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THE RIGHT INCENTIVES?

The risks of undue influence in tax policy

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The Right Incentives? The Risks of Undue Influence in Tax Policy

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LIST OF ABBREVIATIONS

CARF	Brazilian Federal Administrative Tax Court
CBI	Confederation of British Industry
CFC	Controlled Foreign Company
EPZ	Export Processing Zone
FDI	Foreign Direct Investment
HMRC	Her Majesty’s Revenue and Customs
HMT	Her Majesty’s Treasury
IMF	International Monetary Fund
ILO	International Labour Organization
MNCs	Multinational Corporations
MP	Provisional Presidential Decree
OECD	Organisation for Economic Co-operation and Development
SDGs	Sustainable Development Goals
SEZ	Special Economic Zone
UN	United Nations
UK	United Kingdom
VAT	Value-Added Tax

EXECUTIVE SUMMARY

Companies operating in developing countries receive over US$2 billion in tax incentives every week.[1] Governments all over the world promote tax incentives as a tool to attract domestic or foreign investments, asserting a trickle-down effect for the public good and the country overall.[2] However, taking a closer look at their effectiveness, there has been no irrefutable proof or data to determine whether this has worked.[3] In many surveys, investors even consider tax incentives to be among the least important factors affecting decisions to invest.[4] So why do governments still widely grant tax incentives in favour of specific companies, industries or sectors?

With this report, Transparency International illustrates the risk of corruption driven by powerful interest groups in the process of designing and granting tax incentives. Interest group influence is not necessarily a corrupt or illegitimate activity.[5] However, if opaque and disproportionate,[6] it can lead to decisions that favour a particular group at the expense of the public interest.[7] In this case, it is considered as undue influence, which is a more subtle form of corruption,[8] but one which, if undertaken in a systematic manner, can lead to regulatory capture.[9] Regulatory capture or state capture "is one of the most pervasive forms of corruption, where companies, institutions or powerful individuals use corruption such as the buying of laws, amendments, decrees or sentences" or contributions to political parties and candidates in order to "influence and shape a country's policy, legal environment and economy to their interests".[10]

The lack of transparency in the process of designing and granting incentives,[11] the scope of opaque executive discretion[12] and the challenges in assessing the actual benefits brought by tax incentives[13] make them particularly prone to different forms of undue influence.[14]

This report presents three case studies: the automotive industry in Brazil, the textile industry in Madagascar and the Controlled Foreign Company law in the UK. These cases demonstrate how tax incentives may have been granted as a result of undue influence by powerful interest groups and not as the result of a proper assessment of the need for such incentives and of the social-economic benefits they would bring. Open avenues, like a lack of transparency and legal frameworks for party financing, lobbying (especially though professional service providers) and conflict of interests (for example, through the revolving door), can lead to an opaque and harmful tax system. Tax incentives decided and designed under undue influence from narrow interests will very likely not have the proclaimed positive effects. They can lead to lost revenue and impact public financing for critical investments in advancing the Sustainable Development Goals in a respective country.

To curb the risk of corruption around tax incentives, governments should establish policies to:

Strengthen the transparency and accountability of tax incentive regimes

- Build international cooperation on establishing a global minimum corporate tax rate to stem the "race to the bottom" as countries compete to attract foreign direct investment (FDI).
- Develop and govern tax incentive regimes using technical, legal and political processes that are transparent, clear and credible, to deter undue influence.
- Monitor and evaluate tax incentives regularly to assess their effectiveness in achieving their intended social and economic development goals.

- Establish or strengthen freedom of information laws that cover firms using tax incentives, making financial information available for public scrutiny.

Limit the space for different forms of undue influence

- Introduce and strengthen safeguards to ensure that donations to political parties, candidates and other third-party contestants do not result in undue policy influence.
- Implement and strengthen open, public registers of interactions between lobbyists and public officials.
- Create a “legislative footprint” for every regulatory proposal.
- Establish strong codes of conduct, conflict of interest procedures, gifts and hospitality registration, and interest and asset disclosure for both lobbyists and public officials meeting with lobbyists.
- Establish compulsory recusal for officials with interests or prior engagement with potential beneficiaries of tax incentives in their design, assessment or decision-making.
- Define incompatibilities whereby a former public office holder is prohibited from being associated in any manner with the private sector in relation to their area of work and expertise within the government for a reasonable “cooling” period following their tenure.
- Ensure that no professional service provider can provide both tax consultancy to governments and audit services to companies.

INTRODUCTION

This report analyses how powerful interest groups attempt to influence government decisions on tax incentives[15] unduly in their favour and how these incentives impact countries' revenue, their people and the planet. The first section of the report explains why tax incentives became such a widely used policy tool in the first place. It provides an overview of how there is a risk in terms of undue influence and which tools most likely get used to influence the process of designing and granting tax incentives, hijacking the political integrity systems of governments. It concludes with an overview of potential costs that can occur if governments create tax incentives primarily to serve the narrow interests of those who exert undue influence.

In the second part of the report, concrete cases in three countries demonstrate how powerful interest groups have allegedly and reportedly used specific forms of undue influence.

In the first case study, Transparency International Brazil analyses how the government of Brazil granted tax incentives to the automotive industry in record time.[16] It shows potential links between opaque lobbying by professional service providers and alleged illegal campaign donations based on ongoing legal investigations.[17] The case highlights the need for careful consideration of the risks related to the use of extraordinary executive orders providing tax incentives without ensuring proper scrutiny and debate.

In the second case study, Transparency International Madagascar takes a closer look at Export Processing Zones (EPZs) in Madagascar.[18] Based on anonymous interviews with public officials and representatives from Malagasy EPZ companies, they report speculation among many EPZ companies about dubious subsidy payments, intransparent campaign donations and seemingly contradictory statements of public officials around a new law for a Special Economic Zone.

In the third case study, TaxWatch UK looks at the role of professional service providers[19] and potential conflicts of interest in the case of the UK's Controlled Foreign Company rules.[20]

The report concludes with recommendations for strengthening the transparency and accountability of tax incentive regimes, restricting the opportunities for undue influence and ensuring political integrity in the decision-making process.

BACKGROUND ON TAX INCENTIVES

Since the mid-1980s, tax incentives have become widespread as a fiscal policy tool throughout the world.[21] Almost all countries use them in one form or another.[22] This report defines tax incentives as "policy measures that allow deductions, exclusions and exemptions that reduce the tax liability of select economic entities", like firms, corporations and enterprises.[23] Some of the most common tax incentives include tax holidays, special zones offering certain exemptions, investment tax credits, investment allowances, accelerated depreciation, reduced tax rates, tax exemptions and financing incentives.[24]

Historically, international financial institutions like the International Monetary Fund (IMF) and the World Bank persuaded developing countries to offer generous tax incentives.[25] Those countries needed to approach international financial institutions for assistance during the fiscal deficits in the 1980s and 1990s.[26] The IMF's Structural Adjustment Programmes – part of the institution's loan conditionality – involved creating "favourable" business environments in countries with less developed markets.[27]

Today, policymakers in all countries endorse tax incentives as inducements to attract investment and capital flows into preferred sectors, industries or geographical locations.[28] They are used to promote certain activities around sustainable development, such as research and development, investment in infrastructure or job creation, and export promotion.[29] While national tax incentive regimes seem to be the result of independent and sovereign tax policy decisions, governments most often use this fiscal policy tool to compete for investment.[30] Countries with less-developed markets need to maintain a competitive tax system in an endeavour to attract foreign investment, leading to regional tax competition among states.[31] Likewise, countries with highly developed market economies very often offer tax incentives to promote exports and provide their resident multinational corporations (MNCs) with a competitive advantage in the global market.[32]

Despite the widespread use of tax incentives as part of a country's tax system, empirical evidence for their benefits in attracting investments is scarce and inconclusive.[33] It is difficult to determine whether an investment was made purely as the result of tax incentives or whether it would have been made without the incentives in place.[34] Governments often adopt tax incentives in a package of investment reforms.[35] Therefore they cannot claim for sure that any new investment that they manage to attract is attributable to tax incentives.[36] Investors consider tax incentives to be among the least important factors affecting decisions to invest.[37] Surveys have ranked factors such as market characteristics, relative production costs, resource availability, labour-force skills, infrastructure, and socio-political and economic stability higher on the list of determinants of investments and capital inflows.[38] Investors also rank transparency in tax disclosure, as well as simplicity, stability and certainty in tax law application and administration, ahead of tax incentives.[39]

TAX INCENTIVES AND THE RISK OF UNDUE INFLUENCE

One of the reasons why tax incentives continue to flourish is that authorities can justify tax incentives as a more manageable option to attract investment[40] than consistently investing public revenue in correcting deficiencies such as inadequate infrastructure or lack of skilled labour.[41] Tax revenue is generally low in countries with less developed markets, and instead of introducing new spending items, governments find it more convenient to offer and grant tax incentives.[42] Incentives do not involve any direct expenditure of funds or cash subsidies to investors and are therefore politically easy to provide.[43]

Today, international financial institutions still promote tax incentives, but suggest considering their effective and efficient use carefully.[44] Governments should ground tax incentives in a national strategic development plan that underscores the links between lost revenue and social gains resulting from such incentives.[45] They should generate new jobs, broaden the country's tax base as a result of more economic activity,[46] and reflect the impact on the environment[47] and sustainable development.[48] The process of offering and granting tax incentives must therefore be transparent, accountable and marked by political integrity.[49]

However, a significant number of countries do not monitor, collect or report data on the incentives they offer and the subsequent revenue foregone.[50] Involvement from "veto players" like legislative bodies is also limited in most countries.[51] According to a survey of 136 countries, roughly a quarter had provisions for "discretionary procedures" to provide tax incentives.[52] Discretionary incentives are negotiated between a company and the government and often kept confidential.[53] They are usually offered to big investors and MNCs, skewing the playing field for smaller businesses and other investors.[54] Given the large sums involved and limited transparency in the decision-making process, discretionary incentives hold significant appeal for corrupt politicians and businesses.[55] Without strategic and transparent processes in place, tax incentives are prone to corruption, leaving a country's citizens to bear their costs.[56]

Many studies have shown that powerful interest groups have significant sway over tax policy decisions.[57] Interest group influence is not necessarily a corrupt or illegitimate activity.[58] However, if opaque and disproportionate,[59] it can lead to decisions that favour a particular group at the expense of the public interest.[60] In this case, it is considered as undue influence, which is a more subtle form of corruption[61] – one which, if undertaken in a systematic manner, can lead to regulatory capture.[62] If the regulatory outcome advances a vested interest that exerted undue influence, it is considered a form of state capture.[63]

When tax incentives are undermined by corruption in the form of undue influence, they can be considered another form of illicit financial flow.[64] Illicit financial flows are capital flows that are illegal in the way they are created, transferred or utilised.[65] Broader definitions see them as all flows that have a "negative impact on an economy if all direct and indirect effects in the context of the specific political economy of the society are taken into account".[66]

HOW TAX INCENTIVES CAN BECOME CAPTURED

Regulatory capture or state capture “is one of the most pervasive forms of corruption, where companies, institutions or powerful individuals use corruption such as the buying of laws, amendments, decrees or sentences, as well as illegal contributions to political parties and candidates, to influence and shape a country’s policy, legal environment and economy to their interests”.[67]

The lack of transparency in the process of designing and granting incentives,[68] the scope of opaque executive discretion[69] and the limited assessment of the actual benefits brought by tax incentives[70] make them particularly prone to different forms of undue influence[71] that may lead to regulatory capture. [72] Actors use a wide range of ways to unduly influence government decisions to establish a tax incentive and define its terms and conditions. These include:

CAMPAIGN AND PARTY FINANCING

Financial donations to political parties and candidates have long been a simple yet effective way of getting desired outcomes from elected officials.[73] Companies or individuals may make legal or illegal donations to candidates and political parties with an agreement or expectation that if elected, these politicians will approve laws or incentives that benefit those donating.[74] As it is extremely difficult to prove that a donation led to preferential treatment or influenced public decision making (*quid pro quo*), it is often very difficult to prove that corruption took place.[75]

In an attempt to reduce and limit the risks of undue corporate influence, a third of the world’s countries have outlawed corporate donations to political parties.[76] Even though most states have laws specifying the scope of individual and corporate contributions to political parties and specific candidates, poorly designed laws containing loopholes, as well as weak monitoring and enforcement, make it possible to sidestep these conditions substantially or even completely.[77] Transparency could help to expose donations from vested interests, but nearly half the world’s countries do not adequately enforce any meaningful degree of transparency in campaign and party financing.[78] By 2018, disclosure through websites with searchable, machine-readable databases was possible in only about 15 countries.[79]

The first case study in this report, on Brazil, profiles an ongoing legal case to show how undue influence through alleged political donations and bribe payments may have supported and accelerated the approval of tax incentives to the automotive industry.[80]

CORPORATE LOBBYING

A crucial way in which corporations exercise influence over tax policy and may obtain their desired tax incentives is through corporate lobbying.[81] Lobbying is “any direct or indirect communication with public officials, political decision-makers or representatives for the purposes of influencing public decision-making, and carried out by or on behalf of a client or any organised group".[82] Although lobbying opens up opportunities to improve the quality of legislation, it also entails risks, as it exposes decision-makers to opportunities to seek private gain, particularly if it happens in an opaque manner.[83] Politicians and bureaucrats may gain financially, increase their influence, or receive confidential information regarding employment, wages or services in their political constituencies.[84] Despite the widespread occurrence of lobbying, only 22 countries had adopted a legal framework to regulate lobbying by 2016, of which just 16 had functioning public registers.[85]

Without public records of the contacts between officials and corporations that lead to tax exemptions, finding evidence of undue influence and demanding accountability becomes close to impossible. This was the case in the Madagascar study in this report, which can offer only anecdotal evidence from corporate and public officials, who asked to remain anonymous.

REVOLVING DOOR

A fundamental way in which private money exerts influence on governments is through the existence of a revolving door between public office and private companies.[86] Individuals move back and forth between serving governments and private entities to exploit their period of service to benefit those private entities.[87] The revolving door moves either from the government to the private sector or the other way around, resulting in a conflict of interests.[88] On the one hand, the use of government experience and connections can unfairly benefit the private employer, while on the other, a pro-business bias can occur in policymaking and regulatory enforcement.[89]

Both directions can result in increased opportunities for business to enjoy more generous tax incentives. For example, the third case study in this report, on Controlled Foreign Company (CFC) rules in the UK, reveals a potential conflict of interest through the revolving door. Vodafone's Head of Tax was an ex-colleague of the Head of Tax at Her Majesty's Revenue and Customs (HMRC), with whom he had co-authored a departmental review of HMRC's relationship with businesses.[90]

PROFESSIONAL SERVICE PROVIDERS

The role of professional service providers, especially accountancy firms such as the Big Four – Deloitte, EY, KPMG and PwC – could also generate significant conflicts of interest.[91] As part of their job, these firms often advise MNCs and other private clients on investment strategies and tax planning, helping them to structure their businesses in a way that reduces their tax burden, including by taking advantage of tax incentives.[92] However, at the same time, these same firms frequently advise governments on national tax reform, like the design and granting of tax incentives, which may present a significant conflict of interest.[93] Large accounting firms can often operate with complete impunity, with organisations like the Big Four blurring boundaries between public and private interests.[94] Yet national governments, as well as multilateral bodies, continue to see them as neutral and legitimate partners in designing and reforming tax policy.[95]

Professional service providers are accused to play a significant role in both the Brazil[96] and the UK case study.[97] Their potential high involvement in such prominent cases emphasises the immense power these companies may have all over the world when it comes to influencing tax policy decisions.

COSTS OF CAPTURED TAX INCENTIVES

When powerful interests unduly shape tax policy decisions and capture tax incentives according to their particular interests, those incentives will likely be ineffective in generating their intended benefits.[98] The costs potentially caused by captured incentives include:

- **Revenue costs:** Companies operating in developing countries receive over US$2 billion in tax incentives every week.[99] Tax incentives designed as a result of undue influence can massively contribute to this loss in revenue – for example, by offering reduced taxes to investors who would have undertaken projects without such incentives.[100] In this case, the objective of providing the tax incentives is lost.[101] The incentives then benefit investors, without any gain for the host country.[102]
- **Costs for sustainable development:** Loss in revenue resulting from tax incentives leads to an erosion of the tax base and adverse impacts to public financing for efficient delivery of quality public services and investment in infrastructure.[103] Especially concerning are the effects on the Sustainable Development Goals (SDGs).[104] The financing gaps for the SDGs stand between US$5 and 7 trillion.[105] The UN General Assembly stresses the need for each country to strengthen its domestic resources.[106] The corrosive impacts of captured tax incentives on national revenue will likely harm economic and social development.[107]
- **Reputational costs:** When governments come under pressure from special interest groups, they will likely have to face reputational damage.[108] This perception of corrupt officials and processes weakens investors' faith in the credibility and stability of a government's investment policy.[109] Perceptions of corruption have the complete opposite effect to attracting investment, leading to an ultimate reduction in investment in the country.[110]
- **Human Rights costs:** Tax incentives decided due to the undue influence of powerful interest groups undermine democracy and human rights, by allowing external pressures to influence public spending on the fulfilment of these rights.[111] Tax incentives are often offered together with further incentives, resulting in relaxed labour standards, encroaching on land rights and gender-based discrimination.[112] When tax incentives are designed and given under pressure from powerful interest groups, via opaque and secretive processes, this also runs counter to the right to information.[113]
- **Environmental costs:** Tax incentives are already known to create intense downward pressures on environmental protection standards.[114] Undue influence can lead to tax incentives being granted to sectors that are not environmentally friendly and are harming the environment and sustainable development. For example, instead of promoting renewable energy, some governments continue to give tax breaks or other incentives to fossil fuel companies.[115] At the same time, a study shows that the world's five biggest publicly traded oil and gas companies, along with their Brussels-based fossil fuel lobby groups, collectively spent €251.3 million (US$304 million) on lobbying in the EU between 2010 and 2019.[116]

WHO'S IN THE DRIVING SEAT?

UNDUE INFLUENCE BY THE AUTOMOTIVE INDUSTRY IN BRAZIL

In this case study TI Brazil analyses how the government of Brazil granted tax incentives to the automotive industry in record time.[117] Based on ongoing legal cases, it shows potential links between opaque lobbying by professional service providers and alleged illegal campaign donations.[118]

BACKGROUND

In 2015, a massive investigation called Operation Zealots started in Brazil, looking into the involvement of large private companies with members of the Brazilian Board of Tax Appeals (CARF in a corruption scheme).[119] The investigations revealed that companies in the automotive and construction sectors, together with banks, allegedly bribed board members to reduce tax liabilities and fines.[120] Amid the many revelations, investigators discovered evidence that the publishing and processing of Provisional Presidential Decree (MP) No.471/09[121] may have been impacted by corruption in the form of undue influence.[122] So far, investigators have filed two criminal cases on this issue.[123] One relates to the influence of automotive companies and lobbyists from consulting firms on the federal government's decision to issue the Presidential Decree.[124] Another concerns their actions to ensure its approval in Congress.[125]

MP No.471/09 led to the continuation of tax incentives[126] for automotive assembly and manufacturing companies operating in the North, Northeast and Midwest regions of Brazil.[127] The Brazilian government created these incentives in 2000,[128] and the decree allowed them to continue from January 2011 to December 2015.[129] In Brazil, a provisional presidential decree may be enacted in exceptional situations that, due to their "relevance and urgency", indicate the need for immediate action by the executive branch.[130] The government at that time saw a need to develop the national industry, promoting Brazil's competitive position in the foreign market, as well as guaranteeing legal security and predictability of investments in the automotive sector, which is considered a strategic industry for the country.[131] However, the lack of data undermines a more detailed analysis of the actual need for an extension of tax incentives for economic reasons.[132]

The government justified the decree with two main arguments: the increase in formal jobs linked to the industry and the intention to improve automotive sector performance in the respective regions.[133] The explanatory memorandum, articulating what a decree is attempting to achieve, gave a few estimates on economic needs.[134] According to the memorandum, despite their positive development, such regions still accounted for only a small share of Brazil's GDP, justifying the extension of tax incentives to stimulate their economies.[135]

Due to the unavailability of data regarding the actual consequences of the decree for the automotive industry, the relevance of extending the tax incentive cannot be determined. However, the existence of significant tax benefits granted to the sector since 2000[136] raises questions over the decree's adequacy under the urgency requirement. A ten-year-long incentive is hard to justify as an urgent matter. The government knew that the tax incentive was coming to an end, so they could have proposed the extension on time, following the regular legislative process. Publishing a provisional presidential decree instead of starting a regular bill process is a shortcut to accelerate the approval of tax benefits and to curb more in-depth debates. If proposed in the form of a bill with regular processing, legislators could have more adequately scrutinised the incentives before their enactment. Despite the questionable urgency justification, the House of Representatives and Federal Senate approved the decree without much discussion or controversy and without any changes to the original text.[137] This lack of debate suggests that there was some alignment between the legislative and executive branches, which may or may not be specifically related to undue influence.

HOW TAX INCENTIVES CAN BECOME CAPTURED

The scheme to influence the approval process of MP No.471/09 involved automotive companies, politicians, lobbyists and civil servants. In the executive branch, allegedly, three actors were prominent: President Luiz Inacio Lula da Silva,[138] his then-Chief of Staff, Gilberto Carvalho,[139] and a special advisor[140] at the Ministry of Internal Affairs.[141] In Congress, investigations pointed to the participation of the Federal Senate's former Communications Director.[142] In the private sector, two main agents first contacted the intermediary actors: the CEO of MMC,[143] a subsidiary of Mitsubishi in Brazil, and the CEO of CAOA, a subsidiary of Hyundai.[144] The intermediary actors were mainly the consulting and lobbying firms Marcondes & Mautoni and SGR.[145] Investigations pointed to seven individuals who acted on their behalf, including two well-known lobbyists and a former member of CARF.[146] The court documents show that a diverse range of agents and interest groups was operating for the approval of MP No.471/09.[147]

In June 2009, executives from the two automotive companies CAOA and MMC contracted the consulting and lobbying firms for alleged "consulting services" aimed at the intended tax incentives.[148] According to the Prosecutor's Office, such services included the enactment of the decree and granting that CARF would nullify MMC's tax fine, estimated at R$265 million (US$45.85 million).[149] Later on, CAOA stepped down from the contract and only participated in the first stages of the scheme.[150] The adjusted payment for the firms' services and the amount paid in bribes was approximately R$50 million (US$8.65 million).[151]

To ensure that the government would publish the decree in the companies' interests, lobbyists from consulting firms Marcondes & Mautoni and SGR allegedly contacted the President and his chief of staff on 24 June 2009.[152] It appears that after successive contacts and an apparent negotiation of bribes, they agreed that the amount of R$6 million (US$1.04 million) in illegal financing would be paid for the 2010 electoral campaign of the Workers' Party – at that time, the ruling party.[153]

The processing of MP No.471/09 began on 19 November 2009,[154] as the Ministry of Economy sent to the President the explanatory memorandum justifying the need to implement measures aligned to the country's policies on productive development.[155] Responsibility for writing the text fell to the Ministry of Economy, supervised by Carvalho and President da Silva.[156] According to investigations, the text was forwarded to the consulting firms before its enactment, demonstrating that public and private agents were apparently aligned.[157] The President published the decree and sent it to Congress on 23 November 2009, fulfilling the companies' interests.[158] To ensure the expected outcomes of the legislative procedure, firms reportedly paid the Senate Communications Director[159] to monitor and report on the decree's progress.[160]

Provisional presidential decrees often imply lower levels of accountability and external control, as they produce immediate effects. However, there is always the possibility that presidential decrees are amended or rejected in Congress.[161]

The House of Representatives approved the decree on 16 December 2009, in a single voting session.[162] Of the 40 amendments proposed, 24 were closely related to the subject matter of the decree.[163] The remaining 16 attempted to broaden the decree's scope by encompassing other regions or industries.[164] Such amendments typically allow representatives and senators to change the content or scope of a provisional presidential decree, giving the legislative a say in the final version of the text.[165] In this case, the amendments generally aimed at increasing annual investments in research, development and technological innovation, and at expanding tax incentives granted to companies located in the South Region to sugar and alcohol producers located in the Northeast region.[166] Some even proposed an expansion of incentives to cover all companies that fit the provisions of other legislation on tax incentives for regional development.[167]

All amendments were rejected in a final report, stating that they did not relate to MP No.471/09, based on Article 62 of the Constitution.[168] It is essential to note that the reports prepared by legislators to approve the decree do not bring up any additional arguments or details regarding the need for these tax incentives, having limited the grounds for approval to a mere reiteration of the government's explanatory memorandum.[169] They therefore justified the urgency and relevance criteria by claiming the need to provide predictability for investments in the sector and encourage industrial development in the region.[170]

Without any amendments, the text approved by the House was sent to the Federal Senate on 17 December 2009 and approved on 24 March 2010.[171] On 30 March 2010, MP No.470/2009 was passed into Law No.12,218/10.[172] The law was published in the Official Gazette on 31 March 2010.[173]

COSTS OF CAPTURED TAX INCENTIVES

As the evidence shows, the decree represented a good deal for companies and a significant loss for taxpayers. The alleged R$6 million (US$1.04 million) paid in bribes as illegal campaign financing[174], and the R$78,000 (US$14,000) paid to the Communications Director represent about 0.7 per cent of the estimated R$880 million (US$152.27 million) not collected due to the benefits.[175] To prevent similar schemes in the future, it is therefore essential to ensure that corruption no longer represents a good investment for interest groups, enabling a more responsible, transparent and ethical tax system.

The automotive sector currently represents 22 per cent of the country's industrial GDP and approximately 5 per cent of its total GDP.[176] In 2016, Brazil was considered the world's 10th largest vehicle producer.[177] From the 2000s onwards, the sector experienced considerable growth in Brazil, mainly attributed to the expansion of its consumer market, the success of income distribution policies and improvements in access to credit.[178]

The explanatory memorandum of MP No. 471/09 estimated the resulting tax waiver as worth R$1.31 billion (US$230 million) for 2011, R$1.33 billion (US$230 million) for 2012 and R$1.34 billion (US$230 million) for 2013.[179] There are no estimates for the following years.[180] There is also no available data concerning the specific impact of such incentives. According to the Public Prosecutor's Office, the corruption scheme resulted in R$880 million (US$158 million) in tax incentives for MMC, which led to a judicial demand for restitution.[181] As stated by one of the prosecutors,[182] "They [MMC] have financed this criminal organisation over time. It was [paid] R$51 million [US$9 million] in that period. This endeavour was extremely lucrative. […] The Federal Prosecutor's Office points out that the tax waiver resulted in R$880 million [US$158 million] just concerning MMC, and this is the amount that we are asking for in reparations."[183]

In more general terms, tax incentives for the automotive sector have been quite bulky. According to Statements on Tax Expenses published by the Federal Revenue Service, tax waivers for this sector between 2000 and 2010 were estimated at over R$5.3 trillion (US$920 billion), of which R$3.1 trillion (US$540 billion) stemmed from assemblers and manufacturers in the North, Northeast and Midwest regions.[184] The Federal Court of Accounts points out that tax incentives in general totalled R$308.4 billion (US$53.36 billion) in 2019.[185] If financial and credit incentives are also considered, total incentives have increased significantly since 2003, which caused growing costs on the federal government's revenue.[186] In 2015, tax incentives equated in value to 6.7 per cent of the country's GDP.[187]

This data shows that the revenue costs of tax benefits can be considerable, whereas their actual economic advantages remain questionable. It is also essential to consider the impact of these incentives on possible investments in other forms of transport, considering that any tax relief offered to automotive companies represents a policy decision in favour of this sector. Recent data shows that the number of cars in Brazil rose 77 per cent from 2008 to 2018.[188] In cities, cars account for up to 30 per cent of transport, whilst alternatives such as rail and water transport remain underdeveloped.[189] Tax incentives and direct investments aimed at other forms of transportation would foster diversification, reducing the negative impacts of cars. The environmental effects of promoting motor vehicles to the detriment of different means may raise carbon dioxide emissions, boost the consumption of fossil fuels and aggravate the ongoing climate crisis.[190] With corruption able to generate adverse environmental effects, this shows the need for a sustainable tax system that takes into consideration the costs of each economic sector for sustainable development.

METHODOLOGY

This case study was developed by Transparency International Brazil. It is mainly based on the analysis of available official documents regarding Provisional Presidential Decree (MP) No. 471/2009. An external consulting team analysed the enactment and processing of the decree, based on studies and legal documents that backed the measure. Their assessment focused on the constitutional and legislative aspects of the procedure, as well as on the rationale behind the decree in terms of public finance and tax law.

Transparency International Brazil's team then analysed available documents related to ongoing criminal procedures and press articles on the corruption scandal. At this stage, the main task was to understand how the scheme was made possible, identifying the money flows, the role performed by each agent – automotive executives, government officials and lobbyists – and the benefits at stake.

Finally, available data on the impact of tax benefits was analysed and compared with the estimated outcomes in employment rates and sectoral economic performance, emphasising the costs of such waivers on the country's revenue.

WHO'S LOSING THEIR SHIRT?

UNDUE INFLUENCE BY THE TEXTILE INDUSTRY IN MADAGASCAR

This case study takes a closer look at Export Processing Zones (EPZs) in Madagascar.[191] Due to opacity,[192] under-regulation of political financing,[193] and the lack of a freedom of information law,[194] Transparency International Madagascar relied on interviews with public officials and representatives from Malagasy EPZ companies, who wished to remain anonymous. They report speculation among many EPZ companies about potential dubious subsidy payments, intransparent campaign donations and seemingly contradictory statements of public officials around a new law for a Special Economic Zone.

BACKGROUND

Export Processing Zone (EPZ) licences create areas within countries that offer generous tax and other incentives to businesses dedicated to exports.[195] A company with an EPZ licence can be located anywhere in Madagascar, not just in dedicated zones.[196] The zones are designed to attract foreign investment and promote economic growth.[197] In 1989, Madagascar created its first EPZ law,[198] inspired by rapid industrialisation in Mauritius, spearheaded by growth in the textile sector and facilitated by an EPZ system adopted in 1970.[199] The Malagasy government reviewed the law in 2007 to preserve competitiveness.[200]

The main tax incentives of the current Malagasy EPZ law include a 10 per cent corporate tax rate (0 per cent up to the first five years of operation)[201] and no VAT or customs duties on imports of raw materials.[202] The regular corporate tax rate in Madagascar is currently 20 per cent.[203] Today, more than 225 companies benefit from this incentive regime, 46 per cent of which are in the textile sector.[204] Other sectors that benefit include food and information technology.[205]

However, a 2020 World Bank publication jointly commissioned by the Madagascar and Mauritius governments on the competitiveness of the Malagasy EPZ systems concludes that it relies too heavily on tax incentives to attract investment.[206] This conclusion is partly based on a 2018 survey of foreign businesses investing in Madagascar showing that access to inputs and land are far more critical as criteria for foreign investment decisions than tax incentives.[207]

In 2018, the Malagasy Finance Ministry's Tax Policy Assessment Unit had lamented in a report that the country's tax incentives are never subject to cost-benefit analyses.[208] The report mentions that such incentives may "create 'opportunities' for corruption", especially as tax authorities receive "countless requests for exemptions" and tax incentives are continuously "lobbied for to the authorities and parliamentarians".[209] In a similar tone, the World Bank explained in a 2015 report that successive governments granted tax incentives on a "case-by-case basis, rather than based on a systematic application of a set of well-defined and transparent criteria.[210] This practice can be open to abuse and be used as a mechanism to grant favourable status to those who are well-connected".[211]

HOW TAX INCENTIVES CAN BECOME CAPTURED

Due to a lack of freedom of information legislation,[212] the under-regulation of political financing[213] and inadequate provision of transparency,[214] collecting evidence on potential corruption around tax incentives in Madagascar is tricky. This case study therefore mainly relies on anonymous interviews with public officials and representatives from Malagasy EPZ companies.

The interviewees reveal that the EPZ system has been widely abused since its creation in 1989, allowing businesses with malicious intent to take advantage of the generous tax benefits of the regime without complying with its rules.[215] Malagasy EPZ executives further claimed that the Ministry of Industry and the Ministry of Finance are aware of the bad practices of some EPZ companies – for example, the local selling of imported tax-exempted inputs that are only allowed to be used as inputs for production by the importing company, as well as the bribing of public officials to evade customs and tax controls.[216] Yet EPZ companies suspected of abuse are allegedly not subject to regular tax audits.[217] The executives believe that the authorities tend to push away responsibility for controls to one another, and companies guilty of bad practices end up escaping sanctions.[218] In an interview with TI Madagascar the Economic Development Board of Madagascar (EDBM) stated that only half of the 255 currently active EPZ companies submit their legally required half-yearly activity reports on time.[219]

In 2018, the Malagasy government restructured the EPZ regime, identifying a list of businesses whose licences ought to be withdrawn due to non-compliance with legal obligations, like the failure to submit their mandatory bi-annual activity report to the administration.[220] Despite the then-Minister of Industry stating in the media that the EPZ system had been cleaned of fraudulent entities,[221] according to the EPZ companies interviewed for this report, the authorities never issued the decree abolishing those licences, for reasons unknown to the public.[222] In 2008, the government had already decided to stop issuing new EPZ licences, while maintaining the regime for existing EPZ businesses.[223] Again, the authorities never implemented this decision.[224] It is unclear why they opted out of this reform.[225]

In the interviews with EPZ companies, a specific case from 2018 came up, which shows the heavy influence of specific companies within the EPZ regime.[226] After greatly expanding production in 2018, COTONA, an EPZ textile company owned by the Mauritius-based SOCOTA group, was faced with a sharp increase in electricity rates charged by the national utility company.[227] The interviewees claimed that SOCOTA stopped paying the utility company and threatened the Malagasy government that it would leave Madagascar for Ethiopia, laying off its 6,000 Malagasy employees.[228] The same year, COTONA allegedly received a government subsidy of about Ar10 billion (US$2.7 million) as a direct money transfer,[229] a considerable amount for Madagascar. It seems unclear how this amount was decided and whether it corresponds to the electricity debt. Malagasy EPZ companies speculate that such a massive subsidy to a single company was too politically sensitive for the Malagasy government[230] and that this is why the subsidy was eventually split to seven EPZ firms operating in the textile industry, COTONA still receiving the biggest share.[231]

Whether EPZs buy influence through other means, such as uncapped donations to campaigns, is difficult to ascertain, due to Madagascar's non-existent or unenforced disclosure obligations.[232] Private donations are allowed without a ceiling.[233] Candidates are required by law to disclose their accounts to a campaign account financing control commission, but the information is not made public.[234] The commission is underfunded and candidates rarely comply with the obligation of submitting their accounts.[235] For the MP election that took place in May 2019, only 1 per cent of candidates have had submitted their account to the commission by March 2020.[236] This loophole may attract vested interests to put money into campaigns. Presidential candidates spend high amounts of money in their campaigns.[237] It is estimated that former president Hery

Rajaonarimampianina spent around Ar170 billion (US$43 million) in his successful 2013 presidential bid.[238]

The speculation around undue influence in this tax incentives system gained new heights in recent years with the discussions around a new law for a Special Economic Zone (SEZ).[239] This time especially in relation to potential undue influence exerted by Mauritian companies with an EPZ licence.[240] Similar to EPZs, SEZs[241] are geographical areas within a country's borders, with a specific legal, regulatory and institutional framework designed to attract investors.[242] The discussions started in 2016 when then-President Rajaonarimampianina signed a Memorandum of Understanding on the terms and conditions for setting up Special Economic Zones (SEZs) in Madagascar with the government of Mauritius.[243] The "Textile City" project dedicates 80 hectares to the textile industry in the Moramanga region, between the capital, Antananarivo, and Toamasina, for an investment of about Ar595.4 billion (US$150 million).[244]

The Mauritius Africa Fund, an initiative encouraging Mauritian businesses to invest on the African continent,[245] advised the Malagasy government to adopt a new legal framework specific to SEZs, different from the existing EPZ regime.[246] The fund wanted the SEZ law to go beyond the current EPZ law,[247] a key constraint of which is that EPZ companies must export at least 95 per cent of their production.[248] This is "often difficult to achieve for smaller or local companies, hence limiting Madagascar's investments and competitiveness".[249]

From 2016 to 2018, with technical support from the World Bank, the Malagasy government developed the new law on SEZs.[250] The law's main benefits are an exemption of import tax and VAT on inputs used in the production process, as well as a stability clause guaranteeing no increased taxes in SEZs over a 20-year period.[251] However, after alleged interventions from the World Bank and the IMF,[252] SEZs are not benefiting from the same 10 per cent corporate tax rate as EPZs and are subject to the regular 20 per cent tax rate of the country,[253] meaning lobbying by the Mauritius Africa Fund was partly unsuccessful.

As early as 2016, the political opposition to President Rajaonarimampianina started to challenge the creation of SEZs.[254] In the media, Holijaona Raboanarijaona, advisor to current Malagasy President Andry Rajoelina, expressed his fears over Madagascar drawing up yet another special law for SEZs, arguing SEZs should rather submit to existing laws.[255] He described the SEZ system as "a great loss for Madagascar".[256] Paradoxically, Andry Rajoelina's election to presidential office in December 2018 gave new impetus to the "Textile City" project, except that the authorities were now presenting this project as an "industrial park" instead of an SEZ,[257] having heavily criticised the SEZ concept during their campaign.[258]

When faced with accusations of duplicity around the new industrial park in relating to the Textile City project of the former president, Holijaona Raboanarijaona replied that the project would be run as an EPZ rather than an SEZ,[259] even though the SEZ law was explicitly designed for this project. Many Malagasy EPZ companies, as well as public officials, see this change of strategy by the current president as the result of Mauritius Africa Fund lobbyists, disappointed that the SEZ law does not include more tax incentives than under the EPZ system.[260] This case shows that the risk of undue influence around the Malagasy EPZ system continues and is gaining new momentum.

COSTS OF CAPTURED TAX INCENTIVES

The EPZ scheme is often described as successful, highlighting the massive creation of employment.[261] However, most of the new jobs are low-paid, low-skilled and carried out by female workers.[262] The sector is also known for very long working hours and high turnover,[263] with temporary layoffs during times of political instability.[264] In 2004 the International Confederation of Free Trade Unions stated that "during peak production times, a typical working day in the EPZ can be 15 hours.[265] Production quotas are impossible to meet within normal working hours, and overtime is only paid at the lower basic rate.[266] Workers in the zones can have their pay docked if they refuse to work overtime or make too many mistakes".[267] A trend towards the extension of working hours has been further confirmed by an ILO (International Labour Organization) report from 2012.[268] It states that "on average, employees work 10 hours a day, including overtime."[269]

While EPZs represented 27 per cent of total exports in 2017, they only contributed to 1 per cent of tax revenues the same year.[270] The misuse of the EPZ legislation by some firms (for example, by selling imported goods illegally on the local market)[271] will likely impact tax revenue, although by how much cannot be reliably estimated due to a lack of data.

With a 12.4 per cent tax-to-GDP ratio, in 2018,[272] Madagascar has one of the world's lowest tax rates.[273] Yet, there is a crucial need for funding to face the challenges of economic development in this very poor country. Every tax relief measure should therefore undergo thorough scrutiny, limiting the potential for corruption in the form of undue influence. In contexts like Madagascar's, any tax relief measure adds to the difficulty of mobilising urgently needed resources to achieve the Sustainable Development Goals.

METHODOLOGY

To research this case study, Transparency International Madagascar started with a review of the legal framework of free-trade zones in Madagascar. The team also drew up a map of actors, revealing allies and opponents to their research to determine sources considered reliable for interviews.

Desk research, including a review of reports and press articles, combined with an open-source investigation, provided profiles and contact details for companies and public officials to interview, in Antananarivo and two other cities where free-trade firms operate. The team evaluated the financial costs of free-trade zones and compared them to benefits in terms of employment and foreign exchange, based on state budgetary documents and statistics. They also looked into non-financial negative externalities to free-trade zones, including poor working conditions and safety and environmental hazards.

The investigation covered formal and informal connections between free-trade firms and politicians or high-ranking officials, to identify risks of undue influence (such as political financing, bribes, political influence or revolving doors) and determine the extent to which the granting of free trade authorisations and other advantages are based on corrupt relationships.

WHO CAN SERVE TWO MASTERS?

UNDUE INFLUENCE BY MULTINATIONAL CORPORATIONS IN THE UK

In this case study, the UK charity TaxWatch looks at the UK's reform of its Controlled Foreign Company (CFC) regime in 2012, exempting some UK-based multinational companies from anti-tax avoidance rules.[274] It analyses potential lobbying through professional service providers[275] and the use of the revolving door.[276]

BACKGROUND

Controlled Foreign Company (CFC) rules are an essential feature of many tax systems around the world.[277] They allow a tax authority to impose a corporate tax charge on the foreign subsidiaries of any multinational corporation (MNC) headquartered in their country.[278] This prevents MNCs from moving profits into tax havens because it allows national tax authorities to tax any profits of that company in the jurisdiction of the headquarters, rather than in the tax haven.[279] The UK government first introduced the CFC regime in 1984.[280] In 2015, the OECD recommended that all countries adopt CFC rules to protect their corporate tax bases.[281] In 2016, the inclusion of CFC rules became mandatory in the European Union through the Anti-Tax Avoidance Directive.[282]

Starting in the late 1990s,[283] many lawyers and accountancy firms in the UK took the view that the UK's CFC regime was too broad to be compatible with European law, and sought to develop and market tax avoidance schemes based on this perceived loophole.[284] A judgment of the European Court in a case involving Cadbury Schweppes found that, in principle, the UK's CFC rules could be seen to infringe EU law concerning the freedom of movement of capital.[285] They found that the rules could be justified only if they were targeted against wholly artificial corporate arrangements designed to avoid tax.[286]

According to a former government official, interviewed by TaxWatch, public officials widely accepted that as constructed, the UK's CFC rules were too broad to be in line with the judgment of the European Court, and reform was needed.[287] The immediate reaction of the UK government was to use the opportunity to expand the regime, with comprehensive proposals put forward in June 2007.[288] The new rules targeted specific types of transactions and would have made it much harder to set up tax avoidance schemes using offshore entities.[289] Given the widespread use of these schemes, this could have raised substantial amounts of cash for the government. However, the business community was opposed to the changes.[290] As the then-Labour government was also seeking advise from business leaders for new corporate tax changes before implementation, the reform process stalled.[291]

In the years that followed, several large UK multinationals decided to move their headquarters to nearby tax havens such as Ireland, Jersey or Switzerland.[292] HMRC tracked a total of 15 large businesses migrating out of the UK by 2011.[293] The UK's leading business lobby group, the Confederation of British Industry (CBI), seized on the migrations as a sign that the country was becoming "uncompetitive".[294] In practice, it seemed that not much changed for many companies that moved their headquarters abroad.[295] WPP, the global advertising giant, was one of the companies that re-domiciled, moving its corporate headquarters to Dublin in 2008.[296] However, the company's primary operations seemed to remain in its London office.[297]

The move out of the UK did not stop companies to lobby the UK government to give in to their demands to exempt foreign profits from UK taxation.[298] In the run-up to the 2010 General Election, Martin Sorrell, the head of WPP and considered a close ally of Prime Minister David Cameron,[299] made headlines. In a TV interview, he announced that WPP would move back to the UK if the government would agree not to tax profits made by the company overseas – an apparent reference to the CFC rules.[300]

Still, by 2010, the UK's CFC rules remained mostly intact.[301] However, things were about to change rapidly after the general election on 6 May, with the Conservative Party winning more seats than any other party.[302] The party's manifesto had promised a reform of the UK's CFC rules to "make the UK a more attractive location for multinationals".[303] Within two weeks of entering office, Chancellor George Osborne announced plans to set out a "roadmap" for reforming corporation tax with lower rates and a "simpler system".[304]

A long-term goal of the CBI had been to improve consultation between business and government as a means to "enhancing the international tax competitiveness of the UK".[305] Shortly after the election, the Financial Secretary to the Treasury, David Gauke, announced the creation of a new Business Forum on Tax and Competitiveness, which included leaders from several multinationals, an academic and the head of the CBI.[306] At the first meeting of the new Business Forum on Tax and Competitiveness, the minutes show that reform to CFC rules was considered a key priority.[307]

HOW TAX INCENTIVES CAN BECOME CAPTURED

As the new government took office, one of the unresolved issues sitting on the desk of HMRC's head of tax, David Hartnett, was the department's dispute with Vodafone.[308] The case concerned an alleged Luxembourg-based tax avoidance structure that the company had set up in the early 2000s.[309] The department saw billions of Euros pooling in Luxembourg, where they were subject to a tax rate of just 0.8 per cent.[310]

HMRC had started an enquiry into the Vodafone scheme in the early 2000s and, like Cadbury, Vodafone argued that the UK's CFC rules contravened European Law.[311] Following the European Court's decision on Cadbury, Vodafone requested that the UK courts order HMRC to end their investigation.[312] The case went to the UK Court of Appeal, which created a new legal exemption to the UK's CFC rules to make them compatible with EU law.[313] It excluded any EU company from being subject to a UK tax charge under the CFC rules, if it was carrying out genuine economic activity in the EU.[314]

This legal exemption was potentially very problematic for Vodafone. The accounts of its Luxembourg subsidiary, Vodafone Investments Luxembourg, showed from 2008 that the company had staff costs of just €50,000 (US$61,000) and operating profits of zero, while earning €1.9 billion (US$2.25 billion) in interest payments from other Vodafone companies.[315] This set up made it difficult for Vodafone to argue that the operation constituted a genuine economic activity.[316] If HMRC were successful in applying the CFC rules to Vodafone's Luxembourg subsidiary, it could have resulted in the company being liable to pay billions in taxes in the UK.[317] At the time, as disclosed in Vodafone's accounts, the company had set aside £2.2 billion (US$2.85 billion) as a potential liability in this case.[318] However, others calculated that the liability could have been up to £6 billion (US$8 billion).[319]

Tax officials are prevented by law from discussing the details of any case with ministers, and there is no evidence that any pressure was put on HMRC by ministers to resolve this case.[320] But it can be assumed that HMRC had probably seen the political mood.[321] Mr Hartnett had taken personal control of the case, removing it from officials and seemingly negotiating directly with the company.[322] This was a problematic decision, given Mr Hartnett had a potential conflict of interest in the matter.[323] Vodafone's head of Tax, John Connors, was an ex-colleague of Mr Hartnett, with whom he had co-authored a departmental review of HMRC's relationship with business.[324] Mr Hartnett, once named the UK's most wined and dined public official, was also regularly the guest of Vodafone's advisors Deloitte as the negotiations progressed.[325] The UK Parliament's Public Accounts Committee would later be heavily critical of the way tax disputes such as the Vodafone case had been handled, citing a lack of transparency.[326] Following his departure from HMRC, Mr Hartnett joined Deloitte to work one day a week advising foreign governments on tax administration.[327]

A review held by the National Audit Office later confirmed concerns over the process.[328] Vodafone had set aside £2.2 billion (US$2.85 billion) as a potential liability in the case on 22 July 2010, but HMRC settled the case for just £1.25 billion (US$1.62 billion).[329] The details of the announcement released by Vodafone to investors contained some extraordinary remarks from Vodafone as to the future shape of the UK's CFC rules.[330] The company told investors, "Longer term, no CFC liabilities are expected to arise, as a consequence of the likely reforms of the UK CFC regime due to the facts established in this agreement".[331]

As observed at the time by Jeremy Maynes of the law firm McGrigors, "It is interesting to note that [Vodafone] must have been given some indication of the as yet unpublished government proposals to reform the CFC regime, in order for them to have been in a position to comment on the likely lack of future liabilities".[332] Days after the Vodafone deal was completed, the chancellor, George Osborne, used a speech at a summit of CEOs to make a personal plea for Sir Martin Sorrell to move his WPP Group back to the UK.[333] Mr Sorrell was said to be "delighted" with the comments.[334]

Shortly before the election, the Treasury had drafted in a secondee from KPMG, Robert Edwards, to work on CFC reform.[335] KPMG insisted that Mr Edwards was only there to provide technical advice,[336] and industry insiders downplayed his role.[337] However, he was listed as the primary contact for the Treasury's new consultation on revisions to CFC rules, which started in June 2011.[338] His current LinkedIn profile says about his role: "On secondment from KPMG UK to Her Majesty's Treasury (HMT) for a period of two years, I played a pivotal role in designing and introducing significant corporate tax reforms, in particular the reform of the UK's Controlled Foreign Company (CFC) rules."[339]

Although the previous Labour government had seemingly frequently consulted business leaders on proposed changes to the corporate tax regime, in November 2010, the new government formally constituted six working groups to consult on the reforms.[340] The working groups were comprised almost entirely of senior tax managers from major UK-based multinationals, a number of which were known to have used structures designed to avoid CFC rules in the past.[341] They included Vodafone and Cadbury Schweppes.[342]

Outside the official working groups, it seemed that the Treasury was also continuing to engage with major companies on the reform.[343] One of these was WPP.[344] In 2011, Martin Sorrell told the City AM newspaper, "We're still studying the document. It does not go as far as we thought it might.[345] It's very much in the right direction, but not quite far enough in our case. We're assessing what more needs to be done and the Treasury is being very responsive".[346]

The new CFC regime was first outlined in December 2011 and finalised in 2012.[347] One of its more controversial elements was the so-called finance company partial exemption.[348] The partial exemption, which was the default position, meant that 75 per cent of any profits on interest earned by CFCs could be excluded from any charge.[349] The new rule would result in a tax rate of just 2-6 per cent imposed on these profits,[350] compared to the standard rate of corporate tax, which was 23 per cent at the time.[351]

The minutes of the CFC reform working groups are not available, with the Treasury claiming in response to a Freedom of Information request by TaxWatch that it did not hold them. However, the minutes of the Monetary Assets Working Group, as referred to in the European Commission's investigation into the UK's CFC regime, show that business representatives brought in the 75 per cent exemption, designed to ensure a low effective rate of taxation for UK-based multinationals.[352] Initially, the government was considering a 50 per cent exemption.[353] However, as it can be assumed from the consultation documentation, for some companies, even this was not enough, and a full exemption was introduced, which applied to certain types of profits.[354]

Following the adoption of the new rules and their implementation in legislation, companies set about taking advantage of them.[355] Mr Edwards returned to KPMG, where he would work on a team that advised people how to use the new rules to lower their tax bill.[356] He told a journalist from *Private Eye* magazine how the rules could be used to create two deductions of tax on the same loan and provide substantial "UK tax benefits".[357] WPP, the global advertising giant that had lobbied so hard for the changes, announced that it would return to the UK.[358] In its press release, WPP specifically cited the CFC policies of the Labour government as the cause of its move to Dublin and praised the new Conservative-led coalition government for changing them.[359]

COSTS OF CAPTURED TAX INCENTIVES

Many negative impacts followed from the 2012 reforms of the CFC laws, including direct revenue loss from both the policy and its application to resolve tax disputes under previous laws.[360] The new policy can be seen like a massive giveaway to UK-based corporations.[361] At the time, official UK Treasury estimates said the reforms would cost up to £840 million (US$1.08 billion) a year.[362] Unofficially, a government official revealed to TaxWatch that some officials thought that the real cost would be many times that.[363] The rules could potentially allow companies to implement schemes such as the one Vodafone had run for many years, which saw billions in profits pooling offshore at low rates of tax.[364] As discussed above, the rule changes were a catalyst for the UK government to settle the long-running Vodafone dispute.[365]

However, in addition to direct costs, it can be concluded that the policy has led to broader reputational damage for the UK.[366] In 2019, the European Commission found that the 2012 reforms did constitute an unlawful grant of state aid to UK-based multinationals and ordered the UK to recoup the tax benefit gained by firms.[367] This worsened the reputation of the UK as a tax haven.[368] In coming to its conclusion, the European Commission found that the new rules went far beyond their purpose of preventing tax avoidance.[369] Instead, they gave an advantage to companies "artificially diverting non-trading finance profits to CFCs".[370] In other words, rather than limiting the application of CFC rules to abusive tax structures, the UK's laws facilitated them. The UK is appealing the decision, alongside several UK-based multinationals.[371.] The dispute is unlikely to be resolved any time soon, which in turn increases the uncertainty of the corporate tax system – something which the UK has always said it is keen to minimise.[372]

METHODOLOGY

This case study was conducted by an external partner, the organisation TaxWatch from the UK. To investigate the case, TaxWatch started with a review of press articles and other journalistic texts about the policy change. Its team then talked to various journalists who covered the policy change to see if there was additional context they need to include. They went on to review official documents, including the consultation documents produced by the UK government and the decisions of the European Commission on whether the measure constituted state aid. These documents provided details of how the policy worked and the policy formulation process.

TaxWatch also submitted a Freedom of Information request to the UK Treasury to get hold of minutes of the reform working groups, which was denied on the basis that the Treasury did not hold that information. Given that the Treasury was the lead department for this policy, and minutes were referred to in the European Commission decisions, this was surprising, but there was no time to appeal the decision in advance of writing.

POLICY RECOMMENDATIONS

This report reveals that harmful tax incentives thrive through weak national laws and oversight as well as a lack of global norms governing corporate political donations, lobbying and conflicts of interest between the sphere of public officials and the business world. This section highlights the most critical policies governments need to adopt to prevent undue influence on tax incentives:

Strengthen transparency and accountability of tax incentive regimes

1. Build international cooperation on establishing a global minimum corporate tax rate to stem the “race to the bottom” as countries compete to attract FDI.
2. Develop and govern tax incentive regimes using technical, legal and political processes that are transparent, clear and credible, to deter undue influence.
    - Clearly link tax incentives to a country’s strategic development plans and national economic and social goals, backed by a comprehensive, technically sound and evidence-based assessment. The assessment must evaluate all fiscal and non-fiscal options to determine if tax incentives are the most effective way to arrive at the desired economic and social development goals.
    - Discuss and approve tax incentives only through parliamentary decision-making.
    - Use high-standard public consultation methods to inform parliamentary decision-making on tax incentives. These should identify and guarantee equal and meaningful influence on the adoption of incentives to relevant stakeholders concerned with the economic and social goals incentives intend to achieve, other than corporate beneficiaries. These stakeholders need to enjoy full access to adequate information on both the proposed incentives and the consultation process itself.
    - Proactively publish the reasoning for a particular incentive, the estimated specific costs and benefits, a list of all major beneficiaries and benefitting sectors, and an estimation of how much money each beneficiary will save.
    - Govern incentives by tax laws that clarify their scope and limitations. Rules specifying eligibility criteria for firms and investors to qualify for incentives must be laid out, leaving no room for discretion.
3. Monitor and evaluate tax incentives regularly to assess their effectiveness in achieving their intended social and economic development goals. Reviews must lead to the termination of unnecessary, ineffective, redundant or harmful tax incentives.
    - Collect and publicly report the data on revenue foregone as a result of tax incentives, as well as on other potentially harmful impacts, including human rights, environmental and reputational costs.
    - Make the data completely transparent, standardised and machine-readable.

- Enable public participation in the economic, social and environmental audits of tax incentives.

- Proactively publish the results of the review with a list of all major beneficiaries and benefitting sectors of a given incentive, as well as the amounts of money they saved because of the incentives they received throughout the evaluated period.

4. Treat incentives the same way as public expenditure, and reform financial secrecy laws that prevent transparency. Establish or strengthen freedom of information laws that cover firms using tax incentives, making financial information available for public scrutiny.

Deter undue influence arising from political donations:

5. Introduce and strengthen safeguards to ensure that donations to political parties, candidates and other third-party contestants do not result in undue policy influence:

    - Create compulsory reporting and disclosure of all income and expenditures of political parties, candidates and third parties in a timely manner. Obligations to report and disclose political donations should extend, where applicable, to corporate donors (dual reporting).

    - Establish reasonable limits to deter the disproportionate influence of a few donors with vested interests over elected officials. Prohibit donations from lobbying entities and corporations whose specific position vis-à-vis aspiring or incumbent power holders gives them an improper advantage to trade in influence. Criminalise direct bribe payments to foreign and domestic political parties, as well as to their officials, to obtain and retain improper benefits.

    - Establish clear incompatibilities between tax benefits and political finance, such as prohibiting tax incentive beneficiaries from making financial contributions to political parties and candidates; and establishing mandatory inhibition and recusal for elected officials on tax-incentive decisions concerning their political donors.

    - Require corporations to ensure a high level of qualified decision-making by company boards, shareholders and other corporate stakeholders before they make decisions on donations to parties and disclose their political engagement openly.

    - Ensure interoperability of information for open contracting data, beneficial ownership data, interest and asset declaration registers, lobbying registers and others, as appropriate. Reporting should be in machine-readable and open-data formats, submitted through a single system as far as possible and disclosed through a single online portal.

Deter undue influence arising from opaque and unchecked lobbying interactions:

6. Implement and strengthen open, public registers of interactions between lobbyists and public officials:

    - Establish a clear definition for lobbying activity and its scope subject to reporting and disclosure.

- Make such registers mandatory, and require timely registration and periodic disclosure on activities by all lobbyists and organised interest groups.
- Apply registers to both direct and indirect lobbying efforts targeting the full range of institutions and individuals performing public decision-making functions.
- Ensure they contain details of all interactions - especially their purpose and related communications.
- Comply collected information with open data principles.

7. Create a “legislative footprint” for every regulatory proposal to ensure full transparency of decision-making processes. Disclose publicly the membership of government and parliamentary expert and advisory groups, as well their agendas, minutes and participants’ submissions.

Prevent conflict of interests by those with influence over tax incentive decisions:

8. Establish strong codes of conduct, conflict of interest procedures, gifts and hospitality registration, and interest and asset disclosure for both lobbyists and public officials meeting with lobbyists. An independent regulatory body should monitor adherence to such codes and procedures, and ensure the imposition of sanctions.
9. Establish compulsory recusal for officials with interests or prior engagement with potential beneficiaries of tax incentives in their design, assessment, or decision-making. Establish proportionate sanctions applicable to both former officials and private-sector actors in case of non-compliance.
10. Define incompatibilities whereby a former public office holder is prohibited from being associated in any manner with the private sector in relation to their area of work and expertise within the government, and for a reasonable “cooling” period following their tenure.
11. Ensure that no professional service provider can provide both tax consultancy to governments and audit services to companies.

ENDNOTES

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[10] Ibid.
[11] https://www.oecd.org/tax/tax-global/transparency-and-governance-principles.pdf (accessed 1 April 2021)
[12] https://www.oecd.org/mena/competitiveness/38758855.pdf (accessed 1 April 2021)
[13] https://www.imf.org/external/pubs/ft/wp/2009/wp0921.pdf (accessed 1 April 2021)
[14] https://transparency.eu/wp-content/uploads/2016/09/Transparency-05-small-text-web-1.pdf (accessed 14 November 2020)
[15] The scope of this research study does not include tax incentives offered to individuals and non-corporate legal entities.
[16] http://www.planalto.gov.br/ccivil_03/LEIS/L9440.htm; http://www.planalto.gov.br/ccivil_03/_Ato2007-2010/2009/Mpv/471.htm; https://www.congressonacional.leg.br/materias/medidas-provisorias/-/mpv/94277 (accessed 1 April 2021)
[17] https://www.conjur.com.br/dl/lula-acusado-cobrar-propina-troca.pdf; https://www.conjur.com.br/dl/justica-federal-condena-nove-pessoas.pdf; https://www.conjur.com.br/dl/denuncia-lula-recebida-zelotes.pdf; https://www.conjur.com.br/dl/leia-acordao-trf-zelotes.pdf; https://www.conjur.com.br/dl/defesa-lula-zelotes.pdf (accessed 14 November 2020)
[18] https://openknowledge.worldbank.org/bitstream/handle/10986/2341/638440PUB0Exto00Box0361527B0PUBLIC0.pdf (accessed 2 November 2020)
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[20] Brooks, Richard, 2013, "The Great Tax Robbery", Oneworld Publications. https://publications.parliament.uk/pa/cm201012/cmselect/cmpubacc/1531/153108.htm; https://www.bbc.co.uk/news/business-22686877 (accessed 1 April 2021)
[21] https://www.oecd.org/mena/competitiveness/35275189.pdf (accessed 14 November 2020)
[22] https://www.imf.org/external/np/g20/pdf/101515.pdf (accessed 14 November 2020)
[23] https://financialtransparency.org/wp-content/uploads/2020/01/How-Tax-Incentives-Become-Harmful_For-Web_Jan-24.pdf (accessed 14 November 2020)
[24] https://www.imf.org/en/Publications/WP/Issues/2016/12/31/Causes-Benefits-and-Risks-of-Business-Tax-Incentives-22628 (accessed 14 November 2020)
[25] https://www.brettonwoodsproject.org/wp-content/uploads/2019/06/Common-Criticisms-FINAL.pdf (accessed 14 November 2020)
[26] Ibid.
[27] Ibid.
[28] https://unctad.org/system/files/official-document/iteipcmisc3_en.pdf (accessed 1 April 2021)
[29] https://www.imf.org/external/pubs/nft/1998/tlaw/eng/ch23.pdf (accessed 2 November 2020)

[30] https://www.cairn.info/revue-reflets-et-perspectives-de-la-vie-economique-2012-3-page-129.htm (accessed 2 November 2020)
[31] Ibid.
[32] https://www.un.org/esa/ffd/wp-content/uploads/2015/04/2015TIBP_PaperZolt.pdf (accessed 2 November 2020)
[33] https://econpapers.repec.org/article/eeewdevel/v_3a30_3ay_3a2002_3ai_3a9_3ap_3a1497-1516.htm; https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1568296 (accessed 14 November 2020)
[34] https://www.un.org/esa/ffd/wp-content/uploads/2015/04/2015TIBP_PaperZolt.pdf (accessed 14 November 2020)
[35] Ibid.
[36] Ibid.
[37] https://www.unido.org/sites/default/files/2013-02/AIS_Report_A4_0.PDF; https://www.actionaid.org.uk/sites/default/files/publications/tax_incentives_in_the_global_south.pdf (accessed 14 November 2020)
[38] http://www.oecd.org/mena/competitiveness/38758855.pdf (accessed 2 November 2020)
[39] Ibid.
[40] https://www.cgdev.org/blog/good-bad-and-ugly-how-do-tax-incentives-impact-investment#:~:text=An%20economic%20case%20can%20be,collection%20and%20location%2Dspecific%20rents (accessed 1 April 2021)
[41] https://www.unescap.org/sites/default/files/S3_Tax-Incentives-and-Tax-Protection-Base.pdf (accessed 2 November 2020)
[42] Ibid.
[43] http://www.oecd.org/mena/competitiveness/38758855.pdf (accessed 2 November 2020)
[44] https://www.imf.org/external/np/g20/pdf/101515.pdf (accessed 14 November 2020)
[45] http://documents1.worldbank.org/curated/en/794641468000901692/pdf/100756-Tax-incentives-Main-report-options-PUBLIC.pdf (accessed 1 April 2021)
[46] https://www.oecd.org/mena/competitiveness/35275189.pdf (accessed 14 November 2020)
[47] https://www.ips-journal.eu/regions/global/how-tax-breaks-undermine-the-sdgs-4001/ (accessed 1 April 2021)
[48] http://s3.amazonaws.com/aws-bsdc/Aligning-corporate-tax-policy-with-SDGs.pdf (accessed 1 April 2021)
[49] https://oxfamilibrary.openrepository.com/bitstream/handle/10546/620468/bn-tax-incentives-global-south-100518-en.pdf;jsessionid=60F619E6A9D301B42DCA5C96BA31ACE2?sequence=1 (accessed 1 April 2021)
[50] http://documents1.worldbank.org/curated/en/317341468335679099/pdf/588150WP0FIAS110BOX353820B01PUBLIC1.pdf (accessed 14 November 2020)
[51] https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2401905 (accessed 14 November 2020)
[52] Ibid.
[53] https://actionaid.org/sites/default/files/give_us_a_break_-_how_big_companies_are_getting_tax-free_deals_21_aug.pdf (accessed 14 November 2020)
[54] https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2401905 (accessed 1 April 2021)
[55] Ibid.
[56] Ibid.
[57] For example: https://www.jstor.org/stable/20647957?seq=1#metadata_info_tab_contents; https://www.jstor.org/stable/40698392?seq=1#metadata_info_tab_contents; Also see: https://images.transparencycdn.org/images/2015_WorkingPaper3_TaxSystems_EN.pdf; https://knowledgehub.transparency.org/assets/uploads/kproducts/Tax_administration_topic_guide.pdf (accessed 2 November 2020)
[58] https://www.transparency.org/files/content/corruptionqas/Political_corruption_topic_guide_2014.pdf (accessed 2 November 2020)
[59] Ibid.
[60] https://transparency.eu/wp-content/uploads/2016/09/Transparency-05-small-text-web-1.pdf (accessed 14 November 2020)
[61] https://www.transparency.org/files/content/corruptionqas/Political_corruption_topic_guide_2014.pdf (accessed 2 November 2020)
[62] https://www.transparency.org/files/content/corruptionqas/State_capture_an_overview_2014.pdf (accessed 2 November 2020)
[63] Ibid.
[64] https://assets.publishing.service.gov.uk/media/57a089d640f0b649740002b8/U4Issue-2014-02-web.pdf (accessed 1 April 2021)

[65] https://gfintegrity.org/issue/illicit-financial-flows/#:~:text=Illicit%20financial%20flows%20(IFFs)%20are,utilized%20across%20an%20international%20border (accessed 1 April 2021)
[66] https://pdfs.semanticscholar.org/baf1/842251ae95c7389c4c4de824f03d3634e038.pdf (accessed 2 November 2020)
[67] https://www.transparency.org/files/content/corruptiongas/State_capture_an_overview_2014.pdf (accessed 2 November 2020)
[68] https://www.oecd.org/tax/tax-global/transparency-and-governance-principles.pdf (accessed 1 April 2021)
[69] https://www.oecd.org/mena/competitiveness/38758855.pdf (accessed 1 April 2021)
[70] https://www.imf.org/external/pubs/ft/wp/2009/wp0921.pdf (accessed 1 April 2021)
[71] https://transparency.eu/wp-content/uploads/2016/09/Transparency-05-small-text-web-1.pdf (accessed 14 November 2020)
[72] https://www.transparency.org/files/content/corruptiongas/State_capture_an_overview_2014.pdf (accessed 2 November 2020)
[73] https://www.idea.int/sites/default/files/publications/funding-of-political-parties-and-election-campaigns.pdf (accessed 1 April 2021)
[74] https://www.legislationline.org/download/id/2817/file/Tora%20Kenya%20in%20NDI%202005%20Bryan%20and%20Bear%20Money%20in%20Politics.pdf (accessed 1 April 2021)
[75] https://knowledgehub.transparency.org/guide/topic-guide-on-political-finance/5186 (accessed 2 December 2020)
[76] https://www.idea.int/sites/default/files/publications/political-finance-transparency.pdf (accessed 2 November 2020)
[77] https://www.imf.org/external/pubs/ft/fandd/2015/09/pdf/kaufmann.pdf (accessed 14 November 2020)
[78] https://www.transparency.org/en/news/building-political-integrity-to-stamp-out-corruption-three-steps-to-cleaner-politics (accessed 1 April 2021)
[79] Ibid.
[80] https://www.conjur.com.br/dl/lula-acusado-cobrar-propina-troca.pdf; https://www.conjur.com.br/dl/justica-federal-condena-nove-pessoas.pdf; https://www.conjur.com.br/dl/denuncia-lula-recebida-zelotes.pdf; https://www.conjur.com.br/dl/leia-acordao-trf-zelotes.pdf; https://www.conjur.com.br/dl/defesa-lula-zelotes.pdf (accessed 14 November 2020)
[81] https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1540-5907.2009.00407.x (accessed 2 November 2020)
[82] https://images.transparencycdn.org/images/2015_LobbyingInEurope_EN.pdf (accessed 2 November 2020)
[83] https://www.transparency.org/en/news/building-political-integrity-to-stamp-out-corruption-three-steps-to-cleaner-politics (accessed 1 April 2021)
[84] https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1540-5907.2009.00407.x (accessed 2 November 2020)
[85] https://sunlightfoundation.com/2016/11/30/influence-abroad-the-state-of-global-lobbying-disclosure/ (accessed 20 November 2020)
[86] https://www.transparency.org/en/publications/working-paper-06-2010-regulating-the-revolving-door (accessed 20 November 2020)
[87] Ibid.
[88] Ibid.
[89] Ibid.
[90] Brooks, Richard, 2013, “The Great Tax Robbery”, Oneworld Publications. https://publications.parliament.uk/pa/cm201012/cmselect/cmpubacc/1531/153108.htm; https://www.bbc.co.uk/news/business-22686877 (accessed 1 April 2021)
[91] https://www.sciencedirect.com/science/article/pii/S1090951617303553 (accessed 14 November 2020)
[92] https://www.finance-watch.org/wp-content/uploads/2018/07/tax-avoidance-industry-lobby-low-res.pdf (accessed 2 November 2020)
[93] Ibid.
[94] https://www.theguardian.com/healthcare-network/2012/oct/22/public-service-private-blurred-boundaries
[95] https://www.finance-watch.org/wp-content/uploads/2018/07/tax-avoidance-industry-lobby-low-res.pdf (accessed 2 November 2020)
[96] https://www.conjur.com.br/dl/lula-acusado-cobrar-propina-troca.pdf; https://www.conjur.com.br/dl/justica-federal-condena-nove-pessoas.pdf; https://www.conjur.com.br/dl/denuncia-lula-recebida-zelotes.pdf; https://www.conjur.com.br/dl/leia-acordao-trf-zelotes.pdf; https://www.conjur.com.br/dl/defesa-lula-zelotes.pdf (accessed 14 November 2020)
[97] Brooks, Richard, 2013, “The Great Tax Robbery”, Oneworld Publications. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/81304/consul

t_cfc_detailed_proposals.pdf; https://www.taxation.co.uk/articles/2013-02-06-299031-tax-prat-year; https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/81304/consult_cfc_detailed_proposals.pdf; https://www.linkedin.com/in/robert-edwards-31623525/ (accessed 1 April 2021)

[98] https://financialtransparency.org/wp-content/uploads/2020/01/How-Tax-Incentives-Become-Harmful_For-Web_Jan-24.pdf (accessed 2 November 2020)

[99] https://actionaid.org/sites/default/files/give_us_a_break_-_how_big_companies_are_getting_tax-free_deals_21_aug.pdf (accessed 14 November 2020)

[100] https://www.oecd.org/mena/competitiveness/38758855.pdf (accessed 14 November 2020)

[101] Ibid.

[102] https://www.un.org/esa/ffd/wp-content/uploads/2015/04/2015TIBP_PaperZolt.pdf (accessed 14 November 2020)

[103] https://financialtransparency.org/wp-content/uploads/2020/01/How-Tax-Incentives-Become-Harmful_For-Web_Jan-24.pdf (accessed 14 November 2020)

[104] http://s3.amazonaws.com/aws-bsdc/Aligning-corporate-tax-policy-with-SDGs.pdf (accessed 1 April 2021)

[105] https://unctad.org/en/PublicationsLibrary/wir2014_en.pdf (accessed 14 November 2020)

[106] https://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E (accessed 2 November 2020)

[107] https://financialtransparency.org/wp-content/uploads/2020/01/How-Tax-Incentives-Become-Harmful_For-Web_Jan-24.pdf (accessed 2 November 2020)

[108] https://www.taxjustice.net/cms/upload/pdf/Bruno-John_0810_Tax_Comp.pdf (accessed 2 November 2020)

[109] https://www.oecd.org/mena/competitiveness/35275189.pdf (accessed 2 November 2020)

[110] Ibid.

[111] https://www.cbgaindia.org/wp-content/uploads/2016/03/Primer-on-tax.pdf (accessed 2 November 2020)

[112] https://financialtransparency.org/wp-content/uploads/2020/01/How-Tax-Incentives-Become-Harmful_For-Web_Jan-24.pdf (accessed 2 November 2020)

[113] Ibid.

[114] https://www.oecd.org/mena/competitiveness/35275189.pdf (accessed 2 November 2020)

[115] For example: https://www.eesi.org/papers/view/fact-sheet-fossil-fuel-subsidies-a-closer-look-at-tax-breaks-and-societal-costs; https://www.taxpolicycenter.org/briefing-book/what-tax-incentives-encourage-energy-production-fossil-fuels#:~:text=Tax%20subsidies%20for%20oil%2C%20gas,to%202023%20(figure%201).&text=Subsidizing%20investment%20in%20fossil%20fuel,assets%20with%20higher%20pretax%20yields; https://fas.org/sgp/crs/misc/R41953.pdf (accessed 2 November 2020)

[116] https://corporateeurope.org/sites/default/files/2019-10/FFP%20Briefing%20-%20Big%20Oil%20and%20Gas%20buying%20influence%20in%20Brussels%20-%20Oct%202019.pdf (accessed 14 November 2020)

[117] http://www.planalto.gov.br/ccivil_03/LEIS/L9440.htm; http://www.planalto.gov.br/ccivil_03/_Ato2007-2010/2009/Mpv/471.htm; https://www.congressonacional.leg.br/materias/medidas-provisorias/-/mpv/94277 (accessed 1 April 2021)

[118] https://www.conjur.com.br/dl/lula-acusado-cobrar-propina-troca.pdf; https://www.conjur.com.br/dl/justica-federal-condena-nove-pessoas.pdf; https://www.conjur.com.br/dl/denuncia-lula-recebida-zelotes.pdf; https://www.conjur.com.br/dl/leia-acordao-trf-zelotes.pdf; https://www.conjur.com.br/dl/defesa-lula-zelotes.pdf (accessed 14 November 2020)

[119] https://www.internationaltaxreview.com/article/b1f7nj9zdsn4nd/global-tax-50-2016-operation-zealots (accessed 1 April 2021)

[120] https://www.conjur.com.br/dl/lula-acusado-cobrar-propina-troca.pdf (accessed 23 November 2020)

[121] https://www.congressonacional.leg.br/materias/medidas-provisorias/-/mpv/94277(accessed 2 November 2020)

[122] http://g1.globo.com/politica/noticia/2015/10/zelotes-apura-pagamento-de-propina-para-edicao-de-3-medidas-provisorias.html (accessed 2 November 2020)

[123] As appeals are still pending in some cases, alleged and disputed facts are hereby treated as hypothetical. Every claim in this section is based on publicly available case files.

[124] https://www.conjur.com.br/dl/lula-acusado-cobrar-propina-troca.pdf; https://www.conjur.com.br/dl/denuncia-lula-recebida-zelotes.pdf; https://www.conjur.com.br/dl/defesa-lula-zelotes.pdf (accessed 14 November 2020)

[125] https://www.conjur.com.br/dl/justica-federal-condena-nove-pessoas.pdf; https://www.conjur.com.br/dl/leia-acordao-trf-zelotes.pdf (accessed 14 November 2020).

[126] Such benefits mainly refer to the possibility of compensating the amount due in social contributions ("PIS" and "Cofins") as credit for paying the Tax on Manufactured Products ('IPI'). In summary, the presumed IPI credit granted by MP No.471/09 is a benefit whereby a tax credit is constituted in a fictitious manner based on the amount of PIS and Cofins owed monthly by the company and calculated on its revenue from selling goods.

[127] https://www.congressonacional.leg.br/materias/medidas-provisorias/-/mpv/94277 (accessed 2 November 2020)
[128] Law No. 9440/1997 established multiple tax incentives, including those for automotive companies, starting from January 1st, 2000. http://www.planalto.gov.br/ccivil_03/LEIS/L9440.htm (accessed 1 April 2021).
[129] http://www.planalto.gov.br/ccivil_03/_Ato2007-2010/2009/Mpv/471.htm (accessed 1 April 2021)
[130] The decision-making process of provisional presidential decrees depend mostly on the executive and legislative branches. Article 62 of the Federal Constitution states that the provisional presidential decree is a normative act with status of law that can only be issued by the President of the Republic, producing immediate effects thereon. A provisional presidential decree may be created in exceptional situations that, due to their relevance and urgency, indicate the need for immediate action by the executive branch. It should be immediately submitted to the National Congress for scrutiny and final approval or rejection. With regard to its processing, the decree's initial term of validity is 60 days, automatically extendable for the same period if the voting procedure has not been completed by the two Houses of Congress. When sent to the legislative branch, the text is initially analysed by a joint commission, an opportunity for amendment proposals to be presented. After the joint commission approves its report, the decree is submitted to the Chamber of Deputies' plenary and, subsequently, to the Senate. In cases where there is a change in the text, the bill must be sent back to the presidency for final sanction. In the event that a provisional presidential decree is approved without changes, it will be converted into statutory law and directly passed by Congress.
[131] http://www.planalto.gov.br/ccivil_03/_ato2007-2010/2009/Exm/EM-166-MF-MCT-MDIC-09-Mpv-471.htm (accessed 1 April 2021)
[132] Ibid.
[133] Ibid.
[134] Ibid.
[135] Ibid.
[136] Law No. 9440/1997 established multiple tax incentives, including those for automotive companies, starting from January 1st, 2000. http://www.planalto.gov.br/ccivil_03/LEIS/L9440.htm (accessed 1 April 2021)
[137] https://www.congressonacional.leg.br/materias/medidas-provisorias/-/mpv/94277 (accessed 1 April 2021)
[138] https://legislacao.presidencia.gov.br/atos/?tipo=MPV&numero=471&ano=2009&ato=e2fMzYE9EeVpWT4fa (accessed 23 November 2020)
[139] https://www.conjur.com.br/2017-set-19/lula-vira-reu-setima-vez-acusado-vender-mp-montadoras (accessed 23 November 2020)
[140] https://www.conjur.com.br/dl/justica-federal-condena-nove-pessoas.pdf (accessed 1 April 2021)
[141] The Ministry of Internal Affairs (in Portuguese, *Casa Civil*) is responsible for coordinating government activities, including other ministries, and directly advising the president. In many ways, it performs similar tasks to those of a chief of staff in other countries, such as the United States.
[142] https://www.conjur.com.br/dl/justica-federal-condena-nove-pessoas.pdf; https://www.conjur.com.br/dl/leia-acordao-trf-zelotes.pdf (accessed 14 November 2020).
[143] https://www.conjur.com.br/2017-set-19/lula-vira-reu-setima-vez-acusado-vender-mp-montadoras (accessed 1 December 2020)
[144] https://www.conjur.com.br/dl/lula-acusado-cobrar-propina-troca.pdf; https://www.conjur.com.br/dl/justica-federal-condena-nove-pessoas.pdf; https://www.conjur.com.br/dl/defesa-lula-zelotes.pdf (accessed 1 December 2020)
[145] https://www.conjur.com.br/dl/lula-acusado-cobrar-propina-troca.pdf (accessed 23 November 2020)
[146] https://www.conjur.com.br/dl/lula-acusado-cobrar-propina-troca.pdf; https://www.conjur.com.br/dl/justica-federal-condena-nove-pessoas.pdf; https://www.conjur.com.br/dl/denuncia-lula-recebida-zelotes.pdf; https://www.conjur.com.br/dl/leia-acordao-trf-zelotes.pdf; https://www.conjur.com.br/dl/defesa-lula-zelotes.pdf (accessed 14 November 2020)
[147] Ibid.
[148] https://www.conjur.com.br/dl/lula-acusado-cobrar-propina-troca.pdf; https://www.conjur.com.br/dl/defesa-lula-zelotes.pdf (accessed 1 December 2020)
[149] Ibid.
[150] Ibid.
[151] https://www.conjur.com.br/dl/defesa-lula-zelotes.pdf (accessed 2 November 2020)
[152] https://www.conjur.com.br/dl/lula-acusado-cobrar-propina-troca.pdf (accessed on 1 December 2020)
[153] Ibid.
[154] http://www.planalto.gov.br/ccivil_03/_ato2007-2010/2009/Exm/EM-166-MF-MCT-MDIC-09-Mpv-471.htm (accessed 1 April 2021)
[155] https://www.congressonacional.leg.br/materias/medidas-provisorias/-/mpv/94277 (accessed 2 November 2020)

[156] https://www.conjur.com.br/dl/lula-acusado-cobrar-propina-troca.pdf (accessed 1 April 2021)
[157] Ibid.
[158] https://www.camara.leg.br/proposicoesWeb/fichadetramitacao?idProposicao=460895 (accessed 2 November 2020)
[159] One aspect that was questioned in court is that, by not being a senator nor a representative, the communications director could not directly influence the text of the MP. However, it was possible to defend the companies' interests and supervise the procedure according to their goals. That practice, when followed by an illegal payment, consists in peddling influence, a crime of which the communications director was found guilty.
[160] https://www.conjur.com.br/dl/justica-federal-condena-nove-pessoas.pdf; https://www.conjur.com.br/dl/leia-acordao-trf-zelotes.pdf (accessed 14 November 2020).
[161] According to article 62 of the Brazilian Constitution, article 118 of the Rules of the Chamber of Deputies and article 230 of the Rules of the Federal Senate.
[162] https://www.congressonacional.leg.br/materias/medidas-provisorias/-/mpv/93635 (accessed 23 November 2020)
[163] Ibid.
[164] Ibid.
[165] According to article 62 of the Brazilian Constitution, article 118 of the Rules of the Chamber of Deputies and article 230 of the Rules of the Federal Senate.
[166] https://www.congressonacional.leg.br/materias/medidas-provisorias/-/mpv/93635 (accessed 23 November 2020)
[167] Ibid.
[168] https://legis.senado.leg.br/sdleg-getter/documento?dm=3378950&ts=1593905279500&disposition=inline (accessed 14 November 2020)
[169] https://www.camara.leg.br/proposicoesWeb/prop_mostrarintegra?codteor=721200; https://www.camara.leg.br/proposicoesWeb/prop_mostrarintegra?codteor=721200 (accessed 1 April 2021)
[170] https://legis.senado.leg.br/sdleg-getter/documento?dm=3378950&ts=1593905279500&disposition=inline (accessed 2 November 2020)
[171] https://www.congressonacional.leg.br/materias/medidas-provisorias/-/mpv/93635 (accessed 23 November 2020)
[172] Ibid.
[173] https://www.congressonacional.leg.br/materias/medidas-provisorias/-/mpv/94277; https://pesquisa.in.gov.br/imprensa/jsp/visualiza/index.jsp?jornal=1&pagina=1&data=31/03/2010 (accessed 2 November 2020)
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[218] Interviews conducted anonymously by Transparency International Madagascar with employees of Malagasy EPZ companies.
[219] Interviews conducted anonymously by Transparency International Madagascar with officials from the Economic Development Board of Madagascar (EDBM).
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[240] Interviews conducted anonymously by Transparency International Madagascar with employees of Malagasy EPZ companies.
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1) No custom duties for goods intended to undergo transformation or additional labour for the purposes of re-export; any production good, any equipment, any raw material, any input and any semi-finished product admitted in a SEZ is exempted of any duty, tax, fee, levy or other customs charges on import.
2) Imports to SEZs are not subject to VAT. Sales or services brought by SEZ companies on national territory are subject to ordinary VAT.

4) Interest received by shareholders or partners is subject to the corporate tax on movable capital at the rate of 10 per cent (20 per cent for common law).
5) SEZs benefit from the tax incentives specified in the Finance Law for the training of their workers.
6) No taxes, charges or administrative charges apply to foreign exchange transactions related to SEZs.
7) A 20-year stability clause forbids increases in taxes for SEZs during that period.
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