Amsterdam, 02 February 2021
Commissioned by the Dutch Ministry of Foreign Affairs

Strengthening tax systems in developing countries: policy evaluation

Final Report

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SEO-report nr. Rapport nr.

ISBN ISBN

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List of abbreviations

AFRITAC	African Technical Assistance Centre (IMF)
ALP	Arm's length principle
APA	Advance Pricing Agreements
ATAD	Anti-tax avoidance directive
ATAF	African Tax Administration Forum
ATI	Addis Tax Initiative
ATR	Advance Tax Rulings
BEPS	Base Erosion and Profit Shifting
CbCR	Country-by-Country reporting
CD	Capacity Development (the combined efforts of technical assistance, training, conferences and other knowledge sharing activities)
CFC	Controlled foreign company
CIT	Corporate income tax
CREDAF	Centre de rencontre des administrations fiscales
DRM	Domestic resource mobilisation
DTT	Double taxation treaty
DWG	G20 Development Working Group
GAAR	General Anti-Abuse Rule
GloBE	Global Anti-Base Erosion
IBFD	The International Bureau for Fiscal Documentation
IMF	International Monetary Fund
IOB	Policy and Operations Evaluation Department of the Dutch MFA
ISORA	International Survey on Revenue Administration
LoB	Limitations on benefits
MAP	Mutual Agreement Procedure
MFA	Ministry of Foreign Affairs
MLI	Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS
MoF	Ministry of Finance
MNE	Multinational enterprises
MPT	Main Purpose Test
NGO	Non-governmental organisation
NTCA	Netherlands Customs and Tax Administration (*"Belastingdienst"*)
OECD	Organisation for Economic Cooperation and Development
PE	Permanent Establishment
POA	TADAT Performance Outcome Areas
PPT	Principal Purpose Test
SFI	Special Financial Investments
TA	Technical assistance
TADAT	Tax Administration Diagnostic Assessment Tool
TIEAs	Tax information exchange agreements
TIWB	Tax Inspectors Without Borders
ToC	Theory of Change
ToR	Terms of Reference
TP	Transfer Pricing
TPA	Tax Policy and Administration
TPAF	Tax Policy Assessment Framework
TTF	Topical Trust Fund (IMF)
UN	United Nations

1 Introduction

1.1 Purpose of the study

The ability of developing countries to provide public services, promote economic development, and conduct fiscal policy depends on their ability to collect taxes. Many developing countries have a limited capacity to do so, and typically have much lower tax-to-GDP ratios than higher income countries (Besley and Persson, 2014).[1] This constrains their ability to provide fiscal stimulus during crises such as the current covid-19 pandemic. It also limits their ability to fund the investments needed to meet the Sustainable Development Goals (SDGs) by 2030.

Since 2010/2011, the Netherlands, in part through its co-chairmanship of the OECD Task Force on Tax and Development[2] and their contribution to the BEPS-project, has taken efforts to emphasise the development agenda[3] in relation to international taxation. In 2015, as a result of the implementation of the 'Addis Tax Initiative' (ATI), the Netherlands also committed to increase their support for tax reforms in developing countries by 2020. The ATI was initiated by the governments of the Netherlands, Germany, the United Kingdom and the United States during the Third International Conference on Financing for Development in Addis Ababa, Ethiopia on 15 July 2015.

In 2016, following the ATI, the Dutch Cabinet adopted an 'Agenda on Policy Coherence for Development', which included the policy goal 'Increased government revenues in developing countries, especially low-income and partner countries' (Ministry of Foreign Affairs, 2016).[4] This policy goal was expected to be achieved through three sub-goals.

Box 1 Three sub-goals

1. **Contribute to improved international agreements on taxation of real economic activities** by participating in international initiatives aimed at countering tax avoidance using Base Erosion and Profit Shifting tools (BEPS), taking into account the interests of developing countries.
2. **Contribute to structural capacity development for good tax policies and tax collection in developing countries** (with a focus on low income and lower middle-income countries), by implementing the Addis Tax Initiative (ATI) goal of more than doubling technical assistance (TA) between 2015 and 2020.
3. **Decrease the use of the Dutch tax system as a conduit in tax avoidance by multinational enterprises (MNEs)**, including in developing countries, by (1) including anti-abuse clauses into tax treaties and (2) taking extra measures (e.g. conditional withholding taxes) against financial flows to low-tax jurisdictions.

1 It should be noted that developing countries today are not so different – in terms of the tax share in GDP, and the structure of taxation – from modern high-income countries when they were at a similar level of development. In other words, the current tax-to-GDP ratios are in line with their level of development.

2 The Task Force on Tax and Development brings together stakeholders (OECD and non-OECD) to discuss tax and development issues faced by developing countries.

3 Referring to the 'Post-2015 Development Agenda' (later reformulated and rephrased to the '2030 Agenda for Sustainable Development' (see e.g. UN, 2015).

4 In the letter to the parliament, the ATI was mentioned as one of the key points related to the policy coherence in the field of taxation (Ministry of Foreign Affairs, 2016).

This evaluation assesses the Dutch policies and activities that have taken place under the aforementioned three sub-goals. The evaluation entails the period starting in 2012, when the development agenda in relation to international taxation became a discussion point within the Dutch parliament, up to 2019. All sub-goals are part of Dutch government policy. However, activities under sub-goals 1 and 3 are the primary responsibility of and primarily financed by the Dutch Ministry of Finance (MoF), while those under sub-goal 2 (capacity development activities) are the primary responsibility of and primarily financed by the Dutch Ministry of Foreign Affairs (MFA). However, the Dutch MoF did provide in-kind contribution to these capacity development activities through its programmes with the NTCA.

As per the Terms of Reference (ToR) for this evaluation provided by IOB, the main research question guiding this evaluation is:

> *"To what extent have Dutch government policies and activities to strengthen tax systems in developing countries been* ***coherent*** *and* ***relevant****, and what are their* ***effects****?"*

In the literature review we focus on the first research question under "all sub-goals": determining the best estimate of tax revenues lost by developing countries due to multinational tax avoidance and the role of the Netherlands. In this report, we evaluate the relevance, effectiveness and coherence of policies and activities conducted and/or funded by the Netherlands. Box 2 lists - per report and sub-goal - the seven sub-research questions that SEO was requested to answer by the Policy and Operations Evaluation Department (IOB – Directie Internationaal Onderzoek en Beleidsevaluatie) of the Dutch MFA, as agreed upon during the inception phase.

Box 2 Seven Sub-questions

All sub-goals (Main report and literature review)

- RQ 1: What is the best estimate of tax revenues lost by developing countries due to multinational tax avoidance according to the literature and what is the role of the Netherlands in this?
- RQ 2: To what extent are Dutch policies and activities to counter tax avoidance in developing countries coherent?

Sub-goal 1: International agreements (Main report and case study reports)

- RQ 3: To what extent has the Netherlands contributed to the inclusion of developing countries and their priorities in discussions on G20/OECD BEPS standards aimed at countering tax avoidance?
  - RQ 3.1: In what way and which needs and priorities of developing countries with respect to the G20/OECD BEPS discussions were identified by the Netherlands?
  - RQ 3.2: How did the Netherlands take these needs and priorities into account in developing and defending its positions during the G20/BEPS discussions and design of ATAD I and II in the EU?
  - RQ 3.3: At which stages and to what extent were developing countries able to influence the process of the G20/OECD BEPS as a result of activities supported by the Netherlands?
- RQ 4: To what extent are the interests of developing countries considered by the Netherlands when implementing recommendations of international discussions on countering tax avoidance?

Sub-goal 2: Capacity development (Main report and case study reports)

- RQ 5: Which capacity development-activities are supported by the Netherlands and to what extent do they address the needs of developing countries?
  - RQ 5.1: Which activities were supported by the Netherlands and what was the objective of these activities?
  - RQ 5.2a: How has the Netherlands identified tax-related capacity development needs in developing countries?
  - RQ 5.2b: Which tax-related capacity development needs were identified by the Netherlands?

- RQ 5.3: Is there an (objective) standard to which the quality of a country's tax system can be measured?
- RQ 5.4: To what extent has tax-related capacity development financed by the Netherlands been relevant in that it was aimed at addressing the most urgent needs of the recipient country (based on the objective standards identified in 5.3 and given the activities of other parties)?
- RQ 5.5: To what extent has the Netherlands succeeded in improving donor coordination and coherence through ATI and guidance of multilateral trust funds?

- RQ 6: To what extent were tax-related capacity development activities supported by the Netherlands effective for the implementation of BEPS-actions and negotiation and enforcement of anti-abuse clauses in tax treaties in developing countries?
  - RQ 6.1: To what extent did capacity development activities contribute to implementation of BEPS-actions in case study countries?
  - RQ 6.2: To what extent did capacity development activities contribute to an informed position during negotiations of and the enforcement of anti-abuse clauses in tax treaties between the case study countries and the Netherlands?

Sub-goal 3: Decreasing the role of the Netherlands as a channel for tax avoidance

- RQ 7: To what extent are anti-abuse clauses able to counter multinational tax avoidance from developing countries via the Netherlands?
  - RQ 7.1: What was the position of developing countries during negotiations on the inclusion of anti-abuse clauses in tax treaties with the Netherlands and why?
  - RQ 7.2: Are authorities in developing countries able to effectively apply anti-abuse clauses in tax treaties with the Netherlands?
  - RQ 7.3: To what extent is the multilateral instrument considered relevant by authorities in developing countries?

Source: SEO Amsterdam Economics

1.2 Research approach

Method

This is a mixed method evaluation. For each sub-research question we used a variety of information sources, including literature review, analysis of project documents, key informant interviews and three country case studies.

Interview partners

The evaluation team conducted interviews with a diverse set of stakeholders and used input from the Dutch MFA. The number and types of interviewees were selected with the aim of obtaining a) sufficiently *broad* views on all relevant aspects of the research questions; and b) sufficiently *diverse* views from a mix of stakeholders with different interests, particularly in cases where the perspective of interviewees might be dependent on their respective background or position. Given that this first interim report mainly covers sub-goals 1 and 3, the evaluation team conducted relatively more interviews with stakeholders relevant for the international tax policy side (e.g. Ministry of Finance, OECD and other stakeholders with relevant knowledge on international taxation). In the second interim report and the final report, additional emphasis will be placed on the views of the country representatives of selected developing countries – Ghana, Kenya and Uganda - and other stakeholders with relevant insights on the Dutch capacity development activities.[5]

[5] IOB has selected the three case study countries for the current evaluation based on various selection criteria. The criteria were defined such that the final selection contained a country in which the anti-abuse clauses are active (Ghana), agreed upon but not yet active (Kenya) and in which the anti-abuse clauses have only been offered by the Netherlands (Uganda). See "ToR – Strengthening tax systems".

1.3 Reading guide

This report is organised as follows:

Chapter 2 describes the methodology that is used throughout the evaluation. Chapter 3 describes the various 'Theories of Change'. Chapter 4 includes a brief summary of the Literature Review and the answer to sub-question 1. Chapters 5 - 8 subsequently present the analysis of and answer to sub-questions 2 – 7(see Box 1). The appendices present a list of interviewees, an overview of the BEPS actions, a schematic overview of the implementation of BEPS and the Global Forum Standards, as well as an overview of bilateral activities in the case study countries that are supported or conducted by the Netherlands.

The information obtained from the literature review, interviews and desk research is presented separately per sub-research question. Subsequently a synthesis of these findings is presented to answer the relevant sub-question 1 – 7 (see Box 2). Please note that the entire review can be found in Annex A, a separate report.

2 Methodology

2.1 Contribution Analysis

Since the main research question for this study is about assessing the contribution of Dutch policies and activities to strengthening tax systems in developing countries, we use Contribution Analysis (CA) as a general framework for this evaluation. CA is one of the most respected qualitative methods for dealing with the 'attribution' of outcomes to interventions.[6] In this evaluation, these interventions concern the involvement of the Netherlands in the development of international agreements (which is related to sub-goal 1), the capacity development activities provided by the Netherlands to developing countries (which is related to sub-goal 2) and the modification of the Dutch tax system and its treaty policy (which is related to sub-goal 3). When it is not practical to design an experiment to assess performance, CA can provide credible assessments of cause and effect (Mayne, 2008).

2.2 Contribution Analysis starts from a Theory of Change

CA starts from a theory (Theory of Change) of how each intervention should contribute to a specific change. It then aims to identify the contributions of the interventions to the observed outcomes, as well as the likely contributions of other external factors that could have influenced these results. Verifying the Theory of Change (ToC), and examining other factors that may influence the outcomes, is not the same as 'proving' that the Netherlands made certain contributions, but the analysis can provide reasonable evidence about the contribution being made.

2.3 Methodological steps

Following Mayne (2008), we have followed the following methodological steps:

- **Step 1: Defining the attribution problem to be addressed**
  - We started the project by reconstructing different ToCs for Dutch activities and policies aimed at improving domestic resource mobilisation (DRM) in developing countries. In these ToCs we indicated how we believed each intervention was expected to contribute to improved DRM, as well as the expected effects of other factors. This was based on desk review[7], review of existing result chains[8], and a series of initial interviews.
  - We reconstructed ToCs for three types of interventions:

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6 See the special edition of *Evaluation* on Contribution Analysis: *Evaluation*: July 2012; 18 (3), and Howard White and Daniel Phillips (2012) *Addressing Attribution of Cause and Effect in Small N Impact Evaluations*, 3ie Working Paper 15.

7 E.g. IBFD (2013) and documentation related to the OECD-BEPS project.

8 E.g. the series of ToCs that SEO has drafted in close consultation with the African Tax Administration Forum (ATAF); Jongkind (2016)

(a) the involvement of the Netherlands in international tax coordination (focusing on the inclusion of anti-abuse clauses in tax treaties and the inclusion of the development agenda) (related to sub-goal 1 and 3);
(b) bilateral and multilateral capacity development in tax administrations (related to sub-goal 2);
(c) bilateral and multilateral capacity development in international tax policy (related to sub-goal 2).

- **Step 2: Validating the Theory of Change (ToC)**
  - In mid-February 2020, we organised a **ToC-workshop** at the Ministry of Foreign Affairs with relevant stakeholders (described in the next section). During this workshop, we worked with participants in three groups to reconstruct a ToC for each intervention.
  - Based on the reconstructed ToCs we refined the evaluation framework and the (sub-) research questions together with the Dutch MFA. As a result, some research questions were reformulated slightly.

- **Step 3: Gathering the existing evidence for and against the ToC**
  - Following the ToC workshop, we conducted in-depth desk research and interviews with the aim of answering the research questions and collecting evidence for and against the ToC.[9]
  - This evidence was collected from a variety of sources to allow for a 'triangulation' of different sources.
  - This report describes the evidence collected for and against the ToCs,

- **Step 4: Assessing the Dutch contribution**
  - In our final report, we aim to assess not only the Dutch contribution to strengthening tax systems of developing countries, but also the contributions of other relevant factors that affect the strengthening of those tax systems.
  - In order to assess the Dutch contribution, we 'triangulate' the different information sources including literature review, analysis of project documents, in-depth interviews with various types of stakeholders, and the three country case studies (Ghana, Kenya and Uganda).

[9] As agreed with the Dutch MFA, we evaluate a selection of bilateral capacity development programmes individually in the form of case studies. For multilateral capacity development activities, we try to determine whether this type of activity has likely contributed to strengthening international tax systems (through e.g. improved negotiation capabilities and implementation of DTTs and other (BEPS) recommendations), based on existing evaluations.

3 Theories of Change

3.1 Introduction

This chapter describes the 'Theories of Change' (ToCs) that guide this evaluation.[10]

A ToC is a means to understand how the activities of an intervention are expected to lead to a desired outcome. It makes explicit the impact pathways (the links from inputs, outputs and outcomes to the ultimate impact) and also explains the underlying assumptions, showing why and under what conditions the various links in the impact pathway are expected to work. These conditions include the efforts undertaken by other (developed) countries as well as changes in the domestic regulatory framework of the respective developing countries themselves.

Our reconstructed ToCs aim to better explain how the Dutch government intended to contribute to the overall goal of strengthening international tax systems. These ToCs graphically display the Dutch policy theory and reflect the perspective of the Netherlands. External factors, such as the actions of other developed countries or the degree of cooperation by developing countries, do influence the effectiveness of Dutch policy, but are generally not explicitly shown. However, these are implicitly incorporated in the "arrows" that indicate how a first occurrence is expected to lead to a second occurrence (and so on). The failure to actually observe this pattern in reality can be explained by a) a misconception of the policy theory, or b) the role of external factors.

On the basis of desk research and stakeholder interviews, SEO constructed three ToCs related to:

1. The involvement of the Netherlands in international tax coordination (focusing on the inclusion of anti-abuse clauses in tax treaties and the inclusion of the development agenda) (Chapter 3.2);
2. Bilateral and multilateral capacity development in international tax policy (Chapter 3.3);
3. Bilateral and multilateral capacity development in domestic tax policy and tax administration (Chapter 3.4).

The aim of these three ToCs is to depict all possible channels through which the Netherlands could increase the tax revenue of developing counties (i.e. improve DRM). Since this evaluation focuses on tax avoidance through MNEs at the international level and the role of the Netherlands, the report mostly builds on the first two ToCs. Incidentally, it should be noted that the Netherlands devotes a substantial share of their budget to capacity development of domestic taxation, especially through the Netherlands Tax and Customs Administration (NTCA), VNG International and the multilateral funds. These activities are not covered in detail in this report, as the focus of this evaluation is on international taxation.

[10] Organisations often develop a ToC *before* an intervention for proper planning and designing of the intervention. However, a ToC can also be developed retrospectively by reading program documents, talking to stakeholders, and analysing data. The latter is often done during evaluations reflecting what has worked or not in order to understand the past and plan for the future. In this light, we speak of a 'reconstructed ToC' since it concerns a reconstruction of the original ToC (in written or graphic form) from the evaluators' perspective.

On 14 February 2020, SEO organised a **ToC-workshop** at the Dutch Ministry of Foreign Affairs in order to collect and incorporate the views of a wide range of relevant stakeholders[11] into the ToCs underlying this evaluation. During this workshop, which was well received by stakeholders, participants worked in three groups to jointly discuss and reconstruct the three ToCs. Subsequently, each group presented the reconstructed ToC to the other groups, which then commented on the ToCs created by others. This process helped to create a shared understanding, allowing us to further refine and improve the ToCs.

The resulting ToCs are presented in Figures 3.1, 3.2 and 3.3. In Box 1, we link these ToCs and their assumptions to the predetermined list of sub-questions posed in the ToR for this study.

3.2 Involvement of the Netherlands in international tax coordination

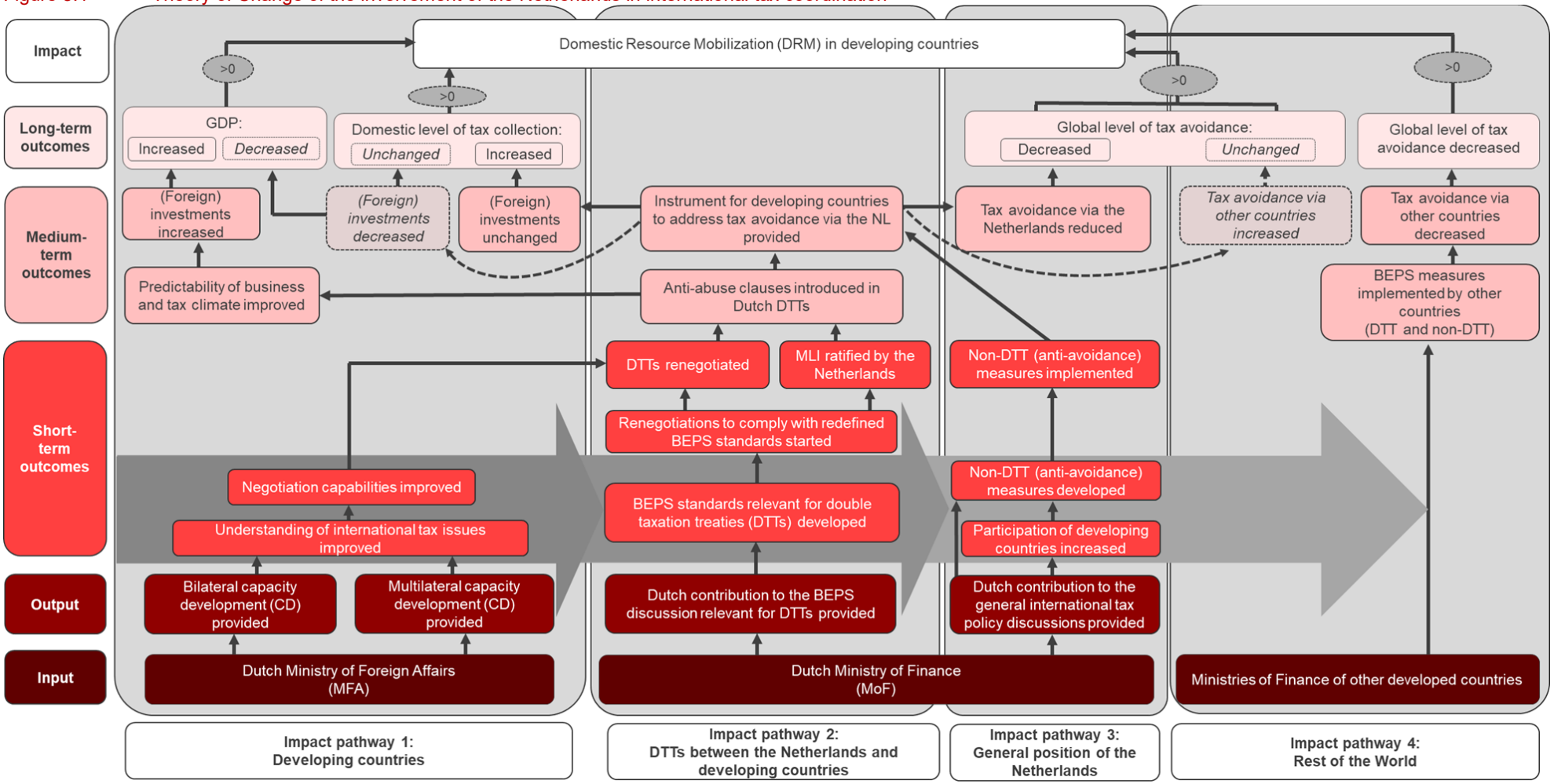
The ToC on Dutch involvement in international tax coordination focuses on the role of the Netherlands in the OECD BEPS process and ATAD negotiations. This ToC is presented in Figure 3.1 and consists of four main 'impact pathways', referring to the impact the Dutch government seeks on strengthening tax systems at the level of:

1. Developing countries ;
2. Double taxation treaties (DTTs) between the Netherlands and developing countries;
3. The general position of the Netherlands in the international tax policy discussion; and
4. Other countries ("the rest of the world").

These pathways describe the means through which the Dutch government seeks to achieve the overall objective: strengthened tax systems and DRM in developing countries.

[11] Including the Dutch MFA, Dutch Ministry of Finance, Dutch Tax and Customs Administration, IBFD, VNG, Oxfam Novib, and academic researchers.

Figure 3.1 Theory of Change of the involvement of the Netherlands in international tax coordination



Source: SEO Amsterdam Economics

3.2.1 Impact Pathway 1 at the level of Developing countries

- **Outputs:** The impact pathway for developing countries starts with capacity development (CD) activities in international taxation that are provided to revenue authorities. For this ToC on Dutch involvement in international tax coordination, we only include the capacity development activities aimed at improving the overall understanding of international tax issues, including tax treaties, and improving the negotiation capabilities of local tax authorities.[12]
- **Short-term outcomes:** The expected short-term outcome of capacity development is an improved overall understanding of international tax issues by local tax authorities (both revenue authorities and Ministries of Finance) and therewith their negotiation capabilities. Through knowledge sharing within the tax authority, the (individual) understanding of issues of the international tax system is expected to be further improved and expanded across the organisation. This might also contribute to understanding and enforcement of complex international rules on transfer pricing, access to and use of information. This is an important aspect of improving domestic revenue mobilisation, which we focus on in more detail in sections 3.3 and 3.4.
- **Medium-term outcomes:** In the medium term, the improved understanding is expected to enable tax authorities to take a better position when entering international negotiations related to international taxation, for example tax treaty negotiations. This in turn is expected to result in international tax policy changes that are more favourable for developing countries, for example through the inclusion of anti-abuse clauses in DTTs and enforcement of these clauses, providing developing countries with additional instruments to address tax avoidance in their country.[13] The expected effect of such international tax policy changes on foreign investment is theoretically ambiguous and depends on whether and how companies engaged in tax optimisation via DTTs continue to invest in the developing country.[14] Less ambiguous is the effect on the predictability and transparency of the local business and tax climate, which is expected to be positive as a result of a more coherent and transparent international tax policy and improved enforcement. This is expected to create a more stable investment climate and therefore increase investments (both domestic and foreign).[15]
- **Long-term outcomes:** In the long term, the changes in international tax instruments that capacity development has contributed to are expected to influence GDP and domestic resource mobilisation (DRM). On the one hand, GDP is expected to increase due to higher overall investments resulting from a more predictable and transparent tax climate. On the other hand, the higher effective tax rate for foreign companies increases their cost of capital, which might lead to reduced investments (intensive margin) or even the cancellation of investments

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12 The total range of capacity development activities provided and/or supported by the Netherlands is broader, and will be assessed in interim report 2. The capacity development related to the implementation of other BEPS-issues, such as transfer pricing, exchange of information etc. is discussed in more detail in the ToC that describes the general impact pathways for capacity development provided to tax administrations in developing countries.

13 The term 'instrument' refers in this context to the non-physical tool/mechanism that allows developing countries to avoid tax avoidance, just as DTTs were constructed as a tool to avoid double taxation.

14 Note that this section only discusses the expected theoretical effects. In a separate report we review the (thus far quite limited) empirical literature on this topic, which has found that the mobility of fiscally driven capital flows is high, and that as a result unilateral changes to fiscal policies will most likely result in shifts of these flows away from economies that take unilateral action to other jurisdictions without affecting overall revenue outcomes. (See SEO (2020), Literature Review SEO – Strengthening Tax systems).

15 E.g. Gelos and Wei (2002), Transparency and International Investor Behavior, NBER Working Paper No. 9260, https://www.nber.org/papers/w9260

(extensive margin). This Theory of Change assumes that the positive effect on investment outweighs the negative effect, hence the net effect on investment (and therefore GDP) is expected to be positive.[16] The effect on DRM is also expected to be positive, but depends on the behaviour of investors. There will likely be foreign companies that reduce their previously untaxed investments, or decide to now channel them via other countries[17] (or companies that cancel new planned foreign investments as a result of the change in the DTT). This probably has little effect on DRM, since these companies were already hardly paying (withholding) taxes in the first place.[18] In contrast, there will also be companies that continue to invest and actually end up paying more (withholding) taxes as a result of anti-abuse clauses. The overall effect on DRM is therefore expected to be positive (or at least not negative), assuming that the overall effect on GDP is positive as well.

- **Impact:** Increased GDP and increased tax revenue collection are expected to contribute to improved DRM.

16 However, since the relative magnitude of both effects cannot be determined in advance, the net effect is in fact theoretically ambiguous. A similar reasoning applies to the effect on the domestic level of tax collection.

17 Diversion of investments takes place when foreign investors try to avoid the application of the anti-abuse clauses by diverting their financial flows through other (conduit) countries. International coordination of the adoption of anti-abuse clauses will reduce opportunities for such diversion and therefore would increase the probability of improving DRM in developing countries. Improved bilateral agreements can therefore in theory contribute to increased taxation, especially when there is international coordination.

18 If the net effect on investment and GDP were to be negative, however, this would indirectly reduce other types of tax revenues as a result of decreased business activity (e.g. VAT, personal or corporate income tax).

Table 3.1 Mapping between Impact Pathway 1 and the research questions

Impact Pathway 1: Developing countries		Research Question
Input	*Capacity development resources by the Dutch Ministry of Foreign Affairs (MFA)*	
Output	Bilateral capacity development provided Multilateral capacity development provided	RQ 6. To what extent were tax-related capacity development activities supported by the Netherlands effective for the implementation of BEPS-actions and negotiation and enforcement of anti-abuse clauses in tax treaties in developing countries?
Short-term outcomes	Understanding of international tax issues improved	RQ 6. To what extent were tax-related capacity development activities supported by the Netherlands effective for the implementation of BEPS-actions and negotiation and enforcement of anti-abuse clauses in tax treaties in developing countries?
	Negotiation capabilities improved	RQ 3.3 At which stages and to what extent were developing countries able to influence the process of the G20/OECD BEPS as a result of activities supported by the Netherlands?
Medium-term outcomes	Predictability of business and tax climate improved (Foreign) investments increased/unchanged/decreased	RQ 7. To what extent are anti-abuse clauses able to counter multinational tax avoidance from developing countries via the Netherlands?
Long-term outcomes	GDP increased Domestic level of tax collection increased	

Source: SEO Amsterdam Economics

3.2.2 Impact Pathway 2 at the level of Double Taxation Treaties (DTTs)

- **Outputs:** The pathway for DTTs graphically starts with the input from the Dutch Ministry of Finance (MoF) on international tax coordination. More specifically, the participation of the Dutch MoF in international BEPS-related discussions is defined as the respective output. Whereas pathway 3 focuses on BEPS-related discussions not linked to DTTs, this pathway focuses on BEPS-related discussions related to DTTs.
- **Short-term outcomes:** The short-term goal of participating in BEPS discussions is to influence standard-setting in the OECD BEPS project. According to domestic discussions in parliament, the Netherlands aims to influence standard-setting in a way that is beneficial for tax authorities in developing countries, whilst not being (too) detrimental for the Dutch private sector and the economy as a whole (Ministry of Finance, 2011 and 2013). The new standards developed by the OECD (i.e. the BEPS recommendations) are expected to have an effect on (but not limited to) the DTTs that have been and will be concluded by the Netherlands and developing countries (e.g. through revised guidelines and standards). In order to comply with the BEPS-standards, participating countries need to reform their domestic tax systems and (re)negotiate their DTTs (or change them via the MLI). For the Netherlands, this is expected to result in two medium-term developments:

1. Renegotiation of existing DTTs and negotiation of new DTTs to include anti-abuse provisions bilaterally (if not included already[19]); and/or
2. Signing and ratification of the MLI to include anti-abuse provisions multilaterally.

- **Medium-term outcomes:** In the medium term, the majority of the Dutch DTTs with developing countries are expected to include anti-abuse clauses and satisfy the minimum standards, as a result of either the ratification of the MLI or of bilateral (re)negotiations. This, in turn, does not necessarily directly reduce the global level of tax avoidance, but at least provides developing countries with an instrument to address tax avoidance of MNEs via the Netherlands.[20] If international coordination (see pathway 4) succeeds in generating a broad adoption of the international minimum standards of anti-abuse clauses in (almost) all DTTs between developing and developed countries, this would increase the effectiveness of the adopting them in Dutch DTTs.
- **Long-term outcomes and impact:** No direct long-term outcomes and impact have been determined for the DTT-pathway specifically. However, through the other pathways, the (re)negotiated DTTs indirectly contribute to DRM as well.

Table 3.2 Mapping between Impact Pathway 2 and the research questions

Impact Pathway 2: DTTs between the Netherlands and developing countries		**Research questions**
Input	*Involvement of the Dutch Ministry of Finance (MoF)*	
Output	Dutch contribution to the BEPS discussion relevant for DTTs provided	RQ 3.1 In what way and which needs and priorities of developing countries with respect to the G20/OECD BEPS discussions were identified by the Netherlands? RQ 3.2 How did the Netherlands take these needs and priorities into account in developing and defending its positions during the G20/BEPS discussions and design of ATAD I and II in the EU?
Short-term outcomes	BEPS standards relevant for DTTs developed	RQ 3.2 How did the Netherlands take these needs and priorities into account in developing and defending its positions during the G20/BEPS discussions and design of ATAD I and II in the EU?
	Renegotiations to comply with redefined BEPS standards started DTTs renegotiated MLI ratified by the Netherlands	RQ 4. To what extent has the Netherlands contributed to including the interests of developing countries when implementing recommendations of international discussions on G20/OECD BEPS standards on countering tax avoidance?
Medium-term outcomes	Dutch DTTs including anti-abuse clauses developed Instrument for developing countries to address tax avoidance via the NL provided	RQ 4. To what extent has the Netherlands contributed to including the interests of developing countries when implementing recommendations of international discussions on G20/OECD BEPS standards on countering tax avoidance?

Source: SEO Amsterdam Economics

[19] The Netherlands already proposed to include anti-abuse clauses in their DTTs with developing countries. As of September 2020, 13 out these 23 DTTs include ant-abuse clauses.

[20] In order to reap the full benefits, developing countries must have the means to actually implement this new instrument. Through the provision of training and technical assistance, governments (including the Netherlands) and development organisations try to increase developing countries' capacity to do so.

3.2.3 Impact Pathway 3 at the level of the Netherlands in the international tax policy discussion

- **Outputs:** The pathway for the general position of the Netherlands starts with the participation of the Dutch MoF in international tax policy discussions. In contrast with pathway 2, pathway 3 focuses on the Dutch contribution to the international tax dialogue instead of on the DTTs concluded with developing countries. The key question with respect to this contribution is: "to what extent did the Netherlands include the needs and priorities of developing countries when defending its positions?".
- **Short-term outcomes:** With respect to this pathway, the short-term goal of the Dutch MoF is to influence the standard-setting in BEPS-related discussions in favour of developing countries *without* deteriorating the position of the Dutch private sector.[21] The Dutch MoF is expected to influence this standard-setting directly by participating in international discussions itself *and* indirectly by increasing the participation of the developing countries in these discussions. Through its involvement in the *Informal Task Force on Tax and Development,* the Dutch MoF contributes to the participation of developing countries by giving them a voice. This pathway focuses on the BEPS recommendations that need to be addressed outside the DTT-spectrum. In the short run, the Netherlands is expected to implement non-DTT-related measures, as recommended by the OECD and transferred to EU directives ATADI and II, that combat anti-avoidance via the Netherlands in its domestic tax law (e.g. country-by-country reporting, exchange of information, transfer pricing, limited interest deduction etc.).
- **Medium-term outcomes:** In the medium term, the Dutch tax system is expected to include more anti-avoidance measures as a result of its own input and the input from other countries during the OECD BEPS discussions. Hereby the Netherlands contributes to the instruments available for developing countries to address tax avoidance via the Netherlands (as defined in pathway 2). This in turn, will reduce possibilities for tax avoidance of MNEs via the Netherlands. This instrument is subsequently expected to contribute to reducing the level of tax avoidance via the Netherlands.
- **Long-term outcomes:** The long-term effect of the reduced level of tax avoidance via the Netherlands due to the implementation of non-DTT anti-avoidance measures is an expected reduction of the global level of tax avoidance. This holds true if and only if the current flows are not restructured in such a way that the same result for the MNE is obtained using another country. If the international coordination (see chapter 3.2.4 concerning pathway 4: Influence at the level of other countries) results in generating a broad adoption of the international BEPS standards aiming to combat tax avoidance in many other countries (both developed and developing), this would increase the effectiveness of adopting them in the Netherlands.
- **Impact:** If this requirement is satisfied, the reduced level of tax avoidance via the Netherlands is expected to contribute to the overall goal of strengthened international tax systems and improved DRM in developing countries.

[21] This is under the assumption that the Netherlands is effectively able to identify the needs and priorities of developing countries in that aspect (*see Research Question 3.1*).

Table 3.3 Mapping between Impact Pathway 3 and the research questions

Impact Pathway 3: General position of the Netherlands		Research Questions
Input	*Involvement of the Dutch Ministry of Finance (MoF)*	
Output	Dutch contribution to the general international tax policy discussions provided	RQ 3.1 In what way and which needs and priorities of developing countries with respect to the G20/OECD BEPS discussions were identified by the Netherlands?
		RQ 3.2 How did the Netherlands take these needs and priorities into account in developing and defending its positions during the G20/BEPS discussions and design of ATAD I and II in the EU?
Short-term outcomes	Non-DTT (anti-avoidance) measures developed	RQ 3.2 How did the Netherlands take these needs and priorities into account in developing and defending its positions during the G20/BEPS discussions and design of ATAD I and II in the EU?
	Participation of developing countries increased	RQ 3.3 At which stages and to what extent were developing countries able to influence the process of the G20/OECD BEPS as a result of activities supported by the Netherlands?
	Non-DTT (anti-avoidance) measures implemented *(e.g. CbC-reporting, exchange of information, transfer pricing, limited interest deduction)*	RQ 4. To what extent has the Netherlands contributed to including the interests of developing countries when implementing recommendations of international discussions on G20/OECD BEPS standards on countering tax avoidance?
Medium-term outcomes	Tax avoidance via the Netherlands reduced	RQ 7. To what extent are anti-abuse clauses in DTTs able to counter multinational tax avoidance from developing countries via the Netherlands?
Long-term outcomes	Global level of tax avoidance decreased	RQ 7. To what extent are anti-abuse clauses in DTTs able to counter multinational tax avoidance from developing countries via the Netherlands?

Source: SEO Amsterdam Economics

3.2.4 Impact Pathway 4: Rest of the World

- **Outputs:** Similar to the Dutch Ministry of Finance, the Ministries of Finance of other developed countries also perform activities and formulate policies aimed at implementing BEPS-related measures, both related to DTTs and non-DTT instruments. This is certainly important considering that the efforts of other countries affect the effectiveness of the Netherlands' efforts.
- **Short-term outcomes:** While the Netherlands does not conduct specific activities to directly influence other developed countries' efforts to combat tax avoidance, the Netherlands can theoretically have an important 'demonstration effect' due to what is referred to in organisation theory as "mimetic isomorphism". This is indicated in Figure 3.1 by the grey arrow in the ToC. By taking the needs and priorities of developing countries into account when negotiating European (e.g. ATAD I and II) and global (e.g. OECD BEPS) agreements, it is possible that the Netherlands can encourage other developed countries to exert similar efforts to strengthen the international tax system and contribute to combating tax avoidance in developing countries. In addition, the capacity development provided by the Netherlands can potentially help developing countries in their negotiations with other (developed) countries as well.
- **Medium-term outcomes:** In the medium term, the efforts conducted by other countries are expected to contribute to the implementation of OECD BEPS-measures (DTT and non-DTT related measures) to counter tax avoidance in developing countries. This, in turn, provides

developing countries with an instrument to address tax avoidance, and it reduces the possibilities of MNEs to structure profit shifting through developed countries (conduits). This instrument is subsequently expected to contribute to reducing the level of tax avoidance via other countries. In addition, the implementation of OECD BEPS-measures in other developed countries contributes to reducing opportunities for conduit companies in the Netherlands to effectively restructure their organisation, thereby increasing the effectiveness of the Dutch efforts to counter tax avoidance by MNEs.

- **Long-term outcomes:** In the long run, the BEPS-related measures implemented by other countries are expected to contribute to reducing the global level of tax avoidance.
- **Impact:** Reduced global tax avoidance is expected to contribute to the overall goal of strengthened international tax systems and improved DRM in developing countries.

Table 3.4 No research questions are formulated with respect to Impact Pathway 4

Impact Pathway 4: Rest of the World		
Input	*Ministries of Finance of other developed countries*	
Medium-term outcomes	BEPS measures implemented by other countries (DTT and non-DTT)	*Prerequisite for effectiveness of Dutch tax policy*
	Tax avoidance via other countries decreased	*Prerequisite for effectiveness of Dutch tax policy*
	Tax avoidance via other countries increased	*Prerequisite for effectiveness of Dutch tax policy*
Long-term outcomes	Global level of tax avoidance decreased/unchanged	*Prerequisite for effectiveness of Dutch tax policy*

Source: SEO Amsterdam Economics

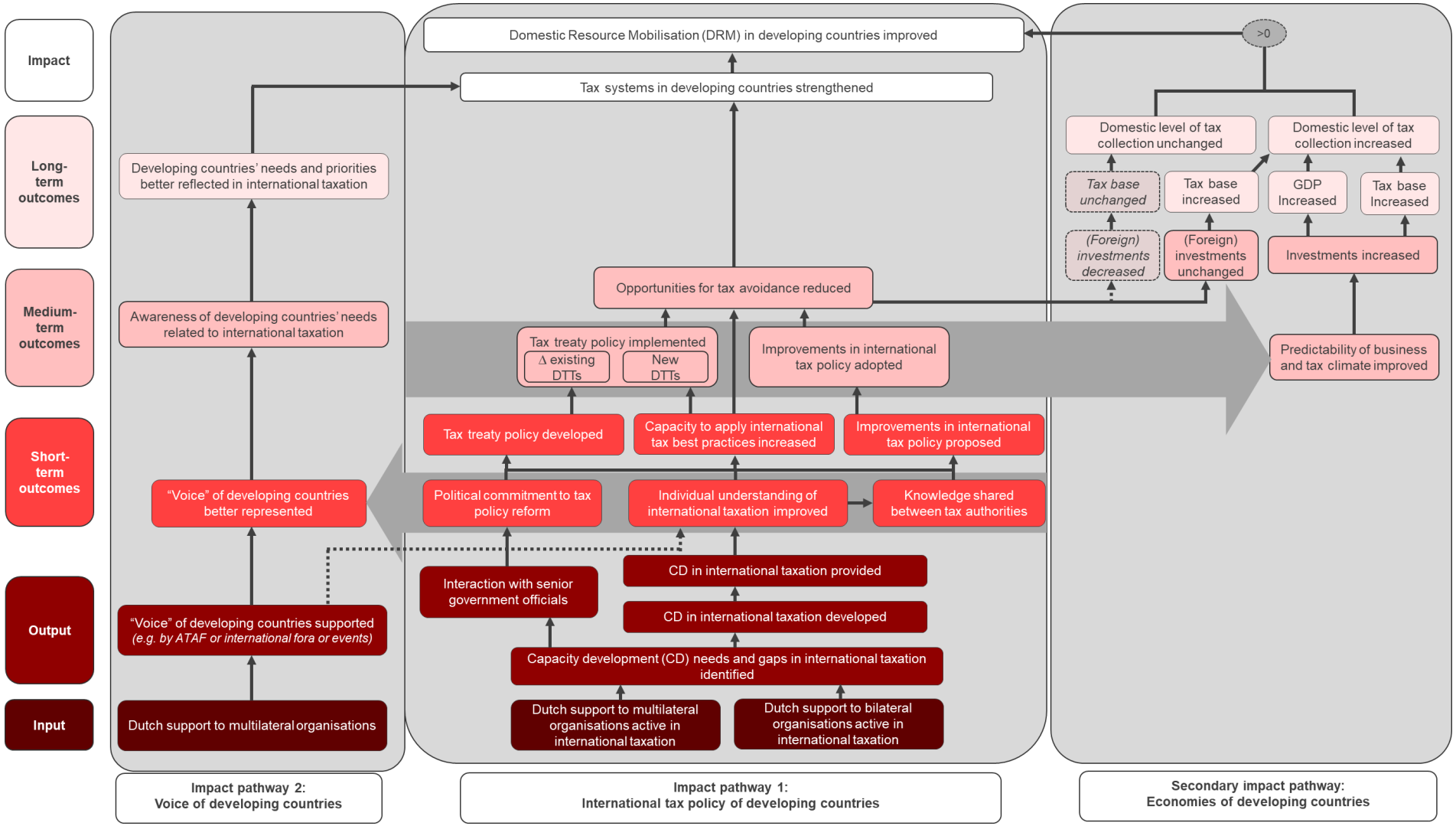
3.3 Capacity development in international policy

The ToC regarding capacity development in international tax policy focuses on the multilateral and bilateral activities supported by the Netherlands in the field of international tax policy. This ToC is presented in Figure 3.1 and consists of two main 'impact pathways', referring to the impact the Dutch government seeks to have at the level of:

1. The international tax policy of developing countries;
2. The voice of developing countries in international tax policy discussions;

In addition, we distinguish 'the economies of developing countries' as a secondary pathway. This pathway is very important but since the local economy is not the primary focus of this evaluation, we label it as 'secondary' only for the purpose of this evaluation.

Figure 3.2 Theory of Change - Capacity development in international tax policy for developing countries



Source: SEO Amsterdam Economics

3.3.1 Impact pathway 1: International tax policy of developing countries

- **Outputs:** This impact pathway starts with the identification of developing countries' CD needs by a multilateral organisation (e.g. OECD, UN) or bilateral organisation supported by the Netherlands (e.g. IBFD). This identification process can be either fully demand-driven (waiting for requests) or more supply-driven, based on a gap analysis of existing policies and capacities (e.g. a developing country's existing tax treaty policy and its capacity to implement this policy). Subject to the expertise and resources of the provider to respond to these needs, the provider then proposes a CD training programme to fill these gaps. In this early stage, the provider of capacity development may also interact with senior government officials to ensure 'ownership' and generate 'buy-in' for the CD.
- **Short-term outcomes:** The short-term goal of providing CD in this area is to contribute to an increased understanding of international taxation issues among participating tax authorities (including local ministries of finance and tax administrations). Through knowledge sharing between and within tax authorities, the (individual) understanding of international taxation is expected to be further improved and expanded. This includes an increased awareness of the areas where the current (domestic) legislation is suboptimal (i.e. tax treaty policy), and an improved understanding of what measures would be required to increase effectiveness. On the other hand, the dialogue with senior government officials is expected to increase political commitment to reforming their tax systems. The combination of increased understanding and increased commitment are subsequently expected to contribute to proposals of new tax treaty models, improved capacity to apply international best practices and proposals for further improvement of international tax policy.
- **Medium-term outcomes:** In the medium-term, these proposals for reforms in international taxation are expected to be adopted. The adoption of a new treaty model is expected to contribute to an improvement of the DTTs (e.g. through the inclusion of anti-abuse clauses), either through amending existing DTTs (via MLI or renegotiation) or by concluding new DTTs.
- **Long-term outcomes:** -
- **Impact:** Ultimately, these reforms at the tax policy level are expected to reduce the opportunities for tax avoidance, thereby allowing tax administrations to collect more taxes and improve DRM in developing countries.

Table 3.5 Mapping between Impact Pathway 1 and the research questions

Impact Pathway 1: International tax policy of developing countries		**Research Question**
Input	*Dutch support to bilateral and multilateral organisations active in international taxation*	
Output	CD needs and gaps in international taxation identified	5.2a How has the Netherlands identified tax-related capacity development needs in developing countries? 5.2b Which tax-related capacity development needs were identified by the Netherlands?
	CD in international taxation developed/provided	5.1 Which activities were supported by the Netherlands and what was the objective of these activities? 5.4 To what extent has tax-related capacity development financed by the Netherlands been relevant in that it was aimed at addressing the most urgent needs of the recipient country (based on the objective standards identified in 5.3 and given the activities of other parties)?
	Interaction with senior government officials	N/A
Short-term outcomes	Political commitment to tax policy reform	N/A
	Individual understanding of international taxation improved Knowledge shared between tax authorities	5.1 Which activities were supported by the Netherlands and what was the objective of these activities?
	Tax treaty policy developed	6.2 To what extent did capacity development activities contribute to an informed position during negotiations of and the enforcement of anti-abuse clauses in tax treaties between the case study countries and the Netherlands?
	Capacity to apply international tax best practices increased	6.1 To what extent did capacity development activities contribute to implementation of BEPS-actions in case study countries? 6.2 To what extent did capacity development activities contribute to an informed position during negotiations of and the enforcement of anti-abuse clauses in tax treaties between the case study countries and the Netherlands?
	Improvements in international tax policy proposed	6.1 To what extent did capacity development activities contribute to implementation of BEPS-actions in case study countries?
Medium-term outcomes	Tax treaty policy implemented (existing DTTs modified and new DTTs concluded)	6.2 To what extent did capacity development activities contribute to an informed position during negotiations of and the enforcement of anti-abuse clauses in tax treaties between the case study countries and the Netherlands?
	Improvements in international tax policy adopted	6.1 To what extent did capacity development activities contribute to implementation of BEPS-actions in case study countries?
	Opportunities for tax avoidance reduced	6. To what extent were tax-related capacity development activities supported by the Netherlands effective for the implementation of BEPS-actions and negotiation and enforcement of anti-abuse clauses in tax treaties in developing countries?

Source: SEO Amsterdam Economics

3.3.2 Impact pathway 2: The voice of developing counties

- **Outputs:** This impact pathway starts with the support of the Netherlands to multilateral organisations (e.g. ATAF, OECD, UN, IMF and the World Bank). Some of these organisations contribute to amplifying the voice of developing countries in ways other than CD, for example through research, policy papers, and representing developing countries in international fora (as in the case of ATAF).
- **Short-term outcomes:** The short-term goals of engaging in these multilateral programmes are twofold. The first goal is to contribute to a better representation of the "voice" of developing countries. Although many developing countries are already members of the OECD's Inclusive Framework, they sometimes lack sufficient capacity or resources to express and defend their needs in global tax discussions.[22] Regional organisations such as ATAF devote financial means to join the table during these discussions and are thereby able to present the general needs of their members.[23] The second goal is that multilateral programmes increase the understanding of international taxation issues by tax authorities in developing countries (see dotted line in ToC diagram).
- **Medium-term outcomes:** In the medium-term, determining and subsequently presenting the "voice" of developing countries is expected to contribute a greater awareness of the actual needs and priorities of developing countries with respect to international taxation. This greater awareness is subsequently expected to contribute to a better reflection of the needs and priorities of developing countries in international tax policy.
- **Long-term outcomes:** In the long-term, the revision of international tax policy (e.g. introduction of anti-abuse clauses) is also expected to contribute to an increase in the number of disputes settled in favour of developing countries.
- **Impact:** Ultimately, the changes in international tax policy that better reflect the needs and priorities of developing countries contribute to strengthened tax systems and improved DRM in developing countries.

[22] Based on the unpublished 10-year evaluation of ATAF, conducted by several members of our evaluation team.

[23] It should be noted however, that the needs and priorities differ per country. The "African voice" that is presented by ATAF is therefore not necessarily the voice of all its member countries, but rather the average opinion. The upcoming 10-year evaluation of ATAF will provide more information on this issue.

Table 3.6 Mapping between Impact Pathway 2 and the research questions

Impact Pathway 2: Voice of developing countries		Research Question
Input	*Dutch support to multilateral organisations active in international taxation*	
Output	"Voice" of developing countries supported (e.g. by ATAF of through international fora and events)	3.3 At which stages and to what extent were developing countries able to influence the process of the G20/OECD BEPS as a result of activities supported by the Netherlands?
Short-term outcomes	"Voice" of developing countries better represented	3.3 At which stages and to what extent were developing countries able to influence the process of the G20/OECD BEPS as a result of activities supported by the Netherlands?
Medium-term outcomes	Awareness of developing countries' needs related to international taxation	3.1 In what way and which needs and priorities of developing countries with respect to the G20/OECD BEPS discussions were identified by the Netherlands?
Long-term outcomes	Developing countries' needs and priorities better reflected in international taxation	3.2 How did the Netherlands take these needs and priorities into account in developing and defending its positions during the G20/BEPS discussions and design of ATAD I and II in the EU?

Source: SEO Amsterdam Economics

3.3.3 Secondary impact pathway: Economies of developing countries

- **Outputs:** There are no inputs (and thus no outputs) provided directly that aim to influence the economies of developing countries.
- **Short-term outcomes:** Effects on the economies of developing countries are only expected in the medium-term.
- **Medium-term outcomes:** the effects in the medium-term are twofold. On the one hand, the reforms at the tax policy authorities are expected to contribute to increased transparency and predictability of the business climate in developing countries (shown graphically with the thick arrow). Both aspects contribute to a more attractive environment for businesses and investors. Increased attractiveness, in turn, is expected to contribute to higher investments, both domestic and foreign. On the other hand, the more limited opportunities for tax avoidance are expected to have an effect on the economic activity of the developing countries as well. This effect is however ambiguous, depending on whether businesses choose to remain in or leave the country in question as a consequence of the tightened regulation. If businesses decide to remain active in the developing country in question, the tax base is expected to increase. However, if businesses were merely located in the respective developing country to avoid taxes, they might decide to relocate their activities to a different country to preserve a low effective tax rate. When businesses leave a country, the tax base remains unchanged (assuming that these businesses were paying any taxes in the first place). This Theory of Change assumes that this positive effect on investment outweighs this neutral effect.
- **Long-term outcomes:** In the long-term, the expected effects are twofold again. On the one hand, increased investments unambiguously contribute to higher levels of GDP. In case the tax reforms effectively limit the opportunities for tax avoidance, the newly investing companies also contribute to a widening of the tax base and domestic tax collection. On the other hand, depending on the overall (re)location choices of businesses, the tax base and therefore the

domestic level of tax collection is expected to increase or remain unchanged. This Theory of Change assumes that the positive effect on the tax base outweighs this neutral effect, hence the net effect on the tax base (and therefore the domestic level of tax collection) is expected to be positive

- **Impact:** Following the assumption of this Theory of Change, the contribution to the overall impact on DRM through this pathway is expected to be positive. On the one hand, the improved business climate is expected to contribute to increased investments and ultimately improved DRM. On the other hand, the more limited opportunities for tax avoidance force current investors to comply with their tax obligations.

Table 3.7 Mapping between the secondary impact pathway and the research questions

Secondary Impact Pathway: Economies of developing countries		**Research Question**
Input	*Dutch support to bilateral and multilateral organisations active in international taxation*	
Medium-term outcomes	Predictability of business and tax climate improved (Foreign) investments increased/unchanged Investments increased	7. To what extent are anti-abuse clauses able to counter multinational tax avoidance from developing countries via the Netherlands?
Long-term outcomes	Tax base increased/unchanged GDP increased Domestic level of tax collection unchanged/increased	

Source: SEO Amsterdam Economics

3.4 Capacity development in domestic tax policy & tax administration

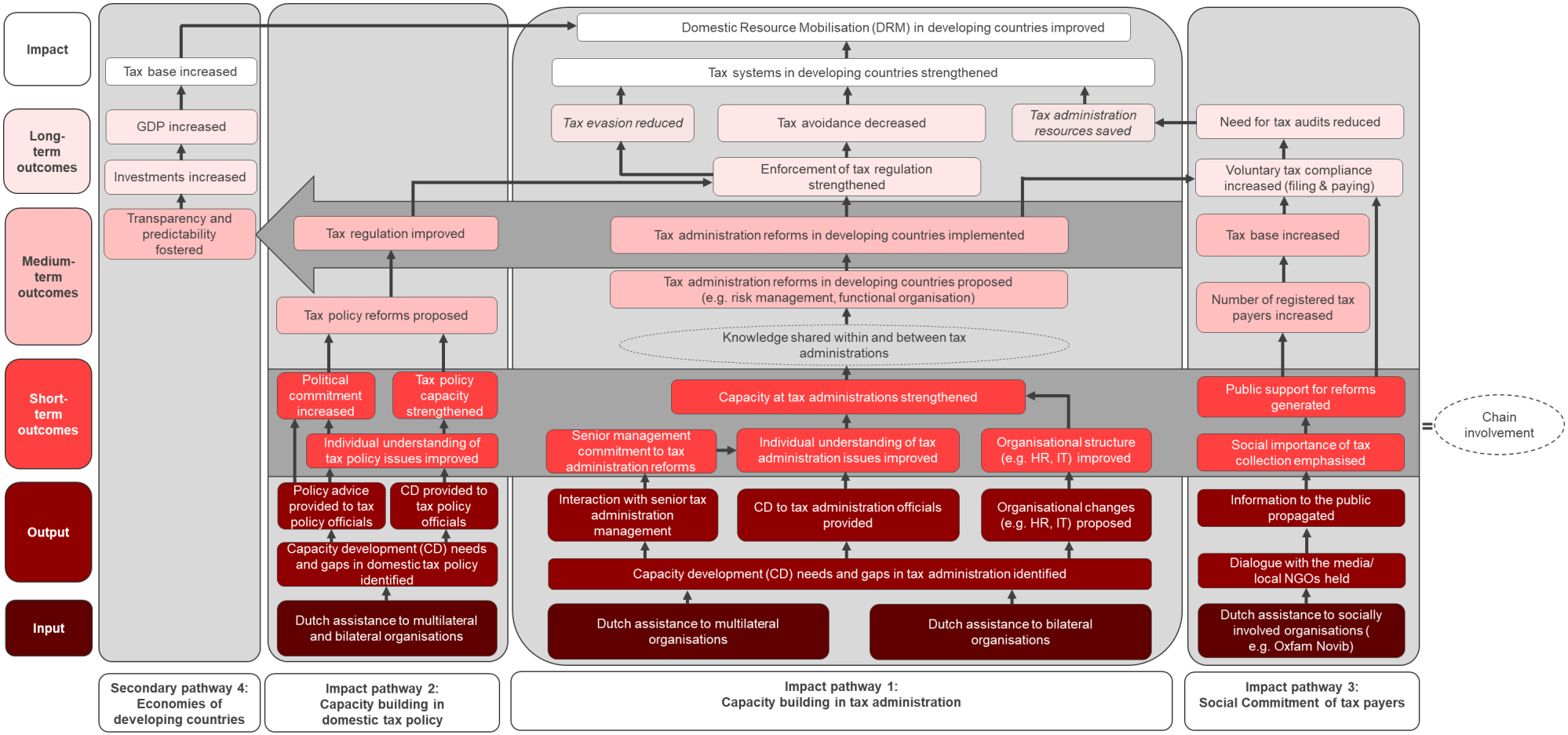
The ToC regarding capacity development of tax authorities in developing countries focuses on the CD-activities/-programmes supported by the Netherlands, either bilateral or multilateral. This ToC is presented in Figure 3.2 and consists of three main 'impact pathways', referring to the impact the Dutch government seeks to have in terms of 'strengthening tax systems' in developing countries and improved DRM.

The impact is expected to materialise at three levels:

1. Tax administrations in developing countries;
2. Tax policy authorities in developing countries;
3. The social commitment related to paying taxes;

In addition, we distinguish 'the economies of developing countries' as a secondary pathway that should not be forgotten. Since the local economy is not the primary focus of this evaluation, we label it as a secondary pathway.

Figure 3.3 Theory of Change 'Capacity development in domestic tax policy and tax administrations in developing countries'



Source: SEO Amsterdam Economics

3.4.1 Impact pathway 1: Domestic tax administration

- **Outputs:** This impact pathway starts with the identification of developing countries' CD needs in domestic tax administration by a multilateral organisation (e.g. IMF, WB) or bilateral organisation supported by the Netherlands (e.g. NTCA, VNG). This identification process can be either fully demand-driven (waiting for requests) or can be supply-driven, based on an analysis of gaps in tax administration capacity. Subject to the provider's expertise and resources to respond to these needs, the provider proposes a CD programme to fill these gaps. In this early stage, the capacity development provider may also interact with senior government officials to ensure 'ownership' and generate 'buy-in' for the CD. Providers may also provide advice on organisational restructuring, including advice on HR or ICT solutions that are necessary for a tax administration to function effectively (which could also include e.g. advice and assistance with setting up a Large Taxpayer Unit).
- **Short-term outcomes:** The key short-term goal of providing CD is to improve the knowledge and skills of tax administration officials in developing countries. Through knowledge sharing between tax administration officials, the individual understanding of tax administration issues is expected to be further improved and expanded across the organisation. This includes an increased awareness of the areas where the domestic tax administration lags behind (i.e. has 'gaps' relative to other administrations or relative to international best practice), and an improved understanding of what measures would be required to reduce these gaps. In addition, the IT solutions that are provided are expected to contribute to an improved digital infrastructure at the tax administrations. Combined with an organisation-wide increased understanding of tax administration issues, the overall capacity of local tax administrations is expected to increase.
- **Medium-term outcomes:** Following the CD provided, the improved (individual) awareness of the existing gaps and required reforms is expected to contribute to proposals for reforms in the medium-term (sometimes as part of the CD). Once implemented, these reforms imply changes at the level of the tax administration organisation (for example, the introduction of a Large Taxpayer Unit, or introduction of risk-based auditing) that go beyond a mere improvement of individual knowledge and skills.
- **Long-term outcomes:** In the long-term, these reforms are expected to increase the capacity of the domestic tax administration as an organisation in terms of enforcing the existing tax regulation. Increased enforcement is expected to contribute to a decrease in the level of tax avoidance. A strengthened tax administration is also expected to be better able to combat tax evasion in the long run.
- **Impact:** Increased enforcement of tax regulation and a reduced level of tax avoidance are both characteristics of a strengthened tax system. Ultimately, strengthened tax systems are expected to also contribute to improved DRM in developing countries.

Table 3.8 Mapping between Impact Pathway 1 and the research questions

Impact Pathway 1: Capacity development in tax administration		**Research Question**
Input	*Dutch support to bilateral and multilateral organisations active in international taxation*	
Output	CD needs and gaps in tax administration identified	5.2a How has the Netherlands identified tax-related capacity development needs in developing countries? 5.2b Which tax-related capacity development needs were identified by the Netherlands?
	CD to tax administration officials provided	5.1 Which activities were supported by the Netherlands and what was the objective of these activities? 5.4 To what extent has tax-related capacity development financed by the Netherlands been relevant in that it was aimed at addressing the most urgent needs of the recipient country (based on the objective standards identified in 5.3 and given the activities of other parties)?
	Organisational changes (e.g. HR, IT) proposed	6.1 To what extent did capacity development activities contribute to implementation of BEPS-actions in case study countries? 6.2 To what extent did capacity development activities contribute to an informed position during negotiations of and the enforcement of anti-abuse clauses in tax treaties between the case study countries and the Netherlands?
	Interaction with senior tax administration management	5.1 Which activities were supported by the Netherlands and what was the objective of these activities? 5.2a How has the Netherlands identified tax-related capacity development needs in developing countries?
Short-term outcomes	Senior management commitment to tax administration reforms	N/A
	Individual understanding of tax administration issues improved	5.1 Which activities were supported by the Netherlands and what was the objective of these activities?
	Organisational structure (e.g. HR, IT) improved Capacity at tax administrations strengthened	6.1 To what extent did capacity development activities contribute to implementation of BEPS-actions in case study countries?
Medium-term outcomes	Tax administration reforms in developing countries proposed/implemented (e.g. risk management, functional organisation)	6.1 To what extent did capacity development activities contribute to implementation of BEPS-actions in case study countries?

Long-term outcomes	Enforcement of tax regulation strengthened	6.1 To what extent did capacity development activities contribute to implementation of BEPS-actions in case study countries?
	Tax avoidance decreased	6.1 To what extent did capacity development activities contribute to implementation of BEPS-actions in case study countries? 7.2 Are authorities in developing countries able to effectively apply anti-abuse clauses in tax treaties with the Netherlands?
	Tax evasion reduced	6.1 To what extent did capacity development activities contribute to implementation of BEPS-actions in case study countries? 7.2 Are authorities in developing countries able to effectively apply anti-abuse clauses in tax treaties with the Netherlands?
	Tax administration resources saved	N/A

Source: SEO Amsterdam Economics

3.4.2 Impact pathway 2: Domestic tax policy

- **Outputs:** This impact pathway starts with the identification of developing countries' CD needs in domestic tax policy by a multilateral organisation (e.g. IMF, WB) or potentially a bilateral organisation (although in practice this is mostly multilateral). This identification process can be either fully demand-driven (waiting for requests) or can be more supply-driven, based on an analysis of gaps in tax administration capacity. Subject to the provider's expertise and resources to respond to these needs, the provider proposes a CD training programme to fill these gaps. In this early stage, the capacity development provider may also interact with senior government officials to ensure 'ownership' and generate 'buy-in' for the CD. Subject to an agreement between recipient and provider, the CD is provided to tax policy officials. At the same time, this allows the donor countries/organisations to have a dialogue with tax policy officials in order to generate 'buy-in' for nationwide reforms.
- **Short-term outcomes:** The short-term goal of providing CD is to increase understanding of tax policy issues among tax policy officials in developing countries. Through knowledge sharing between tax policy officials, the individual understanding of tax policy issues is expected to be further improved and expanded across the department. This includes an increased awareness of tax policy gaps, or identifying areas where the current legislation is suboptimal, and an improved understanding of what changes would be required to improve tax policy. The expected effect of this increased awareness and the tax policy advice provided is as follows. The interaction with senior tax policy officials allows for proposing policy amendments to tax officials. Moreover, increased awareness can strengthen political commitment to reforming tax policies.
- **Medium-term outcomes:** In the medium-term, the improved (individual) awareness or the limitations of current tax policy and required reforms is expected to contribute to proposals for such reforms, including amendments to existing tax policies and the introduction of new policies. Once implemented, these reforms imply changes at the policy level that go beyond a mere improvement of individual knowledge and skills. These reforms make the domestic tax

policy authorities more capable of addressing (inter)national tax policy issues (e.g. domestic and international tax avoidance as well as illicit financial flows).

- **Long-term outcomes:** In the long-term, these tax policy reforms are expected to enable the tax administrations to better enforce the regulatory framework and thereby contribute to reduced tax avoidance.
- **Impact:** Ultimately, these reforms at the tax policy level contribute to strengthened tax systems and improved DRM in developing countries.

Table 3.9 Mapping between Impact Pathway 2 and the research questions

Impact Pathway 2: Capacity development in domestic tax policy		**Research Question**
Input	*Dutch assistance to multilateral and bilateral organisations*	
Output	CD needs and gaps in domestic tax policy identified	5.2a How has the Netherlands identified tax-related capacity development needs in developing countries? 5.2b Which tax-related capacity development needs were identified by the Netherlands?
	Policy advice to tax policy officials provided	5.1 Which activities were supported by the Netherlands and what was the objective of these activities? 5.4 To what extent has tax-related capacity development financed by the Netherlands been relevant in that it was aimed at addressing the most urgent needs of the recipient country (based on the objective standards identified in 5.3 and given the activities of other parties)?
	CD to tax policy officials provided	5.1 Which activities were supported by the Netherlands and what was the objective of these activities? 5.4 To what extent has tax-related capacity development financed by the Netherlands been relevant in that it was aimed at addressing the most urgent needs of the recipient country (based on the objective standards identified in 5.3 and given the activities of other parties)?
Short-term outcomes	Individual understanding of tax policy issues improved Political commitment increased Tax policy capacity strengthened	5.1 Which activities were supported by the Netherlands and what was the objective of these activities?
Medium-term outcomes	Tax policy reforms proposed Tax regulation improved	6.1 To what extent did capacity development activities contribute to implementation of BEPS-actions in case study countries?

Source: SEO Amsterdam Economics

3.4.3 Impact pathway 3: Social commitment

- **Outputs:** The impact pathway related to social commitment starts with the dialogue with NGOs (e.g. Oxfam Novib) and the media in developing countries. These dialogues are expected to contribute to the knowledge dispersion among the general public.
- **Short-term outcomes:** The short-term goal of informing the general public is to emphasise the social importance of domestic tax collection. This includes accentuating the benefits of increased public spending (e.g. through health care and education) as a result of increased DRM. However, it also includes highlighting flaws in the current tax system in order to create public

support for implementing reforms. For example, by emphasising the differences in effective tax rates for various types of legal persons in a country (e.g. an MNE versus a salaried worker).

- **Medium-term outcomes:** In the medium-term, the increased social support for domestic tax collection is expected to contribute to an increase in the registration rate of tax liable entities with the tax administration. Subsequently, an increase in the registration rate contributes to a larger tax collection potential: an increase in the tax base.
- **Long-term outcomes:** In the long-term, the increased public support for tax collection is also expected to contribute to an increase in a) the number of tax returns filed (both timely and correctly) and b) the number of tax returns that is subsequently paid (both timely and correctly). In the long-term, the social commitment is thus expected to contribute to all three aspects of voluntary tax compliance: registering, filing and paying. At the same time, an increase in voluntary tax compliance reduces the need for tax administrations to carry out tax audits, thereby saving resources.
- **Impact:** Ultimately, the social commitment contributes to strengthened tax systems and improved DRM in developing countries. With more resources mobilised, government capacity to finance social protection and essential services, an indispensable element of the United Nations Sustainable Development Goals (SDGs), is increased. Rendering better services to citizens and communities can– as a positive and reinforcing feedback loop – lead to a further increase in the willingness to pay taxes.

One of the participants of the ToC-workshop emphasised the importance of social commitment, and the path towards it, in achieving the overall goal. The Dutch MFA provides capacity development activities through the dialogue and dissent framework to address social commitment issues. These are however not directly related to international taxation and therewith not to any of the evaluation questions. For this reason, the social commitment pathway falls outside the scope of this evaluation.

3.4.4 Secondary impact pathway: Economies of developing countries

- **Outputs:** There are no inputs (and therefore no outputs) provided directly to influence the economies of developing countries.
- **Short-term outcomes:** Effects on the economies of developing countries are only expected in the medium-term.
- **Medium-term outcomes:** The improved capacity (and resulting reforms) in domestic tax administrations and tax policy (expected to be achieved under the first two pathways) are expected to contribute to increased transparency and predictability for businesses operating in developing countries (shown graphically with the thick arrow). Both aspects contribute to a business climate that is more attractive for businesses and investors.
- **Long-term outcomes:** This increased attractiveness of the business climate is expected to contribute to an increase in GDP through higher levels of investments, both domestic and foreign.
- **Impact:** Higher levels of GDP, in turn, result in a higher tax base for developing countries. Combined with more effective and efficient tax administrations and an improved regulatory framework, this is expected to improve DRM in developing countries.

During the ToC-workshop, one of the participants mentioned the importance of commitment at every link in the chain in order to successfully strengthen tax systems in developing countries. In

other words, commitment to reforms at the level of the tax administrations also requires commitment of political leaders and society as a whole. During the workshop, we defined this as "chain involvement", which is shown graphically with the thick horizontal bar in Figure 3.2.

Table 3.10 Mapping between Impact Pathway 3 and the research questions

Secondary impact pathway: Economies of developing countries		**Research Question**
Input	*No inputs are provided to directly influence the economies of developing countries*	
Medium-term outcomes	Transparency and predictability fostered	7.2 Are authorities in developing countries able to effectively apply anti-abuse clauses in tax treaties with the Netherlands?
Long-term outcomes	Investments increased GDP increased	7.2 Are authorities in developing countries able to effectively apply anti-abuse clauses in tax treaties with the Netherlands?

Source: SEO Amsterdam Economics

4 The level of tax avoidance

What is the best estimate of tax revenues lost by developing countries due to multinational tax avoidance according to the literature? How do these measures differ based on the data and methodology employed, as well as the scope of the measures (e.g. in terms of number of countries included)? What are the respective merits in terms of data employed (e.g. quality of the data), applicability in terms of scope (e.g. the Netherlands in relation to developing economies), and methodology (e.g. likely to result in an over/under estimation)? What is the role of the Netherlands in this?

In the current chapter, SEO provides a summary of an extensive literature review presented in a separate report.

Table 4.1 First research question: 'all sub-goals'

Number as based on the ToR	Research Question
RQ 1	What is the best estimate of tax revenues lost by developing countries due to multinational tax avoidance according to the literature and what is the role of the Netherlands in this?

Source: SEO Amsterdam Economics, based on the ToR.

4.1 Best estimate of the level of tax avoidance[24]

Research question 1: What is the best estimate of tax revenues lost by developing countries due to multinational tax avoidance according to the literature and what is the role of the Netherlands in this?

The literature identifies several mechanisms for tax avoidance. Broadly speaking, these mechanisms either largely affect the tax base (hybrid mismatch, IPR regimes, treaty shopping, avoidance of PE status) or the tax rate (CFC schemes, debt shifting, transfer mispricing). The most relevant mechanisms for developing economies are treaty shopping, avoidance of PE status, debt shifting, and transfer mispricing. The Dutch fiscal system can facilitate such mechanisms, for instance through: the extensive Dutch treaty network; facilities in corporate income tax and dividend withholding, tax such as the participation exemption; the Dutch policy with respect to dividend withholding taxes and exemptions; the practice of tax rulings on the interpretation of the tax code; as well as the tax treatment of some legal structures (e.g. cooperation, limited partnership, etc.). Beyond such features of the tax system, the fact that the Netherlands has long been an attractive conduit for foreign capital (self-)reinforces the role the Netherlands plays in facilitating international capital flows through its tax system.

The literature has attempted to quantify the revenue loss associated with tax avoidance. As a result of methodological limitations, however, the literature has not converged on a consensus figure of global costs of tax avoidance. Estimates based on macro-data estimate costs as high as USD 500 and 650 billion, while studies based on micro-data estimate costs up to orders of magnitude smaller. Given the limitations of both approaches, it is not possible to identify a single best estimate.

[24] The current chapter provides a summary of the literature review conducted in the context of this study. The full literature review can be found in Annex A.

Estimated costs for Sub-Sahara-African (SSA) economies are equally divergent, with estimates ranging as high as USD 200 billion, but also significantly lower. For the role of the Netherlands, only one single estimate is available. Synthesizing the literature, Lejour (2020) estimates that countries lose USD 25 billion due to avoidance with use of Dutch entities. The estimate is based on taking the average of a number of empirical estimates of global revenue loss and then calculating the Dutch contribution by applying the share of Dutch FDI. Lejour (2020) does not estimate which part of this 25 billion is related to SSA economies. Assuming a distribution proportional to the distribution of FDI flows to/from the Netherlands suggests that around 1 percent of this amount is related to SSA economies. Note that this calculation essentially combines disparate sources that all employ different methodologies and data. This implies unquantified but most likely large margins of uncertainty. Indeed, the sum of some country level estimates would exceed the amount of avoidance due to the Netherlands implied by a prorated distribution of the incidence of avoidance. For instance, Tørsløv et al. (see missingprofits.world) attributes Nigerian tax losses worth USD 183 million to the Netherlands as well as tax losses worth USD 127 million in South Africa. This suggests that the estimate of revenue loss for SSA countries due to Dutch policies based on a prorated distribution is probably a lower bound.

Relating this figure to tax gaps in SSA is difficult because estimates of tax gaps differ significantly. A back-of-the-envelope calculation based on Lejour's (2020) estimate suggests that the Netherlands may account for around 0.5 percent of revenue losses in SSA (approximately € 250 million) due to CIT avoidance, but employing a different denominator (i.e. overall gap) would shrink this estimate by at least a factor of four.

To our knowledge no studies are available on whether anti-avoidance provisions in DTTs could significantly affect tax losses in SSA. However, studies on treaties in relation to avoidance typically note that the mobility of fiscally driven capital flows is high, and that as a result unilateral changes to fiscal policies will most likely result in flows shifting away from economies that take unilateral action to other jurisdictions without affecting overall revenue outcomes. Such concerns highlight the importance of international coordination in addressing tax avoidance.

5 International agreements

Has the Netherlands succeeded in including developing countries and their priorities in discussions on international agreements on countering tax avoidance during the last decade? In the current chapter, SEO tries to answer this question based on desk research, and in-depth interviews with a variety of stakeholders. In order to answer this overarching question, SEO has, in correspondence with the Dutch MFA, gathered evidence for the more specific research questions listed in Table 5.1.

Table 5.1 Research questions under sub-goal 1

Number as based on the ToR	Research Question	Impact Pathway ToC
RQ 3	To what extent has the Netherlands contributed to the inclusion of developing countries and their priorities in discussions on G20/OECD BEPS standards aimed at countering tax avoidance?[25]	
RQ 3.1	In what way and which needs and priorities of developing countries with respect to the G20/OECD BEPS discussions were identified by the Netherlands?	2&3
RQ 3.2	How did the Netherlands take these needs and priorities into account in developing and defending its positions during the G20/BEPS discussions and design of ATAD I and II in the EU?	2&3
RQ 3.3	At which stages and to what extent were developing countries able to influence the process of the G20/OECD BEPS as a result of activities supported by the Netherlands?	1
RQ 4	To what extent has the Netherlands contributed to including the interests of developing countries when implementing recommendations of international discussions on G20/OECD BEPS standards on countering tax avoidance?	2&3

Source: SEO Amsterdam Economics, based on the ToR.

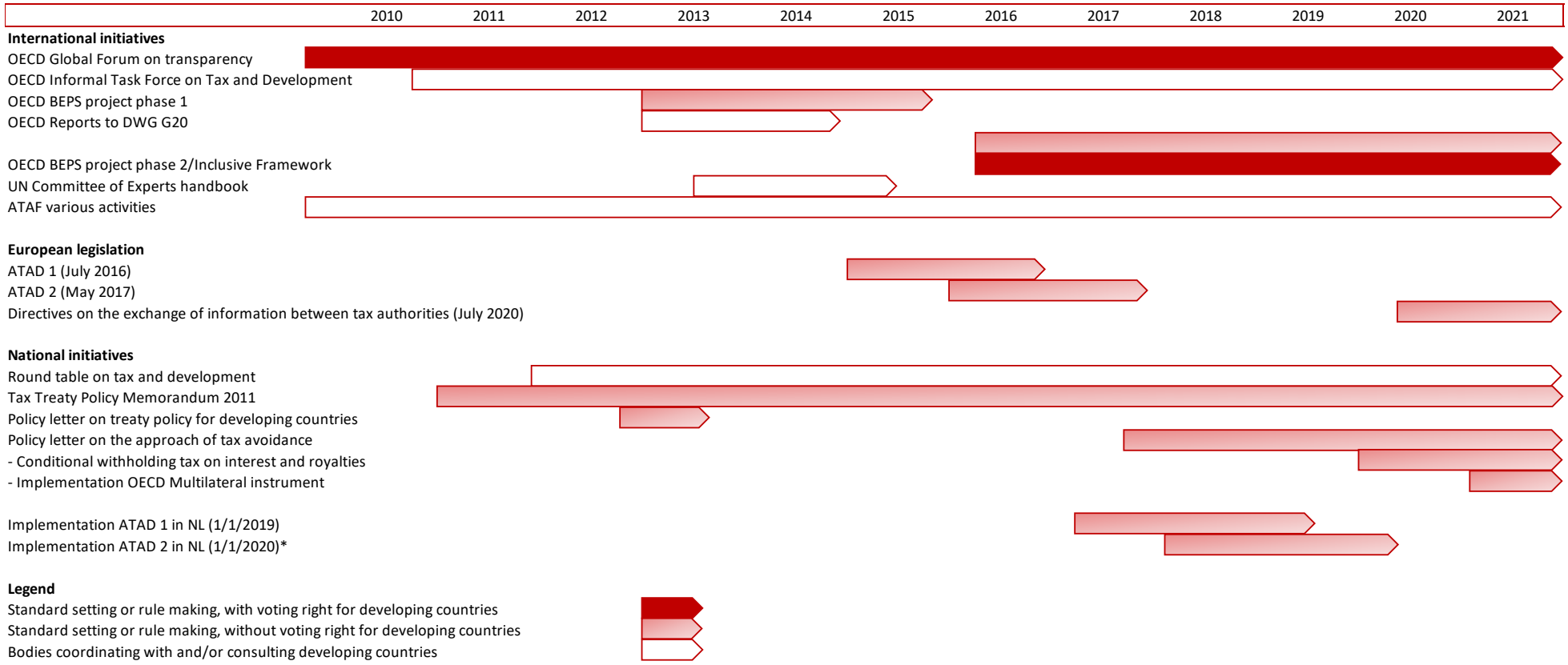
Figure 5.1 below presents an overview of the timelines of the international and national initiatives aimed at strengthening international tax systems and countering tax avoidance in the last decade that are used throughout this report.[26] In some cases, the initiative consists of pure coordination between and assistance to countries in respect of international tax issues (e.g. SADCs Memorandum of Understanding on Co-operation in Taxation and Related Matters and UN's and ATAF's initiatives).[27] In other cases the initiative consists of agreements on measures resulting in more coherence within and between tax systems, substance requirements and transparency with the aim of reducing the amount of tax avoidance (e.g. the OECD's 15 BEPS-Action Plans, including minimum standards (treaty shopping, tackling harmful tax practices, country-by-country reporting and improving the resolution of treaty-related dispute resolution), Global Forum on Transparency and (Automatic) Exchange of Information-standards, and anti-avoidance regulation (EU's ATAD-initiative).

25 See Appendix A for an overview of the BEPS-actions.
26 The initiatives are selected based on their prevalence during desk review and interviews.
27 https://www.sadc.int/files/4413/5333/7922/Memorandum_of_Understaning_in_Cooperation_in_Taxation__Related_Matters.pdf

Formal involvement of developing countries in rule-setting initiatives in respect of preventing tax avoidance started in the Global Forum on Transparency and Exchange of Information after 2009. The BEPS-project developing countries started to be involved in the second OECD BEPS round after 2015, the involvement being organised in the Inclusive Framework.[28]

[28] In the last phase of the first BEPS round (2015), 14 developing countries and several regional bodies representing developing countries took part in the OECD's Committee on Fiscal Affairs (CFA) and various BEPS working groups. As a result, (some) developing countries were more closely involved in BEPS Project discussions and decision-making in that year.

Figure 5.1 Timelines international and national initiatives strengthening international tax systems



* One provision with reard to tax liability (or “reverse hybrids”) will come into effect as of 1/1/2022.

Source: SEO Amsterdam Economics

5.1 Developing countries in the G20 and OECD BEPS discussions

What are the needs and priorities of developing countries and how are they identified? Was there a preliminary analysis of the most important issues to fix in order to strengthen the position of developing countries? To what extent were these needs and priorities subsequently taken into account during BEPS-related discussions and were developing countries able to influence these discussions?

5.1.1 Identification of developing countries' needs and priorities

Research question 3.1: In what way and which needs and priorities of developing countries with respect to the G20/OECD BEPS discussions were identified by the Netherlands?

To structure this, we split the question in two sub-questions:

a. What actions were undertaken by the Netherlands to identify these needs and priorities?
b. Which needs and priorities of developing countries were identified by the Netherlands?

Desk review

a) What actions were undertaken by the Netherlands to identify needs and priorities of developing countries?

In 2010 the Netherlands took the initiative (with South-Africa) for the informal Task Force on Tax and Development. At the national level, needs and priorities of developing countries were a topic in letters to parliament since 2011. The policy note on fiscal treaty policy (Ministry of Finance, 2011) contains a paragraph on the relations with developing countries, including a description of Dutch actions focused on identifying needs and priorities of developing countries, by involving these countries more in international tax policy discussions:

Partly on the initiative of the Netherlands, a joint approach has been decided in the OECD by the Development Committee, the Committee for Tax Affairs and the Global Forum on Transparency and Exchange of Information for Tax Purposes. An OECD Informal Task Force on Tax and Development, set up for this purpose in May 2010, comprising governments from OECD and developing countries, non-governmental organisations, international institutions and international business, will start a broad program in early 2011. The Task Force, co-chaired by the Netherlands, and the African Tax Administration Forum, will work on concrete proposals that can be used by developing countries in the field of information exchange, transfer pricing, Country-by-Country Reporting and capacity building.[29]

The informal Task Force on Tax and Development was an initiative of the Netherlands and South-Africa (confirmed by various stakeholders we spoke) and can be seen as a relatively early attempt to include developing countries in discussions on international taxation within the OECD. The informal task force served as a vehicle to identify needs and priorities of developing countries with respect to international taxation. At the same time, it was a channel for the Netherlands to identify needs and priorities of developing countries. The Informal Task Force was a driving force within OECD for discussing and putting issues on the agenda which were priorities for developing countries (e.g. Country-by-Country Reporting, and reports on

[29] Dutch Ministry of Finance (2011) page 20.

e.g. transfer pricing and ALP in focus countries which were used as inputs in the OECD BEPS project), until the start of the Inclusive Framework in 2016.[30] Both the Dutch Ministries of Finance and of Foreign Affairs were involved in the initiative. This led to the Informal Task Force on Tax and Development under the auspices of the OECD, starting in 2010, co-chaired by The Netherlands and South-Africa. The objective of the task force as agreed in its first meeting[31] was:

"*to benefit developing countries through putting more resources into the tax area, assisting them in accessing the information necessary to enable their tax regimes to work better both raising revenue and strengthening good governance"* (OECD, 2010).

In the first meeting, three sub-groups were set up to:

1. Work on supporting developing countries **on exchange of information** working with the World Bank and IMF, ATAF, and others to enable developing countries to increase numbers of bilateral or multilateral tax information exchange agreements (TIEAs) and to discuss how to assist in implementation of these agreements.
2. Strengthen **transfer pricing implementation in developing countries**, including identifying best practices and encouraging South-South co-operation.
3. Examine the **issue of Country-by-Country Reporting**, develop a scoping paper and provide advice regarding the Investment Committee's MNE Guidelines.

In addition, the Task Force asked interested international organisations to work together on the mapping of international assistance and developing country needs, building on the work already done in this area. In later years the Task Force pushed for more involvement of developing countries in the international coordination of tax issues:

The Task Force welcomed international action to address Base Erosion and Profit Shifting (BEPS). We agreed that developing countries must have a voice in the development of the work. To this end, a BEPS Africa group, under the leadership of the African Tax Administration Forum (ATAF) with the Centre de rencontre des administrations fiscales (CREDAF) would be formed as soon as possible. Regional information sharing and consultation events in Africa and Latin America will be held in early 2014 (OECD, 2013).

The Taskforce also supported the establishment of the Inclusive Framework (see next section) as "*The views of developing countries on the new framework are warmly, and urgently, welcomed.*" (OECD, 2015) It was also a source for Dutch officials to identify the needs and priorities of developing countries first hand. These insights informed the position taken on policy issues, such as Country-by-Country Reporting, transfer pricing, exchange of information and CD programmes for developing countries.

30 See also Burgers et al., 2015.

31 The meeting was co-Chaired by the Netherlands and South Africa (also representing ATAF) and brought together representatives from the tax and aid communities from OECD (UK, US, Norway, Germany, Japan, France, Switzerland, Belgium, Spain, Italy), and developing countries as well as emerging economies (India, Uganda, Sierra Leone, Kenya, Zambia, Malaysia, Philippines, Vietnam), business (including BIAC and TUAC), international organisations (ATAF, EU, CIAT, ITC, ITD, UN), and NGOs (TJN, TJN Africa, Christian Aid, Eurodad, and CCFD).

As of 2012, letters to parliament mainly focus on the G20/OECD project on BEPS, and the participation of developing countries in this project. The importance of participation of developing countries in the process is stressed by the Dutch government in various documents, more than once indicating that it will financially support initiatives to increase the participation of developing countries.[32] *Participation of developing countries in the G20/OECD BEPS-project has gradually intensified. In the first phase of the project, international organisations identified various priorities for developing countries, based on past experience and consultation of these countries. Which needs and priorities of developing countries were identified by the Netherlands?*

There is no (publicly available) Dutch policy document systematically analysing and identifying the needs and priorities of developing countries. However, during the first phase of the OECD BEPS project, various reports from international organisations identified priorities for developing countries. These reports fed into the Dutch policy preparation (as various interviewees confirmed, see next section). In the first place, the G20 Development Working Group (DWG) asked the OECD to map the experiences of developing countries and international organisations in respect of the main sources of BEPS in developing countries and to analyse how these experiences relate to the OECD/G20 BEPS Action Plan (See OECD 2014 and 2014b). These experiences were based on "*..dialogue and consultation with developing countries, and the experiences of international organisations working with developing countries*.". The OECD identified the following most relevant key Base Erosion and Profit Shifting issues for developing countries:

- *Base erosion caused by excessive payments to foreign affiliated companies in respect of interest, service charges, management and technical fees and royalties. (linked to OECD BEPS Actions 4, 8 and 10)*
- *Profit shifting through supply chain restructuring that contractually reallocates risks, and associated profit, to affiliated companies in low tax jurisdictions. (linked to OECD BEPS Actions 8, 9, 10 and 13)*
- *Significant difficulties in obtaining the information needed to assess and address BEPS issues, and to apply their transfer pricing rules. (linked to OECD BEPS Actions 11 and 13)*
- *The use of techniques to obtain treaty benefits in situations where such benefits were not intended. (linked to OECD BEPS Action 6)*
- *Tax loss caused by the techniques used to avoid tax paid when assets situated in developing countries are sold. (linked to OECD BEPS Action 13)*
- *In addition, developing countries often face acute pressure to attract investment through offering tax incentives, which may erode the country's tax base with little demonstrable benefit (included in this report, not as an integral part of BEPS, but of first order concern to developing countries that impacts on the tax base).*

These priorities for developing countries were mostly confirmed in another report by the IMF (2014):

- *'Treaty shopping'—the use of tax treaty networks to reduce tax payments—is a major issue for many developing countries, which would be well-advised to sign treaties only with considerable caution (linked to OECD BEPS Action 6).*
- *Many developing countries also need to be better protected against the avoidance of tax on capital gains on natural resources and some other assets in their jurisdiction by the realisation of these gains (i.e. the transfer of ownership) in low tax jurisdictions (not addressed by the OECD BEPS Actions).*
- *Many developing countries also still lack effective provisions to guard against the use of borrowing to shift profits to lower tax jurisdictions (linked to OECD BEPS Actions 2 and 4).*

[32] Dutch Ministry of Foreign Affairs, 2013 and 2016; Dutch Ministry of Finance, 2015)

- *Addressing the challenges of transfer pricing requires not just capacity building, but clearer and appropriately simplified rules and guidance (not addressed by the OECD BEPS Actions).*
- *Important though it is for developing countries to cope better with the challenges of international taxation, this should not distract from wider and more fundamental tax reform objectives.*

Moreover, IMF (2014) stressed that many developing countries have various other important Base Erosion and Profit Shifting concerns that are not covered by the OECD BEPS-project, for example, the offshore indirect transfer of assets located in a country, tax incentives as source of tax leakage in developing countries, and the lack of comparability data for transfer pricing.

The UN reports that many developing countries have expressed a positive view with respect to some of the OECD BEPS-recommendations, especially the minimum standard on treaty shopping (Action 6) and avoidance of PE status (Action 7).[33] On the other hand, some BEPS-recommendations are not considered priorities, for example, the minimum standard on dispute resolution (Action 14). This would be due to limited or no previous experience in mutual agreement procedures. The UN (2017) stresses that many recommendations from the OECD BEPS-project have much to offer developing countries, but that: "*..it is important to keep in mind the special needs and perspectives of developing countries regarding these issues: among others, the state of development of the tax system, the administrative resources available to deal with these matters, the nature of the trade and commercial relations with trading partners, and regional considerations. Each country must evaluate its own situation in order to identify its particular issues and determine the most appropriate techniques to ensure a sound tax base.*".

The UN also stresses that a separate analysis of Base Erosion and Profit Shifting in developing countries is required because priorities in those countries differ: most developing countries are more concerned with the reduction in source-based taxation, than with the shifting of domestic income of locally owned companies to low-tax jurisdictions. Developing countries are concerned with base erosion issues such as "artificial" avoidance of PE status and establishing mechanisms to deal with such avoidance, and with tax treaty abuse and ways to reduce this. Furthermore, the corporate tax on inward investment accounts for a greater share of total revenue in developing countries than in countries with more developed tax systems. Finally, as to the UN the potential responses to BEPS are limited to some extent by the administrative capacity of developing countries.

The UN's Financing for Development Office assembled a handbook for protection of the tax base of developing countries (UN, 2015). The aim of this initiative was to supplement the OECD BEPS-project by providing additional insight from the perspective of developing countries. The handbook identifies a number of priorities for developing countries, which more or less overlap with those of OECD and IMF:

- *Neutralising the effects of hybrid mismatch arrangements;*
- *Limiting the deduction of interest and other financing expenses;*
- *Preventing the avoidance of permanent establishment (PE) status;*
- *Protecting the tax base in the digital economy;*
- *Transparency and disclosure;*

[33] GIZ (2018).

- *Preventing tax treaty abuse;*
- *Preserving the taxation of capital gains by source countries;*
- *Taxation of services;*
- *Tax incentives.*

The African Tax Administration Forum (ATAF) established a technical committee with the aim of identifying the various BEPS channels and developing mechanisms that African countries could use as an input in the BEPS process (GIZ, 2018). Under this initiative, ATAF has prioritised technical assistance on transfer pricing, interest deductibility and permanent establishments and identifies OECD BEPS actions 4, 6, 7, 8-10 and 13 as priorities. Beyond the OECD BEPS project, ATAF has identified various other base erosion issues of high priority to African countries: lack of transfer pricing comparability data, granting wasteful tax incentives, taxation of natural resources, indirect transfer of assets, fraudulent invoicing of trade transactions and the informal sector.

Box 3 Priorities for developing countries as identified by international organisations

OECD BEPS Actions mentioned by all or most organisations (OECD, IMF, UN, ATAF) with special relevance for developing countries are Actions 4 (interest deduction), 6 (treaty abuse), 7 (PE-status), 8-10 (transfer pricing) and 13 (transparency / CbC-reporting). In addition, some priorities are identified which are not covered by OECD BEPS Actions: tax incentives, indirect transfer of assets, data on transfer pricing comparability and the informal sector.

Stakeholder interviews

a) What actions were undertaken by the Netherlands to identify needs and priorities of developing countries?

At the national level, in the early years taken account in this review (2010-2012) the perspective of developing countries was mainly internalised through parliamentary discussions and input from NGOs. In 2010, the Dutch Ministries of Finance and Foreign Affairs started organising a regular (two or three times a year) round table on matters of international taxation with NGOs, tax advisors, employer and employee organisations. In these meetings the Ministries collect the perspectives of the various stakeholders as an input for the Dutch position in the international discussions and as an input for Dutch tax (treaty) policy and double taxation treaty negotiations.[34] Topics discussed are recent developments in international taxation relevant for developing countries, proposals and reports of international organisations such as OECD and UN, and legislative proposals at the national level. NGOs, international taxation experts and academics frequently bring forward the perspective of developing countries. Though NGOs do not directly represent the interests of developing countries, they tend to be more attentive to their needs and priorities. At the time of writing (May 2020) this round table still exists and meets two or three times a year.

At the international level, the Netherlands and South Africa (also representing ATAF) took the initiative to form a platform to include developing countries in the discussions on international tax policy within the OECD (OECD, 2010) as mentioned in the previous section.

[34] Organisations present are the Dutch order of tax advisors (NOB), employer's organisation (VNO-NCW), employees organisation (FNV), NGOs like Oxfam-Novib, Cordaid, Tax Justice Nederland, SOMO, development finance institutions (FMO) and experts in the field of international taxation (IBFD). "Chatham house rules" apply during these meetings, and no formal meeting notes are made.

The informal task force was also an instrument for Dutch policymakers involved to identify needs and priorities from developing countries first hand.

The UN Committee of Experts also identified and discussed BEPS issues relevant specifically for developing countries. The Netherlands attends meetings on these issues organised by the UN as an observer country. Currently one of the members of the UN Committee is a staff member of the Netherlands Ministry of Finance (on personal title since 2017). In general, the Committee's topics and results cannot be traced back to individual countries or members. The work is done by subcommittees in collaboration with the secretariat. Virtually all tax treaties of the Netherlands with developing countries have elements from the OECD Model Treaty and from the UN Model Treaty and other publications of the UN Tax Committee. The note on tax treaty policy (NFV, Ministry of Finance, 2011) also indicates that the Netherlands is prepared to agree on different points in relation to developing countries than to other countries. It is not possible to establish a direct link between those treaty elements and the source (UN Model or OECD Model) on which that agreement is based.

b) Which needs and priorities of developing countries were identified by the Netherlands?

Various interviewees who were working at the Dutch MoF mention transfer pricing, treaty abuse or treaty shopping and tax incentives as priorities of developing countries as identified by the Netherlands. These priorities overlap with those identified in reports by international organisations, as described in the previous section. Furthermore, interviewees working in the private sector and formerly at the Ministry of Finance, confirm the reports by the OECD in response to the request of the DWG of the G20 (OECD 2014 and 2014b), which identified priorities of developing countries at the time (see previous section) were used in the policy preparation. A general concern for developing countries mentioned by various interviewees is the complexity of many OECD BEPS-actions. Reducing complexity is an important aspect that is often neglected as a result of the difficulties involved in consensus formation between developed countries leading to technically complex compromises. For example, developing countries are asked to exchange information on certain aspects, which may, according to the interviewees, be very difficult for them to comply to. Some interviewees (mainly from private sector consultancies) mentioned developing country priorities on tax policy are more basic than what is discussed under BEPS, such as, automatic information exchanges, setting up IT-systems, and dealing with corruption. One of the interviewees suggested working with two regimes, allowing for simplified solutions to BEPS issues for developing countries. Another interviewee confirms that the OECD BEPS-project is taking away the focus and political capital from other priority areas of taxation in developing countries (e.g. reconsidering changes in domestic tax law).

5.1.2 Integrating needs and priorities of developing countries in Dutch positions

Research question 3.2: How did the Netherlands take these needs and priorities into account in developing and defending its positions during the G20/BEPS discussions and design of ATAD I and II in the EU?

Desk review
The answers to research question 3.1 gave an overview of the issues that international organisations and developing countries consider to be priorities for developing countries. The next question is: "To *what extent did the Netherlands take these issues and the fact that they were important to developing countries into account during OECD BEPS and ATAD discussions?"*. In order to assess this, we checked whether these issues could be found in letters to parliament on the Dutch position in OECD BEPS and ATAD discussions.

Prior to the discussions in the first round of OECD BEPS (2013-2015) the policy note on tax treaty policy (Ministry of Finance, 2011) recognised the special position of developing countries in tax treaty negotiations:
The special position of developing countries and the importance that the Netherlands attaches to the successful tax development of these states justify deviations from Dutch treaty policy. In negotiations on tax treaties with developing countries, the Netherlands will be prepared to accept parts of the UN model treaty, provided that this does not disproportionately damage the interests of Dutch taxpayers. In addition, the Netherlands is committed to technical cooperation with developing countries.

In 2013, the treaty policy vis-à-vis developing countries was formally changed to include anti-abuse clauses in response to the domestic debate on treaty abuse. In that year, the State Secretary for Fiscal Affairs and the Minister for Foreign Affairs and Development Cooperation, sent a joint letter to parliament on the policy with respect to international taxation (Ministry of Finance, 2013, and Kosters, 2014). In this letter the tax treaty policy vis-à-vis developing countries is discussed more extensively. The letter identifies limiting treaty abuse of MNEs active in developing countries as a priority. This is before more systematic analysis at the international level in the OECD BEPS project identifies actions to combat treaty shopping as one of the priorities to address tax avoidance of MNEs in developing countries (see previous paragraph). The letter announces a policy change in tax treaty policy, in response to a research report (IBFD, 2013) concluding that very few tax treaties of the Netherlands with developing countries contain anti-abuse clauses, indicating that:

"…the Netherlands will offer the 23 developing countries with which it has a tax treaty, or with which negotiations are underway, to include anti-abuse measures in those treaties."

The letter also contains the ambitions of the Dutch government with respect to Country-by-Country Reporting and the exchange of information, two other topics which are important for developing countries. On Country-by-Country reporting it states that:

"The Netherlands is fully supporting the growing number of international initiatives to promote transparency through CBC reporting."
On the exchange of information, the at the time State Secretary for Fiscal Affairs and the Minister for Foreign Affairs and Development Cooperation took the position that:

"It is clear that with a worldwide automatic exchange of Foreign Account Tax Compliance Act - relevant information there will be a ground-breaking and unprecedented step forward. The Netherlands fully supports these developments and associated measures. After all, the fight against tax evasion is strongly served by the faster and more effective exchange of larger amounts of relevant information."

In addition, the letter announced intensified financing and cooperation on capacity development with tax administrations in partner countries as capacity development is seen as one of the main instruments to support domestic resource mobilisation. With respect to the formal policy change in 2013 to include anti-abuse clauses in (all) tax treaties with developing countries, the Netherlands was somewhat ahead of the curve: preventing treaty abuse is one of the minimum standards resulting from the first round of the OECD BEPS project (2013 - 2015).

Needs and priorities of developing countries were only sometimes addressed in letters to parliament concerning OECD BEPS and ATAD negotiations. During the subsequent OECD BEPS and ATAD I and II negotiations, the Ministry of Finance sent letters to parliament with the position it intends to take during the negotiations. In these letters, implications for developing countries are sometimes mentioned.[35] As of 2014 this practice becomes more or less standardised in letters on the Dutch position in European negotiations, as "implications for developing countries" becomes one of the standard criteria which should be met.

During the first OECD BEPS round, the position of the Dutch government on specific OECD BEPS actions varies: on some actions it aspires to undertake a pioneering role, on others it explicitly balances Dutch business interests against countering tax avoidance. The position on a number of issues was summarised in a letter to parliament (Ministry of Finance, 2015a. The letter distinguishes three policy areas.

The first block includes aspects of the Dutch tax system that, according to cabinet, in themselves do not stimulate avoidance, but where "*reckless intervention will lead to major damage for real companies. The Netherlands will propagate these strengths in the international discussion and the Netherlands will not give these up.*" Examples are ex-ante certainty for companies, horizontal supervision, an extensive network of tax treaties, the principle of equal treatment of national and cross-border companies and "*no withholding tax on interest and royalties*". In the Cabinet's view, these elements "*contribute to good trade relations between countries, effective supervision and fair business and it would be good if all countries used these elements.*" These aspects do not refer to specific OECD BEPS actions.

In the second policy area, the Cabinet aims at a *pioneering role for the Netherlands*, with respect to policies that counter tax avoidance, which fit well in the Dutch system, where "*we do not have to wait for international steps and where the Netherlands can lead the way.*" Examples are transparency and automatic exchange of data between tax authorities, which is considered important against tax avoidance and transfer pricing rules. The cabinet commits to an early agreement on the automatic exchange of information on rulings between all Member States, and to supplement tax treaties with 23 developing countries with anti-abuse measures and favorable withholding taxes. The Netherlands also aims to play a leading role in providing training and education in developing countries. These priorities are explicitly linked to developing countries in the letter. Topics where the Netherlands wants to assume a pioneering role refer implicitly to e.g. OECD BEPS actions 6, 8--10 and 13.

The third policy area includes "*large differences in tax systems have led to a substantial risk of aggressive tax planning and where incorrect measurements of international measures can have major consequences for international*

[35] E.g. Dutch Ministry of Finance (2013a; 2013b; 2015a; 2016a).

companies (also in the Netherlands)." Examples mentioned in the letter are hybrid mismatches, treaty abuse and preferential regimes. For these policy areas, "*Cabinet is committed to a multilateral approach through anti-abuse measures or coordination in areas where abuse is imminent.*" However, it "*does not support 'crude' measures that, due to a lack of clarity or too limited delineation, create a barrier against real activities, or which create an uneven playing field. For example, the Cabinet is committed to keep room to maintain a nationally preferential regime for innovative activities that is more widely accessible than exclusively for large companies with patented inventions.*" This policy area refers to topics which e.g. are covered by OECD BEPS actions 2 and 5. On these issues the government explicitly reserves the right to balance countering tax avoidance on one hand, and the interest of Dutch business climate for international companies on the other.

Finally the letter states that: "*The Netherlands also considers it important that the voice of developing countries be heard in these discussions. We support initiatives in this area, for example by making it financially possible for a leading group of developing countries to participate in the OECD BEPS discussions.*"

After the first round of OECD BEPS, cabinet sent a letter to parliament (Ministry of Finance, 2015c) summarising the Dutch position on OECD BEPS actions. For the Actions most important for developing countries (4, 6, 7, 8-10 and 13) its position was as follows:

Action 4 on interest deduction:
The government recognises the problem of base erosion due to interest deduction and in this context prefers targeted measures to generic measures. (..) Here too, unilateral action by the Netherlands does not benefit a level playing field and the cabinet is in favour of further developing binding rules, at least in a European context. As mentioned above, base erosion due to excessive interest deduction, and thus this action point, is an important aspect for developing countries. By implementing the proposed interest deduction restrictions, developing countries can ensure that (internal) interest costs of branches of multinationals in developing countries do not lead to a disproportionate erosion of the base.

Action 6 on treaty shopping:
As a minimum standard, it has been agreed that treaties must contain a LoB in combination with a PPT or with an anti-through-flow provision, but that only a PPT will also suffice. The government attaches great importance to the fact that the tax treaties to be concluded by the Netherlands in the future meet this minimum standard. (..) The new standards for anti-abuse provisions are important for developing countries, as they can better implement withholding taxes by combating treaty shopping.

Action 7 on PE:
The cabinet is in favour of this new assessment of whether there is a permanent establishment. The new definition of Article 5 will also become the government's commitment when negotiating a new or (fully) revised tax treaty with another country. Developing countries have also advocated these amendments to the definition of permanent establishment. In practice, there will more often be a permanent establishment, as a result of which developing countries will more often receive tax rights on part of the corporate profit.

Action 8-10 on transfer pricing:
These adjustments are fully in line with the Dutch policy laid down in the most recent transfer pricing decision. The government welcomes these amendments to the OECD TGP along the Dutch line. It provides a more resilient TP practice worldwide and helps combat artificial profit shifts that can also benefit developing countries.

Action 13 on transfer pricing documentation and country-by-county reporting:
Multinational companies with a turnover of € 750 million or more are required to prepare a country-by-country report. This document, modeled on the OECD, schematically shows, among other things, the worldwide distribution of taxable profits and taxes paid. The headquarters of the multinational corporation sends this report to the tax authorities in the country of its location. The tax authorities then automatically forward this information to all countries where the multinational company has branches.

The new rules should apply to financial years beginning on or after January 1, 2016. (..) The cabinet has started preparations to realise this. The new legislation should enter into force on 1 January 2016. Within the EU, the possibility of carrying out public Country-by-Country Reporting is being investigated. Earlier this year, on behalf of the cabinet, I asked the European Commission to prioritise research into the consequences of the expansion of public Country-by-Country Reporting for banks to all major multinational companies.

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Needs and priorities of developing countries are mentioned in various letters on international tax issues. A priority for developing countries as identified by international organisations, which is explicitly mentioned in multiple letters, is countering treaty shopping by adopting anti-abuse clauses (Dutch Ministry of Finance, 2013, 2015a and 2016a). Another topic which is considered relevant for developing countries is mandatory disclosure. Some of these countries might not be able to meet all criteria of mandatory disclosure, and as a result structures involving these countries might be labelled aggressive tax planning (Dutch Ministry of Finance, 2017). Country-by-Country reporting is frequently mentioned, also in relation to the importance for developing countries (e.g. Dutch Ministry of Finance, 2016c). Country-by-Country Reporting is an action (13) resulting from the OECD BEPS project and the CbCR directive, and was implemented by the Netherlands in 2016. CbCR-reporting makes it easier for tax administrations to detect tax avoidance and evasion because MNEs are obliged to report to the various tax authorities, among other things, their profit and tax paid per country in which they operate. Developing countries that implement OECD BEPS Action 13 will also have access to these country-by-country reports (Ministry of Foreign Affairs, 2017).

However, in other cases the Cabinet's assessment of the relevance for developing countries of proposals by the EC (ATAD I and II) concludes that there are no implications for developing countries (see for example Dutch Ministry of Finance, 2014, 2015b and 2016b). These assessments are justified by the fact that the proposals are primarily relevant for EU-countries (e.g. automatic exchange on information on rulings between EU member states, Dutch Ministry of Finance, 2015b and public Country-by-Country Reporting within the EU-area Dutch Ministry of Finance, 2016b).

The picture emerging from this review of selected letters to parliament confirms that needs and priorities of developing countries on balance were mentioned as a relevant factor in substantiating Dutch policies. During the first OECD BEPS round, Cabinet aimed to play a pioneering role on some issues important for (and explicitly linked to) developing countries (e.g.

actions 6, 8-10, and 13). On other issues (with less importance to developing countries, e.g. actions 2 and 5) it explicitly balanced combating tax avoidance with the interests of the Dutch business climate for international companies. After the first OECD BEPS round, some topics of obvious importance to developing countries as identified by international organisations, such as interest deduction (action 4), anti-abuse clauses in DTTs (action 6), PE rules (action 7) and Country-by-Country Reporting (action 13) were explicitly taken into account when substantiating the Dutch position. This was explicitly mentioned in communication about these OECD BEPS actions with specific relevance for developing countries In cases where specific proposals by the EC with respect to corporate income taxation were assessed by Cabinet as being (specifically) irrelevant to developing countries, this seems to be justified (e.g. Dutch Ministry of Finance, 2015a and 2016b).

Based on the 2020 Dutch tax treaty policy note, the Netherlands is currently being more cooperative with developing countries. It is explicitly stated in the policy note that the starting point for Dutch DTTs are the DTTs of other comparable (Western European) countries. However, it also argues to be more lenient with developing countries. For example, the policy note states that the Netherlands does not always strive for the lowest rate of withholding taxes as possible if the treaty partner concerns a developing country. Moreover, according to the policy note, the Netherlands is willing to accept a higher relative rate of withholding taxes (compared to its peers) if the treaty partner has revised its policy in the meantime.

Stakeholder interviews

The official Dutch position is that its policy aims at countering tax avoidance by MNEs. The primary goal during the G20/BEPS discussions and design of ATAD I and II in the EU was to address the issue of tax avoidance by MNEs in general, not specifically to help domestic resource mobilisation in developing countries. As representatives of the Ministry of Finance indicate, taxation is one of the policy areas of the Ministry of Finance. This includes the establishment of double taxation treaties and participation in international tax issues at the OECD. Among other things, the Ministry of Foreign Affairs is committed to economic development in developing countries to combat poverty. When dossiers touch on both policy areas, it is important that this is properly coordinated between the ministries. The Ministry of Foreign Affairs is aware of planned negotiations on DTTs at an early stage and arranges the approval procedure. Many documents, including the policy note on the framework for double taxation treaties and individual tax treaties which have been negotiated, pass through cabinet before they are signed and sent to parliament for ratification. In addition, there is a covenant between the Dutch Ministry of Finance and the Dutch Ministry of Foreign Affairs in which agreements have been made regarding the provision of technical assistance to developing countries. The Dutch Ministry of Finance is responsible for the implementation of the programme. The central idea of the cooperation between the Ministries is that countering tax avoidance has benefits for both developing countries and developed countries.

In the Netherlands, the discussion about tax avoidance intensified around 2012 in the aftermath of the financial crisis. This had a lot to do with the domestic debate about the role of the Netherlands as a conduit country. Partly due to this (internal) political pressure, the Netherlands felt obliged to address resource mobilisation issues in source (developing) countries. This induced top-down policy changes as a result of parliamentary discussions, which were reflected in negotiating mandates. This brought about a shift in Dutch policy. This happened gradually as the

policy stance changed over time. At the same time, according to a former Dutch Ministry of Finance official, an older generation of tax treaty negotiators at the Dutch Ministry of Finance that was primarily focused on negotiating low withholding tax rates was gradually replaced by a new generation. This new generation had a broader view, especially with respect to the position and issues of developing countries. As this interviewee described it, this led to a shift from *merchant* negotiators to *pastoral* negotiators, who also had the interests of developing countries in mind, and were less aggressive in double taxation treaty negotiations with regard to negotiating low withholding tax rates. However, a recent publication from SOMO (2020) argued that "the pledge in the NFV 2011- that 'with regard to developing countries [the Netherlands is] willing to agree on higher withholding taxes than in relation to more developed countries, with the understanding that the Netherlands wishes to achieve a result more or less equivalent to that in the treaties of that developing country with comparable more developed countries'- has not been materialised in most of the tax treaties with developing countries concluded since 2011".

At the same time (as of 2013) the international discussion on tax avoidance in the OECD BEPS project started. In general, the Netherlands has a voice in these discussions, but in the end, it is a relatively small country at the table. Interviewees assert that countries like the US, UK, Germany, France, China and India have a louder voice. Various interviewees point out that given the large investments that flow through the Netherlands, the country is seen as a focal point. Because of its status as a conduit country, the Netherlands had a special position in the OECD BEPS discussions. Other (conduit) countries were closely watching the Dutch position in these discussions. The Netherlands was seen as one of the potential defenders of the status quo. Various interviewees pointed out that many countries were suspicious of the motives of the Netherlands in these discussions, given the volume of investments passing through the country. The fact that the Netherlands was willing to compromise on issues such as anti-abuse clauses, and was already introducing anti-abuse clauses recommended by the OECD in its DTTs was an important signal for other countries.[36] Moreover tax treaties concluded by the Netherlands contain several other anti-abuse provisions, such as subject-to-tax clauses, beneficial ownership clauses, anti-conduit rules and references to anti-abuse provisions in domestic law. As one interviewee remarks, this proactive approach was probably also an incentive for the Netherlands to convince other countries to do the same, both from the perspective of the Dutch investment climate and international cooperation on minimum standards being vital to counter tax avoidance.

Some developing countries appear to consciously negotiate low withholding taxes. Two interviewees from the private sector, formerly working at the local Ministry of Finance, pointed out that some developing countries very consciously negotiate low withholding tax rates in their treaties with the Netherlands. According to these interviewees, these countries are well aware that the Netherlands is a conduit country and therefore explicitly use the Dutch treaty network as a

[36] A main purpose test has – at the time of writing of this report - been included in its tax treaties with Egypt, Ethiopia, Jordan, Croatia, Malawi, Malta, Kenya, Qatar, Tunisia, United Kingdom 2008, United Arab Emirates, Switzerland 2010, South Africa an Zambia. Its treaties with the United States 1992, Japan 2010, Ethiopia, Hong Kong and Panama contain a Limitation on Benefits Provision. The Tax Agreement Netherlands-Sint Maarten contains a General Anti-Abuse Rule (GAAR). Treaties with Algeria, Ghana, Iraq, Uzbekistan and Ukraine include a principal purpose test.

gateway to Western FDI[37].[38] In their view, these developing countries could choose other instruments such as tax incentives or other ways to incentivise investors from abroad, but they opt for low taxes via their tax treaty network (CPB, 2020), and are very transparent about this in the negotiations. One of these interviewees speculated that the same reasoning might explain the fact that some developing countries had (as of May 2020) not yet responded to the Dutch offer to include anti-abuse clauses in their DTTs with the Netherlands, or had not signed or ratified the MLI.

Interviewees differ in their qualification of the Dutch position in OECD BEPS and ATAD negotiations. An interviewee from an international organisation pointed out that the Netherlands was still defending Dutch interests quite aggressively during the first round of OECD BEPS (2013-2015). Other interviewees (one from an international organisation and one former employee of the Dutch Ministry of Finance) say the Netherlands, compared to other conduit countries, was willing to compromise on issues important for developing countries, such as anti-abuse clauses in tax treaties. One interviewee noted that the Netherlands probably delayed the discussions on the anti-abuse clauses in OECD BEPS, not because it objected introducing these clauses per se, but because it had a strong position on the type of clauses that should be included. The Netherlands was at the time in favour of the Limitation-on-Benefits clause as an anti-abuse provision, mainly because of the advantages in terms of legal certainty and easier applicability as there is less need for information and interpretation. The Dutch assessment at the time was that these advantages over the Principal Purposes Test (PPT) were also (or maybe even especially) important for developing countries (Dutch Ministry of Finance, 2013):

"As already written in the Fiscal Treaty Policy Memorandum 2011, it is recommended to include more specific anti-abuse provisions than the beneficial ownership provision in tax treaties with developing countries in order to limit the risks of unintended use. The memorandum also states that the Netherlands prefers targeted measures that offer taxpayers as much legal certainty as possible. That is why the Netherlands has a preference for clear so-called limitation-on-benefits provisions. These describe precisely for which types of transactions or companies / corporate relations the treaty benefits will be granted. This is preferable to generic measures such as a general main-purpose test"

Ultimately OECD BEPS Action 6 was based on most countries' preference for a PPT. Action 6 leaves room for introduction of a robust LOB or a simplified LOB together with a PPT. Some countries perceived this Dutch position in the discussion as trying to obstruct the introduction of anti-abuse clauses per se, but this was not the case. In fact, the Dutch position was partly motivated by the assessment that the advantage of easier enforcement of the LoB could be especially

37 The empirical literature is not clear on this point, A study by Beer and Loeprick (2018) on the impact of double taxation treaties of developing countries with investment hubs fails to find evidence of this effect. On the other hand, Hines (2013) documents a 'distance effect', with countries closer to investment hubs (jurisdictions that typically have many tax treaties) receiving more investments. Similarly, Lejour (2014) documents an increase in FDI to countries that sign a DTT.

38 However, SOMO (2020) rightfully mentions that "it is impossible to ascertain how the withholding tax rates were agreed on". Based on the explanatory memorandum (Memorie van Toelichting) that accompanies the relevant tax treaty, SOMO (2020) states that only in the case of Ethiopia there was an explicit desire from the partner country to agree on relatively low withholding taxes. "Most of the explanatory memoranda to the tax treaties state that the Netherlands either had an emphatic desire for or insisted on lower withholding tax rates." It remains ambiguous how exactly the withholding taxes were agreed upon during negotiations.

beneficial for developing countries (see quote). In its current treaty policy, the Netherlands follows the international minimum standard and as a rule offer to include a PPT.

According to one of the interviewees, the Netherlands tried to delay (until 2024) the implementation of ATAD II, because it assessed the rules concerning hybrid mismatches as being too detrimental to the Dutch investment climate (Tweede Kamer, 2016). According to an MoF representative, the reasoning for the delay was in fact execution problems at the NTCA. Another example is the implementation of the Controlled Foreign Company (CFC) rule following ATAD I, which – even though the implementation in the Netherlands goes further than in countries like Ireland, Luxemburg and the UK – is not as effective as it could be (see Dutch Ministry of Finance, 2020 pp. 95 for suggestions).

The position of the Netherlands differed per topic (see also previous section). On issues important for developing countries- like anti-abuse clauses in tax treaties, interest deduction, the implementation of the MLI and the conditional withholding tax on interest and royalties- the Netherlands was willing to compromise and sometimes went further than required by (European) directives. On other topics with less direct importance for developing countries, such as hybrid mismatches, it tried to delay implementation because it was assessed as being too detrimental to the Dutch investment climate.

Case study interviews

Interviewees in case study countries implicitly raise the issue of the consistency of the Dutch policy in double taxation treaty negotiations. With respect to the Dutch position in the international negotiations, interviewees in case study countries do not have observations to add. As far as the Dutch position in double taxation treaty negotiations is concerned, the Dutch initiative to pro-actively offer anti-abuse clauses in its tax treaties is generally assessed positively. However, as one interviewee (implicitly) points out, as long as withholding tax rates in the treaty with the Netherlands are relatively low, incentives for treaty shopping via the DTT with the Netherlands remain strong. In other words, a consistent approach should seek to combine anti-abuse clauses in these treaties with a level of withholding tax rates that discourages treaty shopping (i.e. rates not lower than in a set of benchmark treaties). The same interviewee points out that it is less clear whether the Netherlands is willing to negotiate substantially higher withholding tax rates in cases where their rates in existing DTTs are relatively low. This raises the question of consistency: by focusing on anti-abuse clauses, on paper, the position of developing countries is improved. But as long as withholding tax rates remain relatively low, incentives for treaty shopping via Dutch DTTs remains strong such as with the Uganda-Netherlands DTT. With respect to BEPS implementation, representatives from one of the case study countries (Kenya) stress that implementation of actions that are important for domestic revenue mobilisation has priority. For instance, Kenya incorporates the BEPS provisions that it deems beneficial to the Kenyan economy, especially those that directly result in improved domestic revenue mobilisation. The minimum standards (BEPS Actions 5, 6 13 and 14) were prioritised, as well as BEPS Action 1 (digital economy) and Action 7 (PE). Permanent establishment rules in particular are seen as crucial, although they are not part of the minimum standards.

NGOs raise the issue of too much private sector involvement in the formulation of Dutch tax policy. According to an interviewee from an NGO, many academic tax specialists in the

Netherlands are also partner at a private tax firm. Private sector representatives tend to endorse the idea that "less taxation is good". The former is also described by Oxfam (2016): commissioned by Oxfam, SOMO found out that 40 out of the 289 tax specialists in the Netherlands are simultaneously partner at one of the large tax consultancy firms and professor or senior lecturer at Dutch universities.[39] The Dutch government often consults these tax specialists – based on their academic position – for advice on their tax policy. The overrepresentation of private sector views makes it less likely that the interests of other stakeholders, including developing countries, is sufficiently taken into account during policy formulation.

5.1.3 Involvement of developing countries

Research question 3.3: At which stages and to what extent were developing countries able to influence the process of the G20/OECD BEPS as a result of activities supported by the Netherlands?

Desk review

The informal Task Force on Tax and Development was an initiative of South-Africa and the Netherlands and can be seen as a relatively early attempt to include developing countries in discussions on international taxation within the OECD (see previous section). During the first round of the OECD BEPS-project in 2013-2015 (see Figure 5.1), developing countries were formally not part of the project. Only the OECD-members plus the G20-members (that were not part of the OECD already) and two countries in an association trajectory (among which Colombia) formally took part in the OECD BEPS process.

However, there was some participation of developing countries in the process, which was supported by the Netherlands. Some developing countries were present in the Informal Taskforce on Tax and Development during this phase (initiated by among others the Netherlands), and the OECD organised regional information sharing and consultation events in and for developing countries in Africa and Latin-America in 2014. In the last phase of this first BEPS round (2015), 14 developing countries and several regional bodies representing developing countries took part in the OECD's Committee on Fiscal Affairs (CFA) and various BEPS working groups. As a result, (some) developing countries were more closely involved in BEPS Project discussions and decision-making that year. The OECD organised these regional meetings in order to inform developing countries of the process and OECD BEPS actions, and to collect input from developing countries. Although they were officially not a member, this input was also transferred from these regional meetings back to the negotiations in Paris. The Netherlands at this stage also financially supported participation of developing countries in the OECD BEPS process (Dutch Ministry of Finance, 2015a). In addition, the Netherlands also encourage participation of developing countries by supporting the capacity development activities of international organisations such as ATAF, the IMF and the World Bank.

During the second round of the OECD BEPS project, which started in 2016, the participation of non-OECD members in the implementation and monitoring of the BEPS

[39] Also described more recently in the Dutch Financial Newspaper ("het Financieel Dagblad") in November 2020. https://fd.nl/economie-politiek/1362835/belastingwetenschap-verliest-geloofwaardigheid-door-dubbele-petten

recommendations was formalised (voting rights) in the Inclusive Framework (GIZ, 2018). The Netherlands supported the institution of the Inclusive Framework. This framework aims to (1) allow interested countries and jurisdictions to work on equal footing with OECD/G20 member countries on developing standards for BEPS-related issues; (see the two-pillar approach below) (2) review and monitor the implementation and impact of the whole BEPS package and, specifically, the BEPS minimum standards; (3) gather data for monitoring other aspects of implementation; (4) finalise the remaining technical work to address BEPS challenges (e.g. transfer pricing profit split method); and (5) monitor outstanding and emerging Base Erosion and Profit Shifting issues. To join the Inclusive Framework a country or jurisdiction must pay an annual membership fee. The peer review monitoring process on the implementation of the minimum standards is expected to encourage members, as well as jurisdictions of relevance, to implement the BEPS package. All countries and jurisdictions joining the framework participate in this peer review process.

As of December 2020, there are 137 jurisdictions in the framework. The Inclusive Framework on BEPS allows interested countries and jurisdictions to work with OECD and G20 members on developing standards on BEPS related issues, and review and monitor the implementation of the BEPS Package. It monitors the implementation of all the BEPS Actions, especially on the minimum standards (actions, 5, 6 13 and 14), and each of these is the subject of a peer review process that evaluates the implementation by each member and provides recommendations.

In May 2019, the Inclusive Framework agreed upon the *Programme of Work to Develop a Consensus Solution to the Tax Challenges Arising from the Digitalisation of the Economy* (OECD, 2019).[40] This Programme of Work tries to deliver a solution to the tax challenges brought by digitalisation and focuses on two pillars. The first pillar concerns a new distribution of taxation rights, whereby a larger part of the tax base is allocated to countries with many consumers or users. Countries where companies do not have a physical presence but are economically active can also obtain taxation rights under the proposed rules. The second pillar concerns a worldwide standard for a minimum effective tax rate stating that in situations where the profits of a multinational corporation are taxed below the minimum, the home country of the multinational, or a country where the multinational deducts certain payments, to the minimum rate. The proposed Dutch withholding tax on interest and royalties to low-tax jurisdictions partly corresponds to proposals for the second pillar. More specifically, the GloBE proposal seeks to develop rules that would provide jurisdictions with a right to "tax back" where other jurisdictions have not exercised their primary taxing rights, or the payment is otherwise subject to low levels of effective taxation. The GloBE proposal was based on:

".. the premise that in the absence of multilateral action, there is a risk of uncoordinated, unilateral action, both to attract more tax base and to protect existing tax base, with adverse consequences for all countries, large and small, developed and developing as well as taxpayers."

In contrast to the initial BEPS-project, developing countries have been included in the process right from the beginning through the inclusive framework. Formally, the developing world has a larger vote and is present in greater numbers.

40 The appreciation of the Dutch cabinet on this programme is positive: *I therefore welcome the work of the OECD and IF. In my view, IF is the right partnership with 134 Member States to find truly global solutions to these challenges.* (Dutch Ministry of Finance, 2019a and 2019b)

The Global Forum on Transparency and Exchange of Information for Tax Purposes is a multilateral framework for work on transparency and exchange of information for tax purposes by both OECD and non-OECD countries as of 2000. Since 2009, the Global Forum is the international body working on the (monitoring of the) implementation of the international standards (Exchange of information on request and Automatic exchange of information) on tax transparency by a peer review process. In addition, it offers technical assistance to its members. The Global Forum as of December 2020 has over 160 members, with 19 international organisations participating as observers. All member jurisdictions have committed to implementing the international standard on Exchange of information on request. Over a hundred countries, including the Netherlands as of 2017, have committed to implementing the standard on Automatic exchange of information (OECD, 2020a). The Netherlands was rated overall "largely compliant" with the standard on transparency and exchange of information on request handled over the period from 2014-2017.

Stakeholder interviews

Formally developing countries are at the table in the Inclusive Framework, but various interviewees point out that in practice, many countries lack the funds needed to attend meetings as well as the capacity to prepare contributions to the discussions in advance.[41] Organisations like ATAF and CIAT (Inter-American Centre of Tax Administrations) are very active in the Inclusive Framework. ATAF provides technical support and advice to its members, to assist them in analysing proposals put forward by the Inclusive Framework, and help them assess the implications for their tax base and investment climate. ATAF has formed a Technical Committee with international tax experts and organises public consultations with stakeholders in Africa to obtain inputs on proposals. It also carries out data collection to assess the impact of proposals. International organisations like ATAF can act as Observers within the Inclusive Framework. This allows for more coordinated and targeted capacity development in the implementation of the BEPS outcomes. Organisations like ATAF can be of particular relevance to developing countries for the implementation of the BEPS Package, as well as providing support to such countries to effectively participate in the ongoing standard setting process. As an example, ATAF has also constructed a Model Tax Treaty. The ATAF Model Tax Agreement for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income generally follows the UN MDTC or OECD MT.

"There is a difference between membership, participation and influence". A representative of a Dutch NGO pointed out that the process should be made more democratic, since OECD countries still "call the shots". According to the interviewee, the UN is often seen as the party that represents developing countries, but it has not intervened in the process sufficiently. In the NGO representative's opinion, there should be more involvement of developing countries, because "if you want to go fast you go alone, if you want to go far you go together". The first phases of OECD BEPS showed many characteristics of a fast process rather than of an inclusive process. Another representative from a Dutch NGO mentioned that developing countries requested to establish a global tax body by the UN, which the Netherlands did not support, believing this UN tax body would not lead to more effective global decision making on tax.

[41] See also https://www.ictd.ac/blog/developing-countries-contributions-international-tax-reform-oecd/

Case study interviews

Interviewees in case study countries are positive about the role of the Netherlands in increasing participation of developing countries in international discussions.-The Dutch role focuses on financial support for developing countries to facilitate participation in international discussions, and on support in the form of capacity development on international tax issues and DTT negotiations.

Nevertheless, the case study countries are not all fully committed to OECD BEPS. Kenya is the only case study country that has engaged in many initiatives on international taxation, including the Inclusive Framework on BEPS (IFB). A stakeholder that worked closely with the Kenyan authorities noted that this was a strategic choice: "if you are not on the table, you are on the menu". The presence of many MNEs in the country was an important reason for Kenya to join the IFB to voice its position on the taxation of MNEs in the international discussions. They also felt that the IFB provides Kenya with the opportunity to raise issues that are specific to the Kenyan situation (e.g. interaction with domestic tax law). Another reason to be actively involved in international discussions is that it facilitates implementation of actions. According to a Kenyan tax expert (outside the public sector), Kenya had also increasingly developed capacity since the second round of OECD BEPS, in order to better deal with international taxation issues and to engage more effectively in IFB working parties.

Neither Ghana nor Uganda joined the IFB, and instead chose their own unilateral path to accommodate to international standards. Based on our interviews, we infer that the main reasons for not joining the IFB included (a) a preference not to commit to all BEPS recommendations, (b) a lack of capacity in complex international tax matters, (c) the costs related to membership of the IFB, and (d) the fact that they are already members of ATAF, which has set itself the goal of "raising the voice of Africa". The Ghanaian authorities noted that ATAF represents African developing countries well enough at the IFB, and that there is therefore no need to become a member of IFB themselves. This also means that the overall influence of the case study countries on the OECD BEPS process is fairly limited.

Stakeholders had different views with regard to the effectiveness of ATAF in representing the interests of African countries in international fora such as the IFB. On the one hand, some interviewees noted that ATAF, by representing a large number of African countries, might be able to raise a louder voice than individual countries could. On the other hand, the "African voice" was seen as only an "average voice" that does not necessarily represent the voices of all individual countries. In fact, some stakeholders had the feeling that ATAF tends to better reflect the voices of richer African countries, and others noted an apparent bias towards Anglophone countries. ATAF itself was well aware of this and said that it had been actively working on better involving non-Anglophone and lower-income countries.

Synthesis and link with ToC

The Netherlands has advocated the inclusion of anti-abuse clauses in DTTs in international discussions. Table 5.2 displays the main findings with respect to research question 3 linked to the ToC. The table shows that for each level in Pathway 2 of the ToC, there is at least medium level evidence that confirms the assumptions made in the ToC. As a result of the

Netherlands introducing the policy to include anti -abuse clauses in DTTs relatively early (mid-2013) it had an incentive to push for inclusion in the minimum standards as agreed on the international level (OECD BEPS and ATAD). With respect to impact pathway 3 (Table 5.3) the evidence is more mixed. On the one hand, the Netherlands aspired a pioneering role with respect to OECD BEPS actions 6, 8-10 and 13, which according to reports by international institutions are important for developing countries. On other topics related to tax avoidance, such as hybrid mismatches, the Netherlands in practice was less eager to adopt new rules and regulations.

Table 5.2 Impact Pathway 2: DTT-related anti-avoidance measures

ToC level	
Outputs	**Dutch Contribution to the BEPS discussion relevant for DTTs provided** • Actions taken to identify needs and priorities: Needs and priorities were identified via reports by international institutions (OECD, IMF, UN), contacts within / via international forums (e.g. Informal Task Force on Tax and Development, UN committee of experts) and a round table with stakeholders at the national level. In these reports, OECD BEPS actions 4, 6, 7, 8-10 and 13 were identified as being of special relevance to developing countries. **Dutch contribution to the BEPS discussion relevant for DTTs provided** • Needs and priorities identified: At the start of the BEPS process, the Netherlands had already identified treaty shopping via double taxation treaties as an issue for developing countries, and adapted its policy to include anti-abuse clauses in treaties with developing countries.
Short-term outcomes	**Dutch position on these priorities and BEPS standards relevant for DTTs developed (Q3.2)** The Netherlands adopted the policy to introduce anti-abuse clauses in DTTs relatively early (mid 2013). As a result, it had an incentive to push for adopting this in international standards. In public statements and according to interviewees, the Netherlands aspired a pioneering role on this issue and some other OECD BEPS actions (e.g. actions 8-10 and 13).On OECD BEPS actions / ATAD clauses like anti-abuse clauses in tax treaties, the implementation of the MLI the Netherlands was willing to compromise and sometimes went further than (European) directives required. **Renegotiations to comply with redefined BEPS standards started** *Discussed in RQ 4* **Double taxation treaties renegotiated** *Discussed in RQ 4* **MLI ratified by the Netherlands** *Discussed in RQ 4*
Medium-term outcomes	**Dutch DTTs including anti-abuse clauses developed** *Discussed in RQ 4* **Instrument for developing countries to address tax avoidance via the NL provided** *Discussed in RQ 4*

Source: SEO Amsterdam Economics

Table 5.3 Impact Pathway 3: Non-DTT-related anti-avoidance measures

ToC level	
Outputs	**Dutch contribution the general international tax policy discussions provided** • Actions taken to identify needs and priorities: Needs and priorities were identified via reports by international institutions (OECD, IMF, UN), contacts within / via international forums (e.g. Informal Task Force on Tax and Development, UN committee of experts) and a round table with stakeholders at the national level. In these reports, OECD BEPS actions 4, 6, 7, 8-10 and 13 were identified as being of special relevance to developing countries **Dutch contribution to the BEPS discussion relevant for DTTs provided** • Needs and priorities identified: The Netherlands identified transfer pricing, treaty shopping and investment incentives as priorities for developing countries, overlapping largely with those identified in reports by international organisations (OECD BEPS actions 4, 6, 7, 8-10 and 13).
Short-term outcomes	**Dutch position on these priorities Non-DTT (anti-avoidance) measures developed** On OECD BEPS actions / ATAD clauses like anti-abuse clauses in tax treaties, interest deduction, the implementation of the MLI, and the conditional withholding tax on interest and royalties, the Netherlands was willing to compromise and sometimes went further than (European) directives required. On other topics as hybrid mismatches, the Netherlands was less willing to implement these directives. **Participation of developing countries increased** The Netherlands took the initiative to involve developing countries in the Informal task force on tax and development at an early stage in the discussion (2010/2011) and was an active supporter of later initiatives such as Tax inspectors without borders. It (publicly and financially) supported a deeper involvement of developing countries in the OECD BEPS process and supported the introduction of the inclusive framework. It also supported developing countries financially to participate in these discussions and to build capacity on issues of international taxation. The Netherlands does not support the establishment of a global tax body by the UN however. **Non-DTT (anti-avoidance) measures implemented (e.g. CbC-reporting, exchange of information, transfer pricing, limited interest deduction)** *Discussed in RQ 4*
Medium-term outcome	**Tax avoidance via the Netherlands reduced** *Discussed in RQ 7*
Long-term outcome	**Global level of tax avoidance decreased** *Discussed in RQ 7*

Source: SEO Amsterdam Economics

5.2 Implementation of G20/OECD BEPS standards[42]

After the needs and priorities of developing countries were identified, were these also included by the Netherlands when implementing the recommendations? The current chapter provides valuable insights by answering research question 4 using stakeholder interviews and desk research as information sources.

Research question 4: To what extent has the Netherlands contributed to including the interests of developing countries when implementing recommendations of international discussions on G20/OECD BEPS standards on countering tax avoidance?

[42] In practice is the implementation of G20/OECD BEPS standards in European countries arranged through the ATAD.

Desk research

Dutch bilateral treaty policy (Impact pathway 2 of the ToC)

As illustrated by a Dutch policy note of 2011, the Netherlands already took (some of) the needs and priorities of developing countries into account before the BEPS project had started (Dutch Ministry of Finance, 2011)**.** In this note, the Dutch MoF already acknowledged that *"treaty shopping plays an increasing role for countries that attach more value on levying withholding taxes"*. At the same time, the Dutch MoF stated that they were willing to include provisions to counter tax avoidance (e.g. withholding taxes) as long as they are proportional. In other words, it should not have severe negative consequences for the (Dutch) good-natured private sector. In addition, they considered it plausible to impose stricter requirements for obtaining treaty benefits for treaties with a relatively low rate of withholding taxes. The Dutch MoF recognised that the likelihood of 'treaty shopping' is decreasing in the rate of withholding taxes. In order to combat tax avoidance, the Netherlands proposed to make use of anti-abuse provisions in tax treaties instead of incorporating anti-abuse clauses in the domestic regulation. Already in 2011, the Dutch MoF discussed the possibility of including anti-abuse clauses in double taxation treaties to deny certain treaty benefits in case the main purpose of engaging in a legal structure was to obtain those treaty benefits (Dutch Ministry of Finance, 2011).

> *"The Netherlands is committed to preventing treaty abuse and is therefore prepared to include treaty limiting provisions if the Netherlands and / or the treaty partner sees a risk of treaty abuse in view of the interaction between the tax systems concerned."*

In a comparative study of DTTs, IBFD (2013) made a number of interesting observations:

1. The DTTs of the Netherlands with developing countries did not provide lower rates for withholding rates than the DTTs of nine other OECD/G20 countries with those same developing countries.[43]
2. However, given the lack of differences in the rates of withholding taxes, a disproportional share of investments still went into the selected developing countries through Special Financial Investments (SFIs) located in the Netherlands. The IBFD listed three reasons for this phenomenon:
   a. The existence of the participation exemption;
   b. The absence of withholding tax on outgoing interest and royalty payments;
   c. The Dutch Advance Pricing Agreements (APA) / Advance Tax Rulings (ATR) practice.
3. The Netherlands had closed less DTTs (with both developing and developed countries) than France and the UK, but more than Luxembourg and Ireland (two countries that had also been popular in the area of 'international tax planning').
4. Few anti-abuse provisions were included in the Dutch DTTs with developing countries at the time.

The IBFD study (2013) suggested that the Netherlands propose the inclusion of anti-abuse clauses to developing countries themselves. This suggestion was adopted by the Dutch Ministry of Finance that same year (Dutch Ministry of Finance, 2013).

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43 The nine OECD/G20 countries include Belgium, China, Germany, France, Ireland, India, Mauritius, the UK and Switzerland.

A letter to Dutch Parliament by the Dutch Ministry of Finance in 2013 illustrates the willingness of the Netherlands to contribute to limiting global tax avoidance even before the BEPS project was finalised. In this letter, the Dutch Ministry of Finance (2013) first noted that maintaining an attractive fiscal climate through a wide treaty network had always been one of the main principles of the Dutch treaty policy. The participation exemption was seen as a crucial element in obtaining this goal and was not up for debate. In the same letter, the Dutch government acknowledged their responsibility towards developing countries in that the Netherlands should try to limit the cases of double non-taxation as a result of the Dutch tax systems and their treaty network. In order to address this issue, the Dutch MoF expressed its preference for a multilateral approach (Dutch Ministry of Finance, 2013).

In addition to their multilateral support, the Dutch MoF also engaged in bilateral actions to limit their role in global tax avoidance (Dutch Ministry of Finance, 2013). On the one hand, this led to changes in their treaty policy and the proposal to include anti-abuse clauses in their treaties with developing countries. On the other hand, this led to increased efforts in capacity development in terms of treaty negotiation training activities and the provision of more practical technical assistance. In addition, amendments to their legislation were made regarding APA and ATR (Dutch Ministry of Finance, 2013).

Dutch multilateral treaty policy through the MLI (Impact pathway 2 and 4 of the ToC)

In a letter to parliament, the Dutch Ministry of Finance (2018) noted that the Netherlands goes beyond the minimum standards in its policy proposals to counter tax evasion and avoidance. The letter stated that:

This Cabinet wants to tackle tax evasion and tax avoidance. It is therefore important to take appropriate measures. In international measures, such as combating excessive interest deduction and treaty abuse, the Cabinet goes beyond the minimum standards. A good example of government policy is that we will tax dividend, interest and royalty flows to so-called low tax jurisdictions to prevent the Netherlands from being used primarily to erode the tax base of other countries. Higher requirements are also imposed on the presence in the Netherlands (PE) before certainty can be obtained in advance.

The 2018 letter contained a list of four key policy measures aimed at preventing the Netherlands from being used as a conduit to transfer profits to tax havens. The policy measures considered most relevant for developing countries were listed under the heading "Combating improper use of our internationally oriented tax system". This included the following four key measures:

1. A proposal to introduce **withholding taxes** on outgoing interest and royalties to low tax jurisdictions;
2. Adoption of **anti-abuse provisions in all DTTs** to prevent treaty abuse (preferably through the MLI);
3. Tightening requirements regarding the definition of **permanent establishments (PE**) in the Netherlands; and
4. Support for proposals regarding **mandatory disclosure and public Country-by-Country Reporting.**

With respect to the first measure, *(conditional) withholding taxes* will enter into force in the Netherlands on 1 January 2021.[44] These will be payable if an entity established in the Netherlands pays interest or royalties to an affiliated entity established in a country with a low statutory rate or a country included in the EU list of non-cooperative jurisdictions. With the introduction of the conditional withholding tax, the Netherlands is anticipating an EU discussion about possible measures against non-cooperative countries. Withholding taxes are currently on the list of optional countermeasures, but not mandatory in the EU (Dutch Ministry of Finance, 2018).

With respect to the second measure (*adoption of anti-abuse clauses in DTTs*), the 2018 letter proposed to offer this to all treaty partners (not only developing countries), preferably via the Multilateral Instrument (MLI). If treaty partners agree, Dutch DTTs are adapted to the anti-abuse provisions developed in the OECD BEPS project in order to provide both the Netherlands and treaty partners with tools to combat tax avoidance through treaty shopping (Dutch Ministry of Finance, 2018).

When signing the MLI in 2017, the Netherlands opted for a relatively generous implementation, implying a (potentially) substantial adjustment of DTTs to prevent double non-taxation (see Table 5.4**).** The Dutch Ministry of Finance (2018) argued that this implementation goes beyond minimum standards and also further than the implementation of other OECD countries (see Table 5.4). The only exception to this rule is Article 12 (artificial avoidance of PE status), which was included in the original notification of the Netherlands at the moment of signature, but was excluded at ratification at the request of the Dutch parliament.

[44] https://www.eerstekamer.nl/wetsvoorstel/35305_wet_bronbelasting_2021

Table 5.4 The Netherlands took a more generous position in its implementation of the MLI than other OECD countries.

	NL	IE	FR	BE	GER	LU	UK	CH
Hybrid mismatches	✓	✓		✓		✓		
Dual residence entities	✓	✓					✓	
Not using an exemption method to avoid double taxation	✓					✓		
Annual assets against dividend stripping	✓	✓	✓	✓	✓			✓
Looking back for interests in real estate bodies.	✓	✓			✓			
Anti-abuse clauses for PEs in third jurisdictions	✓				✓			
Permanent establishment broker structures etc.	✓		✓					
Artificial Avoidance of Permanent Establishment Status through Commissionaire Arrangements and Similar Strategies		✓	✓	✓	✓	✓		
Anti-fragmentation	✓	✓	✓	✓			✓	
Splitting up contracts.	✓	✓	✓					

Source: SEO Amsterdam Economics based on Dutch Ministry of Finance (2018) and Ministry of Foreign Affairs (2019). A checkmark denotes that a country wants to implement the measure via the MLI.

The principal purpose test (PPT) was accepted by all countries ratifying the MLI to tackle treaty abuse (Dutch Ministry of Finance, 2018). If obtaining treaty benefits is one of the main goals of a structure or transaction, a treaty partner can make use of the PPT in order to prevent this.

Other (domestic) developments (Impact pathway 3 of the ToC)

With respect to the third measure (permanent establishments), an amendment of the *substance requirements* for "letterbox companies" was identified as another important policy measure for reducing the role of the Netherlands as a conduit country. This was done by tightening the requirements regarding the presence in the Netherlands, increasing the frequency of information exchange with other countries and stricter conditions for giving certainty in advance. In addition, the substance requirements as of 1 January 2020 were no longer a safe harbour (Tweede Kamer, 2019). According to the Dutch Ministry of Finance (2018), the Dutch Tax and Customs Administration (NTCA) has the possibility of counterproof to demonstrate that a structure is abusive, even if these substance requirements are satisfied. The substance requirement concerns a wage requirement of € 100,000 and the requirement of an office space that is available for at least 24 months.

The 2018 letter also expressed the intention to amend the Dutch Transfer Pricing Decree of 14 November 2013. In this 2013 decree (number IFZ 2013/184M), the Secretary of State for Finance explained that he perceived the OECD Transfer Pricing Guidelines as appropriate explanation and clarification of the arm's length principle laid down in the Dutch corporate income

tax act (Article 8b, Wet VPB 1969) to bring it into line with the new OECD guidelines. The decree also announced an inquiry into the application of the arm's length principle for downward adjustment of taxable profit as an indication of tax avoidance. A new Transfer Pricing Decree (number. 2018-6865) was published on 11 May 2018.

With respect to the fourth measure, *mandatory disclosure and Country-by-Country Reporting (action 13)*, the Netherlands supported the European Commission's proposal for a directive on mandatory disclosure and the initiative to make agreements about Country-by-Country Reporting for large internationally operating companies. EU Directive 2016/881, implementing BEPS action 13 was adopted on 25 May 2016. It required multinationals with a worldwide turnover of more than € 750 million to annually to prepare a country-by-country report for the tax authorities, showing the worldwide distribution of taxable profits and taxes paid.

According to the Dutch Ministry of Finance (2018), the Netherlands advocated for a detailed breakdown of the information. It included CbCR-legislation in its domestic law as of 1 January 2016 (so before the CbCR-Directive was adopted). As of this date Article 29c Wet VPB 1969 the ultimate parent being tax resident in the Netherlands must provide the tax administration with a CbCR-report within twelve months after the last day of the financial year. In certain circumstances this requirement is imposed on a Dutch tax resident group entity not being the ultimate parent.

The Netherlands is comparable with other OECD-countries in terms of the implementation of the standards of the Global Forum on Transparency and OECD BEPS. Table 5.5 lists the key indicators with respect to exchange of information (both on request – EOIR – and automatic – AEOI) and BEPS for the Netherlands and a selection of other OECD countries. The table shows that the Netherlands and its peers largely "meet" the key indicators.

Table 5.5 Implementation of standards of the Global Forum an BEPS is comparable across OECD countries

	NL	IER	FRA	BEL	GER	LUX	UK	SWI
Exchange of information								
Member of Global Forum	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
EOIR rating round 1								
Compliant/largely compliant/not reviewed	LC	C	C	C	LC	LC	LC	LC
EOIR rating round 2								
Compliant/largely compliant/not reviewed	LC	C	C	LC	LC	LC	LC	LC
Mutual Administrative Assistance Convention								
In force/signed/not signed	F	F	F	F	F	F	F	F
Commitment to AEOI								
Year/Not committed to a specific date	2017	2017	2017	2017	2017	2017	2017	2018
CRS MCAA signed								
In force/signed/not signed	F	F	F	F	F	F	F	F
Mutual Administrative Assistance Convention								
In force/signed/not signed	F	F	F	F	F	F	F	F
BEPS								
Inclusive Framework member	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Existence of harmful tax system (action 5)								
Harmful/under review/not harmful	NH	NH	NH	NH	NH	NH	NH	H*
Exchange of information on tax rulings (Action 5)								
Reviewed and recommendations made/ no recommendations made	NR	NR	R	NR	NR	NR	NR	NR
Preventing treaty abuse (Action 6)								
Review in 2018 or 2019, no recommendations and 2020 review ongoing / 2020 review ongoing	RNR	RNR	RNR	RNR	RNR	RNR	RNR	RNR
CbC – Domestic law (Action 13)								
Legal Framework in place / Update on status pending	LF	LF	LF	LF	LF	LF	LF	LF
CbC – Information exchange network (Action 13)								
Activated/Not signed/Not activated	A	A	A	A	A	A	A	A
Effective dispute resolution (Action 14)								
Stage 1/2 reviewed & recommendations made / Not reviewed	2Rec	1Rec	2Rec	2Rec	2Rec	2Rec	2Rec	2Rec
Multilateral Instrument (Action 15)								
In force/Signed/Not signed	F	F	F	F	S	F	F	F

Source: SEO Amsterdam Economics based on: https://www.oecd.org/tax/beps/beps-actions/action6/
*H = in the process of being amended/eliminated

The implementation of the standards of the Global Forum on Transparency and BEPS varies among developing countries, but in general is far more limited than for the OECD countries.[45] Table 5.6 lists the key indicators with respect to exchange of information (both on request – EOIR – and automatic – AEOI) and BEPS for a selection of partner countries of the Netherlands (*"OS-countries"*). The table shows that, although all countries are members of the Global Forum and the Inclusive Framework, the implementation of the standards is fairly limited.

[45] However, implementation is increasing rapidly

Table 5.6 Implementation of standards of the Global Forum and OESO BEPS is relative limited in partner countries of the Netherlands.

	KEN	EGY	JOR	TUN	BEN	BFA	COG	SEN	LBN
DTT with the Netherlands	**Yes***	**Yes**	**Yes**	**Yes**	**No**	**No**	**No**	**No**	**No**
Exchange of information									
Member of Global Forum	Yes	Yes	Yes	Yes	Yes	Yes	-	Yes	Yes
EOIR rating round 1									
Compliant/largely compliant/not reviewed	LC	NR	NR	NR	NR	LC	-	LC	LC
EOIR rating round 2									
Compliant/largely compliant/not reviewed	NR	NR	NR	LC	NR	NR	-	NR	LC
Mutual Administrative Assistance Convention									
In force/signed/not signed	S	N	N	F	S	S	N	F	F
Commitment to AEOI									
Year/Not committed to a specific date	NC	NC	2023	NC	NC	NC	NC	NC	2018
CRS MCAA signed									
Yes/Not applicable	NA	NA	NA	NA	NA	NA	NA	NA	Yes
Mutual Administrative Assistance Convention									
In force/signed/not signed	S	N	N	F	S	S	N	F	F
BEPS									
Inclusive Framework member	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	-
Existence of harmful tax system (action 5)									
Harmful/under review/not harmful	NH	NH	H	UR	NH	NH	NH	NH	-
Exchange of information on tax rulings (Action 5)									
Reviewed and recommendations made/ no recommendations made	NR	R	NR	NR	R	NR	R	R	-
Preventing treaty abuse (Action 6)									
Review in 2018 or 2019, no recommendations and 2020 review ongoing / 2020 review ongoing	RNR	RNR	RO	RNR	RNR	RNR	RNR	RNR	-
CbC – Domestic law (Action 13)									
Legal Framework in place / Update on status pending	U	LF	U	LF	U	U	U	LF	-
CbC – Information exchange network (Action 13)									
Activated/Not signed/Not activated	NS	NS	NS	NA	NS	NS	NS	NA	-
Effective dispute resolution (Action 14)									
Stage 1/2 reviewed & recommendations made / Not reviewed	NR	NR	NR	NR	NR	NR	NR	NR	-
Multilateral Instrument (Action 15)									
In force/Signed/Not signed	S	S	S	S	-	S	-	S	N

Source: SEO Amsterdam Economics based on: https://www.oecd.org/tax/beps/beps-actions/action6/ Data on the other partner countries are not available, because those countries have not joined the Inclusive Framework. * Not yet ratified

Priorities of developing countries (Impact pathway 1 of the ToC)

According to GIZ (2018), the minimum standards for joining the IFB are not always a priority for developing countries, which in turn hampers their implementation. Preventing Base Erosion and Profit Shifting itself is considered relevant to developing countries, but a number of essential problems in their tax systems and local tax administrations make it difficult to implement the recommendations. According to GIZ (2018), these problems included:

- The lack of fundamental knowledge on international taxation and specific BEPS-actions (which are often rather complex);
- Limited staff capacity, and;
- An insufficient IT-structure.

Stakeholder interviews

General position of the Netherlands in international tax policy discussions (Impact pathway 2 of the ToC)
All stakeholders agree that, since 2013, the international tax policy of the Netherlands has been strongly tied to the BEPS project. Since the BEPS project began in 2013, led by the OECD's Committee on Fiscal Affairs, the vast majority of the BEPS discussion points has now been included in Dutch international tax policy and DTTs. Interviewees from the Dutch MoF emphasised that misuse of Dutch bilateral DTTs entails more than just the relationship between the Netherlands and the treaty partner. For this reason, the Dutch MoF also tries to mitigate the problem of third-party relations that misuse the Dutch system (i.e. conduit companies) by channelling their profits through the Netherlands.

Dutch bilateral treaty policy (Impact pathway 2 of the ToC)
The official policy of the Netherlands since 2013 has been to offer inclusion of anti-abuse clauses in all its DTTs with developing countries (Dutch Ministry of Finance, 2013). As of December 2020, the Netherlands had signed DTTs with 23 developing countries, of which 13 treaties included anti-abuse clauses in line with BEPS. While the Netherlands has had a preference to address BEPS-issues multilaterally, five out of 13 DTTs with developing countries were renegotiated bilaterally to include anti-abuse clauses. In the other 8 treaties, anti-abuse clauses were included through the MLI (discussed below).[46]

Table 5.7 The Netherlands included anti-abuse clauses in DTTs with 13 developing countries

Status	Countries	No.
Tax treaties with anti-abuse clauses (re)negotiated bilaterally	Ethiopia, Malawi, Kenya, Zambia, Ukraine, Uzbekistan, and Ghana	7
Tax treaties with anti-abuse clauses (re)negotiated through the MLI	Pakistan, Morocco, Egypt, Nigeria, Georgia, Indonesia, and India	7
Tax treaties without anti-abuse clauses	Bangladesh, Uganda, Moldavia, Philippines, Sri Lanka, Vietnam, Zimbabwe,	7
Treaty partner at the time, but not anymore	Mongolia, Kyrgyzstan	2
Total		**23**

Source: Based on Dutch Ministry of Finance (2018) and (OECD (2020).

In terms of treaty negotiations, the Dutch MoF sees itself as more open (i.e. more cooperative) towards developing countries than towards developed countries. The area of withholding taxes was specifically mentioned by one of the stakeholders from the Dutch MoF. According to a stakeholder from the Dutch MoF, the general official Dutch policy is to maintain low (or no) withholding taxes, but to allow these rates to be somewhat higher for developing countries. The Dutch MoF suggests considering recently ratified DTTs of their peers (e.g. Belgium, Germany, United Kingdom, and Denmark) with developing countries when determining a

[46] In some cases, the Netherlands is still waiting for the ratification by the other party.

reasonable level of withholding taxes. When looking at the Dutch tax treaties, the timing of the treaty's signing should also be considered. Older treaties tend to include lower withholding taxes and less anti-abuse clauses. With respect to service permanent establishments (PE), the Dutch MoF is open to include a technical fee provision in their DTTs with the poorest developing countries. Compared to the OECD model convention, this treaty policy gives developing countries more opportunities to levy income from activities carried out in their country (Dutch Ministry of Finance, 2020b)

Dutch multilateral treaty policy through the MLI (Impact pathway 2 of the ToC)

The Multilateral Instrument (MLI) implements the treaty related anti-tax avoidance measures of the BEPS project in double taxation treaties. An innovative aspect of the BEPS project, the MLI allows for the rapid inclusion in existing DTTs of measures against treaty shopping, artificial avoidance of the PE status and hybrid mismatches, as well as improvements of the dispute resolution mechanism.[47]

On 7 June 2017, Dutch Minister of Finance Dijsselbloem, together with Ministers and other high-level representatives of over seventy jurisdictions, participated in the first signing ceremony of the Multilateral Instrument (MLI) in Paris. At this ceremony, the MLI was signed by 67 countries and jurisdictions, covering 68 jurisdictions from all continents and all levels of development. As of December 2020, the MLI covered 95 jurisdictions, including the Netherlands, Belgium, Luxembourg and Switzerland.

The signing of the MLI by the Netherlands illustrated that the Dutch Ministry of Finance has a preference to address BEPS-issues multilaterally. Signing the MLI was also attractive because it was an easy and practical way to include "common points" in tax treaties. Signatories of the MLI can choose which existing tax treaties they would like to modify using the MLI. Once a tax treaty has been listed by the two parties, it becomes an agreement to be covered by the MLI.[48]

Interviewees cited various reasons as to why some developing countries have thus far been reluctant to sign the MLI or renegotiate their DTTs with the Netherlands. As of December 2020, 10 out of 23 developing countries with which the Netherlands had signed DTTs had not yet reacted to the Dutch offer to include anti-abuse clauses in their DTTs. Possible explanations given in our stakeholder interviews are as follows:

a. The most plausible (and also mentioned by case study country representatives) is an efficiency argument: many developing countries have signed very few tax treaties, making it less efficient to go into the whole process of the MLI, since the modification of DTTs through the MLI takes relatively more time and effort. These countries often prefer to bilaterally renegotiate the few tax treaties they have.
b. Some developing countries might not exactly understand what the MLI entails and as a result do not ratify it for the wrong reasons. Interviewees mention:[49]

47 http://www.oecd.org/tax/beps/multilateral-instrument-BEPS-tax-treaty-information-brochure.pdf
48 http://www.oecd.org/tax/beps/multilateral-instrument-BEPS-tax-treaty-information-brochure.pdf
49 To increase developing countries' understanding of the MLI, the IBFD provided a "Workshop on the BEPS project and Multilateral Convention to Implement Tax Treaty Related BEPS Measures (MLI)" to Zambian officials in Zambia. In addition, IBFD planned another course on the MLI in September 2020: https://www.ibfd.org/Training/BEPS-Country-Implementation-MLI-and-beyond

- Some developing countries may regard the MLI as a way of giving up sovereignty. Our interview partners do not see the MLI as a way of giving up sovereignty, but acknowledge that this might play a role in certain cases.
- Some developing countries have no specific interest in including anti-abuse clauses in its tax treaties. Vietnam was given as an example. It was stated that the country explicitly tries to expand its network of tax treaties without signing the MLI.
- As noted above, one of the possible explanations noted by at least two interviewees is that some developing countries prefer to keep certain clauses, e.g. low withholding tax rates, in their treaties with the Netherlands as a gateway to Western FDI. However, this is very difficult to substantiate with factual evidence. By means of illustration, based on the explanatory memorandum (Memorie van Toelichting) that accompanies every DTT, SOMO (2020) concluded that only Ethiopia expressed an explicit desire to agree on relatively low withholding taxes.

In its recent letter on tax treaty policy for the coming years, the Dutch Ministry of Finance (2020b) lists the following possible reasons for developing countries not to sign the MLI, confirming the efficiency argument:

While developing countries benefit from protecting the tax base, not all developing countries are currently signatories to the MLI. During the plenary debate on the MLI, it has been agreed that this letter will address the question of why this is the case. This is primarily due to the fact that a large number of developing countries have no or only a limited number of tax treaties. This may make it more obvious for these countries to allow measures from the BEPS project that relate to tax treaties to feed into a tax treaty through bilateral negotiations, not through the MLI. In addition, some developing countries that later joined the BEPS project intend to sign the MLI. Furthermore, having anti-abuse provisions in treaties and national legislation or other prioritisation may play a role in the (not) yet signing of the MLI by developing countries. The Netherlands has notified almost all of its tax treaties when the MLI was signed. In this way, the Netherlands offers its treaty partners, and therefore also developing countries, the opportunity to have the (anti-abuse) measures of the BEPS project reflected in these tax treaties, even if these countries join the MLI at a later date.

As of December 2020, the Netherlands had notified 81 treaties as agreements covered by the MLI and accepted almost all provisions of the MLI (see Table 5.4). Twenty-one of these treaties are concluded with developing countries.[50] Thus, the Netherlands went beyond the minimum standards when implementing the MLI. Only one provision was left out (Article 12: Artificial Avoidance of Permanent Establishment Status through Commissionaire Arrangements and Similar Strategies), as a result of an amendment by parliament. According to the OECD, approximately 56 treaties are potentially modified by the Dutch efforts related to the MLI.[51]

According to multiple interviewees, the Netherlands is ahead of other key OECD countries in terms of the implementation of BEPS measures. According to interviewees working in the private sector (and formerly at the Dutch Ministry of Finance), Germany, Italy and Spain were all behind the Netherlands at the moment of the interview (April 2020), although they were among

50 These include Bangladesh, Egypt, Ethiopia, Ghana, India, Indonesia, Jordan, Kazakhstan, Kenia, Malawi, Malaysia, Morocco, Nigeria, Pakistan, Philippines, Sri Lanka, Surinam, Tajikistan, Thailand, Tunisia and Uganda.

51 Potentially, because the Netherlands ratified the MLI and registered 81 treaties under the MLI, but is in many cases awaiting the ratification or registration from their counterparts. Based on the signing of the MLI by other countries there are currently 56 matches

the founding members of the BEPS-project. In fact, though they were amongst the group of first signatories of the MLI on 7 June 2017, these countries according to the OECD-list of signatories and parties to the MLI had not even ratified the MLI on 30 April 2020. Similarly, as an interviewee mentioned, Brazil (member of the G20) and Indonesia (member of the G20) have made their complaints in the past because they were losing tax revenue due to conduit countries like the Netherlands. However, as of December 2020, Brazil had not signed the MLI, whereas in Indonesia the MLI only goes into force on 1 August 2020 (OECD, 2020b). This interviewee noted that in this manner, the MLI has illuminated which of the countries that had been very vocal in the past are actually prepared to counter tax avoidance.

Other (domestic) developments (Impact pathway 3 of the ToC)

According to one of our interviewees outside the Dutch government, the Netherlands is one of the few countries that undertakes serious efforts to make their policy more coherent and more focused on developing countries. Four examples were noted:

1. Regular reporting on developing countries positions (e.g. in letters) to the Dutch parliament;
2. Coordination and coherence between the Dutch Ministry of Foreign Affairs and the Dutch Ministry of Finance - see description on coordination between Ministries of Finance and Foreign Affairs in previous section;
3. The introduction of a VAT exemption for services provided in the Netherlands within the framework of development projects carried out by the organisations in developing countries
4. Dutch contributions to multilateral funds and projects (e.g. at the OECD or the World Bank).

The Netherlands also limits tax avoidance by discarding rulings for transactions involving countries that are on the Dutch list of low-tax jurisdictions.[52] In addition, as of 1 January 2021,[53] the Netherlands will levy a withholding tax on royalties and interest *if* the financial streams subsequently flow towards low-tax jurisdictions and recently announced a conditional withholding tax on dividends.[54] This makes it less attractive for MNEs to set up a conduit company in the Netherlands for the purpose of avoiding taxes, because the success of this structure is no longer guaranteed upfront. Referring to pathway 1 of the ToC, this can result in an increase in domestic tax collection or a decrease in (foreign) investment. However, this probably has less effect on existing structures that have already proven successful in the past.

According to an analysis of the Centraal Planbureau (CPB: Netherlands Bureau for Economic Policy Analysis), which one of our interviewees pointed to, the role of the Netherlands as a conduit country was also a topic in the Dutch internal debate.[55] The authors, 't Riet and Lejour (2017), through a network analysis examined the Foreign Direct Investment diversion and identified the United Kingdom, Luxembourg and the Netherlands, among others, as the most important conduit countries.

52 https://zoek.officielebekendmakingen.nl/stcrt-2018-72064.pdf
53 https://www.eerstekamer.nl/wetsvoorstel/35305_wet_bronbelasting_2021
54 https://www.eerstekamer.nl/behandeling/20191227/publicatie_wet_5/document3/f=/vl4rfod1xnyj.pdf

Developing countries (Impact pathway 1 of the ToC)

Besides the main problem of limited capacity to implement the BEPS-actions, interviewees mention three additional stumbling blocks for developing countries to combat tax avoidance:[56]

1. **Relinquishing sovereignty:** some developing countries refrain from stepping into multilateral agreements, because they see it as a way of giving up sovereignty. In case of a dispute, it would be easier to make use of an arbitrary panel (i.e. the OECD). However, developing countries do not always trust the outcomes, because the arbitrator is foreign.
2. **Internal discussions in developing countries:** revenue administrations are often in favour of anti-abuse provisions, whereas the local Ministry of Finance or board of investments often have different motivations. Representatives from revenue administrations are however often not involved in the tax treaty discussions.
3. **There is no *single position* of developing countries:** developing countries differ in their economic position, domestic tax systems and priorities, which makes it difficult for them to unite and agree on a single position. What perhaps comes closest to representing *the position of developing countries* are the position papers of the African Tax Administration Forum (ATAF), specifically designed for the African continent.

Not all interviewees were purely positive with respect to the BEPS-actions and its relevance for developing countries in general. Some concerns expressed by stakeholders were the following:

- Developing countries need to employ a lot of staff members to keep up with the discussion, whilst they are generally short-staffed and lacking relevant expertise.
- Prioritising BEPS could redirect resources away from potentially more important issues for developing countries, such as limiting illicit financials flows, reforming the domestic tax law or improving the effectiveness of their domestic tax administrations.
- Some developing countries have limited negotiation experience and insufficient understanding of the international tax systems. For these reasons, they often end up with the 'bare minimum', because they have difficulties in: a) determining what is their preferred position; and b) defending this position during negotiations.[57]
- Some developing countries distrust the OECD.

Synthesis and link with ToC

The Netherlands has done relatively well with respect to (the intention of) including anti-avoidance measures in their DTTs with developing countries to combat tax avoidance. Table 5.8 displays the main findings with respect to research question 4 linked to the ToC. The table shows that for each level in Pathway 2 of the ToC, there is some evidence that confirms the assumption made in the ToC. There is strong evidence that the Netherlands has been active to (re)start the bilateral dialogue with developing countries and ratify the MLI. However, these efforts were not always fully effective. Only in slightly more than half of the cases did the proposal of anti-abuse clauses or ratification of the MLI result in a modified DTT. This is mainly a result of choices made by developing countries, who decided not to respond to the proposal of the Netherlands or

[56] The degree to which the BEPS-actions can be successfully implemented does not only depend on the efforts of the OECD/G20 countries, but also on that of other countries as they should also implement the recommendations of the OECD in its BEPS-actions in their domestic legislation.

[57] These are also areas that are addressed during IBFD's treaty fundamentals and treaty negotiation courses.

not to sign or ratify the MLI. This question is further addressed in the country case studies, which show only moderate evidence that the efforts (i.e. renegotiation or the MLI) also directly result in the desired changes (i.e. inclusion of anti-abuse clauses in DTTs).

Table 5.8 Impact Pathway 2: DTT-related anti-avoidance measures

ToC level	
Output	**Dutch contribution to the BEPS discussion relevant for DTTs provided** *Discussed in RQ 3*
Short-term outcomes	**BEPS standards relevant for DTTs developed** *Discussed in RQ 3*
	Renegotiations to comply with redefined BEPS standards started The Dutch Ministry of Finance already proposed to include anti-abuse clauses in DTTs before the BEPS discussions started. This included all the 23 DTTs that the Netherlands had concluded with developing countries.
	Double taxation treaties renegotiated In 2013, the Dutch Ministry of Finance offered the inclusion of anti-abuse clauses to all developing countries with which it had concluded a DTT.
	MLI ratified by the Netherlands The Netherlands has signed the MLI in 2017 and at the 1st of July 2019 it went into force. Based on letters to parliament, it became clear that the Netherlands took a more generous position in its implementation of the MLI than other OECD countries. Eight DTTs with developing countries were modified as a consequence of signing and ratifying the MLI.
Medium-term outcome	**Anti-abuse clauses included in Dutch DTTs /** **Instruments for developing countries to address tax avoidance via the NL provided** As of December 2020, only 14 out of the 23 DTTs effectively included anti-abuse clauses. This was in part because of lengthy ongoing bilateral (re)negotiations, and in part because of the MLI. The anti-abuse clauses that were offered by the Netherlands do go beyond to what was recommended by the OECD/BEPS.

Source: SEO Amsterdam Economics

Table 5.9 Impact Pathway 3: Non-DTT-related anti-avoidance measures

ToC level	
Output	**Dutch contribution to the general international tax policy discussions provided** *Discussed in RQ 3*
Short-term outcomes	**Non-DTT (anti-avoidance) measures developed** *Discussed in RQ 3*
	Non-DTT (anti-avoidance) measures implemented (e.g. CbC-reporting, exchange of information, transfer pricing, limited interest deduction) The position of the Netherlands differed per sub-area. On issues such as anti-abuse clauses in tax treaties, transfer pricing guidelines, CbC reporting, limiting interest deduction, implementation of the MLI, and the introduction of a conditional withholding tax on interest and royalties, the Netherlands was willing to compromise and sometimes went further than (European) directives required.
Medium-term outcome	**Tax avoidance via the Netherlands reduced** *Discussed in RQ 7*
Long-term outcome	**Global level of tax avoidance decreased** *Discussed in RQ 7*

Source: SEO Amsterdam Economics

6 Capacity Development

Table 6.1 Research questions sub-goal 2

Number as based on the ToR	Research Question
5	Which CD-activities are supported by the Netherlands and to what extent do they address the needs of developing countries?
5.1	Which activities were supported by the Netherlands and what was the objective of these activities?
5.2a	How has the Netherlands identified tax-related CD needs in developing countries?
5.2b	Which tax-related CD needs were identified by the Netherlands?
5.3	Is there an (objective) standard to which the quality of a country's tax system can be measured?
5.4	To what extent has tax-related CD financed by the Netherlands been relevant in that it was aimed at addressing the most urgent needs of the recipient country (based on the objective standards identified in 5.3 and given the activities of other parties)?
5.5	To what extent has the Netherlands succeeded in improving donor coordination and coherence through ATI and guidance of multilateral trust funds?
6	To what extent were tax-related CD activities supported by the Netherlands effective for the implementation of BEPS-actions and negotiation and enforcement of anti-abuse clauses in tax treaties in developing countries?
6.1	To what extent did CD activities contribute to implementation of BEPS-actions in case study countries?
6.2	To what extent did CD activities contribute to an informed position during negotiations of and the enforcement of anti-abuse clauses in tax treaties between the case study countries and the Netherlands?

Source: SEO Amsterdam Economics, based on the ToR.

6.1 RQ 5: Relevance of Dutch CD activities

Which CD-activities are supported by the Netherlands and to what extent do they address the needs of developing countries? Is there an objective standard to which the quality of a country's tax system can be measured? Has the Netherlands succeeded in improving donor coordination?

Research question 5.1: Which activities were supported by the Netherlands and what was the objective of these activities?

Box 4 Capacity Development

Capacity Development refers to the process by which individuals and/or organisations obtain, improve, and retain the skills, knowledge, tools, equipment, and other resources needed to do their jobs competently. Capacity development is therefore the combined results of technical assistance, training, conferences and other knowledge sharing activities. Earlier this was often referred to as 'capacity building'.

6.1.1 CD-activities supported by the Netherlands

Bilateral Capacity Development

Since 2012, the Netherlands has been supporting six bilateral CD programmes in the area of taxation. It has done so via three main organisations:

a. **The Dutch MoF** with the **Dutch Tax and Customs Administration (NTCA)** as its implementing agency;
b. **The International Bureau of Fiscal Documentation (IBFD),** located in Amsterdam, with a consortium initially consisting of VNG (Association of Dutch Municipalities), PBLQ HEC, and Ecorys)[58]
c. **The Dutch Association of Municipalities (VNG).** Initially VNG was part of the IBFD consortium, but from [2017] the funding for VNG support has gone via a delegated budget via Dutch embassies (in particular Ghana and Palestine).

Table 6.2 presents an overview of the activities, time period, budget, and countries involved.

Table 6.2 Summary of bilateral programmes supported by the Netherlands[59]

Name	Organisation	Period	Budget	Countries
Strengthening tax systems	Ministry of Finance/ NTCA	15-07-2012 / 31-12-2016[60]	€1.1 million	Burundi, Ethiopia, **Ghana**, Indonesia, **Kenya**, Liberia, Malawi, Ukraine, Palestinian Authorities, Rwanda, Tanzania, **Uganda**, and Zambia
Promoting DRM in partner countries	Ministry of Finance/ NTCA	01-01-2017 / 31-12-2020	€2 million	Bangladesh, Ethiopia, **Ghana**, Indonesia, **Kenya**, Rwanda, and **Uganda**
Capacity Building in Taxation	IBFD consortium (including VNG, PBLQ)	01-07-2013 / 31-12-2015	€1.4 million	Burundi, Ethiopia, **Ghana**, Indonesia, **Kenya**, Liberia, Malawi, Ukraine, Palestinian Authorities, Rwanda, Tanzania, **Uganda**, and Zambia
Capacity Building in Taxation	IBFD consortium	01-07-2016 / 30-06-2020	€3 million	Bangladesh, Ethiopia, **Ghana**, Indonesia, **Kenya**, Malawi, Rwanda, Tanzania, **Uganda**, and Zambia
Local tax communities in Ghana	VNG/ Maple Consult	01-11-2017 / 31-12-2022	€4 million	**Ghana**
Decentralisation of property tax	VNG	01-08-2018 / 31-12-2021	€2 million	Palestinian Authorities

Source: MFA Assessment Memorandums ("beoordelingsmemoranda") of the respective programmes

58 According to the interim evaluation (SEO 2016, p. 6), the expected division of tasks was 50 percent for IBFD, 30 percent for PBLQ HEC, 15 percent for Ecorys and 5 percent for VNG, although in practice most of the activities were performed by IBFD (until end-2015).

59 In addition, the Dutch MFA also provided support to Oxfam Novib/Somo and Both Ends through the dialogue and dissent framework worth of €137.3 million. These programmes maintain a broader focus than (inter)national taxation and have the general goal of building capacity for lobby and advocacy of civil society organisations.

60 This covenant initially ended on 31 December 2015, but was extended by one year.

Ministry of Finance & Dutch Tax and Customs Administration[61]

In 2012, the Dutch MFA signed its first Covenant with the Dutch MoF on *Strengthening Tax Systems* for the period July 2012-December 2015, which was later extended by one year to December 2016. This followed a request by the Dutch MoF in July 2012 for the Dutch MFA to co-finance technical assistance activities conducted by the Dutch MoF in developing countries. Under the Covenant, the Dutch MFA provided financial resources to the Dutch MoF to cover travel expenses and evaluation. In turn, MoF was responsible for executing the programme with the support of experts from the Dutch Tax and Customs Administration (NTCA).

The aim of the first programme was to enhance revenue administration and strengthen tax treaties for at least five developing countries. The overarching objective (as is the case for all programmes discussed below) was to increase DRM by means of a proper functioning tax system consisting of:

- Understandable, practical and manageable tax and customs legislation;
- Improved fiscal policy; and
- Efficient and effective execution of policy and regulation by tax and customs authorities.

The initial aim was to provide CD in at least five out of the 15 "partner countries" at the time.[62] In the end, 13 countries were served through this programme (see Table 6.2).

In the 2015-16 interim evaluation of the bilateral programmes (SEO, 2016), SEO made the following recommendations with respect to the implementation for the next phase:

1. Improved coordination (alignment) with other donors in countries with bilateral programmes;
2. Seek – where possible – active involvement of the embassy or a different representative of country;
3. Actively involve NTCA and IBFD during scoping-missions.

The second programme with the Dutch **MoF/ NTCA ran from January 2017 to December 2019.** The main goal (a proper functioning tax system) and its sub-goals remained unchanged compared with the first programme. All three case study countries received CD from the Netherlands through both bilateral programmes of the Dutch MoF/NTCA.

Three out of the fourteen capacity development activities provided by the NTCA related to international taxation in the case study countries. In total, the NTCA provided 14 different capacity development activities in the case study countries (see Table 6.3). All of the activities focused on improving DRM, with the vast majority aimed at improving domestic taxation practices. Especially the more recent activities were directed at domestic taxation.

61 Based on MFA Assessment Memorandums ("beoordelingsmemoranda") MoF/NTCA

62 As described in SEO (2016, Chapter 2), these 15 partner countries were Afghanistan, Bangladesh, Benin, Burundi, Ethiopia, Ghana, Indonesia, Yemen, Kenya, Mali, Mozambique, Uganda, the Palestine areas, Rwanda and Sedan. According to the Covenant, up to 15 percent of programme resources could be spent on countries other than these partner countries, provided that they had a DTT or customs treaty with the Netherlands, or developing countries where the Dutch Ministry of Finance aimed to set up such a treaty.

Table 6.3 3 out of the 14 capacity development activities in the case study countries provided by the NTCA related to international taxation

Activity	Programme	Ghana	Kenya	Uganda
International taxation				
Transfer pricing (TIWB)	Strengthening tax systems	2013-present		
Exchange of information	Strengthening tax systems		2014	2014
Study visit international taxation	Promoting DRM in partner countries			2017
Domestic taxation				
Valuation and classification of goods	*Strengthening tax systems*	*2014*		
Compliance Risk Management (CRM)	*Strengthening tax systems*	*2016*		*2017*
Change management	*Strengthening tax systems*		*2016*	
TADAT assessment of the National Revenue Board	*Promoting DRM in partner countries/strengthening tax systems*	*2017*	*2016*	*2019*
Customs	*Promoting DRM in partner countries*	*2016-2017*		
Auditing	*Promoting DRM in partner countries*			*2017-2018*
Management	*Promoting DRM in partner countries*			*2018*
Timely filing ("tijdig aangifte")	*Promoting DRM in partner countries*			*2018*
Congres change management	*Promoting DRM in partner countries*	*2018*	*2018*	*2018*
Learning and development	*Promoting DRM in partner countries*	*2018*		*2017-2018*
Tax payers' service	*Promoting DRM in partner countries*		*2018*	

Source: SEO Amsterdam Economics based on the programme's progress reports

IBFD - Capacity building in international taxation[63]

IBFD has been the main provider of Dutch-funded capacity development activities related to international taxation. As part of their contract with the Ministry of Foreign Affairs they executed two programmes on capacity development in international taxation.

The first IBFD programme ran from 2013 to 2015 and focused on establishing a 'well-functioning tax system,' which was considered a requirement for improving DRM. This programme defined four key components of a well-functioning tax system:

1. Understandable, practical and manageable tax and customs legislation;
2. Up-to-date fiscal policy (aimed at countering tax avoidance);
3. Efficient and effective implementation of tax policy by tax administrations;
4. Wide disclosure of tax and customs legislation.

The second IBFD programme ran from 2016 to 2020 and focused on three areas:

1. The inclusion of anti-abuse clauses in tax treaties (including adjustments in national law) in 8 treaty partners plus Tanzania and Rwanda (see Table 6.2);
2. decreasing tax avoidance due to transfer pricing;
3. tax reforms.

63 Based on MFA Assessment Memorandums ("beoordelingsmemorandum") IBFD – Capacity building in taxation

Under the second programme, IBFD provided broadly speaking two types of training with respect to tax treaties:

1. A basic training on the fundamentals of tax treaty policy, and;
2. a more advanced training on tax treaty negotiations.

The IBFD provided relatively few capacity development activities in the three cases study countries. Nevertheless, all of these activities were related to improving DRM by addressing international taxation issues. Understanding international taxation principles, developing a national treaty model and conducting treaty negotiations have been leading topics in IBFD's capacity development activities.

Table 6.4 All of IBFD's four capacity development activities were related to international taxation

Activity	Programme	Ghana	Kenya	Uganda
Tax treaties maintenance and administration (seminar in Amsterdam)	Capacity Building in Taxation	2014	2014	2014
International taxation: principles and application	Capacity Building in Taxation		2015-2016	2015-2016
Offshore entities	Capacity Building in taxation	2016	2016	
Double tax treaties - policy and negotiations (research and training)	Capacity Building in Taxation	2019		

Source: SEO Amsterdam Economics based on the programme's progress reports

VNG & Maple Consult - Local tax communities in Ghana[64]

The VNG programme in Ghana (2017-2022) aims to sustainably increase local tax revenues to finance improved basic services to their citizens. They aim to do so on the following basis:

- Improve the institutional capacity and procedures of each participating Metropolitan, Municipal and District Assemblies (MMDA) to collect revenues and diminish the tax gap;
- Implement IT in each MMDA to support the main tax business processes;
- Improve the capacity of each MMDA to communicate with its citizens;
- Implement participatory planning processes including social contracts with citizens, and;
- Realise political commitment, leadership and project management expertise on the ministerial level and in each MMDA to guarantee sustainability.

Five modules were set up around this aim:

1. Problem analysis and strategy development;
2. Organisation of local tax administration: processes and procedures;
3. Implementation of TaxMan software solution;
4. Taxpayer communication and service delivery;
5. Project management.

Following a workshop in 2017 to identify the priority areas, the year 2018 focused on module 1 and 2, while theme 3 and 4 were added in 2019. The themes are discussed by means of trainings workshops and best practices.

64 MFA Assessment Memorandum ("beoordelingsmemorandum") VNG/Maple consult – Local tax communities in Ghana

VNG – Decentralisation of property tax in Palestine[65]

In January 2017, the Prime Minister's Office (PMO) of the Palestinian Authority identified six pillars to reform the Palestinian land sector, one of which is property tax. VNG International has assisted the property tax reform process, building on prior engagement with the Palestinian Authority. The objectives of VNG were threefold:

- Assist the pilot to transfer property tax collection and management from the Palestinian Ministry of Finance to 3-5 selected municipalities.
- Support the Ministry of Finance to increase transparency of fiscal transfers of property tax to municipalities.
- Develop a long-term decentralisation strategy and roadmap.

The Dutch MFA deemed these activities relevant, as they were both expected to result in:

- Increased DRM for Palestinian municipalities;
- Higher quality of services to citizens;
- More efficient and accountable governance through empowerment of local governments.

Lessons from these pilots are expected to feed into wider property tax reforms. Although the core problem to be addressed was the low tax revenue at the local level, the programme also has addressed problems of municipal development, governance, and strengthening the social contract between Palestinian citizens and the Palestinian authority. Based on the Dutch MFA Assessment Memorandum, the overall objective was "*to investigate how decentralisation of property tax can contribute to enhance (property) tax revenues to enable municipalities in the Palestinian Territories to deliver improved basic services to citizens*. The reverse is also true however: better local service delivery contributes to an improved tax morality.

Multilateral CD-activities supported by the Netherlands

In the same period, the Ministry of Foreign Affairs also contributed financially to 13 multilateral programmes, with a total value of € 36.8 million (see Table 6.4). These contributions have not been focused on a specific country or a specific training area, but contribute to the strengthening of the global tax system. Table 6.4 provides an overview of the activities, time period, budget, and number of countries involved.

65 MFA Assessment Memorandum ("beoordelingsmemorandum") VNG – Decentralisation of property tax

Table 6.5 Summary of multilateral activities supported by the Netherlands

Name	Organi-sation	Theme	Period	Dutch support	Total budget	Number of countries
Revenue Mobilisation Thematic Fund (RMTF)[66]	IMF	CD	01-07-2009 / 30-06-2013	€4 million	$30-40 million	26
Revenue Mobilisation Thematic Fund (RMTF)	IMF	CD	01-05-2016 / 30-06-2022	€4.6 million	$60 million	23
Thematic Fund on Managing Natural Resource Wealth (MNRW-TF)[67]	IMF	CD	01-07-2009 / 30-06-2013	€4 million	$30-40 million	22
African Technical Assistance Centres (AFRITACs)	IMF	Support to regional (African) organisations on Tax	01-07-2009 / 31-06-2013	€4 million	$205 million	24
AFRITAC Core	IMF	Support to regional (African) organisations on Tax	01-06-2015 / 31-05-2019	€7 million	Unknown	42
ATAF	South African Revenue Service	Support to regional (African) organisations on Tax	01-11-2010 / 30-06-2014	€0.25 million	$9.9 million	36
ATAF	ATAF	Support to regional (African) organisations on Tax	01-01-2014 / 31-12-2015	€0.25 million	$3.5 million	36
TADAT Tax diagnostics	IMF (and World Bank)	CD	01-01-2014 / 31-12-2018	€1 million	$8.4 million	41
ATAF	ATAF	Support to regional (African) organisations on Tax	01-01-2017 / 31-12-2020	€0.9 million	$1.3 million	36
Tax and development	OECD	Developing countries participation BEPS	01-01-2015 / 31-12-2017	€0.5 million	$2.2 million	14
BEPS and TIWB support	OECD	Developing countries participation BEPS	01-01-2017 / 31-12-2020	€1 million	€1 million	28
Capacity building in DRM	UN-DESA	CD	01-11-2017 / 31-12-2019	€0.5 million	$0.55 million	24
Global tax program	WB	CD	01-07-2018 / 30-06-2022	€8.8 million	$62.7 million	30% unearmarked and 70% earmarked

Source: Dutch MFA Assessment Memorandums (“beoordelingsmemoranda”)

IMF – African Technical Assistance Centres (AFRITACs)[68]

The Netherlands supports the IMF's six regional technical assistance centers in Africa (AFRITACs), which form part of the IMF's Africa Capacity-Building Initiative.[69] The AFRITACs are collaborative ventures between the IMF, recipient countries, and bilateral and multilateral development partners. Besides the Netherlands, other donors include the European Union, Germany, the United Kingdom, China, Switzerland, France, Luxembourg, Australia, Canada, the European Investment Bank, the African Development Bank, and Korea. Host and member countries also provide a significant share of the funding.

The AFRITACs are run by a centre coordinator and house a number of resident CD advisors. The centre coordinator is typically an IMF staff member of the IMF's African department, while the resident CD advisors are selected by the relevant IMF functional departments. These advisors deliver CD throughout the region on a peripatetic basis (short visits), and are typically supplemented by short-term experts.

The three case study countries relevant to this evaluation (Ghana, Kenya, and Uganda) are served by the IMF's Regional Capacity Development Centres (RCDCs) in East and West Africa, called East-AFRITAC and AFRITAC-West 2. East-AFRITAC was opened in Dar es Salaam, Tanzania in 2002, and works with Eritrea, Ethiopia, Kenya, Malawi, Rwanda, Tanzania, and Uganda. AFRITAC-West 2 was opened in 2013 in Accra, Ghana and also works with the English and Portuguese-speaking members of the Economic Community of West African States (ECOWAS).[70]

The overarching goal of the AFRITACs is to build institutional capacity to achieve sound public resource management, well-developed financial systems, and high-quality macroeconomic statistics. Table 6.4 lists the number of activities in each case study country per AFRITACs' focus area. About one-fifth of the activities evolve around capacity development in revenue administrations. Only very few of the activities relate to international taxation or tax policy however.

IMF CD activities are a combination of CD, financed by a combination of the IMF's own funding and external donor funding. The IMF itself spends about one third of its own financial resources on CD. This also applies to the Thematic Funds.

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68 This section is based on the MFA Assessment Memorandium ("beoordelingsmemoranda") IMF – Support AFRITACs/AFRITAC core, the IMF website and SEO (2019).

69 https://www.imf.org/en/About/Factsheets/Sheets/2017/06/14/imf-regional-capacity-development-initiatives

70 Cabo Verde, The Gambia, Ghana, Liberia, Nigeria, and Sierra Leone. An earlier office, AFRITAC West, was established in 2003 in Abidjan, Côte d'Ivoire, and covers Benin, Burkina Faso, Côte d'Ivoire, Guinea, Guinea-Bissau, Mali, Mauritania, Niger, Senegal, and Togo. For a full list of AFRITAC coverage see https://www.imf.org/en/About/Factsheets/Sheets/2017/06/14/imf-regional-capacity-development-initiatives

Table 6.6 One focus area of the AFRITACs' directly relate to taxation

Focus area	Number of missions		
	Kenya	**Uganda**	**Ghana**
Revenue Administration (RPA)	15	14	13
Public Financial Management (PFM)	*37*	*23*	*8*
Financial Sector Regulation and Supervision (FSR)	*12*	*17*	*8*
Monetary Policy and Operations (MPO)	*8*	*11*	*N/A*
Economic Policies for Financial Stability (EFS)	*14*	*15*	*N/A*
Macro Fiscal Analysis (MFA)	*6*	*8*	*N/A*
Government Financial Statistics (GFS)	*1*	*1*	*N/A*
Real Sector Statistics (RSS)	*2*	*4*	*N/A*
Financial Market Infrastructure (FMI)	*1*	*2*	*N/A*
Total	**96**	**95**	**>29**

Source: SEO Amsterdam Economics based on annual reports AFRITACs.

Table 6.7 4 out of the 28 supported activities through the AFRITACs relate to international taxation

IMF – AFRITACs	Kenya	Uganda	Ghana
Support to AFRITACs			
Developing international taxation capacity		2014	
Diagnostic Mission on Indirect Taxes (VAT and Excise Duties)			2015
Development of valuation capacity in customs		2018	
Strengthening the dispute resolution and appeal mechanism	2014		
Embedded Risk Management Practices in Tax and Customs Administrations	*2013*	*2013*	
Entrenching Information Technology in Tax and Customs Operations	*2013*	*2013*	
Introductory and follow up mission (includes review of ITAS implementation) / overlap with FAD	*2011*	*2011*	
In country practical workshop on tax audit and investigation techniques	*2011/2016*	*2017/2018*	*2014/2019*
Follow up assistance in small taxpayers administration		*2011*	
(local) workshops: Financial sector tax audits	*2011*		
Deepening Taxpayer Segmentation and Consolidating Management	*2013*	*2013*	
Compliance management	*2014/2015/2018*	*2014/2015/2016*	*2017/2018/2019*
Risk management	*2014/2015*	*2014*	*2014/2019*
Improve use of IT	*2014*	*2014/2015*	
Data Integrity Issues		*2014/2015*	
Revenue Strategy implementation		*2018*	
Developing a Medium-Term Reform Strategy	*2017*	*2017*	
Improving Taxpayer Recruiting/Registration/Segmentation	*2016/2017*	*2016*	
Digitalisation for Improved Revenue Performance		*2017*	
Monitoring Taxpayer Accuracy of Reporting		*2016*	
Excise Manual and Structure Review			*2015/2016/2017/2018*
Integrity Workshop			*2018*
TADAT training			*2016/2017*
Develop Project Management Framework			*2015/2016*
Performance Monitoring and Evaluation Framework			*2015*
Train MTO Auditors on CAAT			*2016*
Strategic planning			*2014*
Monitoring LTO Reform implementation			*2014/2015*

Source: SEO Amsterdam Economics based on annual reports

Table 6.8 Very few of the supported activities through the AFRITAC core relate to international taxation

IMF – AFRITAC Core	Kenya	Uganda	Ghana
Improving compliance management in tax and customs	2017	2016/2017	
Legal Work on Tax/Natural Resource Tax Administration	*2016*	*2016*	
Revenue Diagnostics and Needs Assessments	*2017*	*2016*	
Improving Risk Assessment and Management Capacity		*2016/2017*	
Strengthened Revenue Administration Management and Governance Arrangements	*2018*	*2018*	
Strengthened Core Tax Administration Functions	*2018*		
Improved Core Customs Administration Functions		*2018*	

Source: SEO Amsterdam Economics based on annual reports

IMF – Thematic Funds[71]

Dutch support to the Thematic Funds (TF) was originally set up around two trust funds: the Revenue Mobilisation Thematic Fund (RMTF) and the Thematic Fund on Managing Natural Resource Wealth (MNRW-TF).

The RMTF was launched in 2011 as the TPA-TTF, in reaction to increased demand for DRM-related CD. When this demand increased further as a result of the 2015 Addis Tax Initiative, the Revenue Mobilisation Thematic Fund (RMTF) was created. The overarching objective of CD in revenue policy and administration in low and lower middle-income countries is to ensure that public spending is financed without jeopardising fiscal stability.[72]

The RMTF is a Thematic Fund that was launched in 2016 as a successor to the TPA-TTF. Like its predecessor, RMTF's main objective is to assist low and lower middle-income countries (classified as such by the World Bank) with establishing well-designed and administered tax systems that generate sustainable revenue to pay for essential public services. Currently, more than half of countries with RMTF-financed CD are in Sub-Saharan Africa (SSA).

The RMTF is exclusively financed by external donors.[73] Tax policy remains the center of attention. The RMTF has an enhanced focus on intensified engagements in selected countries and supports a larger number of more targeted reform programs. RMTF-financed CD is delivered in many modalities: short-term experts, long-term experts, peripatetic visits, full-blown missions by the IMF's Fiscal Affairs Department (FAD), and integrated development of diagnostic tools, as well as education.

The aim of the MNRW-TF is to help countries develop capacity to manage natural resources. These CD activities are set up around five modules:

1. Extractive industries fiscal regime,

71 This section is based on the MFA Assessment Memorandum ("beoordelingsmemorandum") IMF – Topical Trust Fund, the IMF website, and SEO (2019).

72 IMF (2011), p 14.

73 In addition to the Netherlands, the current financing partners of the RMTF are Australia, Belgium, Denmark, European Union, Germany, Japan, Luxembourg, Norway, South Korea, Sweden, Switzerland, and United Kingdom.

2. Extractive industries revenue administration,
3. Extractive industries macro-fiscal policies, public financial management, and expenditure policy,
4. Asset and liability management,
5. Statistics for natural resources.

The supported activities in case study countries through IMF's thematic funds have a limited focus on international taxation issues. With respect to the case study countries, the support is mostly reduced to the 'Intensive and targeted CD delivery' (see Table 6.5). This CD delivery contains six modules to support comprehensive tax system reforms in developing countries, which do not necessarily directly relate to international taxation. Moreover, no specific programmes were implemented in the case study countries through the RMTF.

Table 6.9 The IMF's thematic funds have a limited focus on international taxation issues

Capacity development activity	Kenya	Uganda	Ghana
MNRW – Capacity Building in oil revenue forecasting	-	1	-
MNRW – Advise on a resource-based fiscal framework	-	*2*	-
MNRW – Intensive and targeted CD delivery (modules 1-6)	*6*	*5*	*3*
Revenue Mobilisation Thematic Fund (RMTF)	-	-	-

Source: SEO Amsterdam Economics based on annual reports thematic funds

TADAT tax diagnostics[74]

Since 2013, the Netherlands is one of the international development partners that together with the IMF and the World Bank supported the development of a Tax Administration Diagnostic Assessment Tool (TADAT). Other development partners include the EU, Germany, France, Japan, Norway, Switzerland, and the United Kingdom.[75]

The main aim of the TADAT diagnostic tool is to provide an independent, standardised, evidence-based, quality-assured, all-round assessment of the performance of a tax administration system. In the longer run, the tool is also expected to "help make tax administrations around the world more efficient and fair."[76]

The TADAT tool was developed with technical input from a wide range of experts, and can now be used by developing countries as an objective and standardised tool to analyse the strong and weak points of their tax system. The aim of the tool is to be able to:

- Better identify the relative strengths and weaknesses in the tax administration system;
- Facilitate discussion for a shared view among all stakeholders (country authorities, international organisations, donor countries and CD providers);
- Refine reform strategies, determine priorities, and order reforms;
- Better coordinate external support for reform, and more efficient use of donor support;
- Improve progress monitoring of tax administration reforms.

74 This section is based on the MFA Assessment Memorandum "IMF – TADAT tax diagnostics" and the TADAT website: https://www.tadat.org/faq
75 https://www.tadat.org/tadatPartners#tadatPartners
76 https://www.tadat.org/faq

In all three case study countries, one or more TADAT assessments took place between 2015-2019. In Uganda, a first TADAT assessment took place in 2015, and a second one in 2019.[77] Ghana and Kenya both had TADAT assessments completed in 2017.

African Tax Administration Forum (ATAF)[78]

The Netherlands is one of the key "pooled funders" to ATAF, together with other key donors including (but not limited to) the United Kingdom, Switzerland, South Africa and Ireland. During 2017-2020, the Netherlands contributed USD 990,000, or USD 247,500 per annum to the donors' pooled funds. This accounted for around 5-8 percent of donor funding during that period.

The Dutch support to ATAF is spread over three phases. These phases ran from 2010-2014, 2014-2015, and 2017-2020, respectively. The goal of ATAF is to build efficient and effective tax administrations in Africa. ATAF also maintains strategic cycles itself. With respect to the current strategic cycle, running from 2016 to 2020, ATAF formulated four strategic objectives:[79]

1. Developing a sustainable, member-oriented African Organisation on Tax Matters
2. Fostering efficient and effective African Tax Administrations
3. Driving the Knowledge Hub in African Tax Matters
4. Informing & influencing regional and global dialogue as the African voice in the field of taxation.

In the case study countries, half of ATAF's activities is aimed at international taxation issues. Transfer pricing, exchange of information, illicit financial flows and DTTs are all issues that are covered by ATAF's capacity development activities (see Table 6.6). Nevertheless, ATAF also provides extensive support on domestic taxation issues to tax administrations. ATAF started as an organisation that aimed to strengthen African tax administrations, but more recently has shifted its focus to (international) tax policy issues.

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77 An evaluation of the TADAT framework in Uganda was carried out by ICTD (Akol et al., 2019). [to be reviewed as part of the Uganda country case study]

78 This section is based on the MFA Assessment Memorandum "Support to ATAF"

79 https://www.ataftax.org/strategic-guidelines

Table 6.10 About half of ATAF activities in our case study countries were in international taxation

Capacity development activity	Kenya	Uganda	Ghana
Technical event on exchange of information	2011	2011	
Technical seminar on transfer pricing			2013
Short course on illicit financial flows			2017
Short course on double tax treaties and base eroding payments	2017		
TA capacity building on transfer pricing	2017	2017	
Country programmes: International taxation issues	2018	2018	2018
Conference on Tax Fraud Investigation		*2011*	*2011*
Workshop on organisation and management of tax administration	*2011*	*2011*	*2011*
Seminar on communication in tax administration			*2011*
Technical seminar on Large Business Taxpayers	*2011*		
Workshop on taxpayer services	*2011*		
Technical seminar on auditing VAT systems			*2013*
Country programmes: domestic taxation issues	*2018*		*2018*

Source: SEO Amsterdam Economics based on ATAF annual reports [2013-2015 still missing]

OECD – Tax and Development (2015-2016)[80]

The OECD's Tax and Development Programme ran from 2015 to 2016 and supported developing countries seeking to implement or strengthen their tax regimes for addressing transfer pricing and other BEPS-related issues. The explicit goal of this programme was to "take action to improve the enabling environment for developing countries to collect appropriate and adequate tax revenues and to build effective states".[81] The programme aimed to encourage participation of developing countries in the Committee on Fiscal Affairs and its subsidiary bodies on the BEPS project, via regional networks of tax policy and administration officials, and via capacity development support, through mentoring and the development of toolkits and guidance.

The support received by the three case study countries under this programme was largely in terms of CD on transfer pricing. This took place in part through Tax Inspections Without Borders (TIWB), and in part through specific support.

OECD – BEPS and TIWB support (2017 – present)[82]

The OECD support programme to BEPS and TIWB was a follow up on the OECD Tax and Development programme. This follow-up programme aims to improve DRM for developing countries by improving the capacity to tax multinational companies fairly and effectively.

The programme started with five clusters to work on in 2017, and added a sixth cluster in 2018:

1. Support to developing countries and other stakeholders in the BEPS process;
2. Toolkits, guidance and other diagnostic work;
3. Regional architecture and inclusive framework;

80 MFA Assessment Memorandum "OECD – Tax and Development"
81 https://www.oecd.org/tax/tax-global/tax-and-development.htm
82 MFA Assessment Memorandum "OECD – OECD BEPS and TIWB support"

4. Country level capacity development on transfer pricing and other BEPS issues;
5. Country level audit support – TIWB;
6. Analyse lessons learned while implementing BEPS.

All supported activities in the case study countries through OECD BEPS and TIWB focused on international taxation. Transfer pricing, where the NTCA has played a prominent role as well, has been one of the leading areas since the beginning (see Table 6.7).

Table 6.11 Overview supported activities in case study countries through OECD BEPS and TIWB

Capacity development activity	Kenya	Uganda	Ghana
Country level capacity development on BEPS and transfer pricing	2017	2017	
Country level Audit Support – Tax Inspectors Without Borders	2017	2017	
Revised transfer pricing legislation and interest deductibility legislation;		2017	
Skills-building workshops on transfer pricing and related BEPS issues for the Uganda Revenue Authority and Ministry of Finance.		2017-2020	
Capacity building through demand-led bilateral programmes to support the application of the BEPS actions and international transfer pricing norms and standards through tailored country-level assistance	2018	2018	2018
Participation in academy programme	2018	2018	2018
TA on redrafting transfer pricing rules	2018		

Source: SEO Amsterdam Economics based on OECD annual reports

UN-DESA - Capacity building in DRM

The UN Capacity building programme includes training and the translation of key UN manuals. Through the programme, the UN provides training on tax treaty negotiations, tax treaty administrations and policies to reduce Base Erosion and Profit Shifting (and improve DRM). Moreover, the UN spends resources to translate its key UN manuals to French for the francophone countries. Its focus is mainly on (least-developed) African countries and was partly established to commit to doubling CD funding as agreed upon by developed countries during the Addis Tax Initiative (ATI). The progamme ran from the end of 2017 until the end of 2019.

In order to reach its overarching goals, the UN defined three sub-goals:

- At least 70 tax officials in national tax administrations (NTAs) and MoFs of selected developing countries who improved their knowledge of double tax treaties and who would be able to apply the skills acquired through the project to effectively negotiate and administer double tax treaties.
- At least 35 tax officials in NTAs and MoFs of selected developing countries who could use the knowledge and skills acquired through the project to effectively address issues related to profit shifting and to the erosion of the tax base of their respective countries.
- 3 manuals translated in French and distributed to NTAs and MoFs.

The supported activities through UN-DESA focus on international taxation issues. The activities are implemented by the United Nations Financing for the Development Office (FfDO), part of UN-DESA. The FfDO trains staff from developing countries directly on the UN tax treaty model and UN approved manuals. In addition, the IBFD and the Netherlands Ministry Finance can be invited to provide teaching staff for the courses. The Netherlands is the sole

donor to the programme components, as listed in Table 6.11. However, these components are part of the UN's larger programme.

Table 6.12 The supported activities through UN-DESA focus on international taxation issues

Capacity development activity	Kenya	Uganda	Ghana
Online Primer on Double Tax Treaties (in French)		-	
UN-OECD Practical Workshops on the Negotiation of Tax Treaties		-	
Workshop on the Administration of Double Tax Treaties for Developing Countries		-	
Handbook on Selected Issues in Protecting the Tax Base of Developing Countries (French)		-	
Workshop on Base Erosion and Profit Shifting for Developing Countries		-	
Online Primer on Transfer Pricing (in French)		-	

Source: SEO Amsterdam Economics based on UN-DESA annual report

World Bank – Global Tax Programme

Through this programme, the World Bank tries to strengthen tax systems of developing countries by facilitating the design and implementation of evidence-based tax systems. The programmes focuss on strengthening tax policy and administrative capacity in four African and Middle-Eastern countries before sharing best practices with the rest of the region. This includes achievement of better compliance management through technical assistance on international taxation, tax transparency, tax expenditure management and targeting, and sector-specific audit approaches. In addition, the programme pilots innovative technology solutions to expand the tax base and encourage business formalisation of micro and small-scale entrepreneurs and individuals. The programme started in mid-2018 and is expected to end in 2022. The programme focuses on the following six areas:

- Development of international tax and tax transparency regimes according to international fiscal standards
- Closing the loopholes in existing laws
- Eliminating ineffective and wasteful tax incentives
- Broadening the tax base by formalising informal economic activity
- Improving the efficiency of tax administration
- Building capacity and sector specific knowledge in key industries (extractives, construction, telecom and hospitality).

None of the supported World Bank activities through the Global Tax Programme focuses on international taxation with respect to the case study countries. Over the course of 2018-2019, each of the case study countries received support in one or more areas.

Table 6.13 None of the supported World Bank activities focuses on international taxation

Capacity development activity	Kenya	Uganda	Ghana
Uganda Improving Domestic Revenue Mobilisation		*2018/2019*	
Economic Management Strengthening			*2018/2019*
Enhancing revenue mobilisation through improved tax compliance and administrative systems in Ghana			*2018/2019*
Kenya Tax Technical Assistance and Public Expenditure Analysis	*2018/2019*		
Strengthening Property Tax Systems in Developing Countries *(partner project with the IMF)*			2018/2019

Source: SEO Amsterdam Economics based on World Bank annual reports

Objectives of the Netherlands

What impact did the Dutch government try to achieve with the multilateral and bilateral programmes it supported? It is important to consider this question prior to assessing the relevance (research question 5) and effectiveness (research question 6) of the TA-programmes.

Based on the Assessment Memoranda (*"beoordelingsmemoranda"*) of the bilateral programmes, we conclude that "affecting DRM positively" has been the overall goal. The MFA Assessment Memorandums of IBFD and the Dutch MoF/NTCA explicitly state improving (or similar wording) DRM as the main goal, whereas the MFA Assessment Memorandums of VNG mention increased revenue as at least a (sub-)goal.

Table 6.14 The overarching goal of all the bilateral programmes is to improve DRM.

Name	Organisation	Goal
Strengthening tax systems	Ministry of Finance/ NTCA	*"[..aims at **improving domestic resource mobilisation.]**"*[83]
Promoting DRM in partner countries	Ministry of Finance/ NTCA	*"**Promoting domestic revenue mobilisation** in partner countries (taxation and customs)"*[84]
Capacity Building in Taxation	IBFD consortium (including VNG, PBLQ)	"[…***stimulate domestic resource mobilisation*** *and strengthen tax systems….]*[85]
Capacity Building in Taxation	IBFD consortium	*"[Framework contract for **support to developing countries in domestic resource mobilisation**….]"*[86]
Local tax communities in Ghana	VNG/ Maple Consult	*"[**Increasing revenue** of Municipal and District assemblies…]"*[87]
Decentralisation of property tax	VNG	*"Enhanced property tax revenues…."*[88]

Source: SEO Amsterdam Economics based on the MFA Assessment Memorandums.

83 MFA Assessment Memorandum "MoF/NTCA – Strengthening tax systems," p1.
84 MFA Assessment Memorandum "MoF/NTCA – Strengthening tax and customs systems," p1.
85 MFA Assessment Memorandum "IBFD – Capacity building in taxation" 1, p1.
86 MFA Assessment Memorandum "IBFD – Capacity building in taxation" 2, p1.
87 MFA Assessment Memorandum "VNG/Maple consult – Local tax communities in Ghana", p1.
88 MFA Assessment Memorandum "VNG – Decentralisation of property tax", p7.

Based on the MFA Assessment Memorandums (*"beoordelingsmemoranda"*) we conclude that "affecting DRM positively" is also high on the agenda of multilateral programmes. Six out of the thirteen programmes describe "improving DRM" (or a similar wording) as the main goal of the respective programme. The other programmes mention "capacity building" or "strengthening tax systems" as the main goal.

Table 6.15 The overarching goal of many of the multilateral programmes is to improve DRM.

Name	Organisation	Goal
AFRITACs	IMF	*Not directly related to improving DRM*
MNRW-TF	IMF	*Not directly related to improving DRM*
RMTF	IMF	*"**Promotion of revenue mobilisation** in support of sustainable development through tax policy reform, strengthening tax administrations, capacity building and international taxation"*[89]
TADAT Tax diagnostics	IMF	*"[.. to help strengthen their tax systems and **to generate more domestic revenue** ("**domestic resource mobilisation**]"*[90]
Tax and development	OECD	*"**Enhanced domestic resource mobilisation** for developing countries"*[91]*
BEPS and TIWB support	OECD	*[….ensure **higher tax revenues** in developing countries and counter tax avoidance and evasion]*[92]
Support to ATAF	ATAF	*"[….**to improve tax collection** and administrations in Africa)]"*[93]
Capacity building in DRM	UN-DESA	*"Strengthening the capacity of Developing Countries to **increase domestic resource mobilisation** for investment in sustainable development"*[94]
Global tax program	WB	*"[…..with the ultimate aim of **raising domestic revenue mobilisation**]"*[95]

Source: SEO Amsterdam Economics based on the MFA Assessment Memorandums.
*The MFA Assessment Memorandum did not mention anything related to DRM as the main goal, but placed *"Enhanced domestic resource mobilisation for developing countries"* at the highest level in their impact framework.

The ultimate objective of the CD programmes with respect to taxation was to improve DRM. In addition to the programme-specific goals, we encountered the following quote in the MFA Assessment Memorandums of multiple bilateral programmes:

"The Netherlands supports developing countries completely in their wish to collect more domestic revenue and provides direct support in this area since 2012. DRM through improved tax collection is ever since an independent target area within DDE."

89 MFA Assessment Memorandum IMF – Revenue Mobilisation Trust Fund," p. 1
90 MFA Assessment Memorandum "IMF – TADAT tax diagnostics", p. 1
91 MFA Assessment Memorandum "OECD – Tax and Development," p. 6
92 MFA Assessment Memorandum "OECD – BEPS and TIWB Support", p. 3
93 MFA Assessment Memorandum "ATAF – Support phase 2", p1.
94 MFA Assessment Memorandum "UN-DESA – Capacity building in DRM", p. 1
95 MFA Assessment Memorandum "IBFD – Capacity building in taxation 1," p. 1

Moreover, some of the MFA Assessment Memorandums (e.g. IBFD and NTCA) make the overarching goal of the TA-programmes supported by both the Dutch MFA and MoF more explicit (see Figure 6.1).[96]

6.1.2 Identification of tax-related CD needs

RQ 5.2: How has the Netherlands identified tax-related CD needs in developing countries? Which tax-related CD needs were identified by the Netherlands?

Desk review

The identification of the CD needs in the initial years is described in the 2015-16 interim evaluation of the bilateral programmes (SEO, 2016):[97]

1. **One of the conditions of the CD programme was that it should be "demand driven".** The theory behind this is that demand driven programmes are more effective, as the receiving authorities will have ownership and a true interest as well as the capacity to receive the TA.
2. In practice, the Dutch MFA aimed to ensure that programmes were demand driven by roughly applying the following process:
   - First, a **letter was sent to Dutch embassies** in partner countries to find out whether the local revenue authorities were interested.
   - If there was interest, this was followed either by (1) a **scoping mission** to the partner country; and/or (2) a **study visit** by the partner country to the Netherlands (e.g. Rwanda, Uganda). During these scoping missions and study visits, the demand for technical assistance was assessed and the Dutch MFA and MoF compiled a list of expertise requested by the partner country.
   - **Efforts were made to consult with other donors, but not always systematically**. As a result, it sometimes turned out later that the request made to the Netherlands had also been made to another donor. In at least one case, it turned out that another donor was already active in this area.
   - There were also **CD requests that arrived through other channels**. For example, through contacts at or previous experiences with one of the external consultants (e.g. Palestinian interest in VNG, Rwandan agricultural taxation through PBLQ) or through meetings at international conferences.
   - As a next step, once the broad interest had been confirmed, a **second scoping mission** was in some cases sent to the country with experts from NTCA and/or IBFD in order to make a specific CD action plan. During the second scoping mission, the list of requested activities sometimes turned out to be quite different from the original requested areas (e.g. as in Ethiopia).

In practice, the process was not entirely demand driven, because the list of topics was limited ex-ante and put, for example, more emphasis on tax administration than on customs issues. The interim evaluation noted that: "By providing a list of examples of CD topics that can be offered, the Dutch MFA can unintentionally influence the direction of demand and limit the extent to which the programme is demand driven."(SEO 2016, p. 9). The table below contains the list of CD topics that were offered originally.

96 MFA Assessment Memorandum "IBFD – Capacity building in taxation 1," p3.
97 This is further verified in the next chapter describing the interview results.

Table 6.16 List of topics for potential technical assistance in tax and customs included in the original letters to Netherlands embassies

Taxes	Customs
Support for the reform of specific fiscal laws and regulations and recovery	Customs law
Treaty negotiations	Management
Reform of the Tax Administration	Formulation of a business strategy
Performance management	Modernisation/reinforcement of border controls
Risk management	Simplification of customs procedures for Authorised Economic Operators
Human resource management	Pre-arrival and pre-departure information.
International exchange of data	Rules of origin
Compliance strategy	Support to customs laboratory
Collection of taxes	Customs enforcement of international property rights
Fiscal fraud detection and prosecution	Container examination
Transfer pricing	
E-audit	

Source: SEO Amsterdam Economics (2016)

Rather than being fully demand-driven, the list of topics offered in the letter was partly driven by supply-side considerations and partly by ex-ante judgements on the *expected* demand (relevance) for recipient countries.

- First, the list of revenue administration topics was determined in part by NTCA expertise and human resource capacity (including their capacity to travel). This is logical, as the Covenant stated that the Dutch MoF was responsible for executing the programme with the support of expertise provided by experts from the NTCA. Since it was clear from the outset that NTCA could not handle all requests, the additional facility with the IBFD consortium was explicitly meant to "include areas that cannot be covered by the Dutch MoF/NTCA." (SEO 2016, p. 6).
- Second, the choice of topics was influenced by the Dutch government's own views on what kind of TA developing countries were expected to need. For example, while the list includes many topics in the area of customs, the programme formally only allowed a maximum of 25 percent of programme resources to be spent on customs related activities. According to the Dutch MFA (interviewed in 2015 during the interim evaluation), the reason why the programme focused on tax administration rather than customs was that, "in view of increasing globalisation and trade liberalisation (including through tariff reductions, free trade zones, and customs unions), revenue generation would increasingly need to come from taxes rather than customs administration." (SEO 2016, p. 5, footnote 2.).

A second reason why the process was not entirely demand driven is that the list of countries was limited ex-ante. The bilateral programme originally concentrated on 15 eligible countries. These were the official 15 'partner countries' of the Dutch development cooperation at the time.[98] According to the Covenant with the Ministry of Finance, at least 85 percent of programme resources should be spent on these 15 countries and at most 15 percent of programme resources

[98] Afghanistan, Bangladesh, Benin, Burundi, Ethiopia, Ghana, Indonesia, Yemen, Kenya, Mali, Mozambique, Uganda, the Palestine areas, Rwanda and Sudan.

could be spent on other countries. These other countries needed to be developing countries that either already had a tax or customs treaty with the Netherlands, or developing countries with which the Dutch Ministry of Finance aimed to set up such a treaty. The ambition was to employ activities in at least five developing countries.[99]

By providing a list of eligible or at least preferred countries, the Dutch MFA had substantial influence over the type of CD that was provided, and to whom. According to the midterm evaluation (SEO 2016), "some influence over the countries to which CD is provided, because the capacity development framework was more or less limited to the 15 partner countries." (SEO 2016, p. 9). While other countries were still eligible for CD, they did not receive a CD offer letter from the Dutch MFA. The Dutch MFA also had the ability to discourage or encourage CD in certain countries for political reasons.

"The "partner countries" remain an important focus for the programme, even though the list of eligible countries is extended to the countries on the PSD list. The intention is explicitly to limit the number of countries to which aid is granted to about 15. Countries eligible for further support include: Ethiopia, Ghana, Kenya, Rwanda, Tanzania and Uganda".[100]

The interim evaluation contained the following recommendations to improve the identification of CD demand and supply (SEO 2016, p. 41):

1. **Increase cooperation with other donors and multilateral organisations on the identification of CD demand and supply.** In particular:
   a. Prior to scoping missions, find out what other donors and local revenue authorities have already done to identify CD needs.[101]
   b. Investigate at an earlier stage, in more detail and on a systematic basis, what assistance other donors have offered in the past or are currently offering.[102]
2. **Involve the Dutch embassy, where possible, in assisting with donor coordination and organising missions.** If the Dutch embassy lacks this capacity, the Dutch MFA was recommended to seek agreements with other donor organisations that do have this capacity (such as GIZ in Ghana).
3. **Involve experts from NTCA and IBFD immediately during scoping missions** to already discuss specific tax CD needs in some technical detail. Joint NTCA and IBFD missions were recommended to ensure programme linkages to existing reform plans and existing donor programmes in the revenue area (thus helping to ensure that the request was demand-driven and a priority for the revenue authorities).

Stakeholder interviews

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99 The formal agreements are originally in Dutch, but are clearly described in English in SEO (2016), Chapter 2.

100 MFA Assessment Memorandum ("beoordelingsmemorandum") MoF/NTCA – Strengthening tax and customs systems, p6.

101 Here it was already noted that "Since the Netherlands is one of the development partners that supports TADAT, a logical option would be to coordinate its scoping activities with the diagnostic assessment conducted by TADAT." (SEO 2016, p. 41)

102 The next subsection on 'stakeholder interviews' describes to what extent these recommendations appear to have been carried out since then.

Multiple stakeholders (the Dutch MFA, NTCA, IBFD) confirmed that the identification process started with the letters sent by the Dutch MFA to (selected) Dutch embassies with the request to inform the tax authorities that this programme existed and invite requests for assistance.

A stakeholder from the Dutch MFA described the de facto selection process during an interview. The interviewee noted that CD is usually only provided on request (as of May 2020). Whenever a CD request would come in, the Dutch MFA would assess the request together with NTCA and IBFD using the following selection criteria:

1. **Can this CD-request be addressed multilaterally?**
   - When other donors such as the WB or the IMF already have similar projects in the recipient country, the MFA policy is to not support it. Particularly if it concerns topics that these multilateral organisations have more experience with (e.g. assistance with MTRS).
   - While this is the MFA policy as described by an interviewee, in practice we did not find a written confirmation of this policy, nor did we find examples of NTCA providing assistance in similar areas as the IMF (see below).
2. **Does it fit the Dutch bilateral expertise (NTCA/VNG/IBFD)?**
   - Sometimes there is also a check with other donors (e.g. DFID) to see whether the Netherlands is also the only one (or among the only few) with the relevant expertise.
   - According to an MFA interviewee, this is not done systematically, which was confirmed by our case studies.
3. **Does it fit within the framework budget?**
4. **Does it fit the country restrictions?** (described in more detail below)
   - By means of illustration, VNG support could only be provided in three countries.

A stakeholder from NTCA described the role of NTCA in this identification process as follows:

1. The NTCA provided input into the original letters sent by the Dutch government (MFA and MoF) to the Dutch embassies, in particular with regard to the initial list of topics offered.
2. NTCA did not play an active role in the identification process. Besides their input on the initial letter sent by Embassies, NTCA officials themselves did not advertise or announce which activities they can support.
3. If a tax service asked for support in a specific area, then NTCA allegedly used the following selection criteria:
   a. Check whether it was a focus country for the Dutch MFA
   b. Find out more about the background of the request (the "question behind the question"), sometimes through scoping visits (e.g. to Uganda, Ghana, Rwanda, Indonesia) before deciding on a MOU.
   c. Check whether other donors were already active in this area (if so, then they would refer to this other partner, or make sure that the assistance provided was complementary).[103]

[103] A positive example of such donor coordination was the case of Ethiopia, where NTCA was asked to provided capacity development in audit techniques. This CD activity turned out be complementary to that of the British tax authority (HMRC). Following discussions with HMRC, it was decided that the Netherlands would "fine tune" what the general audit assistance HMRC was already providing, by teaching specific audit techniques for specific enterprises.

d. Check whether NTCA had the capacity to offer the requested assistance (while maximising synergies with other donors).

In practice, based on various stakeholder interviews, it appears that neither the Dutch MFA nor NTCA explicitly assessed the relevance of specific CD requests for the country in question. An MFA representative noted that relevance is assessed in part during scoping missions but acknowledged that, when a country asks for a specific training or CD, no assessment is made (yet) as to whether a country actually needs this. NCTA interviewees said that they might try to assess relevance by using information from the country itself, their own knowledge of the country, or from other development partners. Both MFA and NTCA also noted (but only when probed) that they would also look at TADAT assessments if available, and that NTCA staff had even participated in TADAT missions. However, the TADAT tool did not (yet) appear to have been used systematically to assess the relevance of CD requests. (See the next section for more on TADAT).

Stakeholder interviews also revealed that donor coordination was not taken as seriously in practice. Based on our case studies in Ghana, Uganda and Kenya (see case study reports), it appeared that the Dutch bilateral providers (NTCA, IBFD and VNG) in recent years had started taking donor coordination more seriously, but there was still room for increased coordination and cooperation. For example, the NCTA programme in Ghana in Transfer Pricing did not appear to coordinate or cooperate with similar CD funded by the IMF and the Norwegian government. Similarly, interviews with VGN, GIZ and the Netherlands Embassy in Ghana revealed donor coordination challenges between the Dutch bilateral programme on property taxes (implemented by VNG) and the German bilateral programme active in a similar area (implemented by GIZ) in Ghana. While the original intention had been to cooperate, in practice the two programmes appeared to be competing.

With respect to country choice, the NTCA commented the following:

- The Covenant between the Dutch MFA and MoF formally allowed assistance to be provided to countries other than the 15 original partner countries [the original Covenant explicitly stated that 15 percent of programme resources could be spent on other countries]: "so if we wanted to do something with Mongolia this would have been possible. In principle we could have given CD to the whole world".
- However, since "demand is always much larger than supply", they [NTCA] needed to choose which countries to support, and then "gave priority to OS (partner) countries". In this sense, the programme was not demand driven.

NTCA interviewees noted that they had received informal requests from other countries, e.g. during conferences, which they sometimes had to refuse. Examples mentioned in interviews included the following:

- Bhutan made a formal request in 2017 for support by the FIOD. This was declined due to a lack of capacity on the side of the NTCA.
- Bhutan made an informal request in 2019 during the Addis Tax Initiative Congress in Berlin. This was declined because of a lack of a 'cooperation relationship'.
- Liberia made an informal request in 2019 during the Addis Tax Initiative Congress in Berlin. NTCA did not follow this up, but referred to the existing CD by IBFD instead.

- Senegal made an informal request in 2017 via RVO. However, NTCA did not follow up for unclear reasons (effectively declining the request, presumably without formally doing so).

MFA representatives noted in interviews that they had not put any constraint on the country choice. On the contrary, they said that they had expanded the number of countries eligible for bilateral CD as a result of ATI, and had told NTCA explicitly that "you can give CD to other countries not on the original list".

Some stakeholders reported on the role of Dutch embassies in the identification process:

- Dutch embassies mostly played a role in the very beginning. If NTCA made contact via embassies, those contacts remained. E.g. once the relations with the Uganda Revenue Authority (URA) were well established, NTCA would get a direct request from URA, and this would no longer go through the Dutch embassy.
- The role of Dutch embassies is different per country. For example, in Uganda and Ghana the NTCA has more contact with an embassy representative, while in Kenya they merely inform but do not discuss with the Dutch embassy.

IBFD appears to have made some efforts in assessing gaps. According to IBFD stakeholders, the suitable training programme for a country requesting CD was decided partly on an assessment of the country's initial capacity. This included an assessment of their DTTs and treaty policy, as well as the link with the domestic law and the accompanied potential tax avoidance risks. One interviewee from IBFD stated that CD needs were also identified as part of post-training surveys (in which the respective participants were invited to list topics, themes, and areas of interest) as well as informal and formal meetings (e.g. at conferences, personal contacts).

No specific list of CD needs has been identified. This is in part because the process was demand driven and in part because the process was unstructured. The final list of CD activities provides a good indication of the CD areas that were considered to address CD needs.

6.1.3 Objective standard

RQ 5.3: Is there an (objective) standard to which the quality of a country's tax system can be measured?

Desk review

A range of instruments and resources exists to examine the quality, maturity and performance of tax systems. The most developed of these (ISORA and TADAT) focus on assessing the performance of *tax administrations* specifically. There are much fewer tools to assess tax policy issues, but the IMF and World Bank recently launched the *Tax Policy Assessment Framework (TPAF)*, an initiative aimed at developing a diagnostic tool for evaluating and strengthening countries' tax policies. As of December 2020, the TPAF is however only limited to VAT.

The OECD, in cooperation with other organisations, has developed a number of tools that can potentially be used as a standard for measuring the quality of a tax system in advanced and emerging economies:

- **Since 2004, the OECD has been publishing the bi-annual *OECD Tax Administration Comparative Information Series.*** This series examines the fundamental elements of modern tax administration systems and uses data, analyses and examples to highlight key trends, recent innovations, and examples of good practice and performance measures and indicators.[104] The aim is to share information and facilitate dialogue to "identify opportunities to improve the design and administration of their systems both individually and collectively".[105] The eighth edition of this series, the Tax Administration 2019 report, provides comparative data on the performance and functions of tax administrations in 58 advanced and emerging economies.
- **Another tool of the OECD is its *Maturity Models*.** These are descriptive self-assessment instruments that aim to help understand specific functional, strategic or organisational areas of a tax administration (for instance, auditing, human resource management, and analytics, digitalisation or compliance burden).

The performance indicators used by the OECD are based on data from the *International Survey on Revenue Administration* (ISORA). The ISORA survey is a multi-organisation international survey to collect national-level information and data on tax administration. It is governed by four partner organisations: CIAT, the IMF, IOTA and the OECD. The ISORA survey data are disseminated using the *Revenue Administration Fiscal Information Tool (RA-FIT)* Data Portal, which is a platform developed by the IMF. This data gathering initiative contains tax administration survey data that can serve as an input for performance measurement and management, comparison and benchmarking.[106] Kenya, Morocco and South Africa are thus far the only three African countries included in the RA-FIT.

The *Tax Administration Diagnostic Assessment Tool (TADAT)* has gained in prominence in recent years as a needs identification and donor coordination tool, particularly for developing and emerging countries. Originally developed in 2013 by the IMF, World Bank, and other development partners (including the Netherlands), TADAT is now "part of a wider agenda of the international community to help countries strengthen their tax systems to better mobilise the domestic revenue they need to provide essential goods and services to their citizens in a sustainable and economically sound way".[107] It does so by providing a standardised and objective assessment of the "health of key components" of a country's tax administration system and of its revenue policy framework.

Whereas the OECD instruments tend towards introspection, TADAT focuses on a participatory yet external assessment of the tax administration system. The diagnostic tool looks at 32 indicators across nine so called performance outcome areas (POA), ranging from the integrity of the registered taxpayer base, to timely payment of taxes and issues of accountability and transparency. Conversely, it neither covers special tax regimes nor customs administration outside core tax responsibilities. Apart from covering most tax administration functions, processes and institutions, the tool focuses on the performance of the core national taxes, including corporate income tax and value added tax.

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104 http://www.oecd.org/tax/forum-on-tax-administration/database/
105 https://www.oecd-ilibrary.org/taxation/tax-administration-2019_74d162b6-en
106 On performance measurement in tax administrations see, for instance, IMF Technical Notes and Manuals 10/11, June 2010.
107 https://www.tadat.org/designDecisionsDocument

While a truly "objective standard" does not exist, both the OECD Maturity Models and the TADAT diagnostic tool can be considered useful standards, with TADAT potentially more useful for developing countries. Both comprise a clear set of measurable elements (criteria, indicators, performance areas) that are deemed instrumental for effective and efficient revenue administration and revenue mobilisation. The OECD Maturity Models are mainly intended for advanced and emerging country authorities to self-evaluate their organisations and operations to identify areas needing reform in order to improve performance. The TADAT tool may be used for this purpose as well, but also provides for a standardised external assessment of tax administration gaps in developing countries. The OECD Information Series, with its good practice examples and ISORA data, can subsequently assist in finding solutions to remedy identified gaps.

Apart from these tools developed by international organisations, there is also the IBFD *Tax-Ray* tool.[108] This tool was developed by IBFD to examine six institutional, strategic and operational abilities of a tax administration to implement, administer and enforce the tax and tax related laws. The Tax-Ray tool has only been applied in Malaysia thus far; it requires a substantial administrative investment since data for more than 1,700 questions needs to be inputted.

There are much fewer tools to assess tax *policy* issues and *core taxes*, which are other components of a country's tax system.[109] Since they are interdependent with a country's socio-economic and political priorities or macro-environmental factors (geography, norms, history), it is inherently more difficult to identify a common (objective) standard. Notwithstanding, the IMF and World Bank recently launched an initiative aimed at developing a diagnostic tool designed to evaluate and strengthen countries' tax policies. The initiative resulted in the *Tax Policy Assessment Framework (TPAF)* which could be used "for an assessment of the entire tax system, one taxation instrument, or a single tax issue of interest".[110] The TPAF currently comprises a Value Added Tax module as a pilot and will gradually be expanded.

Stakeholder interviews

In stakeholder interviews, TADAT was often mentioned as the objective standard against which tax administration performance is best assessed. While a purely objective standard may never exist, the TADAT scores do allow CD providers to check whether a request of a potential recipient country "is logical" or "makes sense".

According to the TADAT secretariat itself, TADAT is now used widely by the IMF, World Bank and a range of other development partners for both identifying, coordinating and prioritising CD in the area of DRM. Recipient countries themselves also increasingly make use of TADAT, but one interviewee stated that these countries could still do more to develop their own clear priorities based on TADAT assessments, and reflect these in Medium Term Revenue Strategies (MTRS).

108 https://www.ibfd.org/Consultancy-Research/TAx-Ray-Assessment

109 This excludes academic research in which the effects of given tax policies on e.g. social welfare, labour markets or other important outcomes are assessed.

110 https://www.imf.org/external/np/exr/consult/2018/tpaf/

According to several key stakeholders (including from the Dutch MFA and NTCA), the Netherlands could make better use of the TADAT assessments when reviewing and prioritising requests for CD. As a contributor to the TADAT programme, the Netherlands has access to all TADAT reports (via the Secretariat). Moreover, there are Dutch officials who are trained TADAT assessors (e.g. the NTCA CD coordinator) and who could help interpret the TADAT scores. Nevertheless, stakeholders acknowledged that TADAT assessments (nor any of the other assessment tools) had thus far not been used "systematically" by the Dutch MFA or the Dutch bilateral partners to determine the relevance of a CD request. However, an MFA representative noted that the TADAT reports were generally consulted during scoping missions to further develop the CD activity. Moreover, a representative of the TADAT Secretariat noted more generally that TADAT assessments provide a "baseline assessment for tax administrations" and therefore can be used to determine a developing country's needs, as has already been done for example by ATAF.

Dutch stakeholders did mention some examples when ongoing CD was halted or requests for CD not followed-up as a result of the TADAT assessment. They provided two examples of CD requests by focus countries that were refused because they were not a TADAT priority:

- **A request from Rwanda for assistance in Taxpayer Services was refused.** According to NTCA, this decision was made following a scoping visit, and after consulting the TADAT assessment for Rwanda. Unfortunately, however, the relation with the TADAT assessment is not described in the scoping visit report.
- **Similarly, a request from Ethiopia was refused.** In this case, NTCA had already started providing some assistance in the area of Taxpayer Services, but because of TADAT and the initial experience this assistance was halted.[111] At the time of the request, NTCA did not have the TADAT report, and Ethiopia did not share it, but when the NTCA received the report later, they noted that this assistance was not a priority according to TADAT. They therefore concluded that "taxpayer services cannot make a real difference when there are other fundamental problems." They did not however aim to address these other fundamental problems because "there were so many other development partners active: USAID, WB, UK, Sweden." As a result, NTCA coordinated their audit training with HMRC (as described elsewhere), finished the commitments they had, and then stopped providing assistance to Ethiopia.

6.1.4 Relevance with respect to the needs of recipient countries

RQ 5.4: To what extent has tax-related CD financed by the Netherlands been relevant in that it was aimed at addressing the most urgent needs of the recipient country (based on the objective standards identified in 5.3 and given the activities of other parties)?

Desk review

Recent diagnostic assessments of the tax administrations in Uganda identified several weaknesses, but also helped reveal the significant improvements that were registered in the Uganda Revenue Authority (URA). Theoretically, any capacity development intervention that seeks to address any of the identified weaknesses can be considered relevant.

[111] For example, it turned out that Ethiopia had a call center with 7 people who received 10 phone calls per day. NTCA then concluded that training in taxpayer services does not make a difference in this case.

- In 2019, Uganda's revenue authority was assessed positively by more than half of all indicators. In the four years that elapsed between the 2015 and 2019 TADAT assessments in Uganda, reforms led to improvements in nine performance outcome areas, including in the areas of risk management and timely payment of taxes.[112]

Table 6.17 TADAT-assessment results

Country	Year	A/B scores (good performance)	C/D scores (poor performance)
Uganda	2015*	10	14
Uganda	2019	16	12
Ghana	2017	*Confidential*	*Confidential*
Kenya	2017	*Confidential*	*Confidential*

Source: TADAT Performance Assessments Report Uganda. The TADAT assessment scores each performance indicator on range from A-D, where A is highest possible score and D the lowest possible score. *In 2015, four indicators were not scored. Ghana and Kenya have received a TADAT assessment in 2017, but the scores are as of December 2020 not publicly available.

The CD interventions implemented through *multilateral* modalities were likely relevant in that they broadly targeted topics and themes that relate to weaknesses identified by TADAT. This assessment must be interpreted with caution, since it is only based on the titles of the interventions and the *presumed* content/focus (see list of activities in section 6.1.1). In Uganda, for instance, the IMF / AFRITAC implemented activities related to risk and compliance management in the period of 2013-2017. Compared to the 2015 TADAT assessment, Uganda improved its scoring in these areas in 2019. In Kenya, on the other hand, the 2017 TADAT assessment scored these areas with the lowest score D. The interventions we reviewed for the purpose of this study included interventions delivered under the IMF's AFRITAC and Thematic Funds Initiatives and ATAF's capacity development programme. The interventions delivered under the programmes from the OECD, UN-DESA and the World bank were not included, because these relate to international taxation, an area that is not covered by any TADAT assessment. The interventions from ATAF that relate to international taxation were also excluded for the same reason.

With respect to the relevance of bilateral interventions, our review suggests that, from 2017 onwards, the NTCA-implemented activities seem relevant for several of the TADAT Performance Outcome Areas (POAs). This assessment was based on a high-level review of the overall bilateral capacity development activities in Ghana, Kenya and Uganda between 2014 and 2019 (summarised in Appendix C). We compared the topics of these activities, largely based on their titles and short project descriptions (as received from the Dutch MFA, NTCA and IBFD) with the TADAT scores in order to determine whether the CD activities likely covered the same issues covered in the TADAT assessment(s). This appeared to be the case for the following POAs:

- POA P2-3 on identification, assessment, ranking, and quantification of compliance risks;
- POA P2-5 on monitoring and evaluation of compliance risk mitigation activities;
- POA 6-19 on the scope of verification actions taken to detect and deter inaccurate reporting;
- POA P3-11 on obtaining taxpayer feedback on products and services ("taxpayer services").

[112] Most of the indicators that improved, did so with a score from C to A, where "C" denotes weak performance and "A" denotes that performance meets or exceeds international good practice. Conversely, four scores marginally worsened by half a score.

Each of these POAs are scored individually. For the scoring, different "dimensions" need to be considered.

The relevance of the CD activities with respect to the TADAT outcome areas is perhaps most obvious in Uganda. NTCA conducted several risk and compliance management related interventions in Uganda that may well have contributed to the above-mentioned performance improvements noted in the 2019 TADAT assessment. This hypothesis could not be investigated further during the case study phase, since the Dutch MFA requested that the case studies should focus only on BEPS-related interventions.

Relevance of multilateral TA[113]

Recent independent evaluations of IMF trust funds found that IMF capacity development in DRM is relevant, largely effective, and of good quality across the board. Such evaluations are typically externally commissioned by the IMF, or carried out by the IMF Independent Evaluation Unit. The evaluations of the AFRITAC regional CD centres and the TPA-TF are the most relevant for this study.[114]

Most independent evaluations of AFRITACs use the OECD-DAC evaluation criteria established by the Development Assistance Committee (DAC) of the OECD. It is noteworthy that three of the four recent independent evaluations of AFRITACs were done by the same company and used the same rating system. The fourth evaluation (East-AFRITAC) was done by a different company, DevTech, [115] with a different rating system, but its ratings can be roughly mapped to the OECD-DAC rating system. Based on the DAC rating system, all four independent evaluations rated the above main areas of the CD process as "good" or even "excellent", including in the opinion of CD recipients, who were extensively interviewed.

The recent independent mid-term evaluation of East-AFRITAC, which included Uganda as a case study, found that its effectiveness was "very good". It showed "strong and even" results on programming, planning, governance, operations, and budget management. The evaluation team concluded that the centre had "achieved most of its objectives and milestones and [had] used its resources according to the plans." The evaluation report also made a number of recommendations to further increase the effectiveness and efficiency of East-AFRITAC support to its member countries. According to the East-AFRITAC Annual Report 2020, IMF staff agreed with most recommendations.[116] The findings also suggested that the IMF and AFRITAC-East had "the highest quality of CD in their area of expertise" but remained somewhat inconclusive regarding the impact of the capacity development activities.[117]

An independent external mid-term evaluation of the TPA-TF (the RMTF's predecessor) found that the overall achievement of its portfolio was a solid 'Good,' but noted that the effectiveness was 'close to substantially achieved'.[118] On the one hand, the independent evaluation team from Consulting Base Limited reported that both the Steering Committee members and beneficiary countries' officials themselves provided "high praise" for the quality and

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113 This section draws on a study that SEO Amsterdam Economics was commissioned to undertake for the Norwegian Agency for Development Cooperation NORAD (SEO 2019). We thank NORAD for allowing us to make use of the findings of this study.

114 The RMTF has not undergone an external evaluation as of yet.

115 "Afritac-East Phase IV Midterm Evaluation Part I", conducted by DevTech Systems and published in April 2019. Uganda was one of the countries visited by the DevTech evaluation team.

116 See also Annex IV in the Informational Annexes of the Annual Report 2019: http://www.eastafritac.org/servlet/servlet.FileDownload?file=00P2M00000cm7U7UAI

117 While we cannot make a conclusive assessment on the quality of these evaluations without having independent data, both evaluation reports are rich in information and transparent with regard to the methods that were used to respond to the evaluation questions. By means of illustration, the Afritac-East (2019) evaluation are two voluminous reports, well structured, and include many facts and figures. IMF documents (e.g. Afritac-East Annual Report 2019 and TPA-TF Completion Report 2017) suggest that the majority of the recommendations in the evaluation reports were accepted by and relevant for the IMF, which suggests that they were of good quality. This having said, it appears that not all IMF-commissioned evaluation reports of IMF CD programmes have been published.

118 https://www.imf.org/external/np/ins/english/files/TPATTFMidTermEvaluationApril2015.pdf

benefits of the advice delivered through TPA-TF-funded CD projects. They also commended the modular approach to providing CD. On the other hand, they noted that the effectiveness scores provided by the TTF project manager were "very optimistic", but considered it "inappropriate for the evaluators to second-guess those scores." The program was found to be "on track" to achieving its objectives and the evaluation provided several recommendations that helped shape the design of its successor, the RMTF.

For a general appreciation of the results of capacity development in a given country, one can assume that CD results are higher in countries with supportive framework conditions. Apart from political stability and economic development, these conditions include the quality of public administration and the ownership of a given administration to integrate capacity development into its policies and operations. These conditions are surveyed annually by the World Bank in its Country Political and Institutional Assessment (CPIA) rating series.[119] With respect to public administration capacity, the CPIA rating for "quality of public administration" is a viable proxy.[120] The CPIA rating for "transparency, accountability, and corruption in the public sector" is the criterion closest to the concept of ownership by the authorities".[121]

The CPIA ratings for Ghana, Kenya and Uganda suggest that these three countries provide for a slightly better implementation environment compared to other countries in Africa. Each of the three countries scores fairly similar and consistently between 3 and 4 points on a seven-point-scale on all three CIPA ratings with little variance over time (like many of the CPIA indicators). These ratings are above the (modest) average ratings of all African countries included in the CPIA assessment that stand at 2.9 and 2.7 respectively in 2018 (see the individual country reports for more detailed information).

Stakeholder interviews

A number of stakeholders noted that there is a trade-off between relevance and effectiveness when deciding on the number of eligible countries. A stakeholder from MFA described this as follows:

- **On the one hand, at least two stakeholders mentioned that it can be more effective to "do more in fewer countries," due to economies of scale.** For example, a tax expert from NTCA mentioned that "risk management and international taxation (transfer pricing) are related topics. Thus it is more effective to treat both topics in one country instead of doing risk management in one country and transfer pricing in another." MFA agreed that it might be more efficient and effective to develop a long-term relationship with a limited number of countries. In that case, "we need to examine in which countries we add the most value."

119 2019 Africa Country Policy and Institutional Assessment (CPIA), World Bank Group, 2019

120 The criterion assesses the functioning of the core administration in three areas: (a) managing its own operations; (b) ensuring quality in policy implementation and regulatory management; and (c) coordinating the larger public sector Human Resources Management regime outside the core administration (de-concentrated and arms- length bodies and subsidiary governments)" (World Bank, 2019).

121 The criterion covers four dimensions: (a) the accountability of the executive and other top officials to effective oversight institutions; (b) access of civil society to timely and reliable information on public affairs and public policies, including fiscal information (on public expenditures, revenues, and large contract awards); (c) state capture by narrow vested interests; and (d) integrity in the management of public resources, including aid and natural resource revenues" (World Bank, 2019).

- **On the other hand, bilateral partners (e.g. NTCA, IBFD or VNG) sometimes have a technical niche in an area that fits them well**. In that case, if a country requests such assistance, it does not necessarily need to be long term.

In addition, there may be a trade-off between 'relevance for the Dutch policy agenda' and 'relevance for the local policy agenda'. In interviews, we heard that some of the previous 15 partner countries are now no longer a priority for the Dutch development agenda, but that these countries may well remain relevant from the point of view of DRM-related gaps [or BEPS]. One example that was mentioned is Indonesia, which is no longer an official 'partner country' for the Netherlands (as MFA aims to do more in SSA) but where NTCA and IBFD are quite active and have well-established relationships. According to a key Dutch stakeholder familiar with the bilateral programmes, "we can be useful there, because Indonesia is trying to make a transition from aid to trade, wants to be more independent, and needs more tax revenues to go along with that".

A stakeholder from MFA noted that the choice of focus countries does not always reflect the countries with the most urgent needs:

- **The choice of partner countries (now called focus countries) was in part a political choice**. For example, MFA recently changed the list of focus countries and added many countries in the ring around Europe (e.g. MENA countries) because these were relevant from a migration perspective.
- **According to this MFA stakeholder, the 'focus countries' are not necessarily the countries with the most urgent needs:** "The countries with the biggest needs are generally the poorest countries, but the countries where you can make most progress with bilateral programmes are a bit richer. These do not necessarily have to be our focus countries. Multilateral programmes on the contrary are probably better able to support the poorest countries with capacity development. For those countries, there is less added value from a (Dutch) tax and customs administration."

According to one interviewee familiar with the IBFD programme, IBFD's capacity development interventions were also demand driven. These interventions were usually preceded by both formal and informal discussions between the respective representatives of the local tax authorities and the Dutch experts. These discussions were aimed at ensuring that the interventions met a specific demand of the tax authorities (i.e., were considered relevant for the respective authorities). One interviewee noted that the specific demands for CD sometimes changed in response to recurrent staff changes, including at senior management levels. This sometimes made it difficult for IBFD to consistently maintain relevance over a longer period of time.

Case study interviews

In general the CD activities provided/supported by the Netherlands were relevant and addressed the recipient country's needs at the time, based on interviews with recipients. This is based on an examination of the following CD activities:

- IBFD's courses on international taxation in Kenya and Uganda;
- IBFD's course on DTTs in Ghana;
- IBFD's seminar on offshore entities in Amsterdam (attended by Kenya and Uganda);
- NTCA's Transfer Pricing project in Ghana through the TIWB;

- ATAF's Transfer Pricing project in Kenya through the TIWB.

Our examination suggests that these interventions were responsive to identified needs at the time; which emerged from both international (e.g. BEPS project) and domestic developments (e.g. high court ruling in Uganda). Discussions in the Netherlands about its corporate tax policy and tax treaties (see 2013 IOB evaluation on tax treaties) made the interventions relevant from this perspective as well.[122] The representatives we interviewed explained that the process to agree upon the objectives, to elaborate the content and the modalities of the capacity development events were participatory and the ideas and expectations of the beneficiaries were incorporated. For more information please see the separate case study reports.

Various stakeholders have stressed the importance of sound domestic tax regulation and a strong revenue authority before engaging in international taxation issues. One stakeholder stated "you first need to stop the bleeding" before revenue authorities can effectively engage in issues like Transfer Pricing. Moreover, the IMF often recommends developing countries not to engage in DTTs at all, as they often do not have the capacity to deal with the consequences.[123] In this light, the activities of the multilateral funds (e.g. IMF, WB and ATAF) are even more relevant than the selected case studies, given that the multilateral funds predominantly focus on improving domestic tax issues. In addition, an African expert in taxation mentioned the increasing regional collaboration of African revenue authorities as an interesting area for further support. These regional hubs create linkages between revenue authorities in Africa and allow for the sharing of best practices. Encouraging south-south cooperation (and avoiding a biased top-down approach from an OECD perspective) is one way to further increase the relevance of Dutch support.

6.1.5 Improving donor coordination

RQ 5.5: To what extent has the Netherlands succeeded in improving donor coordination and coherence through ATI and guidance of multilateral trust funds?

Desk review

Addis Tax Initiative

According to the external mid-term evaluation of the Addis Tax Initiative (BSS, 2019), the Netherlands has been a key player in setting up the Addis Tax Initiative (ATI) prior to the Addis Ababa Conference in 2015.[124] This is indicated, for instance, by the fact that the Netherlands participated in all Steering Committee meetings until January 2018, and chaired said committee in 2015-16. After taking a leading role in the beginning of the ATI, "it was time to pass the baton to other countries". A representative from the Dutch MFA does not exclude that the Netherlands will be playing a larger role in the future. According to interviews conducted in the context of the mid-term evaluation, the Dutch engagement in the ATI helped to protect the tax-

122 https://www.government.nl/documents/reports/2013/11/14/iob-study-evaluation-issues-in-financing-for-development-analysing-effects-of-dutch-corporate-tax-policy-on-developing-countries

123 At the same time, the IMF does not recommend to terminate existing treaties, due to the risk of face loss and political tensions.

124 The Addis Tax Initiative (ATI) has been set up in 2015 as a multi-stakeholder partnership to (1) support domestic revenue mobilisation (DRM) in partner countries and (2) strengthen development cooperation in this area. At present, ATI has 61 members (25 partner countries, 20 development partners and 16 supporting organisations), with a majority of partner countries coming from the African continent.

related development portfolio from budget reductions and contributed to strengthening relations with other countries (both donors and partner countries).

The ATI itself is built as a platform where partner countries and donors are supposed to meet at eye level. It was set up by a group of like-minded donors, who agreed to approach their partner countries and invite them to join this initiative. The Netherlands took the lead on the request of several other donors. As a result of these efforts, 11 to 12 partner countries had already agreed to be part of the ATI when the initiative was formally launched at the Addis Ababa Conference on Financing for Development in 2015. According to the authors, it is fair to say that the Netherlands was particularly active in mobilising their partners which led to a majority of the first group of countries joining. The procedure was to send letters from the Minister of Foreign Trade and Development Cooperation to Finance Ministers in developing countries, with the Dutch embassies following up. The initiative has been useful to convey the political message that constituted the core of the first commitment: lack of ODA funding is not going to be the bottleneck that blocks developing countries' ambitions to mobilise additional domestic revenue. ATI has also been useful in strengthening networking among donors as well as among partner countries, and in matching the requirements of partner countries with the development assistance offered by donors (BSS, 2019).

In terms of policy coherence, the Netherlands has made a significant contribution through its involvement in the ATI. As part of their membership to the ATI, all members including the Netherlands made the following commitments:

1. A commitment to collectively double their technical cooperation in the area of DRM/taxation between 2015-2020.
2. A commitment to step up domestic revenue mobilisation as a key means of attaining the SDGs and inclusive development.
3. A commitment to ensure policy coherence for development.

The fact that the third commitment on policy coherence was added to the ATI agenda was likely largely due to the insistence of the Netherlands. According to the ATI mid-term evaluation (BSS 2019), the Netherlands put forward the idea that it would make little sense to increase DRM-related CD and strengthening the capacity of developing countries to increase their DRM efforts if a key conditioning factor – (international) tax avoidance and evasion – was not addressed. Since the adoption of this third commitment, the ATI now also focuses on issues such as tax treaty renegotiation, use of tax incentives, and taxation of bilateral ODA. With these activities, ATI also referred to the BEPS initiative and the activities launched by the Platform for Collaboration on Tax (PCT), a joint effort of the World Bank, the IMF, the OECD and the United Nations. The Netherlands has been an active member of ATI's consultative group 3, pushing above all the issues of tax expenditure and ODA taxation.

According to BSS (2019), it is fair to say that these activities of the Netherlands have been partly driven by domestic reasons. One of the reasons was that raising policy coherence at an international level helped to also build awareness of these issues at home. Perhaps in part due to the ATI, the Dutch public gradually accepted that the role of the Netherlands as a conduit financial centre in international tax avoidance practices could be harmful to its international reputation.

Along with the initiative under the roof of the ATI, the Netherlands was also among the first countries to stop asking for tax exemptions for bilateral ODA funds, which is a highly debated issue today.[125] While only a small part of the overall ODA provided by the Netherlands is affected by this measure, it has certainly helped to elevate this issue on the international agenda. Moreover, BSS (2019) mentions that there are indications that the Netherlands – like other countries – improved its international reputation due to its involvement in the ATI, which serves as a so-called "commitment device.".

According to the mid-term evaluation of the ATI (BSS, 2019), the ATI also played an important role in the inclusion of developing countries' needs and priorities. As the authors state, only a small number of developing countries play an active role in setting the ATI agenda and following up on the activities that were agreed on. In the first years, the Steering Committee consisted of representatives of four donors and two partner countries, which was later changed to a more equitable distribution of three members from each group. However, for several reasons it remains a challenge to involve developing countries more consistently in the everyday operations of the ATI. Still, developing countries use the ATI as a platform to voice their needs in terms of the types and contents of the development assistance they require.

Apart from the virtual meetings of the Steering Committee, discussions are taking place in various other groups. These include the three consultative groups (organised around the three commitments) and the various face-to-face meetings in conferences, workshops and side events organised by the ATI. A key issue in this context was the ATI commitment to double tax related ODA funds until 2020.

Another piece of independent evidence is that, between 2015 and 2017 – the latest available year of ATI monitoring – the Netherlands raised its tax related ODA by more than 108 percent.[126] Though formulated as a collective target for all donors (because some bilateral donors would not have agreed to it otherwise), the Minister of Foreign Trade and Development Cooperation used this commitment actively in her communication with the Parliament and the Ministry of Finance. In addition, the ATI was also explicitly linked to the development 'Agenda on Policy Coherence for Development' in the area of taxation (Ministry of Foreign Affairs, 2016). Moreover, the ATI is regularly mentioned in the MFA Assessment Memorandums of the various TA-programmes supported by the Netherlands.

A recent study on donor coordination (ITC, 2019) concluded that there was strong progress in the recent past regarding the coordination of DRM related support via forums, platforms, commitments and tools, of which the Netherlands is a partner to many.[127] The partly limited capacity to coordinate their development partners' support and addressing the uneven distribution of assistance across countries are two examples of coordination challenges.

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125 In February 2020, a joint workshop of the OECD Development Assistance Committee (DAC) and the United Nations Committee of Experts on International Cooperation in Tax Matters discussed these matters in Paris. The Netherlands presented a document containing a first (positive) assessment of its experiences with not requesting tax exemptions for ODA funds, inviting other donors to adopt the same policy.

126 Source: the most recent ATI monitoring report: https://www.addistaxinitiative.net/sites/default/files/resources/2017-ATI-Monitoring-Report-Incl-Annex.pdf, accessed 21.03.2020.

127 Study on Donor Coordination, International Tax Compact (ITC), September 2019

The ATI aims to provide several services to bridge these challenges. It does so in various ways, including by offering a platform for participation of partner countries' in the international dialogue, by facilitating matchmaking and by providing transparent information on spending priorities and support patterns etc. via the ATI country DRM profiles. By extension, it contributes to information sharing as a precondition for donor coordination.

The Netherlands has been supporting the ATI actively and early in the process, which was repeatedly stated by several interviewees. Multiple interviewees referred to the active role played by the then Minister of Foreign Affairs who, according to one interviewee was "ahead of the pack". The Netherlands operated as a quasi-secretariat before the ITC was commissioned for this task and was active in drafting the ATI commitments. The role of the Netherlands was also reflected in the ATI Steering Committee, which the Netherlands chaired for a period of two years (2015-2016). By signalling political support to the ATI, by providing operational and specifically by increasing DRM-related resources, it can be concluded that the Netherlands has been contributing to more efficient and effective management of DRM assistance.

Stakeholder interviews

Based on interviews with MFA representatives, it appears that the Netherlands plays a positive but limited influencing role as a member of multilateral trust funds. Each trust fund that is supported by the Netherlands (e.g. AFRITACs, RMTF, MNRW, TADAT) has an annual meeting with all donors, as well as a call every half a year (during which all donors would get an overview with all figures and numbers). Up until the COVID-19 pandemic, the annual meetings for IMF trust funds all took place during a period of two days, usually in June/July. During such meetings, discussions would typically be about the budget allocations of the trust funds (e.g. "why is 5 percent of the budget allocated for 'unplanned overhead'"?) but not so much about donor coordination. An MFA interviewee noted that some other, larger donors are more active in such meetings than the Netherlands, given that such donors have more resources. An example given was that only one MFA representative is responsible for all tax-related multilateral trust funds; in contrast a donor like DFID has one person responsible for the IMF trust funds. Another constraint noted by MFA is that donors to a multidonor trust fund cannot earmark their funds for specific countries, and therefore multidonor trust funds cannot be used as a donor coordination tool. If the intention were to be for the Netherlands to support specific focus countries only (or specific topics), this is better done via single donor trust funds (like the Netherlands is doing at the World Bank).

According to a representative of the TADAT Secretariat, the TADAT framework has increasingly been used as a donor coordination tool. The representative noted explicitly that, "since an increasing number of organisations have started to work with the TADAT framework, donor coordination has become much easier". As mentioned earlier, the Netherlands does not (yet) systematically used the TADAT assessments to determine the relevance of CD requests, but it does consult the TADAT reports during scoping missions. The TADAT representative mentioned the case of Rwanda where "multiple dozens of donors were previously active in the same area without talking to each other" and here TADAT has contributed to improved coordination.

Case studies

Donor coordination by the Ghanaian Revenue Authority (GRA) was poor. According to a representative of the Dutch embassy in Ghana (interviewed in 2015 as part of the interim evaluation), the GRA initially (until 2015) did not clearly indicate to donors what other donors were already doing. (SEO 2016, p. 35-36) In their words, the GRA's approach seemed to be "let's try to get as much support as possible and then we will see" (they seemed to be particularly interested in financial support, such as the budget support provided by the Danish agency Danida; hardware financed by GIZ). However, in 2015 the GRA itself had created a "modernisation office" which was responsible for the coordination of donor activities.

Donor coordination in Ghana improved when GIZ and DFID took over as the lead coordinators. In March 2018, GIZ performed a 'donor mapping' and realised that a single topic, risk management, was covered by seven donors. According to one interviewee, there was the perception that GRA appeared to be "picking the donor that paid the most or offered the nicest bonuses, such as foreign trips". According to a Ghanaian stakeholder, this behaviour of the GRA was in line with the Ghanaian proverb "too much meat does not spoil the soup". A donor representative based in Ghana also put part of the blame on the budgetary agreements of the donors. Donors often have the 'problem' that they need to spend their entire budget before the end of the (fiscal) year. Moreover, the GRA had shown promising results over the years, making it a relatively attractive party to invest in. However, the stakeholder also argued that the GRA has a way of downgrading their targets at the end of the year, making the organisation look more promising. All donors could then report that they were part of this "success". In order to speak with one voice on behalf of the donors and spend resources more efficiently, the GIZ took over donor coordination from the GRA. From then on, all requests for capacity development were discussed among the largest donors to prevent double funding. The stakeholder also explicitly mentioned the important role of the Dutch Ambassador in Ghana in the coordination process. For the Dutch CD in Ghana, this role became apparent as there was frequent contact between the Ambassador, GIZ and the NTCA. At the end of 2019, DFID took the role of lead coordinator over from GIZ.

There were indications that donor coordination in Kenya was not (yet) optimal either, while donor coordination in Uganda was better. An interviewee from a Big-4 firm in Kenya mentioned that it was common for a country (like Kenya) to accept whatever help is offered at no costs. Moreover, a "lack of interest" and a "short-term vision" (short-term focus on revenue collection) were mentioned as factors that prevented sufficient donor coordination from taking place. In Uganda, donor coordination with regard to the content of NTCA activities with URA appeared to be better, in part because an NTCA staff member participated in a TADAT assessment mission jointly with IMF.

Multiple interviewees noted that the responsibility for donor coordination should primarily lie with CD recipients, i.e. the tax authorities themselves. Nevertheless, both NTCA and IBFD stated that they had generally made reasonable efforts to find out whether other donors were active in the same field at the time (e.g. by meeting with other donors during scoping missions). However, both organisations considered it difficult to get a full picture of what other donors are offering, and therefore agreed that donor coordination could be further improved.

Synthesis and link with the ToC

Synthesis RQ 5: Which TA-activities are supported by the Netherlands and to what extent do they address the needs of developing countries?

The CD interventions implemented through both *bilateral* and *multilateral* modalities were likely relevant in that they were addressing the needs of developing countries. Generally speaking, the activities targeted topics and themes that relate to weaknesses identified by TADAT and the TADAT Performance Outcome Areas (POAs). Moreover, the demand-driven nature of the bilateral activities also further validates the relevance of the activities. However, a demand-driven approach should be accompanied with proper donor coordination (either from the side of the recipient or from the donors themselves) to prevent duplication of efforts. Based on the case studies, we also conclude that the CD activities related to international taxation address areas where local capacity is lacking. In addition, recent evaluations of the TPA-TF[128] and the AFRITAC-East[129] concluded that the IMF's capacity development in DRM is relevant, largely effective, and of good quality across the board.

Nevertheless, there may be a trade-off between 'relevance for the Dutch policy agenda' and 'relevance for the local policy agenda'. Various stakeholders have stressed the importance of sound domestic tax regulation and a strong revenue authority before engaging in international taxation issues. Moreover, a stakeholder from MFA noted that the choice of focus countries does not always reflect the countries with the most urgent needs. This implies that the Netherlands could theoretically increase its relevance by relinquishing the predetermined list of countries.

Since 2012, the Netherlands supported six *bilateral* programmes in the area of taxation. Five of these are ongoing, with different implementing modalities and partners. The bilateral programmes were initially focused on the 15 partner (focus) countries of the Netherlands, including Ghana, Kenya and Uganda.

In addition, the Netherlands financed 13 *multilateral* programmes. These include programmes implemented by the IMF, OECD, UN, and regional organisations such as ATAF, all of which provide a range of tax policy and tax administration capacity development activities to a broad range of countries, including the Netherlands' partner (focus) countries.

While aiming towards similar objectives and goals, the bilateral and multilateral programmes differ with regard to their processes, scope and/or delivery models. The Netherlands is an active player at the international level, *inter alia*, as a member of the Addis Tax Initiative, and a supporter of the recently established "Platform for collaboration on tax" (PCT).

While the Netherlands can steer its funding decisions to specific countries or topics through its bilateral programmes, it cannot exert such influence through the multilateral programmes it supports. The Netherlands can exert some influence as member of the Steering Committees of multilateral trust funds, but these funds offer no or only limited possibilities to earmark funds for specific countries or topics. According to MFA, the vast majority of the Dutch

128 The RMTF has not undergone an external evaluation as of yet.

129 Afritac-East Phase IV Midterm Evaluation Part I, DevTech Systems, April 2019. Uganda was one of the countries visited by the evaluation team.

funding is not earmarked. At the multilateral level, this can only be done by creating single donor trust funds, which the Netherlands has done for example at the World Bank.

With regard to the selection of CD projects, the Netherlands generally subscribes to the approach of "demand driven" assistance. This means that countries themselves identify and formulate what kind of CD support they deem necessary and useful. A demand driven approach is a means to ensure the *relevance* of CD activities, i.e., the extent to which they respond to the needs and priorities of the recipient countries. (*Relevance* is thus also the core of research question five.)

While the choice of bilateral programmes overall seems relevant to recipient countries in the sense of being 'demand driven', the operationalisation of this approach is somewhat impeded in practice:

- On the one hand, while theoretically being open to all developing countries, the bilateral assistance is de facto limited to a small group of countries, which are mostly selected for reasons other than their tax gaps or DRM-related priorities as indicated by objective standards such as TADAT.
- On the other hand, the selection of projects to be implemented is limited by the capacities of the Dutch bilateral programme implementation partners that have their specific areas and themes of expertise (and may sometimes have financial or human resource constraints). By limiting the scope of CD to what these bilateral implementing agencies have the capacity to handle (as listed, for example, in the initial announcement letter sent by Dutch Embassies to revenue administrations to advertise the programme), the programme does in fact have a "supply driven" component.

There can be trade-offs between 'relevance for the Dutch policy agenda' and 'relevance for the local policy agenda'. Stakeholder interviews yielded examples of CD requests that may have been relevant, or at least worth investigating, but that were rejected or not followed up by bilateral partners because the request was from a country that was not an original partner country or focus country. Apparently, the country criterion was still perceived to be important by the bilateral implementing agency, despite MFA clearly being more flexible with regard to country eligibility. Similarly, stakeholders noted that there were successful CD programmes in countries that are no longer an official 'partner country' for the Netherlands but where NTCA and IBFD are quite active, have well-established relationships, and "can be useful there."

Apart from country choice and CD themes, the response to CD demands from a given country may at times have been too "passive" or the "relevance assessment" inadequate. Stakeholder interviews suggest that there were situations, particularly early on, in which the mere fact that CD was being requested was already seen as sufficient reason for it being relevant for the requesting country. Implementing stakeholders as well as MFA acknowledged that perhaps too little effort had been made to assess whether the requested CD should actually be a priority for the country.

The "passive" attitude towards local relevance can be explained by several factors:

1. Bilateral agencies may not be the right ones to assess the full set of gaps in a tax system, as this requires significant resources and expertise, which are more likely to be present in multilateral agencies.
2. There is never any truly "objective" standard against which a tax system can be benchmarked (although TADAT and the OECD Maturity Models can now partly fulfil this role, with TADAT potentially more useful for developing countries).
3. The process of needs identification is complex and time consuming (requiring verification letters, scoping missions, discussions with many stakeholders, etc.)
4. The selection of projects and qualifying countries is in part political, and involves obtaining agreement from different stakeholders with potentially different interests (local authorities, implementing agencies, embassies, etc.).
5. The priorities of (changing) stakeholders in recipient countries can change over time.

The current criteria on which CD requests are selected do not necessarily allow for assessing relevance. The criteria include supply-side considerations such as "does the request fit into our niche?"; "do we have the capacity?" or "does it fit into budget restrictions?". These selection criteria, it can be argued, contribute to ensure relevance *for the Netherlands* rather than for the recipient country. With the increasing use of the TADAT assessments, a tool has emerged to address at least some of these challenges. The Netherlands is partly using the tool for its relevance assessments, yet not systematically. The IMF and the WB increasingly use TADAT to identify needs and to improve donor coordination, as a result of which both relevance and efficiency have improved. This is a positive development and considered a strength of the assistance provided via the multilateral organisations, according to some interviewees.

By being a signatory to the ATI and by doubling its financial commitments to support DRM, the Netherlands has new possibilities to direct assistance to a wider group of countries and use diagnostic tools such as TADAT to ensure that its assistance remains relevant (and effective).[130] In this context, several interviewees suggested to combine the current "fully demand driven" approach, which is quite passive, with a more active approach that takes a stance in terms of what type of requests are in fact a priority for the country, as judged by experts.

6.2 RQ 6: Effectiveness of Dutch CD activities

To what extent were tax-related CD activities supported by the Netherlands effective for the implementation of BEPS-actions and negotiation and enforcement of anti-abuse clauses in tax treaties in developing countries?

6.2.1 Implementation of BEPS-actions

RQ 6.1: To what extent did CD activities contribute to implementation of BEPS-actions in case study countries?

130 Which already is the case via e.g. the large Dialogue & Dissent programmes and has also been practiced in the past, i.e. under the Covenant between the MFA and the MoF.

Desk review

There are a few general reasons why developing countries may prefer not to implement any BEPS standards at all:

1. Some developing countries may have the perception that introducing anti-abuse clauses to DTTs (or signing the MLI) could remove certain incentives through which the country was previously able to attract FDI and create jobs. Some countries may fear that BEPS implementation could therefore lead to a loss of FDI, GDP and employment. (However, note that accession to the Inclusive Framework or MLI does not preclude introducing to withhold taxes on fees from technical services in DTTs).
2. Developing countries may distrust solutions crafted by the developed world. Since most developing countries did not participate in BEPS negotiations, the resulting lack of trust (and lack of 'ownership') could be a serious obstacle to accepting them.
3. The level of complexity of the BEPS solutions combined with a lack of knowledge and experience of the developing countries in this field may also be problematic.
4. Developing countries and developed countries may have different views regarding economic and juridical perceptions of 'fairness' that affect BEPS actions. As Burgers and Mosquera (2017) note, these views may differ with respect to:
   a. the level playing field for the digital and the traditional economy;
   b. allocation of taxing rights, and;
   c. fair tax systems and fair and efficient tax administrations.

The next subchapter provides insights in the progress with the BEPS implementation by Ghana, Kenya and Uganda more specifically.

Case studies

Ghana

Ghana is not engaged in many initiatives on international taxation, but the country has chosen its own path to accommodate to international standards. Ghana has not joined the IFB nor did it sign the MLI. However, the country amended some of their DTTs, in accordance with a new domestic tax treaty model, to accommodate to the BEPS minimum standards, in particular in the field of anti-avoidance provisions. Moreover, Ghana actively contributes to the work of the UN Committee of Experts on International Cooperation in Tax Matters (hereafter UN Committee) and is one of the 161 members of the Global Forum on Transparency and Exchange of Information for Tax Purposes (hereafter Global Forum), the leading body working on the implementation of global transparency and exchange of information standards around the world.

Ghana implemented most BEPS outcomes through their domestic law or bilateral negotiations of DTTs. Most of the BEPS solutions have already been implemented through the Ghanaian domestic tax law (e.g. anti-treaty-shopping provision) and some of them are being discussed or implemented as of December 2020 (e.g. Automatic Exchange of Information legislation, transfer pricing rules, mandatory disclosure rules – reporting of tax schemes). Moreover Ghana believes that ATAF represents the African developing countries well enough at the IFB, hence there is no need to become a member of IFB themselves. The most significant progress has been made thus far with respect to the following BEPS actions:

- **Actions 8-10 - Transfer Pricing:** captured in the new transfer pricing regulation that was initially expected by April 2020, but is now more likely to be approved by end-2020);
- **Action 13** - **Country-country-reporting**: this will be addressed with/following the approval of the new transfer pricing regulation.
- **Action 1 – Digitalisation**: progress is being made (including with VAT on e-commerce), but this is still being fine-tuned.
- **Action 4 - Limitations on interest deductions:** a thin capitalisation rule is in place (3 to 1), which should be addressed by a general provision in the new Income Tax Law.

Political factors and capacity constraints impede the implementation of BEPS actions. Stakeholders argue that power struggles and the electoral cycle make the Ghanaian government more driven by short-term interests (i.e. cover the budget gap between what they want to spend, versus what they have to spend) rather than a long-term strategic view. This typically leads to an emphasis on short-term one-off gains rather than long-term structural benefits. Moreover, limited access to transfer pricing data, uneven distribution of knowledge and capacity within the GRA and high turnover of staff members at the GRA prevent an effective and efficient implementation of BEPS action.

The "Ghana Without Aid" campaign is in line with a stronger focus on taxation. Ghana's graduation to middle-income status and the subsequent "Ghana Without Aid" campaign stimulated a renewed interest in enhancing domestic resource mobilisation. The Ghanaian authorities consider improved DRM a way to reduce the country's dependence on aid.[131] This campaign, started by the previous government and continued by the current government, drew more attention to taxation.

Ghana's legal framework in relation to administrative assistance in tax matters is fully in line with internationally accepted standards. Ghana signed the Convention on Mutual Administrative Assistance in Tax Matters (CMAAT) on 10 July 2012 and ratified the convention on 29 May 2013. Subsequently, the CMAAT entered into force on 1 September 2013. Moreover, Ghana is largely compliant with the implementation of Exchange of Information on Request (EOIR) standards. Ghana received this rating based on a review by peers on Phase 1 (legal framework) and Phase 2 (review of EOIR in practice).

Kenya

Kenya is engaged in many initiatives on international cooperation in tax matters that are relevant for the implementation of BEPS standards. Kenya decided to join the Inclusive Framework on BEPS (IFB) as one of its 137 members. By joining IFB Kenya committed to implement the four BEPS minimum standards that address critical issues like tax treaty shopping, tax rulings, harmful preferential tax regimes, transparency on multinationals' global operations and improved dispute resolution mechanisms. Kenya's involvement in the IFB is mainly through working parties, which the authorities consider important and effective. Moreover, Kenya actively contributes to the work of the UN Committee and is one of the 161 members of the Global Forum. According to stakeholders at the National Treasury and KRA, Kenya decided to join the Inclusive Framework because "if you are not on the table, you are on the menu." They noted explicitly that they wanted to join the conversation and the implementation. One of the reasons is that many MNEs are active in Kenya, and changes in tax laws in other countries as a result of discussions in

[131] The graduation to middle-income country makes Ghana also less eligible for aid

the IFB will also affect Kenyan taxing rights. Moreover, Kenya signed the MLI in November 2019, but has not yet ratified the convention.

Kenya accepted all minimum BEPS standards and expects this to have an impact on revenues. Kenya has a clear policy on the BEPS recommendations: *"only those actions that clearly benefit the country will be adopted"*. Kenya had only two reservations when signing the MLI. The minimum standards (BEPS Actions 5, 6 13 and 14) were prioritised, as well as BEPS Action 1 (digital economy) and Action 7 (PE). Permanent establishment rules in particular are seen as crucial, although they are not part of the minimum standards. According to the authorities, "Artificial avoidance of PE status is where we suspect the largest revenue leakage. Robust rules for PE are crucial." The same goes for transfer pricing regimes, were Kenya has intensified capacity development efforts (see Case Study 4).

The Kenyan authorities expect their participation in the Global Forum to have a significant impact on revenues in the coming years. EIOR is expected to improve the information base of the KRA with information from potentially 160 other jurisdictions where the same MNEs are operational. Kenya is a member of the steering group and participates in its activities and meetings.

Kenya's legal framework in relation to administrative assistance in tax matters is in line with internationally accepted standards. Kenya signed the CMAAT on 10 July 2012, but never ratified it. Moreover, Kenya was reviewed by peers on implementation of EOIR standards (phase 1 – legal framework and phase 2 - review of EOIR in practice) and received a general rating "largely compliant".

Kenya does not yet have legislation in place for implementing the BEPS Action 13 minimum standard according to the peer review of the IFB. This means that MNEs do not yet have a filing obligation for a CbC-report in Kenya. In order to improve its CbC-framework, the peer review recommended Kenya to take the following four steps:

1. Implement a domestic legal and administrative framework to impose and enforce CbC reporting requirements as soon as possible.
2. Install and maintain qualifying competent authority agreements in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions and with which Kenya has an international exchange of information agreement in effect that allows for the automatic exchange of tax information.
3. Implement processes or written procedures to ensure that the exchange of information is conducted in a manner consistent with the terms of reference (OECD, 2017) relating to the exchange of information framework prior to the first exchanges of information.
4. Ensure that the appropriate use condition is met ahead of the first exchanges of information.

Despite significant progress made, limited capacity and a short-term focus of Kenyan authorities were seen as the main barriers to advancing the implementation of BEPS recommendations in Kenya. Stakeholders argued that the KRA had a sufficient understanding of the domestic economy, but that their capacity in international taxation needed improvement. Nevertheless, due to CD activities from ATAF and TIWB, the KRA capacity in Transfer Pricing had already strengthened significantly, even to such an extent that KRA officials had started to

provide CD to other African tax officials (a nice example of 'South-South cooperation').[132] However, due to limited data availability, the KRA has not been able to operate to the best of their abilities. Another stakeholder noted that a hindering factor was Kenya's "gaping fiscal deficit, hence a short-term view to collect taxes rather than a long-term perspective of international cooperation and institutional modernisation". While the Kenyan government is working on a new Income Tax Act, which could help narrow the deficit, adopting new legislation is a difficult and lengthy process in Kenya.

Uganda

Uganda has not been engaged in many initiatives on international cooperation in tax matters. Uganda has not joined IFB nor did it sign the MLI, meaning that implementation of the BEPS standards will need to take place through renegotiation of bilateral DTTs. Moreover, Uganda has also not signed the CbC MCAA but plans to take a number of measures regarding the exchange of information, including country-by-country reports In addition, Uganda is one of the 161 members of the Global Forum and based on its medium-term Domestic Revenue Mobilisation Strategy (MFPED 2019), Uganda does plan to take a number of measures that are line with, or go in the direction of, BEPS standards.

Uganda believes in the spirit of the BEPS process, but has thus far been reluctant to fully commit. According to local stakeholders, Uganda believes that BEPS recommendations are developed by OECD countries and reflect their interests rather than the interests of developing countries. The Ugandan government acknowledges that the country is losing out on revenue. However, they need to further prepare themselves before they can fully commit to BEPS ("as the devil is in the detail").

The lack of capacity of Ugandan authorities and the perceived importance of attracting FDI are the main reasons for the weak implementation of BEPS recommendations. Multiple stakeholders have noted that Ugandan authorities have too little knowledge of complex issues and are generally understaffed. The Ugandan authorities want to attract FDI in order to create employment. However, NGOs question the link between lower taxes and higher employment.

Uganda's legal framework in relation to exchange of information (EoI) and mutual administrative assistance in tax matters is fully in line with internationally accepted standards. Moreover, Uganda was reviewed by peers on implementation of EOIR standards and received the general rating "largely compliant".

6.2.2 Informed position of developing countries

RQ 6.2: To what extent did CD activities contribute to an informed position during negotiations of and the enforcement of anti-abuse clauses in tax treaties between the case study countries and the Netherlands?

[132] In particular, KRA experts participated in the 2016-2018 TIWB South-South programme with Botswana, and were deployed to the TIWB and the Commonwealth Association of Tax Administrators. Moreover, the KRA chaired the ATAF Cross Border Taxation Technical Committee.

Ghana

Ghana's current double tax treaty network consists of 11 DTTs that have entered into force. None of Ghana's four most recent treaties (2014 DTT with Denmark, Protocol to the 2014 DTT with Switzerland, 2017 DTT with Mauritius and the 2017 DTT with Singapore) contains a general anti-avoidance provision (LoB or PPT). This contrasts with the DTT with the Netherlands which, after conclusion of the 2017 Protocol, includes a PPT clause consistent with the BEPS minimum standard and the Ghanaian current treaty policy.

Ghana was one of the first countries to respond to the request of the Netherlands made in 2013 to include anti-avoidance provisions in their DTT. In 2017, Ghana and the Netherlands decided to revise their 2008 DTT by signing the amending Protocol. The DTT between Ghana and the Netherlands is an example of a source-oriented DTT between a developing and a developed county. A source-oriented treaty allows for withholding taxes on dividends, interests and royalties, and additionally provides the right to tax fees for technical services in the source country. The revised DTT between Ghana and the Netherlands contains provisions on Mutual Agreement Procedures (MAP) which are in principle consistent with BEPS standards. Moreover, it provides for arbitration as a final stage of MAP. In addition, it also contains Article 9 (2) on Transfer Pricing (TP) corresponding adjustments. Generally speaking, the 2017 Protocol does not follow many BEPS optional provisions as imposed by the MLI (e.g. the PE provisions, tie-breaking rule for double residency of non-individual persons, saving clause or transparent entities provision), although offered by the Netherlands through the MLI.

The Protocol signed by the Netherlands and Ghana introduced further changes related to BEPS and internationally accepted standards of tax cooperation. It replaced the title and preamble of the original DTT to introduce new "language" developed under BEPS Action 6 that the Contracting States intend to eliminate double taxation without creating opportunities for double non-taxation or reduced taxation through evasion or avoidance. In addition, it inserts Article 24A (Principal Purpose Test – PPT clause) and amends Article 27 (Exchange of Information). The 2008 DTT also contains some other anti-avoidance provisions such as beneficial owner clauses, Article 13(4) on immovable property entities ((real estate companies), or TP provisions in Article 9 (1) and (2) that were not amended by the Protocol. However, as far as BEPS solutions are concerned, it should be noted that the Protocol has not amended art. 13(4) in accordance with the BEPS proposal, as expressed in the MLI. This current provision in the DTT has a high threshold of 90 percent for calculating the shares value coming from immovable property. It does preserve taxation rights of the source country poorly, even in comparison to the OECD and UN Models.

Ghana believes that the 2008 DTT is not very beneficial for Ghana, mainly because of the low withholding tax rates and the arbitration provision. Moreover, the 2017 Protocol was very short and did not address these issues. Ghana preferred to renegotiate the whole treaty at the time, but ended up only with amending protocol. However, as of December 2020, Ghana has not made any formal request for renegotiations with the Netherlands again. In the meantime, however, Ghana has changed its tax treaty model (see next section) and now prefers to use Article 29 of the UN Model consisting of a robust LOB provision supplemented by a PPT.

Kenya

Kenya and the Netherlands have signed a DTT in 2015, but this has not been ratified by Kenya. Kenya and the Netherlands did notify this DTT as a covered tax agreement, meaning that it is notified for the MLI and will be modified automatically by its provisions, once ratified. Kenya and the Netherlands accepted the following MLI provisions that will modify the 2015 DTT: transparent entities, dual resident entities, PPT clause and change of preamble, most provisions concerning PE and modification of Article 9 (2) on TP corresponding adjustment. By signing the MLI (from the side of Kenya), the initial MPT will be replaced by a PPT.

Uganda

None of Uganda's DTTs include any general anti-avoidance clause (no PPT or LOB). As of December 2020, Uganda only has ten DTTs in force of which the most recent one was signed in 2004 (with the Netherlands). In contrast to the 2004 DTT with the Netherlands, most of these DTTs are source-country oriented. The 2004 DTT between the Netherlands and Uganda contains very low rates of withholding taxes (WHTs) on dividends paid to companies and it does not impose WHTs on fees from technical services. As far as the anti-avoidance measures are concerned, the 2004 DTT only contains beneficial owner clauses applied to dividends, interests and royalties and Article 9 consistent with BEPS standards. On the other hand, it does not provide for PPT or MPTs, and does not have Article13 (4) on real estate companies. Various people (including now also the Ugandan Ministry of Finance) have questioned the usefulness of DTTs in the case of Uganda. Nevertheless, the 2004 DTT is currently being renegotiated.

In comparison with other DTTs, the current DTT with the Netherlands does not seem beneficial for Uganda. In particular, the 2004 DTT includes three clauses that are particularly attractive to Dutch investors:

- The 2004 DTT includes a participation exemption for withholding taxes on dividends;
- The 2004 DTT does not expand the definition of royalties on leasing of equipment;
- The 2004 DTT contains no source taxation of fees for technical assistance.

The fact that it allowed for non-taxation of dividends made the 2004 DTT even more attractive to Dutch investors, and particularly to non-Dutch investors to use Dutch conduit companies, as described in our case study. On the one hand, the participation exemption for withholding taxes on dividends has effectively prevented Uganda from taxing outbound dividends to the Netherlands. In the Netherlands, companies do not have to pay taxes on dividends from subsidiaries and these outbound dividends from Uganda remain therefore effectively untaxed. The Netherlands does take additional efforts to further limit the opportunities for non-taxation by introducing the withholding tax on interest and royalties to low-tax jurisdictions in 2021. However, this does not apply to dividends, but a taxation of outbound dividends to low tax jurisdictions has been announced for 2024 by the Netherlands.

7 Tax avoidance via the Netherlands

Table 7.1 Research questions sub-goal 3

Number as based on the ToR	Research Question
RQ 7	To what extent are anti-abuse clauses able to counter multinational tax avoidance from developing countries via the Netherlands?
RQ 7.1	What was the position of developing countries during negotiations on the inclusion of anti-abuse clauses in tax treaties with the Netherlands and why?
RQ 7.2	Are authorities in developing countries able to effectively apply anti-abuse clauses in tax treaties with the Netherlands?
RQ 7.3	To what extent is the multilateral instrument considered relevant by authorities in developing countries?

Source: SEO Amsterdam Economics, based on the ToR.

This section contains a summary of our findings on the effectiveness of anti-abuse clauses to counter multinational tax avoidance in developing countries via the Netherlands. The answers to questions 7.1, 7.2 and 7.3 are largely based on our case studies of Kenya, Uganda, and Ghana.

7.1 Effectiveness of anti-abuse clauses

To what extent are anti-abuse clauses able to counter multinational tax avoidance from developing countries via the Netherlands? What has been the position of developing countries and are they able to effectively apply anti-abuse clauses? To what extent is the MLI considered relevant?

Sub-question 7: To what extent are anti-abuse clauses able to counter multinational tax avoidance from developing countries via the Netherlands?

Desk review

Thus far, little is known about the effectiveness of introducing anti-abuse clauses in DTTs to combat tax avoidance. In order to assess effectiveness, one would need to know to what extent anti-abuse provisions can recover 'tax revenues lost' in developing countries by closing previously existing loopholes. However, the mere concept of 'tax revenues lost' suggests that, once loopholes are closed, MNEs start paying taxes where they previously did not. As many studies point out, this is not necessarily the case, because the loopholes are often the main reason MNEs conduct business in certain countries. Any assessment of effectiveness of anti-abuse clauses would, therefore, also need to assess the impact of these clauses on potentially reducing foreign investment, GDP, and employment in developing countries.

The empirical evidence on the positive relation between entering into DTTs and increased FDI inflow is not always convincing (see e.g. Beer and Loeprick, 2018 and de Vries, 2020).[133] This might

[133] Lejour (2014) does find evidence that DTTs significantly increase bilateral FDI stocks. However, the author acknowledges that this can be (partly) explained by investors from third countries that engage in treaty shopping.

be caused by increased international competition for investments, leading to increased tax incentives across the board. On the other hand, there is evidence that entering into DTTs in many cases (can) imply significant revenue losses (ibid). Hence, the first strategy for developing countries is that they should be very careful to enter into new tax treaties in general (see, IMF, 2014 and Hearson and Kangave, 2016, and Brooks and Klever, 2015).

While specific research on the effectiveness of anti-abuse provisions in DTTs is lacking, some studies have assessed the effects of anti-abuse regulation outside of DTTs. Blouin et al. (2014) suggest that thin-capitalisation rules affect the extent to which firms employ debt shifting, but effects on tax revenues remained unquantified. Using firm level data, de Mooij and Liu (2018) showed that tighter transfer pricing regulation is statistically associated with decreased bilateral investments, but stable global investments. This suggests that such regulation induces shifts in investment to other countries. Beer et al. (2018) noted that such shifts and substitution of avoidance to different channels could limit the effectiveness of targeted rules in restricting tax avoidance. They also noted that more research on anti-abuse rules is warranted.

Both Lejour et al. (2019) and Hers et al. (2018) have argued that the introduction of the Dutch conditional withholding tax in 2021 will probably have an effect on investments via the Netherlands, but is unlikely to have a significant impact on global tax avoidance due to the fact that fiscally driven flows are likely to be shifted to other tax-friendly jurisdictions (i.e. shifts will no longer take place through the Netherlands). In other words, if anti-abuse clauses are effective and introduced unilaterally, this will primarily result in shifting tax avoidance through structures using other countries. Put differently, it is unlikely that anti-avoidance provisions in tax treaties will significantly impact global revenue collection unless uptake of such provisions is multinational.

With respect to the anti-abuse clauses in Dutch DTTs, these provisions have already entered into force in a few treaties (Ethiopia, Ghana, Uzbekistan and Zambia bilaterally and for Georgia and India via the MLI), but not much is known yet about the application of anti-abuse provisions.

With regard to MAPs, developing countries have thus far had very few MAP cases, but they are beginning to emerge. According to Picciotto (2016), the number of MAP cases may increase, especially if those countries adopt interpretations that may be considered unorthodox. Our case study on Uganda noted that the Uganda Revenue Authority (URA) already made two MAP claims, both involving telecommunications companies. One of these MAP claims was related to the application of capital gains taxes to the acquisition of Zain by Bharti Airtel, in the amount of USD 85 million. The Uganda High Court decided in September 2014 that Uganda had jurisdiction to tax the transaction;[134] the issue is still under consideration by URA, but Bharti has brought a MAP claim in the Netherlands, where the share transfer took place. A similar high-profile conflict involving Uganda and oil firms Tullow and Heritage did not result in MAP claims, since the transfers took place in countries without tax treaties; however, claims were made under the Dutch Bilateral Investment Treaty.

134 While the 2004 DTT between Uganda and the Netherlands does not contain any anti-abuse clauses, it does provide for arbitration, at the request of either tax authority, if a MAP claim has not been resolved within two years(Picciotto 2016).

Until there are more MAP cases with developing countries that specifically arise from anti-abuse provisions, it is difficult to assess the effectiveness of these provisions. The number of MAP cases might in itself not be a perfect measure for the effectiveness of anti-abuse clauses, as the main effect of anti-abuse provisions may be deterrence (prevention): taxpayers will no longer set up conduit companies for treaty shopping and will redirect their financial flows via other channels. The extent to which deterrence is taking place is difficult to observe, although our case study on Ghana does suggest that some flows were diverted following the introduction of a PTT clause in 2017.[135]

Stakeholder interviews

Interviewees from international organisations questioned whether developing countries should enter into DTTs in the first place. As one interviewee puts it: "..and even if a country is willing to give this type of tax incentive to investors, why then only to investors coming from (or via) this specific treaty partner? Why not to all investors from abroad?". Secondly, to counter tax avoidance via the existing treaty network, developing countries should renegotiate existing treaties, especially those with very low withholding tax rates (and/or large exemptions) to include higher withholding taxes (IMF, 2017). With respect to the termination of unfavorable existing tax treaties by developing countries, interviewees are more cautious: terminating an existing DTT might have a large reputational effect, causing international investors to avoid investing in the country (the case of the Uzbekistan-Dutch DTT is mentioned in this respect). In these cases it is probably better to renegotiate improved terms (i.e. higher withholding tax rates) in the existing treaty.

In general, experts and interviewees from international organisations were skeptical about the potential effectiveness of anti-abuse clauses in DTTs to combat tax avoidance. If a country has a DTT in place, adding an anti-abuse clause cannot hurt. However, as long as large differences in withholding tax rates exist, incentives to use constructions to limit the tax bill for MNEs are very strong, given the very large investment flows (and potential tax liabilities) involved. As one expert puts it: *if we reiterate tomorrow that it is forbidden to drive through a red traffic light, do we expect this to have an effect on the number of people doing that?* At the same time, the judicial capacity in developing countries to apply anti-abuse clauses is a challenge, especially when anti-abuse clauses require significant judicial interpretation by the tax authorities, such as the principal purposes test (which is the minimum standard). A simplified limitation on benefits would be easier to implement for developing countries.

There are some indications that anti-abuse provisions have a preventive effect. All case study countries have included anti-abuse provisions, either in their domestic law or in their DTTs with the Netherlands. Nevertheless, we see very little implementation and enforcement of these provisions. This could mean that the authorities fail to effectively implement them or that there is no need to actually implement them due to a prevention effect. Taxpayers need to adjust their behavior to the risk of the potential application of anti-abuse provisions. By means of illustration, a Kenyan stakeholder mentioned that whilst KRA was handling a large court case regarding tax avoidance, three smaller taxpayers exposed themselves and paid their transfer pricing fees (without actual pressure from the KRA). Moreover, tax disputes are often solved behind closed doors, making it difficult for the general public to detect them.

135 As is described in the case study report for Ghana, after the 2017 protocol to the 2008 DTT entered into force, the Dutch foreign investment position *inclusive of SFIs* fell below zero for the first time.

8 Coherence of Dutch policy

Table 8.1

Number as based on the ToR	Research Question
2	To what extent are Dutch policies and activities to counter tax avoidance in developing countries coherent?

Source: SEO Amsterdam Economics, based on the ToR.

In its policies and activities aimed at countering tax avoidance in developing countries, the Dutch government pursues two broad policy goals: (1) increasing DRM in developing countries, and (2) promoting the interests of the Dutch economy. The main policies and activities that we have discussed in this report are the bilateral and multilateral Capacity Development programmes managed by the Dutch Ministry of Foreign Affairs (MFA) and the international tax policy conducted by the Dutch MoF. Roughly speaking, MFA's main policy goal with these CD programmes is to increase DRM in developing countries, while the Dutch MoF's main goal with its international tax policy is to promote the interests of the Dutch economy by minimising the obstacles Dutch private companies face abroad (whilst also considering the interests of other (developing) countries). The extensive network of tax treaties, which is designed to avoid double taxation, is one example through which the Dutch MoF tries to place Dutch businesses on an equal footing with their foreign competitors.[136] The goals can sometimes be pursued in tandem (in which case they lead to policy coherence), but are sometimes in conflict (leading to policy incoherence), for example when it comes to taxes levied abroad on Dutch companies, in which case the Dutch government and DTT partner countries may sometimes have opposing interests. It should be noted, however, that the treaty policy of the Netherlands has become more lenient over time with respect to developing countries. Based on the 2020 tax treaty policy note, the Netherlands does not always strive for the lowest possible rate of withholding taxes if the treaty partner concerns a developing country and it is willing to accept a higher relative rate of withholding taxes (compared to its peers) if the developing country in question has revised its policy between negotiations.

To assess the coherence of Dutch policies and activities in this area, we proceed in three steps. First, we discuss the ways in which policy coherence is already present or has been improved in recent years. Second, we discuss the remaining reasons for potential incoherence (or even a potential conflict) between the different policy goals. Third, we make recommendations for further improving policy coherence.

8.1 Measures taken to improve policy coherence

Perhaps the main area where the interests of developing countries and the Netherlands coincide is in preventing aggressive tax avoidance via Dutch conduit companies. This is in

136 This can, however, also result in a 'race-to-the-bottom' with other countries on corporate tax rates, ultimately making all countries worse off.

the interest of developing countries because effective tax avoidance measures in their domestic law and tax treaties will result in more tax revenue. It is also in the interest of the Netherlands, because having a level playing field in developing countries is important for countering tax avoidance via the Netherlands.

In recent years, the Dutch government has made considerable efforts to prevent BEPS while taking into account the interests of developing countries. The OECD acknowledges and appreciates the efforts of the Dutch government in this regard. According to the 2017 OECD Development Co-operation Peer Review of the Netherlands (OECD, 2017): *"the Netherlands promotes fair tax regimes to increase developing countries' own income. It also supports stronger international co-operation for tackling tax avoidance"*. The peer review also underlined that the Netherlands provided financial resources for participation of developing countries in the OECD BEPS project, championed the 2015 Addis Tax Initiative, and committed to doubling its support to strengthen tax administrations in developing countries.

The Dutch policy to introduce anti-abuse clauses into its DTTs with developing countries is fully coherent with both policy goals, by providing developing countries with an instrument to reduce tax avoidance through Dutch conduit companies. Already in 2013 (before the OECD BEPS project), the Netherlands proposed to include anti-abuse provisions in DTTs with 23 developing countries. As of December 2020, such provisions were included in Dutch DTTs with 14 developing countries. This has been acknowledged and praised by the OECD (2017). Currently, the Dutch MoF fully operates in line with the OECD BEPS-policy by including the minimum standards and offering anti-abuse clauses when negotiating tax treaties, both through bilateral negotiations as well as through the MLI. Moreover, according to a Dutch MoF representative, the Dutch MoF is more lenient with developing countries than with developed countries in their treaty negotiations (e.g. with respect to service, PE, and withholding taxes). This is also in line with the 2020 Dutch tax treaty policy note.

More recently, the Netherlands adopted the Trust Offices Supervision Act 2018 in order to decrease the number of Dutch Special Purpose Entities (SPEs) that register in the Netherlands to benefit from e.g. Dutch DTTs. In 2018, the Dutch National Bank estimated that these so-called 'letterbox companies' only add very limited value to the Dutch economy whilst eroding the tax base of developing countries, and could therefore be missed.[137] By introducing the CFC-rules as of January 2020 (by virtue of ATAD1), the Dutch government took another step to reduce profit shifting and therefore tax avoidance via the Netherlands. However, multiple stakeholders external to the government sphere noted that the related substance requirements are relatively easy to meet, especially for larger companies. However, since 1 January 2020, these substance requirements are no longer a 'safe harbour': companies that meet these requirements can still be seen as being involved in treaty abuse (Tweede Kamer, 2019).

The recent introduction of new withholding taxes is another way in which the Dutch government aims to combat tax avoidance via the Netherlands. This concerns in particular two new taxes: (1) a withholding tax on interest and royalties in 2021 with respect to non-cooperative and low-tax jurisdictions (and in abusive situations); and (2) an additional withholding

[137] https://www.dnb.nl/nieuws/nieuwsoverzicht-en-archief/DNBulletin2018/dnb379675.jsp

tax on dividend flows to low tax jurisdictions in 2024.[138] According to stakeholders external to the governmental sphere, this is a serious attempt to "block collateral damage" as it makes tax avoidance via the Netherlands less attractive than it was before. However, stakeholders also argued that, for the sake of completeness, these withholding taxes should be levied on all outgoing flows.[139]

The 2020 update to the Dutch tax treaty policy is expected to result in new or revised DTTs that are more beneficial for developing countries. The old treaty policy was predominantly based on the OECD model, which is designed for DTTs between economically equal countries,[140] whereas the new treaty policy also includes some provisions from the UN model (which developing countries often use as a basis for their own national treaty model). However, a representative of a Dutch NGO pointed out that the newly introduced CFC rules are too weak, the substance requirements are too easy to satisfy for large companies and, generally speaking, the new treaty policy still allows for many exemptions in the DTT, causing limited use of these provisions.

The Netherlands organises roundtable discussions where, among other parties, the Dutch MFA, Dutch MoF, private sector companies and NGOs jointly discuss the Dutch international tax policy. This allows the parties with a stronger emphasis on the development agenda (e.g. MFA and NGOs) to influence Dutch international tax policy. One interviewee, however, mentioned that NGOs and other civil societies still have too little involvement. Moreover, these organisations are often informed too late about developments in the Dutch treaty network, making the process of DTT negotiations still not sufficiently transparent.

A final measure that has improved policy coherence is that the Netherlands recently decided not to seek tax exemptions on Official Development Assistance (ODA). A recent report[141] noted that other bilateral development partners still often seek exemptions for their aid, sometimes through "opaque private agreements." The report argued that such ODA tax exemptions are potentially inconsistent with the Addis Tax Initiative (ATI) goals on capacity-building and policy coherence (ATI, 2015). The policy incoherence arises because such countries are 'preaching tax morality but practicing tax avoidance' (Fjelstad, 2009). It also goes against the principles of aid delivery in the Paris Declaration of Aid Effectiveness, which specifically calls for increased alignment of aid with partner countries' priorities, systems and procedures (OECD, 2005). The fact that the Netherlands has unilaterally decided to refrain from requesting some ODA tax exemptions make it a frontrunner in this area (together with Norway). However, another study done for the German BMZ found that even in those cases where donors stopped asking for tax exemptions for bilateral aid, this covered only a small percentage (single digits) of their overall ODA. This conclusion also applied to the Netherlands.[142]

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138 https://www.government.nl/latest/news/2020/05/29/government-to-step-up-fight-against-tax-avoidance-with-new-withholding-tax-on-dividend-flows

139 According to one stakeholder, "There are still too many exemptions and some companies will still manage to get an effective tax rate below 9 percent".

140 As argued by various stakeholders, both in the Netherlands and in developing countries

141 https://www.odi.org/sites/odi.org.uk/files/resource-documents/12191.pdf

142 According to an assessment by MFA, if the Netherlands had already given up asking for tax exemptions in 2013, it would have cost the 15 partner countries 3 percent of their ODA-budget in 2013 (under the assumption that current projects would also directly fall under the measure). The measure is effective from 1 January 2016, but applies only to projects that started after that date. No new calculations were made and no compensation was provided to Embassies that could no longer claim for paid taxes (VAT, custom duties) at Ministries of Finance in developing countries.

8.2 Remaining areas of potential incoherence

One area where the two policy goals are potentially in conflict is with regard to policies or CD activities that affect the taxation of Dutch companies in developing countries.[143] With respect to the first policy goal (increasing DRM in developing countries), it is beneficial for DRM when Dutch companies pay effectively more taxes in developing countries, while with respect to the second policy goal (interests of Dutch economy) it is not in the direct interest of Dutch companies.[144] This tension has sometimes become visible in countries where MFA has supported CD programmes explicitly aimed at increasing DRM,[145] while at the same time the Dutch MoF negotiated a DTT in which it aimed for increased competitiveness (through lower taxes) for Dutch businesses operating in this country.[146] There were also examples of countries that received training from IBFD on tax treaty issues, funded by MFA, just before the country entered negotiations with MoF representatives of the Netherlands (Indonesia), or while negotiations with the Netherlands were still ongoing (Kenya). In those cases, IBFD was put in a somewhat awkward position, although MFA noted that it was agreed in advance that IBFD should not provide any advice regarding the treaty with the Netherlands.

Even after publication of the OECD BEPS Final Reports in 2015, the Dutch MFA and MoF still hold different positions on the ultimate goal of 'strengthening tax systems. The MFA supports bilateral and multilateral CD activities that are explicitly aimed at increasing or 'improving' tax revenues for developing countries.[147] Based on interviews with Dutch MoF representatives, the Dutch MoF does not see this as their main responsibility. Their aim is to provide developing countries with an instrument (e.g. anti-abuse clauses) to combat tax avoidance. Whether or not this actually results in improved DRM for the developing country is of lesser concern to the Dutch MoF.

The different views of the Dutch MFA and MoF on ultimate policy goals are clearly visible when it comes to support for capacity development by the NTCA. On the one hand, MFA sees CD as a very important instrument and committed to doubling its CD support through the Addis Initiative. During interviews with CD recipients, it was also clear that the revenue administrations and Ministries of Finance in developing countries were often grateful for receiving such CD. However, when it comes to making the Dutch tax experts available for CD projects, a tension sometimes arises when specific experts are scarce. For example, in the case of Ghana's transfer pricing programme, stakeholders noted that the NTCA experts sent to Ghana to provide

143 This is also the case for other countries that pursue both policy goals, but it may be particularly important for small open economies like the Netherlands that are more dependent on international trade.

144 Note that taxation is not the only driver of competitiveness, nor are DTTs only concluded to promote the interests of Dutch companies operating abroad. Moreover, paying taxes in a developing country can sometimes be in the interest of Dutch companies if this helps to ensure a long-term trade or investment relationship. On the contrary, it cannot be excluded that an increased effective tax rate can cause companies to rethink their investment.

145 As noted elsewhere in this report, increasing DRM is typically the main target for MFA-supported bilateral and multilateral tax-related CD programmes. However, MFA emphasised that the main goal of CD programmes is not to collect more taxes *from Dutch companies*. Rather, it is to establish a better, more transparent, and more predictable tax system. The long-term goal is then the sustainable development of a country, which in turn implies more investments, more GDP growth and therefore also more tax revenues.

146 MoF noted explicitly that, in treaty negotiations, the goal is to at least not weaken the position of Dutch companies.

147 Either directly through improved regulation and/or enforcement or indirectly through increased economic growth as a result of e.g. increased transparency.

CD in transfer pricing did not always have the required expertise. NTCA acknowledged that they were not always able to free up the most relevant TP experts for Ghana due to capacity constraints and competing priorities at NTCA. This then is an example of where different priorities of the Dutch MoF/NTCA and MFA can lead to an in-built tension when resources are scarce.

Recommendations to further improve coherence

The Netherlands should cooperate more with other countries to reduce the risks that capital flows are diverted to other conduit countries. If multiple countries simultaneously take more stringent measures against tax avoidance, the trade-off between the two dual goals is less of an issue (currently there is a first-mover disadvantage of losing competitiveness).[148] In other words, the Netherlands can maintain its dual goals and be coherent if it convinces other countries to take equally stringent measures. At a country level, the Netherlands can have a big influence (for example in Uganda where it is the largest foreign investor). At the OECD level, the Netherlands might only have limited voting power given its relatively small country size. Nevertheless, it can potentially have a large demonstration effect given its image of playing a prominent role in tax avoidance and its large FDI outflows.[149] A multi-country approach is within the range of possibilities given the increased international cooperation in the area of taxation during the last decade. Moreover, the Dutch MoF also indicated in an interview that they keep an eye on the tax treaty policy of other OECD countries when deciding on their own.

The Dutch MFA could be more closely involved in DTT negotiations and should provide more information to the Dutch MoF regarding capacity development activities. If involving Dutch MFA officials in actual DTT negotiations is not possible, then at least there should be more checks and balances during the process (e.g. a consultation half-way), for example through more frequent roundtable discussions. The Dutch MFA currently is not frequently informed about the status of DTT negotiations. According to various stakeholders, it is also very difficult for the Dutch MFA or parliament to influence a treaty outcome after the treaty negotiators of both countries have already come to an agreement. This is another reason to aim for more consultation during the process.[150] Similarly, the Dutch MFA should ensure that the Dutch MoF is fully informed of all CD activities, particularly in countries with which DTTs are being (re-)negotiated.

The Dutch government would find itself less conflicted if it provided more CD through multilateral channels rather than through bilateral channels. This prevents a situation in which the Dutch MoF is negotiating a DTT with a developing country that at the same time receives CD on DTT negotiations directly funded by the Dutch MFA. This also puts the developing country in a position where they are, on the one hand, grateful for the CD provided by the Dutch government (MFA), while on the other hand having to negotiate hard with this same

148 This competitiveness argument is particularly important when there is a risk that the structures considered as 'aggressive' by tax administrations and domestic law of the developing country are different from those considered by the Netherlands as aggressive.

149 According to an OECD representative, the Netherlands may be too small and has too little decision-making power to enforce other countries to do the same. However, according to an NGO, the Netherlands is definitely a country that start the process. Geographically the Netherlands is small, but in terms of FDI it is very large.

150 Similarly, it is very difficult to know for NGOs and CSOs whether there is already an agreement on a political level to influence the ratification process.

Dutch government (MoF) during DTT negotiations. This conflict is lessened when the Netherlands provides its CD through multilateral funds.

Continued training of tax officials in developing countries continues to be of utmost importance for countering tax avoidance via the Netherlands. The concept of "aggressive tax planning" is not clear-cut, and tax avoidance schemes can be highly complex, thus CD activities related to international taxation and tax treaty policy remain highly relevant. CD can also continue to serve both policy goals, particularly if it focuses on BEPS-related measures to reduce tax avoidance by non-Dutch companies (including Dutch conduit companies). CD activities to further strengthen domestic tax administrations also continue to be imperative, and could possibly generate even more domestic revenue according to some stakeholders. However, from the policy coherence perspective it is not obvious that NTCA should provide such CD directly given the potential conflict of interest (when Dutch taxpayers are affected) and capacity constraints at NTCA.

9 Limitations

Due to the COVID-19 pandemic, international travel was not possible, as a result of which the planned face-to-face interviews had to be replaced by phone or video interviews. A general limitation of phone interviews (which is also the term we use for video calls without video) is the lack of opportunity for nonverbal communication (such as facial expressions and body language) that often conveys valuable information. Moreover, interpersonal interactions normally make it easier to develop a "rapport" between the interviewer and the interviewee, helping the interviewer to retrieve information from the respondent. Other limitations of phone interviews are local distractions on the side of the interviewee, making the interviewee potentially less involved with the interview. Whenever good video connections were available (in about half of all interviews), most of these disadvantages were not present.

Notwithstanding the limitations associated with online interviews, SEO was able to complete proper interviews with the vast majority of targeted stakeholders. Scheduling (and completing) interviews with stakeholders located in the Netherlands and other OECD countries was never a problem. Some stakeholders in the three case study countries were often quite easy to reach through online methods (with or without video). However, other stakeholders located in Africa were difficult to reach or did not respond to our requests for an interview. By means of illustration, SEO did not manage, despite numerous attempts, to secure an interview with the Ugandan Ministry of Finance to discuss their views on OECD BEPS, the Ugandan tax treaty policy and the DTT with the Netherlands. Similarly, it was not possible to secure an interview with the key Kenyan official responsible for tax treaty negotiations. It is not clear whether this was a result of the interview being conducted through online methods, or whether it was the result of the topic's sensitivity, given ongoing tax treaty negotiations with the Netherlands in both countries. It is quite possible that these interviews would have been difficult to secure if the evaluation team had been able to travel. In both examples, the evaluation team did manage to conduct online interviews with multiple other stakeholders on the same topic (e.g. other government officials, NGOs, private sector representatives, IMF resident representatives and other local tax experts).

Another limitation is that the number of potential interviewees for CD-activities was usually scarce. In most other cases, the CD activity was limited and short-term (e.g. a 1-week training course) due to which only two groups of stakeholders had specific information about these CD-activities. These included (1) the provider(s) of the CD-activity (i.e. the IBFD or NTCA) and (2) the recipient (i.e. the local tax administrations and Ministries of Finance of the case study countries). In some cases, however, e.g. the case study on Transfer Pricing in Ghana, the CD activity was a longer-term programme that involved numerous stakeholders that could be interviewed (e.g. multiple providers, multiple recipients, Netherlands embassy, and other organisations providing support in the same area). In the latter case we were able to obtain a wider and richer view of the case study that combined different perspectives.

A final limitation is that SEO did not obtain permission to gain insights into the treaty negotiation mandates of the Netherlands. The treaty mandates provide the most valuable

information to assess how the needs and priorities of developing countries were considered during treaty negotiations. Given that access to these mandates was not provided, our analysis had to be limited to a comparison between the Dutch tax treaty policy note and the concluded DTT, combined with the views of selected treaty negotiators who were available for online interviews.

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Appendix A List of interviewees

Name	Role and organisation
Khalid Amezoug	Tax policy advisor at the Dutch Ministry of Finance
Anna Bardadin	Senior Program Manager at the International Bureau of Fiscal Documentation (IBFD)
Esmé Berkhout	Tax expert at Oxfam Novib
Frank van Brunschot	Technical assistance advisor at the IMF (formerly strategic advisor international affairs at the NTCA)
Ben Dickinson	Head of the Global Relations and Development Division in the OECD's Centre for Tax Policy and Administration
Maikel Evers	Associate partner at PwC and tax lawyer
Jan de Goede	Senior Principal, Tax Knowledge Management at the International Bureau of Fiscal Documentation (IBFD)
Geert Holterman	Policy advisor at the Sustainable Economic Development Department of the Ministry of Foreign Affairs
Alex Israel	Tax policy advisor at the NTCA, seconded to the Dutch Ministry of Finance
Reijer Janssen	Deputy Director International Tax and Consumer Tax at the Dutch Ministry of Finance
Kristy Jonas	Tax policy advisor at the Dutch Ministry of Finance
Bart Kosters	Senior Principal Research Associate in International Bureau of Fiscal Documentation's (IBFD) Tax Services Department
Nils Langemeier	Policy advisor at the Sustainable Economic Development Department of the Ministry of Foreign Affairs
Jan Loeprick	Senior Tax Economist at the IMF (formerly World Bank)
Arnold Merkies	Coordinator of the Dutch branch of the Tax Justice Network
Maarten van 't Riet	Economist and researcher at the Public Finance sector of CPB Netherlands Bureau for Economic Policy Analysis
Harry Roodbeen	Director International Tax and Consumer Tax at the Dutch Ministry of Finance
Marlies de Ruiter	Partner at EY and Global International Tax Policy Leader
Dirk-Jan Sinke	Head of Tax Policy at VNO-NCW and MKB-Nederland
Joseph Stead	Senior Policy Analyst tax and development in the OECD's Centre for Tax Policy and Administration
Irma Mosquera Valderamma	Associate Professor of Tax Law at Leiden University, the Netherlands and Lead Researcher of the European Research Council ERC Funded Project GLOBTAXGOV
Nestor Venegas	Senior Policy Analyst tax and development in the OECD's Centre for Tax Policy and Administration
Marijn Verhoeven	Lead Economist in the Equitable Growth, Finance and Institutions Practice Group and Head of the Global Tax Team at the World Bank
Edwin Visser	Partner at PwC and Tax policy leader for the EMEA region
Francis Weyzig	Tax programme leader at CPB Netherlands Bureau for Economic Policy Analysis and member of the BEPS monitoring group

Appendix B BEPS actions[151]

- **Action 1 Tax Challenges Arising from Digitalisation**
  Addressing the tax challenges raised by digitalisation is currently the top priority for the OECD/G20 Inclusive Framework, and has been a key area of focus of the BEPS Project since its inception. This work has delivered several important outputs covering both direct and indirect tax issues.
- **Action 2 Neutralising the effects of hybrid mismatch arrangements**
  BEPS Action 2 called for the development of model treaty provisions and recommendations regarding the design of domestic rules to neutralise the effects of hybrid instruments and entities. The work by OECD member states and Inclusive Framework member jurisdictions on BEPS Action 2 culminated in the 2015 OECD report on Neutralising the Effects of Hybrid Mismatch Arrangements.
- **Action 3 Controlled Foreign Company**
  The Action 3 recommendations outline approaches to attribute certain categories of income of foreign companies to the shareholder(s) in order to counter offshore structures that shift income from the shareholder jurisdiction. The work by OECD member states and Inclusive Framework member jurisdictions on BEPS Action 3 culminated in the 2015 OECD report Designing Effective Controlled Foreign Company Rules
- **Action 4 Limitation on Interest Deductions**
  The Action 4 recommendations aim to limit base erosion through the use of interest expense to achieve excessive interest deductions or to finance the production of exempt or deferred income. The work by the Inclusive Framework member jurisdictions on Action 4 resulted in the 2015 OECD report Limiting Base Erosion Involving Interest Deductions and Other Financial Payments.
- **Action 5 Harmful tax practices (Minimum Standard)**
  The Action 5 Report is one of the four BEPS minimum standards. Each of the four BEPS minimum standards is subject to peer review in order to ensure timely and accurate implementation and thus safeguard the level playing field. All members of the Inclusive Framework on BEPS commit to implementing the Action 5 minimum standard, and commit to participating in the peer review.
- **Action 6 Prevention of tax treaty abuse (Minimum Standard)**
  BEPS Action 6 addresses treaty shopping through new treaty provisions whose adoption forms part of a minimum standard that members of the BEPS Inclusive Framework have agreed to implement. It also includes specific rules and recommendations to address other forms of treaty abuse. Action 6 identifies tax policy considerations jurisdictions should address before deciding to enter into a tax agreement.
- **Action 7 Permanent establishment status**
  The work carried under BEPS Action 7 provides changes to the definition of permanent establishment in the OECD Model Tax Convention to address strategies used to avoid having a taxable presence in a jurisdiction under tax treaties.
- **Action 8-10 Transfer Pricing**

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BEPS Actions 8-10 address transfer pricing guidance to ensure that transfer pricing outcomes are better aligned with value creation of the MNE group. In this regard, Actions 8-10 clarify and strengthen the existing standards, including the guidance on the application of the arm's length principle and an approach for appropriate pricing of hard-to-value-intangibles within the arm's length principle.

- **Action 8 – Intangibles**
  Action 8 addresses transfer pricing issues relating to controlled transactions involving intangibles, since intangibles are by definition mobile and they are often hard-to-value. Misallocation of the profits generated by valuable intangibles has heavily contributed to Base Erosion and Profit Shifting.
- **Action 9 - Risks & Capital**
  Work under Action 9 considers the contractual allocation of risks, and the resulting allocation of profits to these risks, which may not correspond with the activities actually carried out. Moreover, Action 9 addresses the level of returns to funding provided by a capital-rich MNE group member, where those returns do not correspond to the level of activity undertaken by the funding company.
- **Action 10 - High-Risk Transactions**
  Action 10 focuses on other high-risk areas, including the scope for addressing profit allocations resulting from controlled transactions which are not commercially rational, the scope for targeting the use of transfer pricing methods in a way which results in diverting profits from the most economically important activities of the MNE group, and the use of certain type of payments between members of the MNE group (such as management fees and head office expenses) to erode the tax base in the absence of alignment with the value-creation.

- **Action 11 BEPS data analysis**
  The BEPS Action 11 report Measuring and Monitoring BEPS established methodologies to collect and analyse data on the economic and fiscal effects of tax avoidance behaviours and on the impact of measures proposed under the BEPS Project.
- **Action 12 Mandatory Disclosure Rules**
  BEPS Action 12 provides recommendations for the design of rules to require taxpayers and advisors to disclose aggressive tax planning arrangements. These recommendations seek a balance between the need for early information on aggressive tax planning schemes with a requirement that disclosure is appropriately targeted, enforceable and avoids placing undue compliance burden on taxpayers.
- **Action 13 Country-by-Country Reporting (Minimum Standard)**
  Under BEPS Action 13, all large multinational enterprises (MNEs) are required to prepare a country-by-country (CbC) report with aggregate data on the global allocation of income, profit, taxes paid and economic activity among tax jurisdictions in which it operates. This CbC report is shared with tax administrations in these jurisdictions, for use in high level transfer pricing and BEPS risk assessments.
- **Action 14 Mutual Agreement Procedure (Minimum Standard)**
  The BEPS Action 14 Minimum Standard seeks to improve the resolution of tax-related disputes between jurisdictions. Inclusive Framework jurisdictions have committed to have their compliance with the minimum standard reviewed and monitored by its peers through a robust peer review process that seeks to increase efficiencies and improve the timeliness of the resolution of double taxation disputes.

- **Action 15 Multilateral Instrument**
  The Multilateral Instrument offers concrete solutions for governments to close loopholes in international tax treaties by transposing results from the BEPS Project into double taxation treaties worldwide. The MLI allows governments to implement agreed minimum standards to counter treaty abuse and to improve dispute resolution mechanisms while providing flexibility to accommodate specific tax treaty policies.

Appendix C Implementation BEPS and Global Forum standards

Table C.1 Implementation of standards of the Global Forum and OESO BEPS is more limited in non-partner developing countries that have a DTT with the Netherlands (compared with the Netherlands).

	ZMB	PAK	MAR	GEO	UKR	IDN	IND	LKA	VNM	MNG
DTT with the Netherlands	**Yes**	**Yes**	**Yes**	**Yes**	**Yes**	**Yes**	**Yes**	**Yes**	**Yes**	**No***
Exchange of information										
Member of Global Forum		Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes
EOIR rating round 1 *Compliant/largely compliant/partially compliant not reviewed*		LC	LC	LC	NR	PC	C	-	NR	NR
EOIR rating round 2 *Compliant/largely compliant/not reviewed*		NR	NR	NR	NR**	LC	LC	-	NR	NR
Mutual Administrative Assistance Convention *In force/signed/not signed*		F	F	F	F	F	F	NS	NS	F
Commitment to AEOI *Year/Not committed to a specific date*		2018	NC	NC	NC	2018	2017	NC	2018	-
CRS MCAA signed *Yes/Not applicable*		Yes	Yes	NA	NA	Yes	Yes	NA	NA	-
Mutual Administrative Assistance Convention *In force/signed/not signed*		F	F	F	F	F	F	NS	NS	F
BEPS										
Inclusive Framework member	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Existence of harmful tax system (action 5) *Harmful/under review/not harmful*	NH	UR	-	NH	NH	NH	NH	NH	NH	NH
Exchange of information on tax rulings (Action 5) *Reviewed and recommendations made/ no recommendations made*	NR	NR	NR	NR	NR	NR	R	R	R	NR
Preventing treaty abuse (Action 6) *Review in 2018 or 2019, no recommendations and 2020 review ongoing / 2020 review ongoing*	RNR	RNR	RNR	RNR	RNR	RNR	RNR	RNR	RNR	RNR
CbC – Domestic law (Action 13) *Legal Framework in place / Update on status pending*	U	LF	U	U	U	LF	LF	LF	LF	U

Source: SEO Amsterdam Economics based on: https://www.oecd.org/tax/beps/beps-actions/action6/ Data on the other non-partner developing countries that have a DTT with the Netherlands are not available, because those countries have not joined the Inclusive Framework.
* Negotiations are pending. ** Originally scheduled for 2019

Table C.1 – Continued

	ZMB	PAK	MAR	GEO	UKR	IDN	IND	LKA	VNM	MNG
CbC – Information exchange network (Action 13) *Activated/Not signed/Not activated*	NS	A	NA	NA	NS	A	A	NS	NS	NS
Effective dispute resolution (Action 14) *Stage 1/2 reviewed & recommendations made / Not reviewed*	NR	NR	NR	NR	NR	1rec	1rec	NR	NR	NR
Multilateral Instrument (Action 15) *In force/Signed/Not signed*	-	S	S	S	F	S	F	-	-	-

Source: SEO Amsterdam Economics based on: https://www.oecd.org/tax/beps/beps-actions/action6/ Data on the other non-partner developing countries that have a DTT with the Netherlands are not available, because those countries have not joined the Inclusive Framework.Bilateral activities case study countries