PILLAR 4

GOOD CORPORATE CITIZENSHIP

20

TAX

STANDARD

Commitment

Eliminate the average gap between the tax paid and the statutory rate over any five-year period in each country where value is created for the company and its subsidiaries.

Analysing business finances.
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Tax is a critical tool to mobilize the domestic resources for the investments, services, and institutions necessary to achieve the SDGs. In 2020, the United Nations Conference on Trade and Development found that global SDG investment "remains far from the target to meet the $2.5 trillion annual financing gap for developing countries."[1] On climate action alone, developed countries formally committed to jointly mobilizing US$ 100 billion per year by 2020 to address the needs of developing countries,[2] a commitment they never met.[3] Yet, hundreds of billions of U.S. dollars of tax revenue are lost each year because of corporate tax avoidance and evasion. Scandals like the Panama Papers, Paradise Papers, Luxembourg Leaks, and Pandora Papers have exposed the widespread practices of corporate tax dodging and their corresponding consequences on public budgets.

Some of the strategies companies deploy to reduce their tax burdens include lobbying for tax holidays or incentives and profit shifting. Profit shifting means moving profits to lower tax jurisdictions offshore, including through anonymous shell companies and transfer mispricing,[a] thus eroding the tax base of higher tax jurisdictions. Indeed, in the Luxembourg Leaks of tax documents in 2014, some of the largest food processing companies' European operations have restructured under subsidiaries in Luxembourg to avoid paying higher corporate taxes in other European jurisdictions.[4] Many food sector companies also shift profits to Switzerland through their commodity trading arms in the lower-tax country.[5]

Tax havens cost governments tax revenue. While there is no consensus around the collective losses of corporate tax revenue globally, some studies estimate that they amount to up to US$ 600 billion per year, through legal and illegal means.[6] Of that lost revenue due to tax avoidance, some studies have shown approximately US$ 200 billion is lost from low-income economies, or around 1.3% of GDP in those countries, a larger hit as a percentage of GDP than in higher-income economies.[7] This is also more than the US$160 billion low-income countries receive each year in foreign development assistance.[8] Researchers estimate that "close to 40% of multinational profits are shifted to tax havens globally,"[9] which constitutes approximately US$ 650 billion each year.[10] In 2017, American Fortune 500 companies alone held an estimated $2.6 trillion offshore.[11]

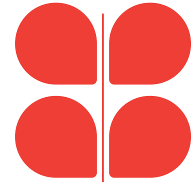
Corporate tax practices driven by tax minimization also undermine corporate investments in countries. For example, companies which move from jurisdiction to jurisdiction in pursuit of discretionary tax holidays are "less likely to invest in local infrastructures and economies, and less likely to create good quality, high skilled jobs than a company making more stable, non-tax-motivated decisions about its business operations."[12]

For a company to align its tax practices with the SDGs, simply complying with the law is not sufficient. While some governments are mobilizing efforts to fight these strategies,[b] many of the aggressive tax minimizing strategies companies deploy are within the letter, but not the spirit, of the law. The UN Economic and Social Council reiterated that according to the UN Guiding Principles on Business and Human Rights, business entities are expected to respect economic, social, and cultural rights "regardless of whether domestic laws exist or are fully enforced in practice."[13] Accordingly, where States have not managed to properly address tax avoidance strategies, companies have a responsibility to make sure they are not involved with such outcomes through their tax practices or those of their business relationships.

By implementing more responsible, SDG-aligned tax practices, and stemming abuse of the gaps in the global tax system, food companies can significantly contribute to sustainable development.

a. Transfer mispricing entails setting the prices of goods and services that are sold between subsidiaries in different countries in ways that shift profits for maximum tax benefit.

b. For example, in 2021, the Canadian government took a major step toward ending anonymously-owned companies, committing in its annual budget to establish a public registry of corporate ownership by 2025, and the US Congress passed legislation that effectively bans shell companies. (Source: Alex Boutilier, "Ottawa Targets Tax Evaders with Public Registry of Corporate Owners," thestar.com, April 21, 2021, https://www.thestar.com/politics/federal/2021/04/21/ottawa-targets-tax-evaders-with-public-registry-of-corporate-owners.html. 116th Congress (2019-2020), "H.R.6395 - 116th Congress (2019-2020): National Defense Authorization Act for Fiscal Year 2021," legislation, January 1, 2021, 2019/2020, https://www.congress.gov/bill/116th-congress/house-bill/6395/text.. The Government of Denmark has refused to provide COVID-19 pandemic-related financial assistance to companies located in offshore tax havens, and has asked companies to align their practices and tax practices with the Guiding Principles. UN Working Group, "Connecting the Business and Human Rights and the Anti-Corruption Agendas," Forty-Fourth Session (UN Human Rights Council, June 17, 2020), https://doi.org/10.1163/2210-7975_HRD-9970-2016149.)



SDG-ALIGNMENT: THIS STANDARD CONTRIBUTES DIRECTLY TO EACH OF THE 17 GOALS,

given the importance of tax for States to be able to fund the achievement of the 2030 Agenda. In addition, responsible tax practices contribute to:

SDG 17 – Partnerships for the goals

Target 17.1: Strengthen domestic resource mobilization, including through international support to developing countries, to improve domestic capacity for tax and other revenue collection.

Target 17.15: Respect each country's policy space and leadership to establish and implement policies for poverty eradication and sustainable development.

PILLAR 4

GOOD CORPORATE CITIZENSHIP

STEPS TO MEET THE COMMITMENT

1. ADOPT A POLICY AND EMBED IT INTO GOVERNANCE AND MANAGEMENT SYSTEMS

1.1. ADOPT A POLICY

The board or the most senior level of SDG-aligned companies adopt a policy to respect, and enable fulfillment, of economic, social and cultural rights, including the rights to social security, health, education, and development, by engaging in responsible tax practices. The policy:

- Aligns with and references the international standards listed in Box 28.
- States that the company and its subsidiaries and joint ventures (1) pay the right amount of tax, at the right time, in the countries in which it creates value, (2) do not engage in arrangements whose sole purpose is to create a tax benefit in excess of what is reasonably understood to be intended by relevant tax rules, and (3) do not negotiate special tax holidays, incentives and rates that are not generally available to all market participants.[14]
- States implementation is overseen by the highest governing body and day-to-day responsibility for implementation is clearly defined.
- Includes a set of principles that apply to the tax practices of all of the company's entities, subsidiaries, and joint ventures in all jurisdictions.[c]

BOX 28: INTERNATIONAL HUMAN RIGHTS STANDARDS RELEVANT TO TAXATION

- Universal Declaration of Human Rights, Article 28.[15]
- International Covenant on Economic, Social and Cultural Rights, Article 2(1).[16]
- Declaration on the Right to Development, Articles 2(3), 3(1), 4(2), 7(1).[17]
- General Comment No. 24.[18]

1.2. EMBED THE POLICY INTO GOVERNANCE & MANAGEMENT SYSTEMS

To embed the policy, SDG-aligned companies:

- Communicate expectations for implementing the policy commitment to all relevant internal and external stakeholders (including tax professionals, suppliers, and clients), including by elaborating clear procedures for managing responsible tax practices.
- Ensure their business practices and the incentives they create do not contradict, in form or substance, the company's policy commitment.

2. ASSESS ACTUAL & POTENTIAL IMPACTS

SDG-aligned companies assess the alignment of their tax practices and those of their business relationships with their commitment to responsible tax practices. This assessment considers how the company's tax planning and lobbying practices might undermine the SDGs by reducing tax revenues in different jurisdictions. The assessment determines the true beneficial owners of suppliers and other business relationships (any party with shareholdings of more than 10%) and assesses the alignment of their tax planning activities with the commitment to responsible tax practices.[19]

3. INTEGRATE BY SETTING TARGETS & TAKING ACTION

SDG-aligned companies integrate the findings of their comprehensive assessment outlined in **Step 2** into relevant internal functions and processes by **setting targets** and then **taking action** to align with the standard within set target dates.

3.1. SET TARGETS

SDG-aligned companies set specific time-bound intermediate and long-term targets to align business practices with the standard. The targets are ambitious enough to contribute significantly to the SDGs' achievement, in particular SDG 17. The intermediate targets are relevant for companies to monitor their and their business relationships' continuous improvement towards meeting the standard. Where possible, indicators measure outcomes rather than outputs or activities. These targets are tailored to the company's business activities and relationships based on their assessment of actual and potential impacts.

c. For example, Nestlé has developed 10 Taxation Management Principles (Source: "Nestlé: Taxation," Nestlé Global, accessed July 7, 2021, https://www.nestle.com/csv/what-is-csv/taxation.).

3.2. TAKE ACTION

SDG-aligned companies integrate the findings of assessments into relevant internal functions and processes. They take appropriate actions to ensure their due diligence processes prevent, mitigate or remediate impacts on people and planet that may result from tax practices.[20] Some specific measures that SDG-aligned companies implement include:

- **Declare profits geographically based on where their real economic substance arises**. Do not engage in arrangements whose sole purpose is to create a tax benefit in excess of what is reasonably understood to be intended by relevant tax rules.[21] Only use business structures that are aligned with business activity and which have genuine substance.[22]
    - **Do not use tax havens to avoid taxes on activities that take place elsewhere**, including by locating assets or booking profits in – and routing transactions via – low- or no-tax jurisdictions.
    - **Only base branches, subsidiaries, and joint ventures in low- or no-tax jurisdictions for substantive and commercial reasons.**[23]
    - **Do not use artificially fragmented structures or contracts to avoid establishing a taxable presence** in jurisdictions where value is created for the company and its subsidiaries.[24]
    - **Align with current best practice guidelines**, such as the OECD's arm's length principle for transfer pricing by which transfer prices reflect market prices that would prevail in arm's length transactions between two unrelated parties.[25]
- **Use leverage with business relationships to end their involvement in tax avoidance schemes**, including schemes that obscure their beneficial ownership.
- **Use leverage in industry-wide and cross-industry discussions** to promote responsible tax practices and robust tax systems.[26]
- **Refrain from lobbying for lower tax rates**. Use leverage to support a global minimum corporate tax rate, address profit shifting to tax havens, and end the race to the bottom.[27]
- **Refrain from undermining the development and enforcement of robust tracking and recovery laws** and mechanisms that contribute to the remediation of tax abuses.[28]
- **Refrain from negotiating special tax holidays or incentives** that are not generally available to all market participants[29] and are not targeted as specific legitimate public policy purposes, such as to stimulate employment in an economically depressed region. Where tax holidays or incentives are provided for legitimate public policy purposes, meet those public policy objectives or forgo the incentive.

4. ESTABLISH AND PARTICIPATE IN EFFECTIVE GRIEVANCE MECHANISMS & PROVIDE OR ENABLE REMEDY

4.1. ESTABLISH GRIEVANCE MECHANISMS

SDG-aligned companies establish effective grievance mechanisms that are accessible to stakeholders to report impacts by tax practices that do not align with the standard. To ensure that victims of adverse impacts have access to remedy, SDG-aligned companies establish effective, confidential, and anonymous grievance mechanisms and whistleblower protections to enable and protect both internal and external stakeholders in confidentially reporting cases of actual or potential misconduct related to tax practices.[30]

4.2. COOPERATE IN STATE-BASED GRIEVANCE MECHANISMS

Where a company, its subsidiaries, or other business relationships engage in tax evasion or avoidance, the company participates in legitimate public grievance mechanisms and sanctions regimes, and, where relevant, complies with sanctions and fines commensurate with the negative impact of its involvement in the abuse, or uses its leverage to ensure sanctions and fines are complied with.

4.3. PROVIDE OR ENABLE REMEDY

When SDG-aligned companies identify that they have caused or contributed to harm through their tax practices, they acknowledge their part in the occurrence of the harm done and provide for or cooperate in their remediation through legitimate processes. Where the company is connected to tax abuses through business relationships but did not contribute to the abuses, it enables remediation by using its leverage with those entities.

5. TRACK PERFORMANCE

SDG-aligned companies monitor and review the effectiveness of the implementation of their responsible tax commitment to support continuous improvement to meet the standard.[31] Indicators the company uses to track performance include:

- The corporation's average tax gap (the average gap, over the past five years, between the effective tax rate and the statutory rate).
- The effective tax rate as a percentage of pre-tax profits and the industry norm.
- The volume and percentage of global profits attributed to recognized tax havens and low-tax jurisdictions.[32]

6. DISCLOSE PERFORMANCE

To enable transparency and accountability, SDG-aligned companies communicate publicly on their performance against their tax commitment and targets, particularly when concerns are raised by or on behalf of affected stakeholders. Where relevant, SDG-aligned companies also share aggregate data and high-level findings directly with affected stakeholders and organizations, including human rights organizations and researchers.

Regular public disclosure is accurate, clear, accessible, and third-party verified information about the actual and potential impacts related to their tax practices, their efforts to address these to implement their policy commitment, and performance against targets. Disclosure includes sufficient information to evaluate the adequacy of the company's approach and activities. Formal disclosure includes information on the following:

- The indicators listed under step 5.
- The company's public commitment to responsible tax practices.
- The company's efforts to align the company's, its subsidiaries', and other business relationships' practices with the public commitment to responsible tax practices.
- Annually, on a country-by-country basis[33] in each country in which the company, its subsidiaries, and its joint ventures operate and create value for themselves:
    - Names of each subsidiary;
    - The place of incorporation, if different from the country where value is created;
    - A description of the primary activities of the subsidiary;
    - The beneficial ownership, or true owners, with shareholdings of more than 10% for all of its subsidiaries;
    - The number of employees and the basis of calculation of this number;
    - Revenues from third-party sales;
    - Revenues from intra-group transactions with other tax jurisdictions;
    - Profit/loss before tax;
    - Tangible assets other than cash and cash equivalents;
    - Corporate income tax paid on a cash basis;
    - Corporate income tax accrued on profit/loss;
    - A narrative explanation for the gap between the effective tax rate and the statutory rate;
    - Evidence that the legitimate public policy purpose of any tax holidays or incentives is met by the company.
    - The ratio of pre-tax corporate profits to wages.[34]
- An explanation of why the company has subsidiaries operating in low tax jurisdictions.[35]
- Any efforts to influence lawmakers, policymakers, and tax authorities on tax-related issues.

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Companies often engage with human rights defenders, whistleblowers, critics, and trade unionists in ways that undermine the achievement of their own sustainability commitments. Human rights and environmental defenders who challenge agribusiness projects play a critical role in notifying processing companies of potential sustainability issues in their value chains and yet still face violence and judicial harassment in their operating contexts. Current ESG and sustainability frameworks rarely consider such impacts and the appropriate role of responsible and sustainable companies in acting to prevent and address them.

Worker in a rice field.
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