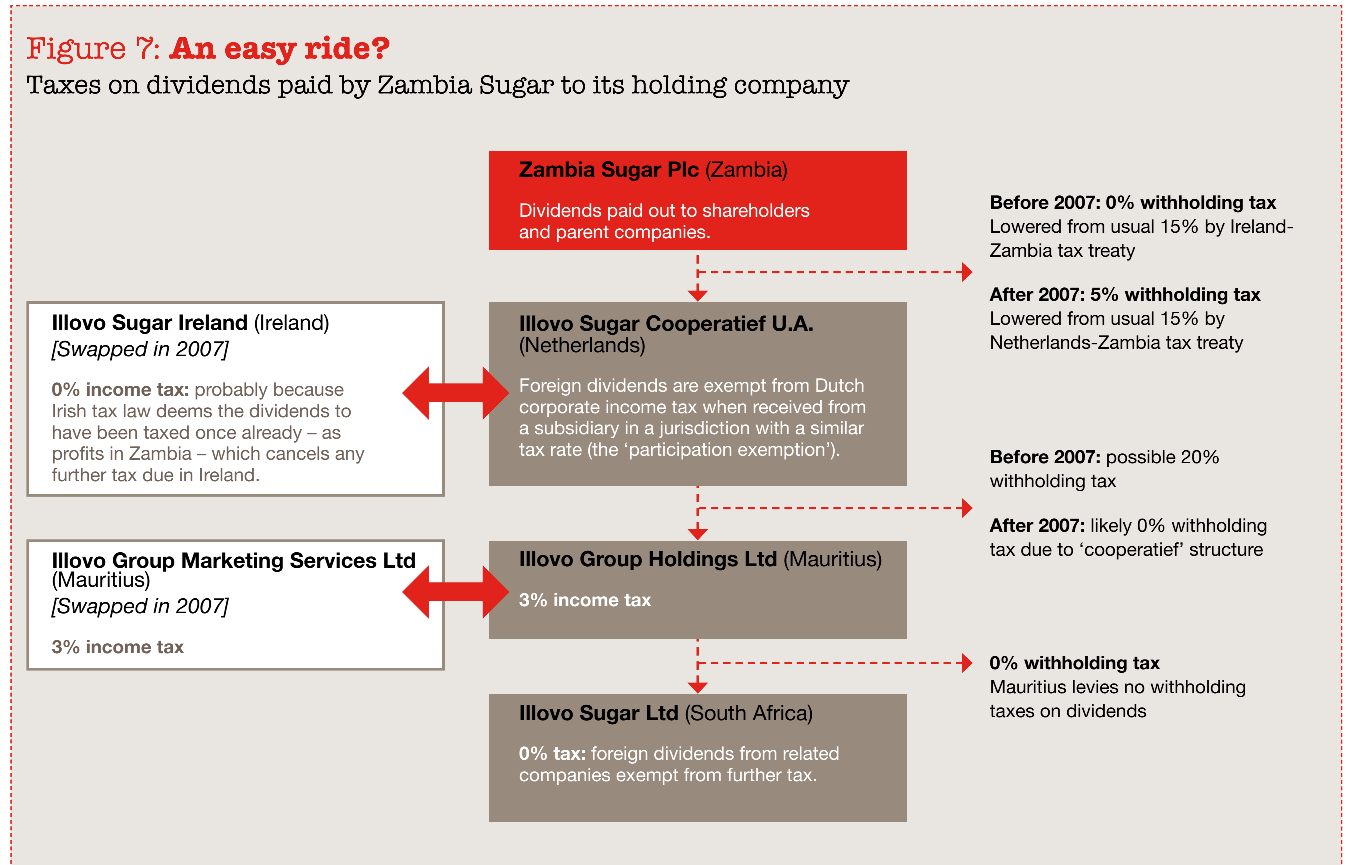
They work like this: the owners of a Dutch cooperatief are classed as its 'members' rather than its shareholders. So the income they receive from the company is not classified as being paid to them as dividends, as with normal shareholders. Instead, profits shifted into the cooperatief automatically become owned by its members (in this case not real human beings, but Illovo companies in Mauritius and Jersey). Using this loophole in Dutch tax law, profits received by a cooperatief may leave the Netherlands tax-free.[130]

Under this new structure, Zambia may be able to levy at least some withholding tax on Zambia Sugar's dividends at the start of their low-tax journey out of the country. But the terms of yet another out-of-date tax treaty – this time signed in 1977 between Zambia and the Netherlands – still deny Zambia the right to apply any more than 5% tax to dividends paid out to qualifying Dutch companies, rather than the normal 15%.[131]

In short, by shuffling the ownership of Zambia Sugar between different European tax havens with a few strokes of a pen, the likely tax liability on its dividends may be reduced from 20% to 5%.

Zambia Sugar's profits can now be taken out of Zambia and back home at an extremely low tax rate. While the opacity of the holding companies in Mauritius and Jersey prevent us from seeing how much tax has been paid worldwide on this stream of dividends, we can estimate the likely Zambian tax loss due to these two ingenious holding structures. We estimate these structures may have avoided as much as **US$7.4 million (ZK32 billion)** of Zambian withholding tax since 2007.[132] The profits received by Illovo Sugar's South African headquarters will be taxed there; but once paid on to ABF, they are unlikely to be be taxed further in the UK, since dividends received by UK companies from their foreign subsidiaries have been exempt from UK tax since July 2009.[133]

ABF told us that "dividends paid from the Netherlands to Mauritius are taxed at 3%. Had they been paid directly to South Africa there would have been no tax to pay, further demonstrating that this structure was not created to avoid tax".[134] But dividends paid directly from Zambia to South Africa are taxed in Zambia at 15%, a withholding tax which we are arguing this structure avoids. Likewise we are not arguing that this structure was entirely created to avoid tax, but that it has this effect.



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Information on the tax breaks granted to big companies is also by law supposed to be available to the public, but in practice we found that it remains secret.

Step 4: **Get your own tax haven**

The final step in shrinking Zambia Sugar's tax liabilities is the result not of ingenious tax planning through foreign tax havens, but the consequences of Zambia's own tax policies.

Both internal and external pressure to attract foreign investment at any cost means that developing countries are caught between two competing pressures: the desire to offer tax breaks to investors, and the need to raise scarce tax revenues.

In Zambia, as elsewhere, the balance of institutional power is tipped firmly towards investors and incentives. Zambia's investment-friendly tax regime has granted tax breaks to multinational companies that have essentially cancelled their Zambian tax bills for years on end, without checks that they are even delivering the promised business activities and investments in return.

As a result, there is little clear evidence of investment, jobs and growth generated by such tax incentives. Companies qualifying for special tax breaks in return for new investments have in theory to submit a confidential annual Enterprise Performance Form describing their investment progress. These annual returns are supposed to be audited by the national investment promotion agency, the Zambian Development Agency (ZDA) – the same agency that grants the tax breaks in the first place. An external report commissioned on the ZDA in fact found that "currently the agency does not carry out any audits to verify the information provided".[135] ZDA officials told us that more recently they had begun to audit Copperbelt investments that were granted tax incentives, and identified a small number of companies that had not delivered the promised projects.[136] But even if a company does not deliver the project or investment for which it has enjoyed a tax break, little action is taken, since the ZDA says it wants to remain 'light touch' with investors. "It's not something where we say 'you haven't done this, here are the penalties'," ZDA officials told us. "If it doesn't happen, we dialogue, see if there is something we can do. We are investor-receptive."[137]

Tax breaks themselves are granted to companies not by the Zambian tax authority but by the investment promotion agency itself, the ZDA. As ZDA officials told us, "Everything starts and ends with the ZDA."[138] ZDA officials confirmed that the ZRA has never successfully contested a decision to grant a company a tax break, and that very few companies who apply are refused tax incentives.[139] Despite the ZRA being nominally represented on the board that approves or denies tax incentives to companies, in practice this approval has been delegated to the ZDA's management team, away from the board's scrutiny.[140] Information on the tax breaks granted to big companies is also by law supposed to be available to the public, but in practice we found that it remains secret (see below). And ZDA and ZRA officials told us that the government has no estimates of the amount of tax forgone from its tax incentives and tax holidays.[141] Revenue authority officials (commenting generally, not specifically about Zambia Sugar) said that, "sometimes you find they [the companies] are asking for incentives that are not at all permitted in the schedules [of the law]".[142] Some tax breaks are also drawn so widely in Zambian law that companies far from their original 'target' can qualify for them.

Zambia Sugar is a good example. The company has enjoyed rising income and profits in recent years. Yet despite this, since 2008 the company has simply not had to pay the usual Zambian corporate tax rate of 35%. Instead, it has been permitted to pay just 15% on all its profits.[143] The tax savings generated by this rate change are difficult to calculate precisely without knowing what the company's taxable profits have been in years when large capital allowances have been claimed; but the company's own accounts indicate that the rate change reduced the company's tax liabilities by some 10.3% just in 2008, and a further 4.9% in 2012 – a saving of some US$3 million (ZK13.5 billion) in those years alone. In future years, when capital allowances are not being claimed, if Zambia Sugar continues to be at least as profitable as it now is, we estimate that the rate change will lose the Zambian revenue authority some US$3.6 million (ZK18 billion) a year, and rising with rising profits.[144]

This is the result of a challenge mounted in 2005 by Zambia Sugar's tax advisers, who argued to the ZRA that the entirety of the company's income should be considered for tax purposes as 'farming income', thus qualifying for a special 15% tax rate.[145] Previously, only the small amount of profit attributed to the company's cane-growing qualified for this special farming tax rate.

Even these cane-growing profits are 'notional'. The company said at the tax tribunal hearing that followed its appeal, "premised on the notion of a company selling to itself" through Zambia Sugar 'notionally' buying its own sugar cane.[146] Likewise Zambia Sugar's own accounts have consistently attributed the vast majority of its profits to sugar production, not cane-growing (figure 8).[147] Yet Zambia Sugar nonetheless told the tax tribunal in 2007 that the higher-tax "processing of sugar cane into sugar is incidental

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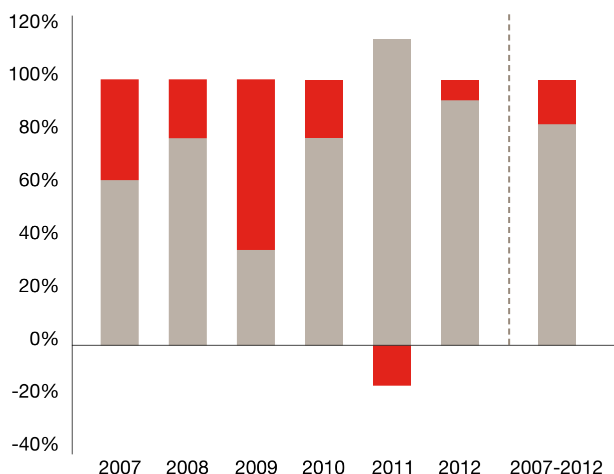
Figure 8: **Factory or farmer?**

Zambia Sugar profits from cane-growing and industrial sugar production, 2007-12



Source: Zambia Sugar annual accounts 2007-12)

to the main activity [of the company]".[148] The tribunal accepted the company's overall argument that its profits derived 100% from its farming operation and not really from sugar production, and slashed its tax rate in half. Since the tax rate change was retrospective, the Zambian Tax Authority was also forced to pay back some ZK24.6 billion (US$6.2 million) in 2008 and 2009 for previous years' tax payments.

Lusaka-based tax experts we spoke to were surprised by Zambia Sugar's successful suit, since the 15% farming rate was originally introduced to help domestic farmers, and has previously been denied to commercial farms seeking a similar blanket low rate on their profits.[149] Yet this tax break is now being enjoyed by Zambia's biggest multinational agribusiness, over three-quarters of whose profits by Zambia Sugar's own admission derives not from growing and selling sugar cane, but from industrial commodity production in its Nakambala factory (Figure 8).

ABF told us that "Any changes to the tax rates following the Zambia Revenue Tribunal ruling in 2007 should be considered a reflection of due process and the 'rule of law', and should not be criticised. Instead praise should be given to an open and honest system... A key component of any developing democracy is its application of the "rule of law".[150] One ZRA advisor blamed tax incentives drawn too widely in outdated Zambian tax law: "This is bad design: we could have a revenue threshold on the rate so that massive companies can't qualify for it."[151] Yet instead, in 2012 the 'farming' tax rate was decreased further to just 10%, which in future years will push Zambia Sugar's tax rate in Zambia below some of the rates its sister companies enjoy in tax havens.

Further tax windfalls were to come for Zambia Sugar. The costs of borrowing and spending on projects like expanding the Nakambala mill and sugar estate are usually expected to reduce companies' profits in the short term. In practice Zambia Sugar's profitability is not suffering post-expansion, and the company already showed record profits in 2012, even after the costs of its loan repayments.[152] Nonetheless, under a special regime intended to encourage investment by compensating for a possible short-term dip in profits, the Zambia Development Agency (ZDA) has granted Zambia Sugar a further concessionary tax rate on income deriving from its expanded mill and estate.[153] The second tax break, which has not yet been used, will likely shrink the company's tax bill for years to come, despite the company already being back at record profit levels since the investment.

Troublingly, we do not know the precise terms of this second tax break, or what investments and jobs Zambia Sugar has promised to deliver in return. Zambian law requires the ZDA to keep a public register of the investment certificates it awards to companies (the key qualifying document for a tax break), and details of the conditions and incentives granted to the company. Any member of the public is by law permitted to view these documents.[154] But when ActionAid asked to see Zambia Sugar's investment certificate and supporting documents, ZDA officials were initially not aware that they were supposed to be public.[155] They subsequently confirmed our legal right to see them,[156] but told us they were unable to separate out public-access documents from confidential ones in the relevant files.[157] At the time of writing, ActionAid has still not been granted access. ABF also declined to disclose to us the terms of this additional special tax incentive.[158]

> The secretary-general of Senegal's finance ministry called excessive tax incentives "a budgetary cancer".

Going, going, gone...

Zambia Sugar may have won this extra tax break just in time. In late 2011 new Finance Minister Alexander Chikwanda told parliament that "the process of granting additional incentives... provides discretion and lacks transparency, thereby creating opportunities for corruption", and proposed to remove the powers of the ZDA to grant discretionary incentives "to prevent leakages in the tax system".[159] There is of course no suggestion of corruption in Zambia Sugar's case. But while the Zambian government is seeking to limit such discretionary, opaque tax breaks in the future, Zambia Sugar can continue to enjoy its own special tax regime for several years yet.[160]

Grade 5 class at Nakambala Basic school, Mazabuka, Zambia.

PHOTO: JASON LARKIN/ACTIONAID

Are tax incentives working for developing countries?

Many countries are engaged in a 'race to the bottom' to attract business and investment with low tax rates and ever more generous tax breaks for multinational businesses.

For resource-rich but capital-poor developing countries, pressures to compete in this low-tax race are even more intense – including pressure from international agencies like the World Bank, whose highly influential 'Doing Business' rankings award countries each year for the fitness of their business climate, in part ranking countries more highly simply for lowering their tax rates.[161]

Yet there is limited evidence that tax breaks and incentives, like those granted to Zambia Sugar, actually attract foreign investment. Econometric evidence from the World Bank itself has shown that when foreign investors are making decisions about where to invest, factors other than tax may be more influential, and tax rates only become key to investment decisions where a favourable non-tax investment climate already exists: the infrastructure, education and security for which tax revenues themselves are needed.[162] Even the International Monetary Fund has suggested that wide tax breaks and tax holidays are "a particularly ineffective way of promoting investment".[163]

Domestic investors and businesses also find it harder to compete with multinationals benefitting from large tax breaks. As Yusuf Dodia, Director of Zambia's Private Sector Development Association, told us, "domestic investors can on paper get [tax] incentives, but in practice we don't get the US$500,000 threshold. But smaller investments in some cases can have much greater impact – like a ferry in a remote area rather than a bridge in a busy city."[164]

The tide, though, is turning towards tougher accountability and tighter limits for tax incentives, as developing countries become more openly concerned about the decimation of their corporate tax bases. At the most recent meeting of the African Tax Administration Forum, an Africa-wide network of tax authorities, the secretary-general of Senegal's finance ministry called excessive tax incentives "a budgetary cancer".[165] His government calculates that Senegal loses over 6% of its entire GDP to tax incentives.[166]

In Zambia, where the low tax take from hugely profitable mining companies became a major election issue in 2011, the new government's first full budget in October 2012 noted falling tax take due to "a proliferation of inefficient tax incentives" and announced a complete review of all tax incentives during 2013.[167]

Unlike his multinational employer, Isaac is unable to structure his loans through an offshore tax haven.

Covering the gap: life as a cane-cutter

To function properly, schools and health service needs sustainable tax revenues to pay for ongoing costs – medicines, fuel, nurses' salaries. At present, despite the company's own (welcome) provision of health services on its Mazabuka estate, some of Zambia Sugar's own employees are having to cover the gap themselves.

Isaac Banda[168] is a (tax-paying) cane-cutter who has worked for Zambia Sugar for 10 years on seasonal contracts. Last year he was called to his daughter's school to find her having a severe asthma attack.

"We had to take a taxi [to the government hospital], but the doctor was not there, so we had to take the child to a private surgery. We paid 40 pin [ZK40,000] for the X-ray and 50 pin [ZK50,000] for medicine."

As a seasonal worker – like more than half the Zambia Sugar workforce[169] – Isaac says that his family is not eligible to use the Zambia Sugar clinic nearby (the company makes a monthly deduction from his wages for his own medical treatment there).[170] ABF told us that this is because "Seasonal workers usually return home annually when their contracts are complete. Their homes are often situated far from the estate and they generally do not bring their dependants [sic] and families to live with them." In Mazabuka, however, we nonetheless met many seasonal workers like Isaac who live permanently, with their families and children, close to the estate. Indeed the headmaster of Nakambala Basic School, next to the estate, told us that most of his pupils' parents were seasonal Zambia Sugar workers.[171]

A cane-cutter harvesting sugar cane on the Mazabuka estate.

PHOTO: JASON LARKIN/ACTIONAID

With overtime and bonuses, Isaac earns around ZK2,212,000 a month during the cutting season.[172] With rising food prices in Zambia, basic provisions for a family of six now cost around ZK3,500,000.[173] So, along with other seasonal Zambia Sugar workers ActionAid has met, Isaac borrows money to cover the costs of medical care and basic provisions. Unlike his multinational employer, however, Isaac is unable to structure his loans through an offshore tax haven (see 'Step 2'). Instead, he takes out monthly loans arranged via Zambia Sugar's payroll from a local lender, Bayport Financial Services, negotiated by the workers' union. Repayments and interest are deducted from Isaac's salary: his payslip, seen by ActionAid, shows that in the previous month, ZK1,140,000 (half his income) was deducted as loan repayment and interest. "You take a credit from somebody, or a loan from Bayport, that's the only one where you can make your chap [son] go to school."

The cost of making education free for a schoolchild in Mazabuka is equivalent to the tax we estimate Zambia Sugar avoids every two minutes.

"Education is preparation for tomorrow": Nakambala Basic School

Cane-cutter Isaac Banda's children go to Nakambala Basic School in Mazabuka town, on the edge of the Zambia Sugar estate. Most of the school's pupils have family members who are Zambia Sugar employees, from cane-cutters to irrigation workers, and many will go on to form the company's future workforce. The pupils are dedicated and the staff hard-working – each of them paying tax on their ZK2,500,000 monthly salary.[174]

Over 1,200 schoolchildren have to fit into just 12 classrooms, sitting in shifts, taught by 20 teachers. The biggest class, Grade 5 – combined into a single class of 90 because one of their two teachers is on maternity leave and the government does not provide funds to replace her – has to use an unfinished classroom block with no windows, doors or floors. Some pupils have to stand at the back and write with their books pressed against their hands, or sit on the floor. When it rains, they often have to move out of the classrooms altogether.

The classrooms have been unfinished for eight years, since the government grant that the school receives – just ZK1.2m (US$240) a quarter – cannot pay for new buildings. Parents pay Parent Teacher Association (PTA) contributions of ZK50,000 a year per child to cover the cost of their school's repairs and new buildings. This small amount is still sometimes impossible for some parents. Headmaster Mr Sumatama says: "There is a policy of free [basic] education in Zambia, but then that free education needs to be supplemented by the parents. Buying books, buying the uniform itself... they struggle to do that. The people in here are the [seasonally employed] cane-cutters. When it is finished they are off-crop, they lose employment."

Mr Sumatama is surprised to hear about the level of Zambia Sugar's tax payments. "If we knew that is what is happening, I think people would have been [up] in arms with Zambia Sugar. It's very unfair. Zambia Sugar get a lot of profit, and it is just morally good to pay back on these profits, than taxing a teacher who gets just two, three million Kwacha [US$400-US$600]... We are just neighbours to Zambia Sugar. They have that responsibility, that corporate responsibility to pay back to the community in which they are operating from."

The struggle to pay school fees is very real. Prisca Monga lives at Mulonga Extension on the outskirts of Mazabuka. Her husband, a carpenter by trade, stopped working for Zambia Sugar in 2003, and cannot now find work. Prisca sells *impwa* and other vegetables at the Mulonga Extension market, but it often isn't enough to cover the ZK140,000 (US$28) she has to pay each month to rent her single room, and ZK36,000 (US$7) for electricity. As a result, it is sometimes impossible to pay her children's PTA fees, and her son has had several recent spells off school. She says that when the fees rise in Grades 8 and 9, "if they are not able to pay, the kids have to stay at home". Her neighbour James Nakamba,[175] an irrigation supervisor on the Zambia Sugar estate, says that "most of the children loitering in these compounds are Grade 7 dropouts. Some of them turn to be thieves, or do piecework, to help their parents to buy food."

Zambia Sugar has made donations to some government schools around its estate, but this cannot replace adequate, sustainable government funding for all schools. The Zambian central education budget is still only able to provide US$77 per pupil a year, and so in most schools money for school repairs and upkeep have to come from parents' fees.[176] The typical cost of these fees – the cost of making education free for a schoolchild in Mazabuka – is equivalent to the Zambian tax we estimate Zambia Sugar avoids through tax haven transactions every two minutes.[177]

Grade 5 class in an unfinished classroom, Nakambala Basic School.
PHOTO: JASON LARKIN/ACTIONAID

Prisca Monga's single-room home at Mulonga Extension on the edge of the Zambia Sugar Estate.
PHOTO: JASON LARKIN/ACTIONAID

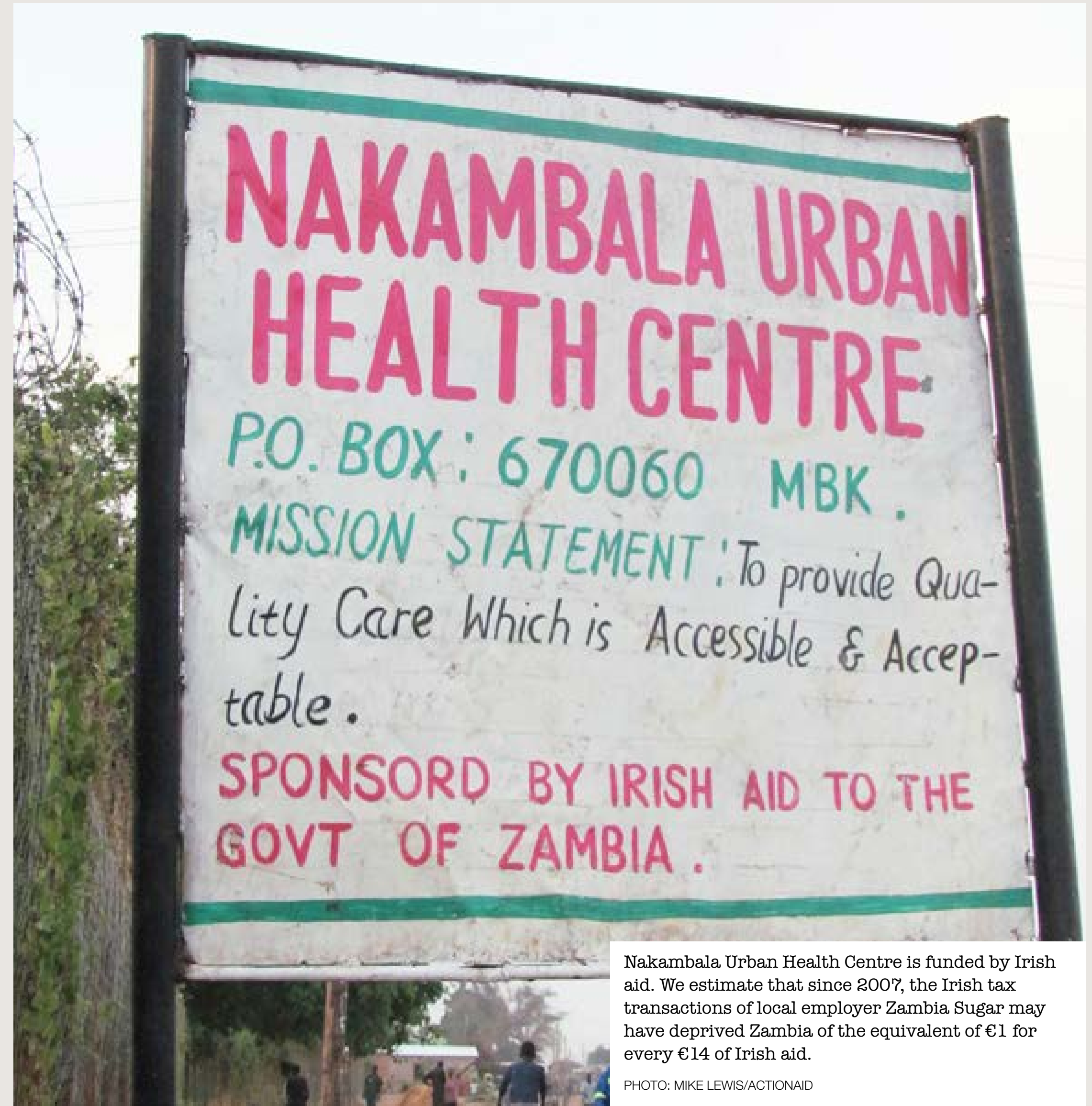
We estimate that Irish transactions undertaken by Zambia Sugar deprive the Zambian government of some nearly US$2 million a year – enough to cover the PTA fees for 180,000 Zambian schoolchildren.

Giving with one hand...

In Mazabuka, home to Isaac and to Zambia Sugar, both Nakambala Urban Health Centre and Nakambala Basic School were built using aid money from the Irish government – Zambia being one of Ireland's nine key 'development partners' on which Irish overseas aid is focused. They provide vital services under great pressure. But limited Zambian government revenues mean that ongoing costs of schoolbooks, new classrooms and teachers fall all too often on their poorest users.

As the Irish Minister for Trade and Development, Joe Costello, recently said, "Irish Aid plays a vital role in helping to meet the needs of people in some of the poorest parts of the world. However, to achieve a sustainable solution to poverty, developing countries need to generate their own revenues... We will continue to work at all levels, through the United Nations, the European Union and the OECD in particular, in addressing these important issues relating to taxation and development."[178]

Yet as we have seen, Irish tax rules enable the multinational corporation next door to these Irish-funded schools and clinics to siphon profits out of Zambia, into and via Ireland. We estimate that Irish transactions undertaken by Zambia Sugar deprive the Zambian government of nearly US$2 million (ZK9.2 billion) a year – enough to cover the PTA fees for 180,000 Zambian schoolchildren. Indeed, according to our estimates, since 2007 this single company's transactions via Ireland may have deprived the Zambian government of revenues equivalent to one in every €14 of Irish development aid to Zambia during that time.[179]



Nakambala Urban Health Centre is funded by Irish aid. We estimate that since 2007, the Irish tax transactions of local employer Zambia Sugar may have deprived Zambia of the equivalent of €1 for every €14 of Irish aid.

PHOTO: MIKE LEWIS/ACTIONAID

The bill

Who pays the bill?

Since 2007 Zambia Sugar has paid 30% of its operating profit to associated companies in tax havens.[180] We argue that some of these transactions have shrunk the company's taxable profits in Zambia, while others have reduced or cancelled Zambia's share of taxes on cross-border interest income and profits distributed to its overseas parent company.

As a result of these transactions, we estimate that since 2007 some US$17.7 million (ZK78 billion) of Zambian tax has been forgone. Add the tax revenues lost thanks to Zambia Sugar's tax incentives and tax rate change from 35% to 15%, and we estimate that the bill of lost tax revenues is over US$27 million (ZK116 billion).

Nor does the future look bright. The tax savings from the company's rate change and other special tax incentives may reduce tax liabilities by at least US$3.6m a year even if the company does not increase in profitability, and may rise further with growing future profit levels. And while we cannot predict the pattern of the company's future transactions with tax haven companies, if they continue at current patterns then alongside the growing impact of the company's Zambian tax breaks, we estimate that tax losses to the Zambian exchequer in the future may easily reach some US$7 million (ZK35 billion) a year.

Our reckoning of the Zambian tax lost to the four 'steps' described in this report is necessarily an estimate. It is currently impossible for a shareholder, ordinary employee, member of the public or even tax inspector to tell exactly where and how much tax ABF or most other multinationals are paying, since most stock exchanges, governments and

Table 2: **The bill**

2007-12	Payments to tax haven companies, 2007-12	Estimated Zambian tax foregone, 2007-12	
'Farming' rate change	N/A	**US$3 million** (ZK13.5 billion)	
'Farming' rate overpayment for previous years	N/A	**US$6.3 million** (ZK24.6 billion) (repayment for 2001-5)	
Management and purchasing fees to Ireland	**US$47.6 million** (ZK209 billion)	**US$7.4 million** (ZK32.6 billion)	
Export agency commission to Mauritius	**US$6.1 million** (ZK30.4 billion)	N/A	
'Dog-legging' interest payments via Ireland	**US$30 million** (ZK135 billion)	**US$3 million** (ZK13.5 billion)	
'Tax-free takeaway'	N/A	**US$7.4 million** (ZK32 billion)	
TOTAL	**US$83.7 million** (ZK374 billion)	Incentives **US$9.3 million** (ZK38.1 billion)	Future incentives At least US**$3.6 million** (ZK18 billion) per year
		Tax haven transactions **US$17.7 million** (ZK78 billion)	
TOTAL ESTIMATED ZAMBIAN TAX FOREGONE		US$27 million (ZK116 billion)	

> “It is no longer clever to come up with the smartest tax wheeze.”
>
> James Henderson, Managing Director, PR firm Pelham Bell Pottinger

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tax authorities currently do not require most multinationals to publish details of their tax payments in all the individual countries where they operate. Nor are private companies in most tax havens required to make basic financial accounts publicly available, as they are in the UK and – in theory – in Zambia.[181] And at the time of writing, ABF itself had not responded to any of our detailed questions regarding the tax practices of its subsidiary companies.[182] We have therefore based our estimates on an analysis of those company accounts and other financial documentation we have been able to obtain from European and African countries; and the prevailing tax laws in those countries.

Impact on workers and local investors

We have seen the impact of inadequate tax revenues on ordinary Zambians using the country's overstretched schools, clinics and nutrition programmes. But the tax haven transactions described above also impact directly on workers and local investors.

Lower profits thanks to tax haven payments, for example, may depress local wages. Some seasonal workers on Nanga Farms – the cane-growing farm majority-owned by Zambia Sugar just outside Mazabuka – have, up to July 2012, earned monthly wages around 20% less than the government-benchmarked minimum wage. Zambia Sugar employees themselves went on strike over wages in June 2012, and more recent payslips from both Nanga Farms and Zambia Sugar seen by ActionAid show wage rates just over the minimum wage.[183] ABF denied categorically that “lower profits are the result of payments made to low-tax jurisdictions”, and said that “[t]he company awarded a [pay] increase that was double the level of the prevailing inflation rate, and was one of the highest percentage increases awarded in the country.” Zambia Sugar's contribution to local employment undoubtedly brings great benefits. Nonetheless some workers, as we have seen, still have to borrow just to meet basic household costs; while sums equivalent to nearly a third of the firm's operating profits are being paid for off-shored services from other group companies in and via tax havens.

Likewise, shifting profits to other group companies in tax havens means that those profits can be maintained within the corporate group as a whole, while reducing the local profits from which independent shareholders' returns are paid. In Zambia Sugar's case, these are mainly Zambian pension funds and individual investors, which together own the 18% of the company not held by Illovo. They have complained about low dividends at recent shareholder meetings. Again, the company has blamed this on the costs of its expansion, its company secretary telling dissatisfied local investors at its last AGM, “once we finish repaying the loan we owe the banks, everybody will be smiling”.[184]

Tax responsibility?

ABF's chief executive, George Weston, writes in the company's most recent Corporate Responsibility report that “over the years we have grown into a diversified international food, ingredients and retail group, **and we have focused more on the ‘responsibility’ than on the ‘corporate’.**”[185] Yet the company's corporate responsibility policies have nothing to say about tax avoidance, negotiating tax breaks, or the company's responsibility to pay its due taxes.

Elsewhere this message is getting through to large companies loud and clear. James Henderson, Managing Director of leading British PR firm Pelham Bell Pottinger, insists that “If a company is going to try to pay less than the standard corporate rate there needs to be a very good reason. The mood has changed. Tax avoidance is today seen as an evasion of corporate responsibilities. It is no longer clever to come up with the smartest tax wheeze.”[186]

To what extent does ABF bear responsibility for the tax practices outlined in this report? Of course, each of the Illovo group companies is an independent legal entity, and in Zambia Sugar's case there are other shareholders that control 48.5% of its parent company Illovo Sugar Ltd. We asked ABF what control and oversight it maintained over the tax function of the Illovo group and its constituent companies, but did not receive a substantive reply at the time of writing.[187] Nonetheless, as the majority shareholder of Illovo Sugar Ltd, ABF is certainly in a position to influence the tax behaviour of its subsidiary sugar businesses, and their continued use of pre-acquisition tax structures and practices, should it choose to do so. Chief executive George Weston describes ABF as “highly diversified” and managed “without imposing central edicts”, but nonetheless insists that ABF's business principles “extend to all sites, in all countries and at every level of our organisation… from board member to the shop floor”.[188] ABF also specifically states that it has a board-level tax policy imposing requirements on “all [its] businesses”.[189]

Unfortunately this group-wide tax policy is not made publicly available, and ABF's public statements regarding tax compliance state simply that “all businesses [must] comply fully with all relevant local tax law”, a superfluous commitment given that it would obviously be unlawful for any company not to do so.[190]

ABF makes no public mention of its approach to legal but artificial tax avoidance, or to the negotiation or litigation of tax breaks and tax rates. Although the practices outlined in this report may be common amongst large multinationals, some other FTSE-100 companies have begun to state

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publicly that they will not seek to obtain significant benefit from tax havens, or to engage in artificial tax planning.[191]

Certainly the creation of new offshore structures within the Illovo group does not seem to have stopped since ABF acquired majority control of Illovo Sugar Ltd in 2006. For example, the reshuffling of Zambia Sugar's holding companies from Ireland to the Netherlands, reducing taxes on Zambia Sugar's profits distributed as dividends thanks to an abstruse loophole in Dutch tax law, was done in June 2007.[192]

The Illovo group's most recent project – a now-aborted investment in the planned expansion of a sugar estate and biofuel plant at Markala in Mali – was routed through a subsidiary in the Indian Ocean haven of Mauritius, Illovo Group Holdings Ltd, to which Illovo's share of the Malian profits would be paid, although the tax impact of this structure likewise remains unclear and the investment was abandoned in 2012 due to political instability.[193] We have also been able to identify tax-haven holding structures – whose tax impact likewise remains unclear – for Zambia Sugar's sister companies in Tanzania and Malawi. In a letter to ActionAid on 28 November 2012, ABF told us that "for the latest Illovo year end to 31 March 2012 the Illovo group's effective tax rate was 30.3% [worldwide]. Over the past 5 years Illovo has paid some 1.3 billion Rand (c.£100 million) in taxes and collected a further 1.9 billion Rand (c.£145 million) for central and local governments in the African countries in which it operates."[194]

They told us that "Illovo seeks to maintain a professional and transparent relationship with all tax authorities that it deals with, ensuring full disclosure of all transactions and related tax matters have been made to the appropriate authorities and these are regularly reviewed and audited by the local tax authorities."[195] They also told us that "Zambia Sugar paid (from 2007/8) withholding taxes of ZK28.7 billion (44 million Rand) and customs duty of ZK24.8 billion (39 million Rand) and collected employment taxes of ZK136 billion (228 million Rand).

Cane harvesting on Zambia Sugar estate.

PHOTO: JASON LARKIN/ACTIONAID

Leaving aside that the largest of these three are taxes borne not by the company's own profits but by its ordinary employees, we do not deny that companies like Zambia Sugar pay several kinds of taxes. Nonetheless it is taxes on income and profits that reflect the taxes companies and their owners bear themselves, rather than being passed on to consumers in the cost of goods or borne by employees. We believe taxing companies' profits remains a vital and fair part of all countries' tax bases, and should not be artificially avoided.

ABF's championing of the need for companies to pursue wider social goals and give back to communities seems at odds with the tax behaviour we have outlined in this report. ABF prides itself, for example, on providing significant charitable funding out of its profits: about 40% of ABF's shares are ultimately owned by the Garfield Weston Foundation, the Weston family's charitable trust, which disburses £30-40 million each year to churches, community projects, education and arts organisations, mainly in the UK. (It also helps to fund low-tax advocates the Institute of Economic Affairs,[196] a think-tank whose editorial director Philip Booth recently called for "Britain [to] become a tax haven – both for companies and for people").[197] But advocates for corporate social responsibility are increasingly seeing responsible taxpaying as a core part of companies' social responsibility.[198]

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What next?

The practices outlined in this report are the result not just of corporate ingenuity, but also of regulatory weakness and government policies.

Responsible companies; stronger tax authorities; better tax laws; and, critically, public action and scrutiny – all have a part to play in protecting the revenues that Zambia and many other countries need to fight hunger and poverty.

Recommendations

To Zambia Sugar and ABF:

Companies must stop using corporate structures and transactions designed solely or mainly to avoid tax liabilities.

- Associated British Foods should publish a full tax policy, covering its tax practices, their management, and reporting of the company's tax position.
- This policy should, quite simply, rule out the use of artificial transactions and arrangements to minimise tax liabilities.
- Zambia Sugar and other Illovo group companies should stop paying management and agency fees to Ireland, Mauritius and other tax havens.
- Where paid-for services are being provided from tax havens, Zambia Sugar and ABF should aim ultimately to build the skills and expertise for those services in the countries where its main operations are located; and ensure that payments for them, at market prices, go directly to the company providing them.
- Investors, tax authorities and employees should be able to see where and how the group is paying its taxes. ABF should publish annual accounts on its website of all its subsidiary companies, including those in tax havens. It should also provide clear information about the functions, staffing and assets of every subsidiary.

To the UK, Ireland and other developed country governments:

As exporters of investment, aid donors, and the home countries of many multinational companies, developed countries have the opportunity and responsibility to ensure that companies headquartered within their jurisdictions are not artificially reducing their tax bills.

- Developed countries should assess their own tax regimes against the likely 'spillover' effect on the tax base of developing countries, as recommended by the World Bank, IMF, UN and OECD.[199]
- Developed countries should enhance international tax cooperation with developing countries' tax authorities to overcome the difficulty of obtaining information about 'both ends' of international transactions used to minimise tax liabilities in developing countries.
- In particular, developed countries should require multinationals headquartered in their jurisdictions to disclose all international related-party transactions producing a significant tax advantage, and exchange that information with relevant countries, where international agreements permit.
- Ireland should urgently either renegotiate or cancel its bilateral tax treaty with Zambia, to allow Zambia to levy the tax rates it chooses on payments of royalties, dividends, interest and service fees from Zambian to Irish companies.
- Developed countries should assess their bilateral tax treaty networks to determine whether they are unfairly denying taxing rights to developing countries. If so, they should offer to renegotiate those treaties, permitting the use of a range of different tax treaty models, and including clauses permitting 'source countries' to tax fees for technical services, management fees, and payments for the use of intangible assets.
- Developed countries should insert anti-avoidance clauses in their bilateral tax treaties to deny treaty benefits to artificial transactions such as 'treaty shopping', and to transactions with no real economic substance.
- To avoid their own jurisdictions being used as conduits for financial flows into tax havens, developed countries should impose withholding taxes on interest, dividend and royalty payments into tax havens, and where necessary abandon double tax treaties with tax havens.

To the Zambian government and parliamentarians:

- Zambia should urgently renegotiate its bilateral tax treaty with Ireland to stop it being used by multinationals to 'treaty-shop' and shift profits artificially into other jurisdictions.
- Before it is ratified and comes into force, the Zambian cabinet should ensure that Zambia's new tax treaty with Mauritius does not unduly deny Zambia its taxing rights, and in particular that it protects Zambia's right to levy withholding taxes on interest, royalties, dividends, technical and management service fees to Mauritius.
- The Zambian government should undertake a comprehensive review of its tax treaties, to ensure that its treaty network adequately protects Zambian taxing rights.
- The government should use its comprehensive review of tax incentives during 2013 to assess tax expenditures resulting from its incentives regime, and ensure that they are properly targeted and commensurate with the benefits that they are expected

> "There are too many tax havens, too many places where people and businesses manage to avoid paying taxes."
>
> David Cameron, UK Prime Minister

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to bring to Zambian citizens. In particular, tax incentives should only be applicable to the income relating to the activity which is being incentivised, and blanket tax holidays should be abolished.

- Clear cost-benefit analysis of each tax incentive should be done, both in terms of economic benefits to the country from additional investment, and the opportunity costs of better funding for public services. The government's assessment of its tax expenditures should be published, to allow Zambian citizens to participate in a frank national debate about the costs and benefits of the Zambian tax incentive regime.
- The Zambian Revenue Authority, and not the Zambian Development Agency, should approve the granting of tax incentives to specific companies.
- The ZDA should regularly audit all qualifying companies' Investment Performance Forms, as it is required to do. Likewise the ZDA must grant public access to investment certificates and supporting documents, as it is required to do under the Zambian Development Agency Act.
- Sections of the Income Tax Act providing incentives aimed at domestic businesses and enterprises, such as the special corporate tax rate on farming income, should be more tightly targeted to ensure that they only apply to income deriving directly from the specified activity (for example, farming). A revenue limit should also be included to prevent large multinational businesses qualifying for incentives intended for domestic businesses and farmers.
- Zambian citizens must be granted their right under Zambian law to access basic information about companies registered in Zambia. This includes the annual returns of all companies, and annual accounts of public companies, which are required by law to be made available to all members of the public at the Zambian Patents and Company Registration Agency (PACRA).[200] In practice these documents are simply not obtainable by the public from PACRA, and sometimes not filed at all.[201] PACRA should ensure that companies are filing the information they are required to provide by law, and should make these available to the public at reasonable cost.
- Privately owned companies in Zambia should also be required to file publicly available annual accounts, as in other jurisdictions.

To the international community:
It is time to stop talking and start acting, to tackle the common global problem of endemic tax avoidance and the tax havens that facilitate it. UK Prime Minister David Cameron has said, "Some businesses and some individuals hide their taxes away and don't pay them fairly – and there are too many tax havens, too many places where people and businesses manage to avoid paying taxes."[202] To ensure this:

- Tax havens must provide information about the companies, assets and wealth placed in their jurisdictions. In particular, countries should agree to take serious countermeasures against tax havens that do not sign the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, including all the levels of information exchange provided for under the Convention.
- Individual countries, regional groups, and standard-setters like the G20, OECD and UN Tax Committee should seriously consider alternative methods for taxing multinational companies, to prevent the artificial shifting of profits into low-tax jurisdictions. This should include robust unilateral application of anti-avoidance measures, as well as possible regional or international agreements to ensure that the attribution of taxable profits to a given jurisdiction more closely accords to the real economic activity underlying those profits.
- Developing countries should not be required to implement the OECD guidelines on transfer pricing in national law, or to use the OECD model tax treaty in treaty negotiations. Both standard-setters like the OECD and developed countries should instead ensure that international tax standards allow the use of other pricing methods and model treaties which may serve developing countries' needs and capacities better.
- All countries should require companies registered in their jurisdictions to file publicly available annual accounts, as is currently required in the UK and – in theory – in Zambia, but not in tax havens like Mauritius and Jersey. This would help shareholders, consumers and tax authorities to see how much tax multinational companies are paying, and where.
- Tax authorities, investors, and the general public should be able to find out who owns companies and trusts. It should not be possible for the ownership of parts of a major, publicly traded multinational group like ABF to remain secret, as with its Jersey subsidiary. All countries should subscribe to an international, legally binding standard requiring the public registration of the beneficial ownership of all companies, trusts and other corporate bodies.
- Developed countries should apply serious countermeasures against payments and financial flows into those jurisdictions that do not subscribe to such a standard.

To Zambian and UK citizens:
Citizens must hold their governments to account for their

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tax policies. Consumers, investors and employees must hold companies to account for their tax behaviour.

- In Zambia, citizens should demand their existing rights under the Zambian Development Agency Act and the Companies Act to obtain public information about company accounts, tax incentives and tax holidays.
- Zambian citizens should demand that the current government review of tax incentives reports publicly on the impact of tax incentives and tax holidays on government revenues.
- Zambian citizens should call on their parliamentarians not to ratify new tax treaties with low-tax jurisdictions, including the treaty with Mauritius, unless such tax treaties do not deny Zambia taxing rights.
- In the UK and elsewhere, company employees, shareholders and consumers should ask questions of multinationals like ABF about their tax policies and practices. If multinationals continue to engage in aggressive tax practices, then shareholders and consumers should consider choosing alternative products, services and investments.

Sister Florence Mweemba and staff at Nakambala Urban Health Clinic, Mazabuka, Zambia.

PHOTO: JASON LARKIN/ACTIONAID

Glossary

Arms-length price
The range of prices that a company would be expected to pay for a product or service when buying it from another, completely unrelated company.

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

Double taxation agreement (DTA)/tax treaty
A legal agreement between two countries that sets out how the right to tax income earned in country A by residents (individual or corporate) of country B is divided between them. Tax treaties also provide for mechanisms of cooperation and information-sharing between tax authorities of the two countries.

Multinational company
A company operating in more than one country. Usually, a multinational company is a group of subsidiary companies all owned by an ultimate 'parent' (in this case, Associated British Foods), either directly or via other holding companies.

Operating profit
A company's turnover, minus the amount it spends, but only taking into account expenditures and income that relate to the ordinary operations of the business. It therefore excludes interest payments to creditors, or income from investments or debtors. Operating profit allows an investor to see how well the company is running its core business.

Pre-tax profit
A company's turnover, minus the amount it spends, taking into account all forms of income and expenditure except taxes on profits.

Subsidiary
A company wholly or partly owned, and wholly or partly controlled, by another company. Subsidiaries are legally separate entities from one another and their parent companies, but may overall be controlled by that parent company.

Tax avoidance
Practices which minimise tax liabilities within the letter of the law (and are thus not unlawful), but which are morally questionable and/or go against the intention of lawmakers.

Tax competition
Competition between different jurisdictions to encourage businesses or individual taxpayers to locate companies or assets in their jurisdiction by lowering tax rates, or offering other tax incentives or favourable tax rules.

Tax expenditure
The amount of tax revenue forgone by a government as a result of a tax incentive or tax break. Although it is revenue which is not collected, it is often recorded in national accounts as an expenditure, since it is equivalent to paying that amount of revenue to the taxpayer.

Tax haven
A jurisdiction (sometimes independent countries, sometimes dependent territories such as the British Virgin Islands) that creates attractive tax rules, systems of regulation and veils of financial and corporate secrecy, for the benefit of individuals and companies operating elsewhere. In Mauritius, for example, 'global business companies' pay much lower tax rates than domestic companies. Also known as secrecy jurisdictions.

Tax incentive/tax break
A reduced rate of tax, or tax holiday, which a government grants to a taxpayer in order to encourage particular behaviour. Developing countries often offer tax incentives to foreign investors – for example, exempting them from corporate income taxes for a fixed number of years – in order to encourage foreign investment.

Transfer pricing
When companies that are part of the same multinational group trade with each other, for example when one company in a group provides a service to another company. Under existing accounting and tax rules, the group's accountants have to decide what price they should pay each other. International standards require them to do this based on the range of prices that would be paid if the companies were completely unrelated (the 'arms-length price').

Treaty shopping
Exploiting particularly favourable features (usually reduced or cancelled withholding tax rates) of a double taxation convention (DTC), between countries A and B in order to lower taxes on income paid to country C, to which the DTC was never intended to apply. This is usually achieved using a 'conduit entity' – a company or other corporate body – in country B, through which income passes from A to C in order to take advantage of the DTC between A and B.

Turnover
All the company's income for the year.

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Unitary taxation

A method of apportioning the corporation tax to be paid by a company or group of companies in different jurisdictions by considering the company or group as a single profit-making entity, and dividing up the whole group's taxable profits between the different jurisdictions where it operates according to a formula generally based on the geographical location of its employees, assets, and sales. Unitary taxation would prevent companies from avoiding taxes in higher-tax jurisdictions by shifting profits artificially to low-tax jurisdictions where they do not maintain employees and assets, and do not do business. Some US states already use systems of unitary taxation to apportion taxes paid by US companies in different states, and there have been calls for countries to cooperate in taxing multinational companies in the same way.

Withholding tax

A method of collecting tax from an individual or a company by taking it from their income before it reaches them: for example, the collection of income tax from employees by their employer through 'pay as you earn', with the tax remitted to the government by the employer. Many countries require companies that make payments to other foreign companies to pay a withholding tax on them, especially if the two companies are related to each other.

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[3] World Bank, *Nutrition at a glance: Zambia*, September 2010. See http://bit.ly/SL3gg9 (accessed 4 November 2012); UNICEF, *State of the World's Children 2011*, p.94, statistical table 2. See http://uni.cf/PPGtAx (accessed 4 November 2012).

[4] Zambia Sugar's pre-tax profits from 2007-12 were US$123m (ZK550 billion). Throughout this report we present figures in both Zambian Kwacha (ZK) and US dollars (US$). At the time of writing (December 2012), the exchange rate was US$1 to ZK5,290. Where figures refer to a particular year, or a range of years, we have used the mean interbank exchange rates for each calendar year in our calculations.

[5] World Bank, *Nutrition at a glance: Zambia*, September 2010, http://bit.ly/SL3gg9 (accessed 4 November 2012); UNICEF, *State of the World's Children 2011*, p.94, statistical table 2, http://uni.cf/PPGtAx (accessed 4 November 2012).

[6] ActionAid calculation from OECD CRS Overseas Development Assistance (ODA) database, searched on 4 November 2012 under 'purpose codes' for food security and agriculture: total disbursed 2007-11 was US$830,579. Figures for 2012 were not available at time of writing.

[7] The World Bank estimates that the cost of scaling up core micro-nutrition interventions needed to prevent malnutrition in the 'uncovered' population in Zambia is less than US$7m. World Bank, *Nutrition at a glance: Zambia*, September 2010, http://bit.ly/SL3gg9 (accessed 21 November 2012). For methodology see http://bit.ly/VGOvIJ (accessed 21 November 2012). See below for further details of tax loss calcuations. Full calculations behind all tax loss estimates in this report are available from ActionAid on request.

[8] Calculation of Zambian government spending per pupil based on UNESCO figures for public expenditure per primary pupil as a % of GDP per capita, and World Bank figures for Zambian GDP per capita. We compared this figure (US$77) with the US$2.75m we estimate is lost to Zambian tax revenues annually through Zambia Sugar's tax haven transactions.

[9] ActionAid has examined all of Illovo Sugar Ireland's available accounts since 2005, which state clearly: "The company has no employees."

[10] €2m is not the total amount paid to the Irish company by Zambia Sugar, but only the portion declared as received by Illovo Sugar Ireland as 'management fees' and on which it pays Irish tax, which might therefore be expected to represent fees for services provided by Illovo Sugar Ireland, rather than fees paid to other service-providing companies elsewhere in the Illovo Group.

[11] Illovo Sugar Ireland accounts 2007-11.

[12] Hearson, M and Brooks R. *Calling Time: Why SABMiller should stop dodging taxes in Africa*, ActionAid, 2012 (second edition 2012: first edition 2010). See http://bit.ly/e9V2gC (accessed 4 November 2012).

[13] Fuest, C et al. 'International debt shifting and multinational firms in developing economies', *Economics Letters*, Vol. 113(2), 2011, pp. 135-138

[14] 'Starbucks 'paid just £8.6m UK tax in 14 years', BBC News, 16 October 2012, see http://bbc.in/QP5DLC (accessed 3 November 2012)

[15] David Cameron statement on prospective G8 summit in Northern Ireland, 21 November 2012.

[16] David Cameron. 'A G8 meeting that goes back to first principles', EU Observer, 21 November 2012.

[17] 2013 Budget speech delivered 12 October 2012, see http://bit.ly/SUKCPq (accessed 21 November 2012).

[18] ActionAid telephone call with Head of Corporate Affairs and Administration, Zambia Sugar, 12 October 2012.

[19] ActionAid interviews, Mazabuka, 17-18 October 2012.

[20] Figure for expenditure per primary school pupil as a % of GDP is from UNESCO's UIS Data Centre, see http://bit.ly/bcbOFY (accessed 19 November 2012); GDP/capita data for 2011 are from World Bank World Development Indicators, see http://bit.ly/dxzQgO (accessed 19 November 2012).

[21] UNESCO, *Education For All Global Monitoring Report 2012*, Statistical tables. See http://bit.ly/SYPjlI (accessed 19 November 2012). Survival rate to last (primary) grade is 53% (2009), compared to 66% in 1999.

[22] ActionAid interviews, Mazabuka, 17-18 October 2012.

[23] Not his real name. To preserve their anonymity, we have changed the names and some identifying details of all Zambia Sugar employees interviewed in the course of our research.

[24] ActionAid interviews, date and location withheld.

[25] Payslip for September 2012 shown to ActionAid.

[26] 'Basic needs basket', July 2012, surveyed by the Jesuit Centre for Theological Reflection, Lusaka.

[27] National pension scheme (NAPSA) contributions are deductible from PAYE tax, which explains the lower than expected tax charge in the accompanying table.

[28] Delegation of the European Union in Zambia. *Strategic Environmental Assessment (SEA) of the Sugar Sector in Zambia*, January 2010, p.2.

[29] Zambia Sugar Plc annual reports 2008-2012.

[30] Corporate income tax *payments* refer to the 'cash tax' shown on the company's cash flow statement. In terms of its 'book tax' liabilities, in the last five years Zambia Sugar has recorded a net tax credit of ZK31 billion.

[31] Each of these taxpayers is liable for a different form of income tax, levied on their income in different ways. Caroline pays a 'presumptive' fixed market levy to the Mazabuka District Council of ZK1000 a day regardless of her income or profits; Isaac pays 'pay-as-you-earn' income tax to the Zambian Revenue Authority, deducted at source from his wages on gross monthly income over ZK2,000,000; and Zambia Sugar Plc is liable to corporate income tax on its profits, after deducting a range of costs and expenses. Since these taxes are applied differently, to compare their tax burdens we have compared their net income with the amount of income tax(es) paid. This should not be taken to indicate the rates at which these different income taxes are applied on liable income.

[32] ActionAid interview, 17 October 2012. This is based on Caroline's own estimates of her *kantemba's* daily revenues, working seven days a week.

[33] Unweighted average African tax take/GDP is 19.8% in 2010: AfDB/OECD/UNDP/UNECA, *African Economic Outlook 2012* (28 May 2012), p. 40. By comparison, UK tax take/GDP in 2011/12 was 37.3%: HM Treasury, Public Sector Finances Databank, October 2012, Table C1. See http://bit.ly/rxmIud (accessed 3 November 2012).

[34] Figures taken from Zambian Revenue Authority, *Programme proposal to support specialized large taxpayer revenue administration in Zambia, 2011-2014*, February 2011. This tax take/GDP estimate of 10-12% is lower than the 19.4% projected in the 2012-13 Zambia budget, but takes into account a likely underestimation of Zambia's GDP in current statistics by around 30-40%, according to government documents.

[35] UNESCO. 'Zambia', *World Data on Education, VII Ed. 2010-11*, August 2010.

[36] World Bank/World Health Organization data at http://bit.ly/106P2bY (accessed 20 November 2012).

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[38] 'Top 100 Food and Drink Manufacturers in the UK and Ireland', *Food & Drink Business Europe*, 5 July 2012. See http://bit.ly/X9l4V1 (accessed 3 November 2012).

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[40] Associated British Foods Plc, 'Responsibility in Action: Billingtons', n.d., http://bit.ly/VK8IgT (accessed 3 November 2012); British Sugar, 'Fair Trade [brochure], n.d. See http://bit.ly/VK6PRe (accessed 3 November 2012); Zambia Sugar Plc, Annual Report 2012, p. 47 Note 23.1.

[41] Illovo's sugar estates cover 120,154 hectares as of 2012. *Illovo Sugar Integrated Annual Report 2012*, p. 119, Note 11.

[42] Illovo Sugar Ltd website, 'Fast Facts', n.d. See http://bit.ly/Tsm27D (accessed 4 November 2012).

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47 UNESCO, World Data on Education, 7th edition, 2010/11, figures for average national pupil-teacher ratio in grades 1-9; World Bank, *African Development Indicators 2011*, Table 3.1 (figure for proportion of population at less than US$1.25 per day). See http:// bit.ly/w4Ylil (accessed 7 November 2012).

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49 ActionAid interviews with Zambia Sugar temporary workers, dates and location withheld; ActionAid interviews with Nakambala Urban Health Centre staff, 19 October 2012; payslips and contract documents seen by ActionAid; letter from Illovo Sugar to ActionAid, 18 January 2013.

50 ActionAid interview, 18 October 2012.

51 ActionAid interview, 18 October 2012.

52 ActionAid interview, 18 October 2012.

53 ActionAid interview with Nakambala Health Centre staff, 18 October 2012.

54 ActionAid interview, 18 October 2012.

55 ActionAid interview, 18 October 2012.

56 ActionAid interview, 19 October 2012.

57 Zambia Sugar Plc annual report 2012, p.18.

58 Ibid.

59 Zambia Sugar Plc annual reports 2007-12. Note that the 'book tax' calculated on its profits and losses is greater than these tax payments, but offset by tax credits and delayed by deferred taxes. Note also that Zambia Sugar's domestic subsidiary, Nanga Farms Plc, has paid significantly *more* tax in this period than its parent company.

60 Letter from Illovo Sugar to ActionAid, 18 January 2013

61 Zambia Revenue Authority, 2013 Budget: *Overview of tax changes* (October 2012)

62 See, for example, the mandate of the Mauritius Offshore Business Activities Authority, established in 1992 to sustain the growth of offshore industries. See http://bit.ly/ VLCHF4 (accessed 4 November 2012). In 2001 it was renamed the Mauritius Financial Services Authority, with a more regulatory mandate.

63 George Weston, 'A sweeter future for Africa?', speech given to the Royal African Society Business Breakfast series, London, 5 October 2010. See http://bit.ly/RzeZh9 (accessed 4 November 2012).

64 Zambia Sugar annual accounts, 2007-12.

65 According to Illovo Sugar Ireland's accounts, "the principal business activity of the company is the provision of management and technical services to group companies. Presently the company only supplies services to Zambia Sugar Plc." Illovo Sugar Ireland annual financial statement 2011, p.2.

66 Zambia Sugar actually pays more than US$2.6m (€2m) to Illovo Sugar Ireland; €2m is the portion declared as received by Illovo Sugar Ireland as 'management fees' and on which it pays Irish tax; this might therefore be expected to represent fees for services provided by the Irish company itself, rather than fees paid onto other service-providing companies elsewhere in the Illovo Group.

67 Illovo Sugar Ireland accounts 2007-11.

68 Zambia Revenue Authority, *Withholding Taxes* – Leaflet (n.d.)

69 Zambia Revenue Authority, *Budget Highlights 2013* (October 2012), Section 1.2.2.

70 Letter from ABF and Illovo Sugar to ActionAid, 18 January 2013.

71 Letter from Illovo Sugar to ActionAid, 30 January 2013.

72 Illovo Sugar Ltd annual report 2012.

73 Letter from Associated British Foods and Illovo Sugar to ActionAid, 18 January 2013.

74 Illovo Sugar Ireland annual accounts, 2006/7 to 2011/12.

75 Since 2007, Zambia Sugar has declared payments to Illovo Sugar Ireland of ZK 209 billion (€34 million), while Illovo Sugar Ireland has declared net income of €12.2 million, entirely consisting of management fees from Zambia Sugar. Illovo Sugar Ireland and Zambia Sugar annual accounts, 2007-12

76 ActionAid telephone call, 26 October 2012.

77 ActionAid visit, 3 October 2012.

78 ActionAid telephone interview, 26 October 2012.

79 Letter from Ilovo Sugar to ActionAid, 30 January 2013.

80 Zambia Sugar accounts, 2007-12; Illovo Sugar Ireland accounts, 2007-12.

81 Letter from Ilovo Sugar to ActionAid, 30 January 2013.

82 Illovo Sugar Ireland accounts 2007-11; Deloitte, 'International tax: Jersey highlights 2012'. See http://bit.ly/SLD0T6 (accessed 4 November 2012).

83 Letter from Associated British Foods and Illovo Sugar to ActionAid, 18 January 2013; email from Barclays Corporate Affairs to ActionAid, 13 November 2012; Illovo Sugar Ireland annual accounts, 2007-12. Payments from the Irish to the Jersey companies are not declared directly in the Irish accounts, but as 'amounts due' from Illovo Sugar Ireland to Illovo Project Services Ltd which have decreased each of these year ends, from €655,000 to zero.

84 This assumes no withholding tax on these payments for 'management fees and purchases'. While Zambian domestic law permits a 15% withholding tax on management and consulting fees, Zambian 'source state' taxation of such fees is not permitted under the Zambia-Ireland tax treaty. The full calculations for all of the tax loss figures in this report are available on request from ActionAid.

85 Zambia Sugar annual accounts 2012, p.47.

86 Letter from ABF and Illovo to ActionAid, 18 January 2013.

87 Letter from ActionAid to ABF, 28 October 2012; letter from ABF to ActionAid, 28 November 2012.

88 Telephone interview, 26 October 2012.

89 Mauritius Union Annual Report 2011. See http://bit.ly/TFsbSo (accessed 5 November 2012).

90 Telephone interview, 26 October 2012.

91 *Times of Zambia,* 27 January 2011.

92 Mauritius' tax treaties only contain provisions for taxing royalties, dividends and interest income, and almost all contain clauses reserving the right to tax any other income only to the state of residence of the company receiving the income.

93 This assumes that Zambia Sugar will continue to enjoy the 'farming' corporation tax rate, reduced in 2012 to 10%.

94 HM Treasury, 'Statement by the Chancellor of the Exchequer, Rt Hon George Osborne MP; Britain & Germany call for international action to strengthen tax standards. Joint statement by the United Kingdom and Germany', 5 November 2012. See http://bit.ly/ YKXJY1 (accessed 6 November 2012).

95 BBC, 'Should Zambia impose windfall taxes on mining companies?', 13 September 2011. See http://bbc.in/pqLgSO (accessed 6 November 2012).

96 Interview with ZRA official, 8 October 2012.

97 Interview with ZRA advisor, date and location withheld.

98 For Brazil's 'fixed margin' method, see Tatiana Falcao (IBFD), 'Brazilian transfer pricing – a practical approach. Could this be a model for developing countries?', presentation to Helsinki Transfer Pricing Seminar, 13 June 2012, http://bit.ly/WwHcJN (accessed 6 November 2012). For China's adjustment of transfer prices using 'location saving' formula, see Zhang Ying (State Administration of Taxation of People's Republic of China), 'China's transfer pricing system', presentation to Helsinki Transfer Pricing Seminar, 13 June 2012, http://bit.ly/SSEta2 (accessed 6 November 2012).

99 European Commission, 'Proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB)', COM/2011/121, Brussels, 16 March 2011. See http:// bit.ly/fUvjHH (accessed 6 November 2012).

100 Income Tax Act (Cap. 323), sections 97A-D.

101 Income Tax Act (Cap. 323), section 95.

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[102] Interview with ZRA advisor, 12 October 2012.

[103] Interview with ZRA staff, 8 October 2012.

[104] Interview with ZRA staff, 8 October 2012.

[105] Organisation for Economic Cooperation and Development.

[106] IMF/OECD/UN/WB, *Supporting the development of more effective tax systems: a report to the G-20 development working group* (2011), p.27.

[107] Zambia Sugar annual report 2009, p. 2

[108] Zambia Sugar annual reports, 2007-12; Illovo Sugar Ireland annual accounts, 2007-11. There was a two-year interest moratorium at the start of the expansion project, in 2007 and 2008.

[109] 'Particulars of a charge created by a company incorporated in the state', Illovo Sugar Ireland mortgage document, filed in Ireland, dated 30 November 2007.

[110] Letter from ABF and Illovo to ActionAid, 18 January 2013.

[111] Statement from Zambia Sugar Plc and Citigroup, sent to ActionAid, 17 January 2013.

[112] There is no Zambia-US DTC, so presumably the full 15% WHT rate would be applicable to interest payments to Citibank N.A. If the interest were paid directly to Standard Bank in South Africa (which is the security trustee of the loan), then according to the Zambia-South Africa DTC it would be taxable only in the country of residence of the debtor (i.e. Zambia), presumably at the 15% rate. See *Agreement for the Avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income [between the Union of South Africa and the Federation of Rhodesia and Nyasaland]*, 22 May 1956 (still in force), Article XII(4).

[113] The Zambia-UK Double Taxation Convention limits Zambian WHT on interest payments to Standard Bank in the UK to 10%.

[114] Illovo Sugar Ireland annual accounts, 2007-11.

[115] The Ireland-UK double taxation convention forbids source-state taxation on interest payments; Irish tax law also contains a general 'domestic exemption' which exempts interest payments to companies in other EU member states from Irish withholding tax: International Bureau for Fiscal Documentation (IBFD), Country Survey: Ireland (19 December 2005).

[116] 'Particulars of a charge created by a company incorporated in the state' (Illovo Sugar Ireland mortgage document, filed in Ireland), dated 30 November 2007, on file with ActionAid. Withholding tax would also be waived for interest payments to South African and USA-resident companies under Ireland's respective tax treaties.

[117] Calculation based on 10% withholding tax rate which would otherwise be charged on interest payments to the UK branches of these banks (ActionAid calculation based on Zambia Sugar annual reports 2007-12). This is a conservative estimate: using the 15% rate which would be applicable if the interest payments were going straight to the banks' South African and US headquarters would yield a larger figure for tax lost.

[118] Although at present the Netherlands does not apply withholding taxes to interest.

[119] The only other Zambia tax treaty that entirely cancels 'source' withholding taxes is the Zambia-Kenya treaty.

[120] Interview with ZRA official, 8 October 2012.

[121] Zambia Revenue Authority, 'Zambia renegotiates United Kingdom Tax treaty'.

[122] Megha Bahree and Deborah Ball, 'Island tax haven roils India's ways', *Wall Street Journal*, 29 August 2012.

[123] Shri S.S. Palanimanickam, Minister of State in the Ministry of Finance, Answer to unstarred question no. 4689 in the Lok Sabha (Indian parliament), 4 May 2012.

[124] Letter from ActionAid to ABF, 28 October 2012; letter from ABF to ActionAid, 28 November 2012.

[125] See diagram for details. When Illovo Sugar Ireland was the parent company of Zambia Sugar in this structure, it appears from its accounts not to have paid Irish corporate income tax on dividend income from Zambia, probably because Irish tax law deems the dividends to be have been taxed once already – as profits in Zambia – for which the company receives a tax credit for this 'underlying' tax that cancels any further tax due.

[126] Ireland's dividend WHT is levied, with some exemptions, at the standard rate of income tax, currently 20%.

[127] Subject to a participation exemption and a 'substantial shareholdings' test. See Illovo Sugar Ireland annual accounts 2007.

[128] Illovo Sugar Ireland annual accounts 2007; Illovo Sugar Cooperatief U.A. financial statements 2007-8.

[129] Tamara Martin, Jeffry Van Brussel, Jaime Young (PriceWaterhouse Coopers), 'Dutch co-ops: a primer', in *CCH: international Tax*, No. 48 (November 2008).

[130] There appears to be no discernible provision for tax in Illovo Sugar Cooperatief U.A.'s accounts. It is difficult from the Cooperatief's abbreviated accounts to see how and when profits are being distributed to its members; certainly some of the Cooperatief's income is currently being placed in the company's own profit reserve.

[131] 5% rate applies if recipient owns more than 25% of the shareholding in the Zambian company.

[132] Assuming that the full 15% was avoided in 2007 thanks to the rate in the Ireland- Zambia treaty, and 10% thereafter thanks to the rate in the Netherlands-Zambia treaty.

[133] Corporation Tax Act 2009, Section 931E, as amended. It is possible that dividends paid from Illovo Sugar Ltd to ABF are subject to withholding taxes in South Africa (previously called secondary company tax, and replaced in April 2012 by a formal withholding tax); depending on whether taxes paid by the Illovo group elsewhere can be offset against these withholding taxes.

[134] Letter from ABF and Illovo to ActionAid, 18 January 2013.

[135] ActionAid interview, 12 October 2012; OECD Development Assistance Committee Network on Governance (GOVNET), *Room Document 2 Zambia Tax Incentives Study* (prepared for Meeting of the Taxation Task Team, Paris, 4 November 2011), section 4.2.3. Internal document on file with ActionAid.

[136] ActionAid interview, 10 October 2012.

[137] Ibid.

[138] Ibid.

[139] ActionAid interviews, 10 and 12 October 2012.

[140] OECD Development Assistance Committee Network on Governance (GOVNET), *Room Document 2 Zambia Tax Incentives Study* (prepared for meeting of the Taxation Task Team, Paris, 4 November 2011), section 4.2.2. Internal document on file with ActionAid.

[141] ActionAid interviews, 8 and 10 October 2012.

[142] ActionAid interview, 8 October 2012. There is no suggestion that the official was referring to Zambia Sugar in this statement.

[143] Zambia Sugar annual report 2008; previously the company's revenue streams were taxed differentially, with profits from cane growing and sugar exports taxed at 15% in accordance with Zambian tax incentives for farming and 'non traditional product' exports; and profits from sugar production and domestic sales taxed at 35% (Zambia Sugar Annual Report 2006).

[144] This estimate is made by applying to Zambia Sugar's pre-tax profits the reduced corporate tax rate that the company now enjoys (10%); and comparing this to the tax that would have been due conservatively assuming that pre-tax profits rise no further than current levels; and patterns of profit from farming, non-farming and export income continue (leading to an effective tax rate, without the rate change, of around 23%). Full details of this calculation are available from ActionAid. The reduction in tax liabilities from the rate change from 2007 to 12 is taken from Zambia Sugar annual report 2008, p. 30, note 6; Zambia Sugar annual report 2012, p. 37, note 7.

[145] Zambia Sugar Plc vs. ZRA (2006/RAT/02/DT), 2007 ruling on file with ActionAid.

[146] Ibid.

[147] Zambia Sugar accounts 2007-12.

[148] Zambia Sugar Plc vs. ZRA (2006/RAT/02/DT), 2007 ruling on file with ActionAid.

[149] Interview with Lusaka-based tax lawyer and tax adviser, 15 October 2012. One such previous case mentioned was ZRA vs. Nanga Farms Ltd in the Revenue Appeals Tribunal, March-April 1999 (1999/RAT/38). N.B. This company is not to be confused with the Nanga Farms Plc which is majority-owned by Zambia Sugar.

[150] Letter from ABF and Illovo to ActionAid, 18 January 2013.

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[151] Interview with ZRA adviser, date and location withheld.

[152] Zambia Sugar Plc annual report 2012.

[153] Zambia Sugar annual report 2011 (note 7); letter from ABF and Illovo to ActionAid, 18 January 2013.

[154] Zambian Development Agency Act, Section 76.

[155] Telephone call with ZDA official, 18 October 2012.

[156] Email from ZDA official, 19 October 2012.

[157] Telephone call with ZDA official, 18 October 2012.

[158] Letter from ActionAid to ABF, 28 October 2012; letter from ABF to ActionAid, 28 November 2012.

[159] Zambian Finance Minister, budget address, 11 November 2011.

[160] Zambia Sugar Plc Annual Reports 2008 and 2009 (income statement and cash flow statement)

[161] World Bank/IFC, *Paying Taxes: Doing Business*. See http://bit.ly/rpmPTh (accessed 21 November 2012).

[162] James, S. *Tax and non-tax incentives and investments: evidence and policy implications*, Investment Climate Advisory Services, World Bank Group, December 2009.

[163] International Monetary Fund, *Kenya, Uganda and United Republic of Tanzania: Selected Issues*, IMF Country Report No. 08/353, October 2008, p.11. See http://bit.ly/ R5ePMW (accessed 4 November 2012).

[164] ActionAid interview, 13 October 2012. The Zambian Development Agency Act specifies that investment tax incentives are only available for investments over $500,000.

[165] 'Les dépenses fiscales : «un cancer budgétaire »', ATAF press release, 15 October 2012. See bit.ly/YQ1I5m (accessed 6 November 2012).

[166] 'An exchange market for tax experiences', ATAF News, September 2012, p.1. This is based on the results of a tax expenditure assessment carried out in 2008, which found that the Senegalese tax code contained derogations resulting in the cancellation of CFA378 billion in otherwise due taxes.

[167] 2013 Zambian Budget speech delivered 12 October 2012. See http://bit.ly/SUKCPq (accessed 21 November 2012).

[168] Not his real name.

[169] Monthly employment figures taken from Zambia Sugar annual reports 2007-12.

[170] Letter from ABF and Illovo to ActionAid, 18 January 2013.

[171] ActionAid interview, 10 October 2012.

[172] September 2012 payslip seen by ActionAid.

[173] Basic Needs Basket, July 2012, surveyed by the Jesuit Centre for Theological Reflection, Lusaka.

[174] Employees are liable to personal income tax at 25% on any monthly income over ZK2 million – raised in 2012 to ZK2.2 million.

[175] Not his real name.

[176] Calculation based on UNESCO figures for public expenditure per primary pupil as a % of GDP per capita, and World Bank figures for Zambian GDP per capita.

[177] The average annual PTA fee per head at the schools we visited in Mazabuka district was ZK50,000. We estimate that Zambia Sugar's tax haven transactions have reduced its Zambian tax liabilities by some ZK73 billion over the last six years.

[178] Department of Foreign Affairs, Press Release, 27 September 2012. See http://bit.ly/ TMLfOw (accessed 8 November 2012).

[179] See below for estimates of Zambian tax loss due to Zambia Sugar's Irish transactions ($9.1m/ZK41 billion). Irish development aid to Zambia taken from available Irish Aid annual reports 2007-11, available at http://bit.ly/UToS6R (accessed 21 November 2012).

[180] Total operating profit from 2007-12 was ZK866.8 billion. Zambia Sugar annual reports 2007-12.

[181] Ian Bowler, *The potential transparency benefits of public registration of statutory accounts of unlisted companies*. Presentation to OECD Task Force on Tax and Development, 29 March 2012, http://bit.ly/SJxfCL (accessed 4 November 2012).

[182] Letter from ActionAid to ABF, 28 October 2012; letter from ABF to ActionAid, 28 November 2012.

[183] Nanga Farms payslips shown to ActionAid, dates and locations withheld. Monthly payslip dated 30 June 2012 showed wage rate of ZK330,720, compared to the government-benchmarked minimum wage of ZK419,000 for general (non-specified) workers. The Zambian minimum wage was increased on 4 July 2012 to ZK700,000. More recent payslips seen by ActionAid for equivalent jobs show wage rates of ZK772,200. The government minimum wage is intended to benchmark minimum wages across the country, but are not binding on the pay of workers, like those at Zambia Sugar and Nanga Farms, who are subject to collective pay bargaining. See Government of Zambia, *Minimum Wages and Conditions of Employment (General) Order 2011, Statutory Instrument No.2 of 2011.*

[184] Judith Hara, 'Zambia Sugar shareholders bemoan low dividends', *Times of Zambia*, 13 August 2012.

[185] See http://bit.ly/Vo7r3F accessed 4 November 2012. Emphasis added.

[186] James Henderson (Pelham Bell Pottinger), 'Does Tax Transparency have a role in corporate social responsibility?', presentation to International Tax Review's Tax and Transparency Forum, April 2012.

[187] Letter from ActionAid to ABF, 28 October 2012; letter from ABF to ActionAid, 28 November 2012.

[188] ABF, *Corporate Responsibility Report* (introduction), 2010. See http://bit.ly/Vo7r3F (accessed 4 November 2012).

[189] ABF Plc, 'Investors – Corporate Governance – Risk Management', n.d. See http://bit. ly/VLe4bN (accessed 4 November 2012).

[190] Ibid.

[191] Responses by four FTSE-100 companies to ActionAid tax policy survey, April-May 2012.

[192] In the absence of a universally agreed definition of tax haven jurisdictions, ActionAid uses a relatively standard list of tax havens produced by the U.S. Government Accountability Office, adding the Netherlands and the U.S. state of Delaware because of their widespread use in international tax avoidance structures. See ActionAid, *Addicted to tax havens: The secret life of the FTSE 100*, ActionAid UK, 2011, http://bily/qyztfi (accessed 4 November 2012). For details of the Netherlands' tax haven features, see Michiel van Dijk, Francis Weyzig and Richard Murphy, *The Netherlands: A tax haven?*, SOMO, November 2006, bit.ly/TslVbX0 (accessed 4 November 2012).

[193] Agreement dated 26 June 2007 between the Government of the Republic of Mali, Illovo Group Holdings Ltd and Schaffer & Associates International LLC, on file with ActionAid. Following the March 2012 coup in Mali, Illovo reportedly wrote off its investment in the Markala project, citing concerns about the country's 'deteriorating security situation'. Mike Cohen, 'Illovo Pulls out of Malia Sugar Project on Security Concerns', Bloomberg, 28 May 2012. See http://bloom.bg/Kyvu89 (accessed 4 November 2012).

[194] Illovo Sugar (Malawi) Ltd annual report 2012, note 24.

[195] Letters from ABF and Illovo to ActionAid, 28 October 2012, 18 January 2013.

[196] Garfield Weston Foundation annual report 2011.

[197] Philip Booth, 'Tax havens are essential and do us all a favour', *The Telegraph (UK)*, 11 November 2012. See http://bit.ly/UgXgle (accessed 20 November 2012).

[198] David Williams (KPMG), *Tax and corporate social responsibility*, September 2007. See http://bit.ly/9li02u (accessed 20 November 2012).

[199] *Supporting the development of more effective tax systems: a report to the G20 Development working group by the IMF, OECD, UN and World Bank*, November 2011, chapter 2. See http://bit.ly/AnAEwv (accessed 21 November 2012).

[200] The Companies Act (Cap 388), articles 184-189, 374.

[201] UK International Development Select Committee, *Tax in Developing Countries: Increasing Resources for Development: Government Response to the Committee's Fourth Report of Session 2012-13* (HC 708, 8 November 2012). See http://bit.ly/ V8VzCW (accessed 26 November 2012), p.4.

[202] David Cameron, speech at NACCO Materials handling factory, Northern Ireland, 20 November 2012.

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