



# The role of multinational companies in tax evasion and tax avoidance: The case of Nigeria

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## ABSTRACT

Tax evasion and tax avoidance reduce government revenues. This has a significant detrimental effect on the provision of infrastructures, public services and public utilities. Multinational companies (MNCs) in the oil, gas, and manufacturing sectors have used various tax schemes, ranging from off-shore intermediary companies to claiming recharges, royalties or technical fees and under-reporting of profit, to avoid paying tax in Nigeria. This paper locates the role of MNC tax practice within the broader dynamics of globalisation and the pursuit of profits, to argue that the drive of MNCs for higher profits can enrich our understanding of why some MNCs engage in tax evasion and avoidance at almost any cost. Stimulated by profitability, and intense competition and pressure to increase earnings, capitalist enterprises constantly seek new ways of boosting their earnings by developing complex structures and novel ways of increasing their profits by exploiting ambiguities in the law. The evidence shows that tax havens and offshore financial centres, shaped by globalisation, are major structures facilitating the anti-social tax practices of MNCs. The findings also suggest that the local business elite and local professionals are key actors in facilitating these anti-social tax practices in Nigeria for their own financial gain. These MNC practices also shift the tax burden to less mobile capital and less well-off citizens, and thereby undermine the Nigerian social fabric. This paper therefore argues that tax reforms are needed to reduce the problems created by MNCs and their affiliates operating in Nigeria.

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## 1. Introduction

Tax evasion is an unlawful practice which has the effect of reducing the government revenues needed for the provision of infrastructures, and for public services and public utilities. Tax avoidance, while not regarded by some as being unlawful, has the same effect. Both practices are motivated by different factors and involve a wide range of different mechanisms (Mo, 2003). They are a major feature of national and international fiscal policy and of the global capitalist economy. Scholars have considered tax evasion and tax avoidance from many perspectives, such as the legal, ethical and economic (Abudlrazaq, 1992; Alm et al., 1992; Cowell, 1990; Fashokun, 1976; Flesch, 1968; Killian and Koltz, 2004; Ola, 2001; Wheatcroft, 1955). These tax practices are not the prerogative of developed economies, but are also encountered in developing countries; and huge sums of money are lost to government coffers by such practices (Cobham, 2005; Christian Aid, 2005<sup>1</sup>; Oxfam, 2004).

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<sup>1</sup> See the report, 'The Shirts off their Back: How Tax Policies Fleece the Poor', available online at <http://www.christian-aid.org.uk/indepth/509tax/> accessed on 14 January 2006.

Unlike tax evasion, tax avoidance is considered by some scholars to be a lawful activity (Brown, 1983; Flesch, 1968; Sommers, 1998), but others disagree (Cowell, 1990; McBarnet, 1991; Potas, 1993). Also, as a thin line can separate the two practices, what constitutes lawful or morally acceptable behaviour may be problematic (McBarnet, 1991; Slemrod, 2007). However, despite disagreement about whether tax avoidance is an unlawful activity, both practices have negative consequences and effects (Cobham, 2005; Kirchler et al., 2003) and have, in the words of He and Li (1996), 'similar impacts on fiscal revenues' (p. 38).

Companies and wealthy individuals use a range of tax evasion and tax avoidance schemes, tax havens, shell companies and inter-group structures to avoid and evade taxes in order to boost profits and capital (Bakre, 2007; Palan et al., 2010; Sikka and Hampton, 2005; Sikka, 2003, 2007, 2008a; Tax Justice Network, 2007; US Government Accountability Office, 2004, 2005; US Senate Sub-Committee on Investigations, 2006). These schemes result in a loss of tax revenues which undermines government legitimacy and prevents economic and social development (Cobham, 2005; Richardson, 2006; Sikka, 2008a). However, corporations regard tax avoidance schemes as justifiable and legitimate cost reduction programmes and not as practices which undermine social solidarity and the development of a just and fair society (Sikka, 2008a). In the last few years or so, the effects of such tax schemes on the world's poor have been considered by various bodies, including charities such as Oxfam and Christian Aid and Tax Justice Network (Christian Aid, 2005, 2006, 2008; Oxfam, 2000, 2004; Tax Justice Network, 2005, 2006, 2007); and there have been calls for reform to prohibit MNCs and the wealthy from using such schemes (Christian Aid, 2008; Murphy, 2003, 2007; Palan et al., 2010).

While accountants and tax professionals are not expected to condone tax evasion by their clients (Sikka, 2008a) and are expected to promote transparency and accountability and devise techniques for detecting tax fraud, it has been shown that some professionals do, in fact, use their expertise to facilitate both tax avoidance and tax evasion practices (Bakre, 2007; Ezeoha and Ogamba, 2010; Sikka and Willmott, 2010; Sikka, 2003, 2008a; US Senate Sub-Committee on Investigations, 2005). Accounting technologies, such as transfer pricing and the use of intangible assets, also make it easier for MNCs to hide and shift capital (see Baker, 2005; Otusanya, 2010; Pak, 2006; Sikka and Willmott, 2010; Sikka, 2007). Thus some professionals use accounting technologies and structures to make financial gains for their clients and themselves to the detriment of the public interest which they claim to be protecting (Bakre, 2007; Mitchell et al., 1998, 2001; Sikka, 2008a; US Senate Sub-Committee on Investigations, 2006). It has been shown that tax revenues cannot be evaded or avoided without the involvement of accountants, lawyers and bankers (Ezeoha and Ogamba, 2010; Sikka, 2008a; US Senate Sub-Committee on Investigations, 2005; US Sub-Committee on Investigations, 2003, 2008). Offshore tax havens,<sup>2</sup> which provide secrecy and low regulation, are key vehicles for the movement of 'hot' money<sup>3</sup> (Christian Aid, 2005; Killian, 2006; Palan, 2002, 2003; Tax Justice Network, 2006).

A number of studies have attempted to quantify the amount of revenue lost as a result of tax-saving schemes and structures (Baker, 2005; Christian Aid, 2005; Cobham, 2005; Oxfam, 2004; Senator Carl Levin Report, 2007; Sikka and Hampton, 2005; Sikka, 2008a; Tax Justice Network, 2007; US Senate Sub-Committee on Investigations, 2008). This study considers some of the practices which undermine and reduce tax revenues in developing countries, with the particular focus being on tax evasion and tax fraud by MNCs in Nigeria. The loss of tax revenues in Nigeria due to tax evasion and tax avoidance has had a significant impact on the Nigerian government's investment in social infrastructures and social welfare programmes and has increased poverty. This paper aims to add to the discourse on tax evasion and tax avoidance by considering the various schemes adopted by MNCs in advancing their capital accumulation in developing countries, such as in Nigeria in particular, despite their professed claims in their own host countries to be socially responsible corporate entities.

The paper is structured as follows. Section 2 examines the literature on the blurred line between tax evasion and tax avoidance, and explores the activities of MNCs aided by tax havens and offshore financial centres in tax evasion and tax avoidance schemes in both developed and developing countries. Section 3 considers the role of globalisation in these practices. Section 4 provides case examples to show how MNCs in Nigeria have exploited the ambiguities between tax evasion, tax avoidance and tax fraud in their pursuit of profit. Section 4 also considers the role professionals play as facilitators of anti-social tax practices. Section 5 provides a summary and discussion.

## 2. The blurred line between tax evasion and tax avoidance

Tax evasion and tax avoidance are considered by most governments to be serious threats to the integrity of tax systems in a democratic society. According to Spicer (1975), tax evasion and tax avoidance result in a loss of tax revenues, impair the chances of realising the distributional or equity goal of taxation, and, if they become widespread, as they have in recent times, then more taxpayers may lose faith in the tax administration system and may be tempted to join the ranks of tax evaders (p. 152).

<sup>2</sup> Tax havens are places or countries (not all being sovereign states) which have sufficient autonomy to write their own tax, finance and other laws and regulations. They all take advantage of this autonomy to create legislation designed to assist non-resident persons or corporations to avoid the regulatory obligations imposed on them in the places where the non-resident people undertake the substance of their economic transactions (Palan et al., 2010, p. 8).

<sup>3</sup> Through tax havens and offshore financial centres it has been estimated that \$1 trillion a year of 'dirty' money flows into the global banking system, one half of which comes from developing countries and transition economies (Baker, 2005; Christian Aid, 2005).

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