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Country Report: Ghana

Annex B to SEO Report “Strengthening Tax Systems”

Nienke Oomes (team leader)
Thierry Belt
Johannes Hers
Cezary Krysiak
Harald Meier
Christian von Haldenwang



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List of abbreviations

AFRITAC	African Technical Assistance Centre (IMF)
ATAF	African Tax Administration Forum
BEPS	Base Erosion and Profit Shifting
CbCR	Country-by-Country reporting
CMAAT	Convention on Mutual Administrative Assistance in Tax Matters
CbC MCAA	Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports
CD	Capacity Development
CPIA	Country Policy and Institutional Assessment
CSO	Civil Society Organisation
DRM	Domestic Resource Mobilisation
DTT	Double Taxation Treaty
EOIR	Exchange of Information on Request
FDI	Foreign Direct Investment.
GDP	Gross Domestic Product
GIZ	German Development Corporation
GRA	Ghana Revenue Authority
IBFD	The International Bureau for Fiscal Documentation
IFB	Inclusive Framework on BEPS
IMF	International Monetary Fund
IOB	Policy and Operations Evaluation Department of the Dutch MFA
LoB	Limitations on Benefits
LTU	Large Taxpayer Unit
MAP	Mutual Agreement Procedure
MFA	Dutch Ministry of Foreign Affairs
MLI	Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS
MoF	Dutch Ministry of Finance
MNE	Multinational Enterprises
NGO	Non-governmental Organisation
NTCA	Netherlands Customs and Tax Administration (" <i>Belastingdienst</i> ")
OECD	Organisation for Economic Cooperation and Development
PE	Permanent Establishment
PPT	Principal Purpose Test
SFI	Special Financial Investments
SSA	Sub-Saharan Africa
TA	Technical Assistance
TADAT	Tax Administration Diagnostic Assessment Tool
TIEA	Tax information exchange agreements
TIWB	Tax Inspectors Without Borders
ToC	Theory of Change
ToR	Terms of Reference
TP	Transfer Pricing
UN	United Nations
UN-DESA	United Nations Department of Economic and Social Affairs
VAT	Value Added Tax

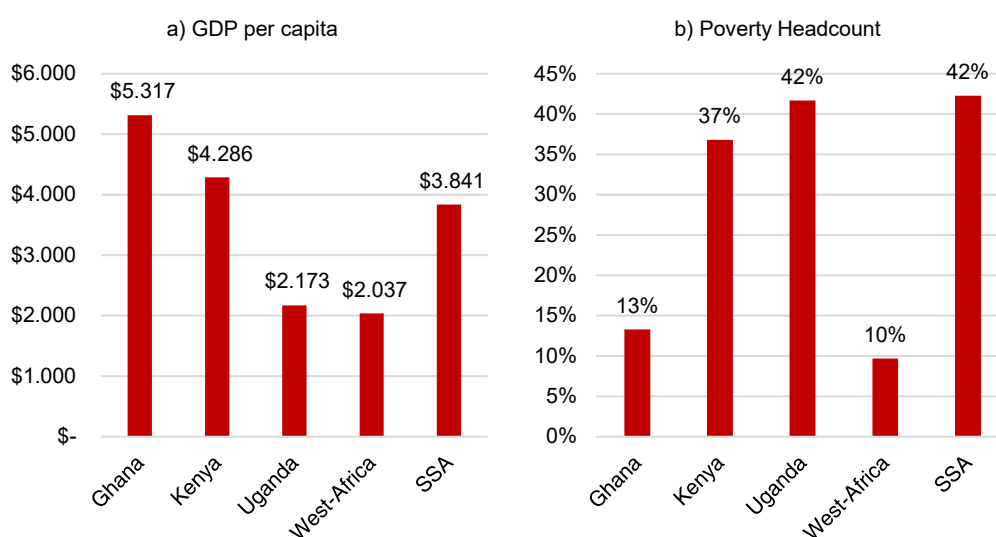
1 General Background

Ghana is a lower middle-income country in West Africa with a higher level of income and a lower poverty rate than Sub-Saharan Africa (SSA) on average. However, its tax-to-GDP ratio remains lower than the SSA average, despite good governance indicators. FDI has mostly come from conduit countries other than the Netherlands.

1.1 Economic background¹

Ghana is a lower middle-income country in West Africa with a higher level of income and a lower poverty rate than many other countries in Sub-Saharan Africa (SSA). The country's GDP per capita is more than 2.5 times that of West Africa, and also well above Kenya and Uganda in East Africa (see Figure 1.1a). If inequality does not hit a country disproportionately, a higher GDP per capita translates into a lower poverty rate. This is also the case for Ghana: its poverty headcount is well below the headcount for Kenya, Uganda and the Sub Sahara African average (see Figure 1.1b). However, the IMF (2019) noted that poverty reduction has slowed down since 2012 while inequality widened.

Figure 1.1 Ghana performs relatively well on economic performance indicators



Source: World Development Indicators (World Bank, 2020). GDP per capita (2017-19 average; PPP; current international \$). Poverty headcount ratio at \$1.90 a day (latest available; 2011 PPP; % of population). The numbers for West-Africa and the SSA are calculated based on a weighted average.

Ghana moved from low-income status to lower middle-income status in 2010. This happened unexpectedly due to a technical GDP rebasing exercise, which revealed its official GDP per capita was USD 1,363 rather than USD 800. This statistical adjustment put Ghana into a new income category overnight, and had important consequences, as it affected its eligibility for

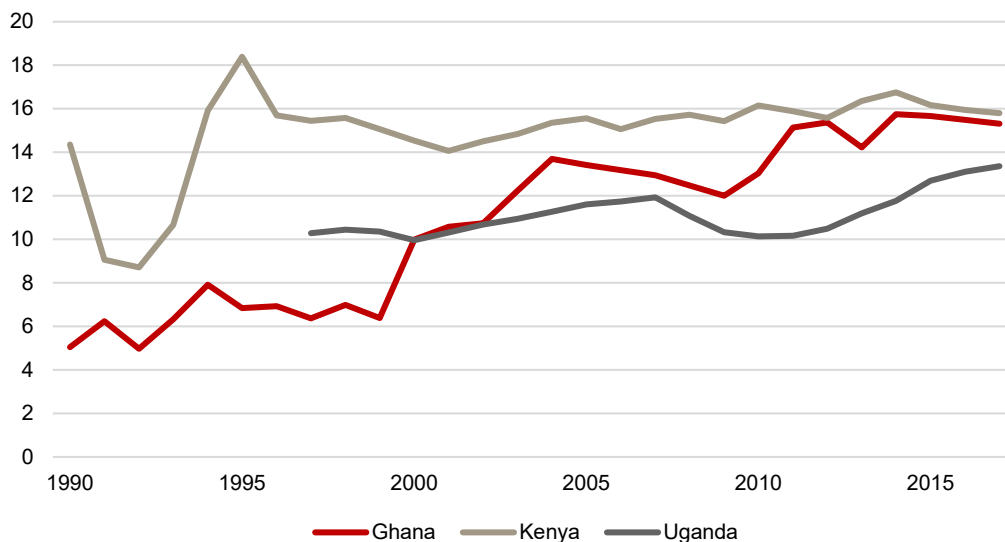
¹ Although Ghana participates in IMF's General Data Dissemination System (GDDS) since July 20, 2005, the IMF (2019) notes that there are still shortcomings in the data quality: "data provision is broadly adequate for standard surveillance, though some shortcomings remain in the quality and timeliness of certain data".

concessional finance from the World Bank, which has been the country's most important creditor for the past three decades.²

1.2 Revenue mobilisation

The tax-to-GDP ratio in Ghana more than doubled since 2000, but remains low. On average over the last two decades, the tax ratio in Ghana was around 12.8 percent of GDP, which according to the IMF (2019) was well below the average of 15 percent in Sub-Saharan Africa (SSA). In 2018, the IMF estimated that Ghana's tax revenue was around 7 percentage points of GDP below its theoretical tax capacity.³ According to the IMF (2019), Ghana ranks only in the second lowest quartile in the SSA region and in the lowest quartile among its middle-low-income peers in SSA, which averaged 16.9 percent of GDP in 2018.

Figure 1.2 Ghana's tax-to-GDP ratio has increased substantially since 2010 but remains low



Source: World Revenue Longitudinal Data set (WoRLD), IMF. (Tax revenue in percent of GDP)

The low level of tax revenues has been driven in part by relatively low domestic taxes, notably personal income taxes and value added tax (VAT). In 2018, personal income tax revenues had declined to 2 percent of GDP while VAT revenues had fallen to 2.3 percent of GDP. However, corporate tax revenues more than doubled from 1.3 percent of GDP in 2008 to 2.8 percent of GDP in 2018,⁴ which helped to mitigate the underperformance of VAT and personal income tax. Trade taxes have stagnated at 2 percent of GDP since 2015.⁵

Based on two different estimates of 'tax effort', Ghanaian authorities collect less taxes (relative to their potential) than their peers. This is shown in Figure 1.3, which displays two

² Moss and Majerowicz (2012)

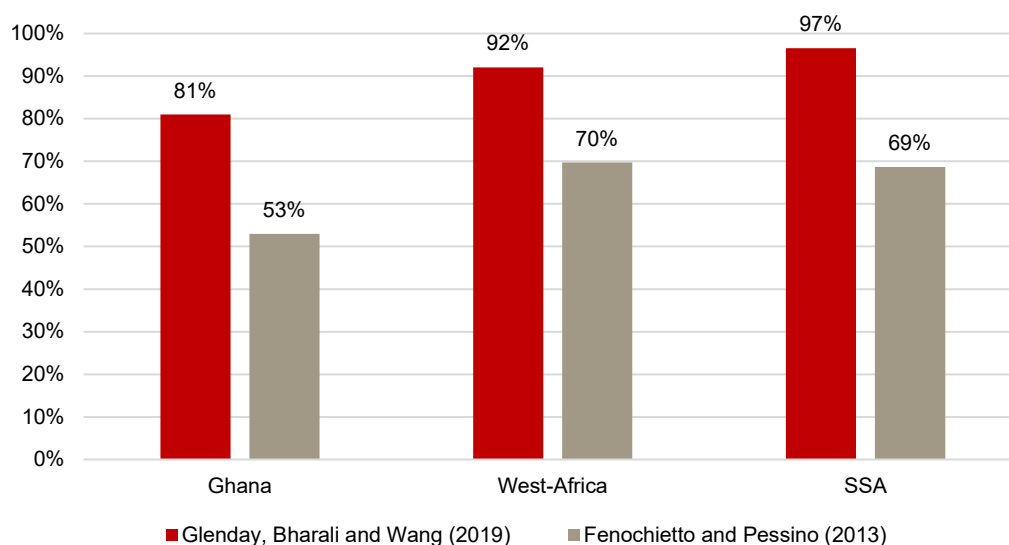
³ This theoretical tax capacity (also called 'tax frontier') can be defined as the highest level of tax revenue (usually measured in percent of GDP) that a country can be expected to achieve given certain underlying macroeconomic and institutional conditions. (IMF Regional Economic Outlook for Sub-Saharan Africa, May 2018, page 40.)

⁴ This happened despite the fact that the corporate tax rate in Ghana has been fixed at 25 percent since 2006, i.e. it was an increase in the effective corporate tax rate.

⁵ IMF (2019), pp. 41-42.

estimates of ‘tax effort’. The estimate produced by Glenday, Bharali and Wang (2019) calculates tax effort in the broadest sense, by econometrically estimating the main determinants of revenue, and then using these to project potential revenue. Tax effort is then defined as the ratio between actual and potential revenue. Fenochietto and Pessino (2013) on the other hand define tax effort as the ratio between actual revenue and ‘tax capacity’, where the tax capacity is defined based on the fiscal structure of a country. The tax-effort calculations from Glenday et al. (2019) are available for more countries than the calculations from Fenochietto and Pessino (2013). Moreover, the latter data are also only available for 2011.⁶

Figure 1.3 Ghana’s tax effort lower than other countries in the region



Source: Glenday, Bharali & Wang (2019) and IMF (2011). Regional averages concern unweighted averages.

The “Ghana Beyond Aid” strategy envisages an increase in the tax ratio to 18 percent of GDP by 2023. According to the IMF (2019, p. 10), this target “may be ambitious given current levels” but they believe that an increase from the current level of nearly 16 percent to 18 percent is possible if the authorities focus on (a) tax policy reform focused on mining taxation and exemptions; (b) efforts to target non-standard VAT, custom duty exemptions on imported supplies and domestic sales (particularly on cereals, vehicles, cocoa, sugar, wood, and oil); (c) various tax administration measures, including in compliance risk management, a focus on large taxpayers; taxpayer registration; interconnecting tax payment platforms; information sharing and data cooperation between GRA and other government agencies (IMF 2019, pp 42-43).

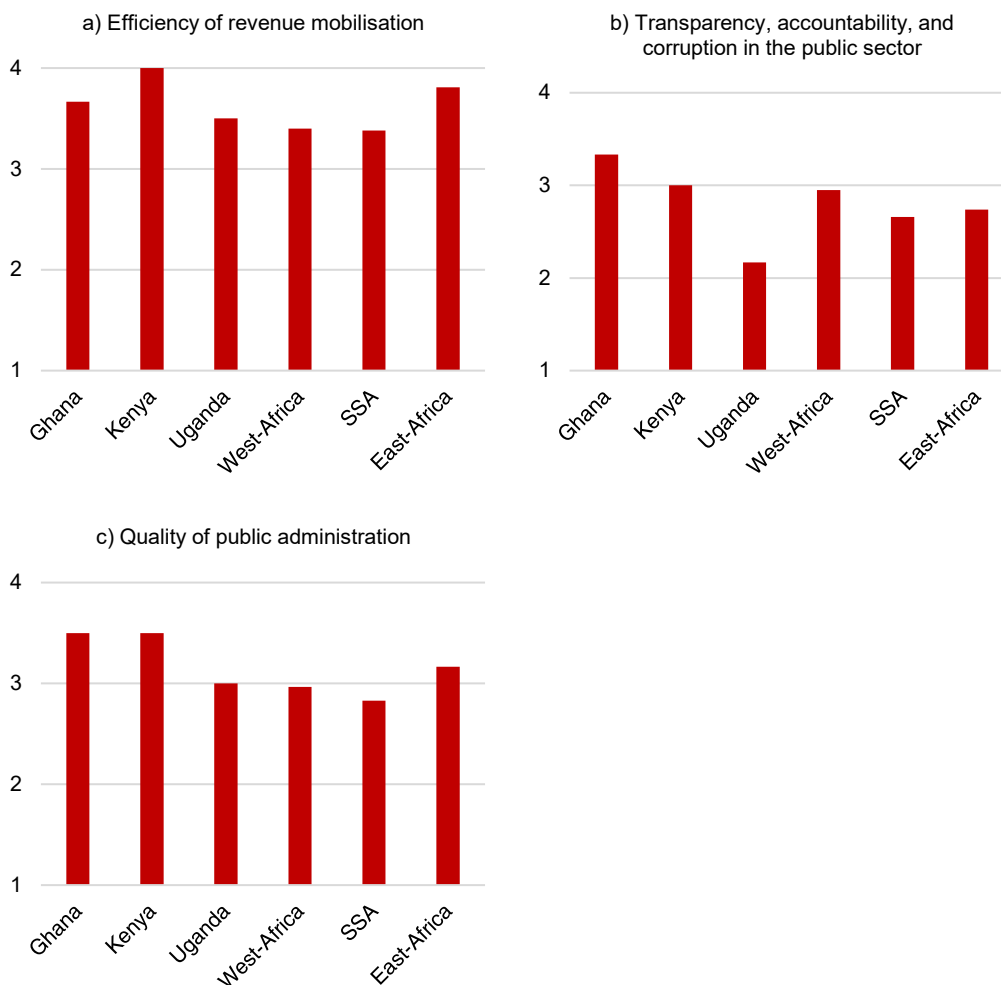
Many development partners in Ghana provide capacity development (CD) in DRM. The IMF and the World Bank are some of the most active organisations that cooperate with the government on both tax administration and tax policy issues. The German development cooperation (GIZ) has also been active with regard to both tax and customs administration, including local (subnational) taxation, and recently also exchange of information (EoI). Other organisations mentioned included the OECD and the African Tax Administration Forum (ATAF). CD activities supported by the Netherlands are described in Section 2.

⁶ We display both calculations since the tax-effort ratios from Glenday, et al. (2019) are to our knowledge, the most recent and comprehensive available, whereas the ratios from Fenochietto and Pessino (2013) are easier to interpret and do not require a modification of the fiscal structure. The latter simply states the effectiveness of the tax administration in terms of revenue collection given the current fiscal structure.

1.3 Governance indicators

World Bank governance indicators for Ghana suggest that the country is more transparent and has a better quality of public administration than other SSA countries.⁷ Ghana scores fairly similar and consistently between 3.3 and 3.7 points on a six-point-scale on all three CPIA ratings as exemplified in Figure 1.4. Moreover, the ratings show little variance over time (not shown in the figure). These ratings are well above the (modest) average ratings of all SSA countries included in the CPIA assessment. East African countries perform relatively better than the SSA average. With respect to ‘efficiency of revenue mobilisation’, Ghana performs slightly below the East African average. Compared to other African countries, Ghana scores particularly well on “transparency, accountability and corruption”.

Figure 1.4 Ghana provides a relative good implementation environment



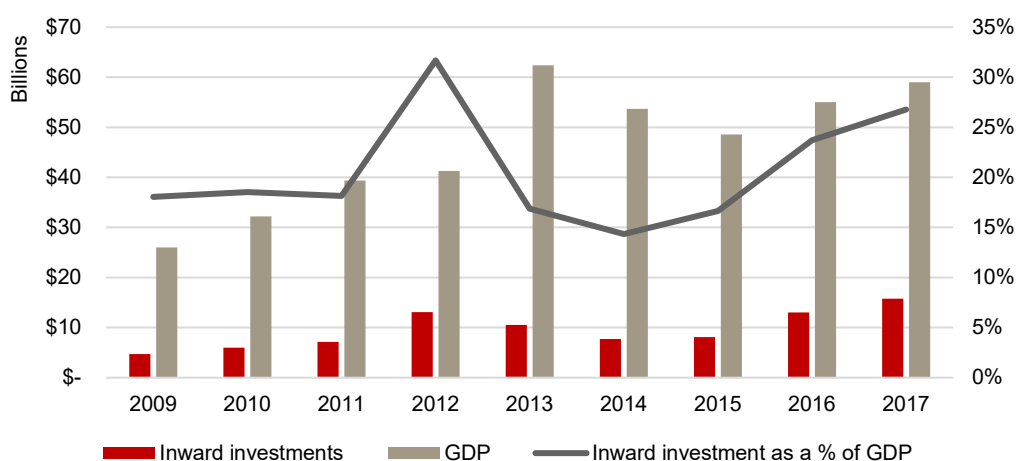
Source: Data from database: Country Policy and Institutional Assessment, Last Updated: 07/14/2020. CPIA efficiency of revenue mobilisation rating; CPIA transparency, accountability, and corruption in the public sector rating; CPIA quality of public administration rating (1=low to 6=high). Averages for 2018-2020. Regional averages concern unweighted averages.

⁷ Country Policy and Institutional Assessments (CPIA) are carried out annually by the World Bank to measure and rank the ability of countries to make effective use of aid. CPIA ratings are used by the Bank to calculate country performance ratings, and play an important role in determining the Bank's allocation of aid.

1.4 Foreign direct investment

The stock of foreign direct investment (FDI) in Ghana grew rapidly but erratically over 2009-2017. Overall, the stock of inward FDI more than tripled from USD 4.7 billion to USD 15.8 billion between 2009 and 2017 (see Figure 1.5). In 2017, the stock of FDI was also significantly higher than in Kenya and Uganda (not shown in figure), even when correcting for the size of the population. Nevertheless, the FDI stock was still 15 percent smaller than the Sub Sahara African average (after correcting for population size). In absolute terms, it grew between 2009 and 2012, particularly in 2012, then declined between 2012-2014 (in USD terms and especially in percent of GDP), and then picked up again between 2014-2017. Updated data on stocks are not available, but according to the IMF (2019), inward FDI inflows moderated in 2019 and were expected to recover to an average of 5 percent per year in the medium term, given pending investment in hydrocarbons.

Figure 1.5 Foreign direct investment into Ghana has fluctuated over the years



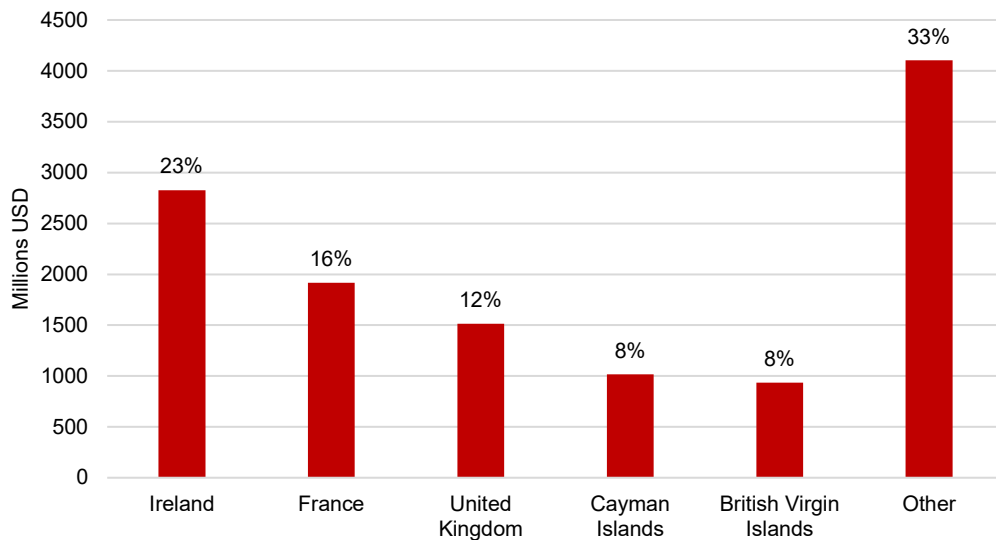
Source: Coordinated Direct Investment Survey (CDIS), IMF for data on *Inward foreign direct investment*. World Development Indicators (World Bank, 2020) for data on *GDP*.

In recent years, large foreign investments in Ghana have come from Ireland, the Cayman Islands and the British Virgin Islands. During the period 2015-2017, Ireland was the largest foreign investor in Ghana.⁸ Other large investors have been the Cayman Islands (which was placed on the EU black list of non-cooperating jurisdictions in 2020⁹) and the British Indian Ocean territory (with a population consisting of only 4,000 British and U.S. military).

⁸ At the time of writing this report, bilateral FDI data beyond 2017 were not yet available from the IMF.

⁹ <https://www.consilium.europa.eu/en/press/press-releases/2020/02/18/taxation-council-revises-its-eu-list-of-non-cooperative-jurisdictions/>

Figure 1.6 Ireland is the largest foreign investor in Ghana



Source: Coordinated Direct Investment Survey (CDIS), IMF. Inward foreign direct investment, measured in millions of USD. 2015-2017 average based on inward investments reported by Ghana.

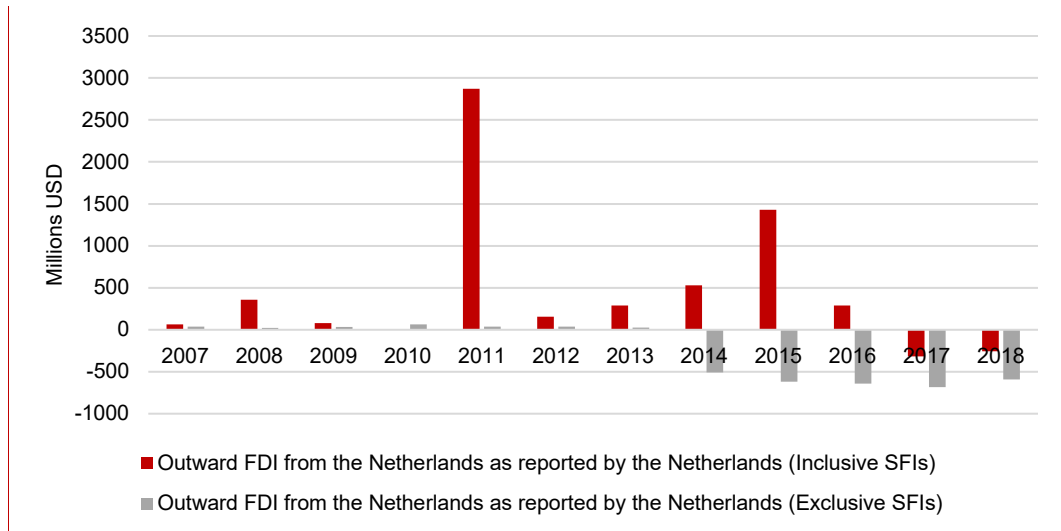
Despite large FDI inflows from the Netherlands in 2011 and 2015, the Netherlands has not been a large investor in Ghana in recent years (see Figure 1.7). After the DTT entered into force in 2008, the Dutch foreign position in Ghana *inclusive of specialised financial institutions (SFIs)* exceeded USD 100 million for the first time.¹⁰ In 2016, the same year the new Ghanaian Income Tax Act went into force, the Dutch foreign position *inclusive of SFIs* fell significantly.¹¹ This Act has introduced taxes on goods and services which were hitherto non-taxable (including increased withholding taxes on interests and dividends and other personal income taxes). At the time, it was argued that this act would discourage Ghanaians and investors from investing, which is confirmed by the data. Noteworthy is that it was mostly the SFI-related investments that declined significantly after this act went into force. Moreover, after the 2017 protocol to the 2008 DTT entered into force, the Dutch foreign investment position *inclusive of SFIs* even fell below zero for the first time. At the same time, the Dutch foreign position *exclusive of SFIs* had already been negative since 2014.¹² Actually, the Dutch position exclusive of SFIs had always been either negative or only slightly positive.

¹⁰ Dutch investment flows would be a better measure to assess the importance of the Netherlands as an investor in Ghana. These data are, however, not available.

¹¹ Ghanaian Income Tax Act, 2015 (Act 896)

¹² A negative foreign position means that the subsidiaries in Ghana had a larger claim on the Dutch holding than the other way around (the directional principle basis).

Figure 1.7 The Netherlands has not been a large investor in Ghana during the last decade



Source: DNB (2019). *Direct investment abroad (stocks, in millions of USD)*. These are directional figures, in which investment by Dutch parent companies in foreign subsidiaries is netted against investment by foreign subsidiaries in Dutch parent companies.

2 Capacity building activities

2.1 Bilateral activities

Table 2.1 The Netherlands financed bilateral activities in 10 areas in Ghana from 2013 to 2019

Activity	Programme	Year	Organisation
Transfer pricing (TIWB)	Strengthening tax systems	2013-present	MoF/NTCA
Tax treaties maintenance and administration (seminar in Amsterdam)	Capacity Building in Taxation	2014	IBFD
Valuation and classification of goods	Strengthening tax systems	2014	MoF/NTCA
Compliance Risk Management (CRM)	Strengthening tax systems	2016	MoF/NTCA
Customs	Promoting DRM in partner countries	2016-2017	MoF/NTCA
TADAT assessment of the National Revenue Board	Promoting DRM in partner countries	2017	MoF/NTCA
Tax Revenue for Economic Enhancement (TREE)	Local tax communities in Ghana	2017-2022	VNG
Congress change management	Promoting DRM in partner countries	2018	MoF/NTCA
Learning and development	Promoting DRM in partner countries	2018	MoF/NTCA
Double tax treaties - policy and negotiations (research and training)	Capacity Building in Taxation	2019	IBFD

Source: SEO Amsterdam Economics based on programme documentation

2.2 Multilateral programmes

The contribution of the Netherlands towards multilateral programmes is generally speaking not earmarked (see Table 2.2). Only with respect to the UN-DESA programme, the Netherlands contributed financially to a specific subset of activities (i.e. training in tax treaty negotiations, tax treaty administration, and in policies to prevent base erosion and profit shifting). The contribution to the IMF's thematic funds is generally speaking not earmarked, but the Netherlands asked the IMF to pay specific attention to anti-money laundering practices. With respect to the RMTF, the Netherlands asked the IMF to put more emphasis on donor coordination, whilst the funding remained formally not earmarked. Moreover, 70 percent of the Dutch funding to the WB was earmarked for Central Africa and the MENA region, but nothing of the remaining funding was earmarked for specific activities in Ghana. Nevertheless, the Netherlands often took part in the steering committee of the programme in order to have a voice in determining the final activities.

Table 2.2 The Netherlands supported 12 multilateral programmes in Ghana from 2013 to 2019

Name	Organisation	Theme	Period
Thematic Funds; TPA-TF ¹³	IMF	TA	01-07-2009 / 30-06-2013
Thematic Funds; MNRW-TF ¹⁴	IMF	TA	01-07-2009 / 30-06-2013
African Technical Assistance Centres (AFRITACs)	IMF	Support to regional (African) organisations on Tax	01-07-2009 / 31-06-2013
AFRITAC Core	IMF	Support to regional (African) organisations on Tax	01-06-2015 / 31-05-2019
ATAF	South African Revenue Service	Support to regional (African) organisations on Tax	01-11-2010 / 30-06-2014
ATAF	ATAF	Support to regional (African) organisations on Tax	01-01-2014 / 31-12-2015
TADAT Tax diagnostics	IMF (and World Bank)	TA	01-01-2014 / 31-12-2018
ATAF	ATAF	Support to regional (African) organisations on Tax	01-01-2017 / 31-12-2020
Tax and development	OECD	Developing countries participation BEPS	01-01-2015 / 31-12-2017
BEPS and TIWB support	OECD	Developing countries participation BEPS	01-01-2017 / 31-12-2020
Capacity building in DRM	UN-DESA	TA	01-11-2017 / 31-12-2019
Global tax program	WB	TA	01-07-2018 / 30-06-2022

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

2.3 Selected case studies

At the request of IOB, SEO selected as case studies only those bilateral CD-activities with a focus on international taxation. As Tables 2.1 and 2.2 show (but also described in Chapter 3 of the main report), the Netherlands also devotes a substantial share of their budget to capacity development in the area of domestic tax policy and tax administration (e.g. through the NTCA, VNG International and the various multilateral funds). However, at the explicit request of IOB, these were not selected as case studies as this evaluation needed to focus on (the coherence of) the different Dutch policies in the area of international taxation. In principle, SEO selected all of these bilateral CD-activities in the area of international taxation, except for a few cases where insufficient information was available or the activity was very small. In addition, we complemented the selected CD-activities with an analysis of Ghana’s involvement and position with respect to OECD BEPS (including its tax treaty policy). Although these matters are not CD-activities in itself, they do relate to the multilateral OECD programmes and therefore we treat them as “case studies” for the purpose of this evaluation.¹⁵

¹³ Formerly referred to as one of the Topical trust funds (TPA)

¹⁴ Formerly referred to as one of the Topical trust funds (MNRW)

¹⁵ This approach does therefore also not intend to make a selection that is fully representative of the Dutch support in the field of taxation, but is in line with the desires of IOB.

Table 2.3 Selected “case studies” in Ghana

Name	Organisation	Years	Type
CD activities			
Transfer Pricing (TIWB)	NTCA	2013-present	Bilateral
Double Tax Treaties - policy and negotiations (research and training) for the Ghanaian Revenue Authority	IBFD	2019	Bilateral
Other			
Analysis of the Ghanaian tax treaty policy (e.g. MLI/negotiations with the Netherlands)	Ghanaian National Treasury & Ghanaian Revenue Authority	-	-
Analysis of the Ghanaian position with respect to the OECD/BEPS (negotiations)	Ghanaian National Treasury & Ghanaian Revenue Authority	2013-present	-

Source: SEO Amsterdam Economics

3 Case Study 1: Involvement in on BEPS

3.1 Ghana's participation in BEPS-related fora

Ghana's participation in a number of tax initiatives of international organisations is an objective indicator of its involvement in international cooperation in tax matters. In particular, we identified the following relevant international tax initiatives:

- G20/OECD initiatives such as the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting ('Multilateral Instrument' or 'MLI') and the Inclusive Framework on BEPS ('IFB');
- The Global Forum on Transparency and Exchange of Information for Tax Purposes ('Global Forum');
- The Convention on Mutual Administrative Assistance in Tax Matters (CMAAT);
- The Multilateral Competent Authority Agreement on The Exchange of Country-by-Country Reports (CbC MCAA)
- UN Committee of Experts on International Cooperation in Tax Matters (UN Committee),

Ghana is not engaged in many initiatives on international taxation, but the country has chosen its own path to accommodate to international standards. Ghana has not joined the IFB nor did it sign the MLI. However, the country has amended some of their DTTs, in accordance with a new domestic tax treaty model, to accommodate to the BEPS minimum standards, in particular in the field of anti-avoidance provisions. Moreover, Ghana strongly supported the work of the UN Committee by appointing a candidate for the Committee member. The representative from Ghana – acting on a personal basis – is a co-chair of the Committee in its current term.

Inclusive Framework on BEPS

Ghana has not yet decided to join the Inclusive Framework on BEPS (IFB) yet. The OECD/G20 BEPS Project delivers potential solutions for governments to close loopholes in international rules,¹⁶ especially those allowing MNEs to artificially shift their profits to low or zero tax environments (i.e. the so-called tax havens). In response to the G20's call for broad and consistent implementation of the BEPS package, the OECD established the IFB in June 2016. Members of IFB can discuss and address all issues relevant for their country within an international body which sets up international standards on international tax cooperation on BEPS. According to officials from the GRA, the Ghanaian Ministry of Finance created a special committee to analyse the potential benefits and losses of joining the IFB (e.g. the level of financial commitment). Thus far, the analysis has not been completed or the Ministry of Finance has not yet reacted upon it. Nevertheless, there are some general reasons why developing countries, like Ghana, might have concerns about the added value of the IFB. First of all, they could prefer not to commit to all the solutions covered by the BEPS package which all IFB members must introduce by joining the

¹⁶ Examples are the transparent use of tax rulings through exchange of information, limiting opportunities for treaty abuse by signing on to the MLI, abolishment or change of potential harmful tax practices such as preferential tax regimes (e.g. patent boxes), the transfer pricing regime, Country-by-Country reporting to the parent entity's tax administration, and measures against so-called "cash boxes".

framework. Secondly they might consider the costs of IFB membership being too high, not only the membership fee (direct costs) but also the costs related to participating in meetings (indirect costs) which may require long-distance travel. Finally, the lack of capacity to attend and contribute to all initiatives of IFB could make it difficult to achieve the assumed goal of IFB membership, namely to have a real influence on decisions and solutions adopted by this forum. Moreover, Ghana has also not signed CbC MCAA.¹⁷ However, one interviewee from the Ghanaian Ministry of Finance indicated that the country is currently revising its transfer pricing regulation. One of the issues that was identified in the process is CbC-reporting.

Ghana implemented the BEPS outcomes through their domestic law or bilateral negotiations of DTTs. Most of the BEPS solutions have already been implemented through the Ghanaian domestic tax law (e.g. anti-treaty-shopping provision) and some of them are being discussed or implemented as of September 2020 (e.g. Automatic Exchange of Information legislation, transfer pricing rules, mandatory disclosure rules – reporting of tax schemes). Moreover Ghana believes that the African developing countries are well represented by ATAF at the IFB, thus there is no need to become a direct member of IFB.

Beyond standard-setting, the IFB also aims for effective implementation, with a peer review and monitoring framework that enhances a level-playing field. By joining the IFB, countries commit to implementing the four BEPS minimum standards. These minimum standards address critical issues, such as tax treaty shopping, tax rulings, harmful preferential tax regimes, transparency on multinationals' global operations and improved dispute resolution mechanisms. The IFB has 137 members as of September 2020.¹⁸

Global Forum on Transparency and Exchange of Information for Tax Purposes

Ghana is one of the 161 members of the Global Forum on Transparency and Exchange of Information for Tax Purposes (hereafter Global Forum), the leading body working on the implementation of global transparency and exchange of information standards around the world.

Ghana is largely compliant with the implementation of Exchange of Information on Request (EOIR) standards. Ghana has received this rating based on a review by peers on Phase 1 (legal framework) and Phase 2 (review of EOIR in practice).¹⁹ The Global Forum monitors and peer reviews the implementation of international standards of EOIR and automatic exchange of information (AOI). The EOIR provides international exchange of foreseeably relevant information for the administration or enforcement of the domestic tax laws for a requesting party. All Global Forum members have agreed to a peer review assessment of their implementation of the EOIR standard. In addition, non-members that are relevant to the Global Forum's work are also subject to review. The peer review assesses the legal and regulatory framework of each jurisdiction, as well as the implementation of the EOIR framework in practice.

¹⁷ <https://www.oecd.org/tax/beps/CbC-MCAA-Signatories.pdfs>

¹⁸ <https://www.oecd.org/tax/beps/inclusive-framework-on-beps-composition.pdf>

¹⁹ <http://www.oecd.org/tax/transparency/GFratings.pdf>

Convention on Mutual Administrative Assistance in Tax Matters (CMAAT)

Ghana's legal framework for administrative assistance in tax matters adheres to internationally accepted standards. The CMAAT, developed jointly by the OECD and the Council of Europe in 1988,²⁰ is the most comprehensive multilateral instrument available for all forms of tax co-operation to tackle tax evasion and avoidance. The CMAAT provides a legal framework on Exchange of Information (EoI) for tax purposes, the assessment and collection of taxes and all other possible forms of administrative co-operation between states in tax matters. As many as 137 jurisdictions participate in the CMAAT as of September 2020, including 17 jurisdictions covered by territorial extension. Ghana signed the CMAAT on 10 July 2012 and ratified the convention on 29 May 2013. Subsequently, the CMAAT entered into force on 1 September 2013.²¹

UN Committee

A representative from Ghana also participates in the work of the UN Committee of Experts on International Cooperation in Tax Matters. This UN Committee is responsible for UN Model Double Taxation Convention and also provides guidelines for developing countries on specific issues of international tax cooperation including BEPS. A delegate from Ghana (Mr. Eric Mensah) is one of the 25 members and Co-Chair of a current term of the UN Committee. Mr. Mensah is Assistant Commissioner at the GRA in charge of Legal Affairs and International Taxation Agreements. While he participates in the UN Committee in a personal capacity and does not formally represent the government of Ghana, the participation of a high level GRA official may be seen as an indication of Ghana's strong commitment to international tax cooperation.

3.2 Stakeholders' views on Ghana's role in BEPS

According to private sector tax experts, the Ghanaian government appears to have made progress on a number of BEPS actions even though it is not formally participating in the BEPS process. According to a tax advisor from a Big 4 company, Ghana has taken a more active stance towards BEPS during the last five years. In his view [which remains to be confirmed], the most significant progress has been made thus far with respect to the following BEPS actions:

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

BEPS actions on which private sector tax advisors see less progress include:

- **Action 2 - Hybrid mismatches:** Have not done much in this area.

²⁰ Subsequently amended by a protocol in 2010

²¹ https://www.oecd.org/tax/exchange-of-tax-information/Status_of_convention.pdf

- **Action 3 - Controlled foreign company:** Do not have such rules as of September 2020, but new regulations are expected soon.
- **Action 5 - Harmful tax practices:** Have not done much in this area.
- **Action 6: Prevention of tax treaty abuse.** All DTTs have provisions that prevent treaty shopping. The GRA Commissioner General has the right to withdraw tax treaty benefits in certain cases. This also applies to past benefits.
- **Action 7 – Permanent establishment status:** included in DTTs (provisions against treaty shopping).
- **Action 11 – BEPS data analysis:** can only do this following implementation of other action plans (in particular Action 13).
- **Action 12 - Mandatory disclosure rules:** not much action in this area, but it is required to disclose beneficial owners in financial statements
- **Action 14 - Mutual agreement procedures:** various dispute resolutions are in place already, but not much was done in terms of MAPs.
- **Action 15 – MLI:** Ghana has not signed the MLI and does not appear to have plans to do so.

Representatives of the Ghanaian authorities confirmed that their basic attitude vis-à-vis the BEPS minimum standards is positive. They noted that in fact, some BEPS recommendations had already found their way into domestic law, and that, in general, the BEPS recommendations are a frequent topic of internal discussion. *“Our first aim is to go for the minimum standards. However, we are not opposed to go beyond that”*. However, the authorities also indicated that they wanted to have a better understanding of the impact of implementing BEPS recommendations on revenue mobilisation. And in case it involves implementing standards in DTTs, the opinion of the partner jurisdiction is also important (see Section 5).

Stakeholders mentioned several factors as having stimulated the government’s interest in BEPS and DRM-related reforms and modernisation programmes.

1. Ghana’s graduation to middle-income status and the subsequent “Ghana Without Aid” campaign stimulated a renewed interest in enhancing domestic resource mobilisation as a way to reduce the country’s dependence on aid. This campaign was started by the previous government and has been continued by the current government.
2. Ghana’s President was seen as having ambitious plans for the country’s economic development, for which he needed the GRA and the Ministry of Finance to collect more tax revenue.
3. The former finance minister Seth Terkper, who himself had a background in taxation, was mentioned as having played a key role in encouraging the government to modernise the tax system.
4. The government received a lot of advice from development partners (IMF, World Bank, GIZ and others).
5. Public discourse, in part stimulated by NGOs and bilateral development partners such as GIZ, has increasingly stressed that tax compliance is necessary for improved public investment (e.g. in infrastructure) and even improved COVID-19 relief measures.²²

²² For instance, a taxpayer identification number (TIN) is now needed to be eligible for COVID-19 relief. Digitalisation (use of online tools) has been a supportive factor in this context.

The level of BEPS implementation is influenced in part by capacity constraints. According to private sector representatives, some aspects (such as prevention of treaty abuse) are difficult to implement because of the limited access to transfer pricing data that would enable the authorities to assess transactions. Several other interviewees (a bilateral development partner and an NGO representative) observed that the level of capacity is unevenly distributed within the GRA, and limited in certain areas. Examples cited of limited capacity in certain areas were the implementation of DTTs, AEOL, and tax auditing. Another factor mentioned by multiple interviewees was the high turnover in GRA due to frequent reshuffling of staff, which can affect their effectiveness.

Some stakeholders also had positive remarks about the GRA's capacity. Private sector representatives noted that capacity bottlenecks are currently being addressed through training, hiring of new staff and infrastructure modernisation (digitalisation). A development partner active in providing DRM-related capacity development activities noted that, overall, *“technical capacity at working levels seems to be reasonable, but the ideas and proposals developed by these capable people are not always accepted at higher levels of political management”*. Another development partner emphasised that corruption levels in Ghana are comparatively low. However, this is not entirely consistent with the governance indicators presented in Section 1.3. Moreover, in May 2020, the European Commission put Ghana on the blacklist for money-laundering.²³

Political factors may also play a role in limiting progress on tax reform and BEPS actions. According to an NGO representative, the fact that Ghana is not a member of the Inclusive Framework shows its reluctance to fully and openly commit to the BEPS process. In their view, the electoral cycle is such that the Ghanaian government is driven more by short-term interests (i.e., cover the budget gap between what they want to spend, versus what they have to spend) rather than a long-term strategic view. This typically leads to an emphasis on short-term one-off gains rather than long-term structural benefits.²⁴ In addition, several interviewees hinted that GRA is affected by power struggles within the government (including the Ministry of Finance and the Presidency). For example, mention was made of a Deputy Minister of Finance who had been removed from the GRA Board, to be replaced by a “more independent” person. According to a development partner, “When there is a new President, the entire top is typically replaced.”

Some observers see the government as being too “pro-business.” According to an NGO representative, this is the reason for the large number of tax exemptions granted.²⁵ It can also be a reason why the campaign “Ghana Beyond Aid” lost some visibility over the last year, according to a development partner. Some noted that the general public increasingly sees DTTs as reflecting “specific trade interests” that cause the Ghanaian people to lose revenue. One interviewee even observed a strong rejection of tax treaties by the public in Ghana.

While ‘fiscal literacy’ on BEPS among the general public is considered low, CSOs such as the Tax Justice Alliance are engaged in a public debate on national and international tax exemptions. Exemptions are seen as excessive and sometimes arbitrary. For example, a

²³ Together with Botswana, Mauritius and Zimbabwe. Uganda was already on the list, which now has a total of 22 countries.

²⁴ This short-term vision was also confirmed by a former GRA representative, who noted that the focus in GRA has been too much on “immediate results” due to “too much pressure on short-term revenue mobilisation”.

²⁵ See also GIPC (2018).

company that exports more than 70 percent of its products is eligible for a 10-year tax holiday. The same holds true for companies owned by people below the age of 35. The IMF has often criticised such exemptions. The government has prepared a new bill that will make it more difficult to grant tax exemptions to companies. NGOs and CSOs are now engaged in broadening the debate on exemptions towards international taxation, and claim that this topic should be treated under the roof of the UN rather than the OECD. They feel that BEPS, while a good initiative in principle, also contains aspects that are not necessarily in the interests of developing countries. An interviewee mentioned the MLI as an example of a mechanism that aims to protect the taxing rights of developed countries.

4 Case study 2: Ghana's tax treaty policy

4.1 Ghana's DTT network

Ghana's current double tax treaty network consists of 11 DTTs that have entered into force.²⁶ The DTT with the Netherlands, originally concluded in 2008, was amended by the protocol signed on 10 March 2017 (Dutch Ministry of Foreign Affairs). Since Ghana has not signed the MLI, its current treaty policy, in particular regarding the implementation of solutions developed under the BEPS project, can only be analysed on the basis of the latest tax agreements.²⁷ By means of illustration, we have looked at the 2014 DTT with Denmark, the Protocol to the 2014 DTT with Switzerland, the 2017 DTTs with Mauritius and Singapore and the 2017 Protocol to the 2008 DTT with the Netherlands.

In 2014, Ghana did not incorporate any general anti-avoidance provisions (PPT or LOB) nor MPT clauses for passive incomes into their DTTs with Denmark and Switzerland. Nevertheless, both DTTs do include some anti-avoidance provisions: a beneficial owner clause is applied in case of dividends, interest, royalties and fees for technical services and real estate clauses. They also include provisions on mutual agreement procedures consistent with the BEPS standard. Moreover, both DTTs are source country oriented treaties in the sense that they contain relatively high withholding taxes on dividends, interests and royalties. They also provide withholding taxes on fees for technical services but do not tax other incomes and payments for leasing of equipment. The DTTs concluded in 2017 with Mauritius and Singapore also do not contain any general anti-avoidance clause (PPT or LOB). These DTTs do not include the minimum standards despite being concluded after the setting of the BEPS minimum standard (action 6) in 2015.

In contrast, the DTT with the Netherlands which, after conclusion of the 2017 Protocol, includes a PPT clause consistent with the BEPS minimum standard. The 2017 Protocol with the Netherlands was a first step for Ghana on its way to modifying its treaty network with anti-avoidance provisions consistent with the BEPS standards. (See Section 4.3 below). Ghana's current treaty policy is to implement anti-abuse clauses in their DTTs on a case by case basis.

The treaties with Mauritius, Singapore and Netherlands (amended by 2017 Protocol) include withholding taxes on fees for technical services (i.e. source-oriented), but only the 2008 DTT with the Netherlands contains a real estate anti-avoidance clause. Even in this case, its applicability is very limited, because it provides for a 90 percent threshold on shares' value coming from immovable property instead of a 50 percent threshold per the OECD and UN Models. It makes this provision hardly useful for anti-avoidance purposes.

²⁶ Belgium, Denmark, France, Germany, Italy, Mauritius, the Netherlands, Singapore, South Africa, Switzerland and the UK

²⁷ Since Ghana is currently (September 2020) renegotiating two DTTs, it is too early to assess the practical impact of the BEPS project on Ghana's tax treaty network.

4.2 Ghana's tax treaty model

The evaluation team did not have access to Ghana's tax treaty model, as this is not a public document. Sometimes the model is not a formal document but merely the position of the country proposed to the treaty partner during negotiations. However, in the case of Ghana interviews suggest that the country does have a tax treaty model.

In 2019, Ghana appears to have changed its treaty model with respect to the use of general anti-avoidance clauses in their DTTs. According to the authorities, Ghana now prefers to apply Article 29 of the UN Model: including a robust LOB provision supplemented by a PPT. This solution is also fully consistent with the BEPS standards. As Case Study 3 suggests, it is likely that this change in the treaty model was a direct result of the IBFD training on DTTs in 2019.

Nevertheless, Ghana is flexible on the type of anti-avoidance clauses that are included in DTTs. According to the authorities, when a treaty partner does not accept Article 29 of the UN Model, Ghana is open to considering the inclusion of a simplified LOB or a PPT.

4.3 Ghana's DTT with the Netherlands

RQ 7.1: What was the position of Ghana during negotiations on the inclusion of anti-abuse clauses in tax treaties with the Netherlands and why?

The DTT between Ghana and the Netherlands was amended in 2017 to include an anti-abuse clause (PPT). Ghana and the Netherlands concluded the initial "Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital gains" at Accra on 3 October 2008 ("2008 DTT"). Subsequently this 2008 DTT was amended by a Protocol signed in Accra on 10 March 2017 ("2017 Protocol") (Dutch Ministry of Foreign Affairs, 2017). The 2017 Protocol introduced a PPT clause into the 2008 DTT.

Ghana was one of the first countries to respond to the request of the Netherlands made in 2013 to include anti-avoidance provisions in their DTT.²⁸ Subsequently, in 2014 the Netherlands made a draft proposal of the protocol to the 2008 DTT. Originally this draft proposed to introduce an LOB as an anti-avoidance provision (which was the standing Dutch policy at the time). After the conclusion of the first BEPS round in 2015, the Netherlands changed its policy and proposed to include the PPT clause in accordance with the BEPS minimum standards. As a consequence, Ghana accepted the proposal of the Netherlands and both parties signed the amending protocol in 2017.

Ghana believes that the 2008 DTT is not very beneficial for Ghana, mainly because of the low withholding tax rates and the arbitration provision. With respect to the latter, the UN Committee mentions that it is never in the interest of a State to limit its sovereignty in tax matters through mandatory arbitration. Moreover, the difficulty of finding suitable arbitrators and the general lack of expertise with mutual agreement procedures in developing countries creates an

²⁸ The proposal of the Netherlands in 2013 to 23 developing countries to include anti-avoidance provisions in their DTTs.

uneven playing field for settling disputes with the more experienced developed countries. Ghana would have preferred to renegotiate the whole treaty including these articles, but (as far as we have been able to confirm) Ghana did not formally express this to the Dutch partners as a condition to revise the 2008 DTT. Since the draft protocol was very short (it generally consists of a PPT clause, an amendment of the EoI article to be consistent with EOIR standards, and a provision on assistance in tax collection) Ghana decided to accept it and to revisit a full renegotiation of the 2008 DTT in the future.

As of September 2020, Ghana has not made any formal request for renegotiations with the Netherlands. In the meantime, however, Ghana has changed its tax treaty model (see next section) and now prefers to use Article 29 of the UN Model consisting of robust LOB provision supplemented by a PPT.

4.4 Ghana's position regarding the MLI

RQ 7.3: To what extent is the multilateral instrument considered relevant by authorities in Ghana?

Ghana has not signed the MLI. It is therefore not possible to analyse Ghana's position on the MLI provisions. Instead of signing the MLI, Ghana decided to renegotiate its DTTs on a bilateral basis, but with the aim to implement the BEPS minimum standards.

The authorities noted three key reasons for choosing the bilateral solution over the MLI:

- **Efficiency:** since Ghana only has 11 DTTs, which is a small number, it is more efficient to renegotiate these DTTs bilaterally than to analyse and prepare a position on the MLI. The bilateral option requires less capacity and administrative costs.
- **Flexibility:** bilateral negotiations allow Ghana to introduce a tailor-made solution for a specific treaty partner (that might go beyond the minimum standards).
- **Preference for UN model:** Ghana has a preference for Article 29 of the UN Model as a general anti-avoidance clause in its DTTs, which is not possible to do through the MLI. Ghana decided to do opt for the LOB, because it is less of a general clause and therefore simpler in its application. Since the LOB does not cover the full range of avoidance schemes (e.g. anti-conduit regulation), the LOB needs to be supplemented by the PPT.

5 Case study 3: DTT Training IBFD

In 2019, the International Bureau for Fiscal Documentation (IBFD) conducted a two-week course in Ghana on ‘Double Tax Treaties - policy and negotiations.’ The course took place in 2019 and was attended by a large group of participants from the GRA. A smaller group of 10-15 GRA representatives participated in a follow-up tax treaty negotiation workshop.

5.1 Relevance

Objective

RQ 5.1: What was the objective of this activity?

The objective of this training programme was to provide insights into (1) tax treaty provisions and international tax principles and (2) preparation and conduct of tax treaty negotiations. After discussion with the GRA, both parties agreed that IBFD would provide a two-week general training on international taxation principles, including an analysis of the national treaty model and existing tax treaties. The training also covered the interaction with domestic law.

- Topics addressed during the first week included: residence; permanent establishment and allocation of profits; dividends, interest, royalties and fees for technical services; capital gains; employment income; double tax relief; triangular cases; international tax planning; anti-avoidance rules; and BEPS developments.
- During the second week, the focus was predominantly on the Model Tax Convention drafted by Ghana, including the relation between model provisions and the BEPS standards.
- Later in the year, a tax treaty negotiation workshop was organised for a smaller and more dedicated group (10-15 participants) on how to prepare, conduct, and prioritise the most important issues in tax treaty negotiations. The objective of this workshop was to further increase knowledge and awareness about international taxation issues in general and advance tax treaty negotiation skills in particular.

Needs identification

RQ 5.2: How has the Netherlands identified the tax-related TA and training needs?

The GRA initiated the request for training. The GRA directly approached the IBFD, probably because Ghana had also attended the conference on international taxation organised by IBFD in 2014, with a request for capacity development in the area of tax treaty negotiations and their national tax treaty model. Participants included the GRA experts who had previously participated in the 2014 IBFD multinational conference on international taxation, where IBFD’s capacity development programmes had been presented. This is how the GRA knew about IBFD’s opportunities in this area.

The lead tax treaty negotiator at GRA was nearing retirement and looking to build replacement capacity in his department. Only after establishing contact with IBFD and discussing the basics of the programme, MFA was approached in order to make technical assistance

available under the Dutch government programme. According to IBFD this was a very good example of a demand driven CD project.

IBFD designed the programme in coordination with the GRA. Once the GRA had expressed their interest for capacity development, the GRA and IBFD had a discussion on the specific contents of the programme. IBFD did this directly with the recipients at GRA and not via the Dutch embassy or MFA. The Dutch Ministry was never involved in the development of the programme.

RQ 5.2: To what extent did it address the most urgent needs?

IBFD assessed the specific training needs in direct consultation with the GRA (see above) by an assessment of the Ghana treaty model, the previously conducted DTTs and the interaction with domestic law. The programme was thus tailored to the needs and priorities as expressed by the GRA and as identified by an objective assessment of Ghana's tax treaty policy. IBFD and GRA identified the following training needs: general principles of international taxation and the interaction with domestic law; and the preparation and execution of bilateral tax treaty negotiations.

Some IBFD programme participants had also attended an OECD course on tax treaty negotiation (several years before). The OECD training was however more general, with participants from more than ten countries. It was not specifically tailored to Ghana's situation or its model tax treaty. Furthermore, according to IBFD, these OECD trainings provide a general way of approaching tax treaty negotiations that do not necessarily address the needs of individual (developing) countries. As far as we have been able to confirm, there were no (other) similar programs via multilateral or bilateral channels on tax issues in Ghana in the same period, nor had there been recently, so there was no need to coordinate. During the programme it became clear that most participants had not had a previous training from foreign experts.

In addition to capacity development, the analysis of the national treaty model provided additional value added for Ghana. During the programme's preparation, IBFD analysed the national treaty model and found some flaws in the national model – inconsistencies in comparison with the OECD and UN models. These were communicated to the GRA in the course of the programme's preparation. Programme visits a few months later revealed that the national treaty model had already been adapted on some of these points. IBFD experts therefore believe that their course may have had a significant impact, but this remains to be confirmed by the authorities.

5.2 Effectiveness

Effect on the capacity of authorities

The tax treaty negotiation component of the programme focused on two aspects: 1) technical aspects related to the model, the differences between UN and OECD and other national models; and 2) tax treaty negotiation techniques, in order to increase awareness about possible issues, and how to conduct actual negotiations (e.g. how to present and justify the inclusion of the provisions beneficial for developing countries, so that they are accepted in the DTT). Another issue addressed in the programme was the composition of the tax treaty negotiation delegation.

A first direct impact of the training on the GRA's capacity was to increase understanding of the context and process of treaty negotiations. While there is little to substantiate the effectiveness of the training programme, one participant commented that the training “actually enhanced the capacity much. I think we are able to apply the learnings so well in the course of our work”. However, we would not expect a two-week training programme to completely change the way treaty negotiators conduct negotiations, especially if the treaty partner continues to have greater capacity and knowledge of DTTs and other aspects of international taxation (which is generally the case when the treaty partner is a developed country). Similarly, a two-week training programme can definitely improve the understanding, willingness and ability to apply anti-abuse clauses, but it is unlikely to have major effects in this area.

Another aspect of effectiveness is how long people are staying in public sector, after completing training. In the case of Ghana, participants in the programme were relatively senior. According to IBFD, this was positive because senior participants are less likely to leave (aside from retirement). The GRA also indicated that turnover at the GRA was not high. The majority of the people that attended the training sessions in 2019 are still there, and in their view most are expected to remain for at least another 5-10 years. However, in other interviews we learned that the high turnover of staff within the GRA limited effectiveness in the past. (See Case Study 4). Importantly, less turnover of staff is in our view a prerequisite for a training programme to be effective, but is not a driver of effectiveness on its own.

RQ 6.1: To what extent did TA and training activities contribute to implementation of BEPS-actions in Ghana?

The relevant BEPS actions were discussed throughout the programme, but not as a separate topic. The course covered the MLI, including the considerations to implement minimum standards via the adoption of the MLI or via (re)negotiations of bilateral tax treaties. Another topic was the choice of the specific anti-abuse clause (PPT versus (simplified) LOB). On both issues, pros and cons of the various options were sketched, but IBFD did not push for a specific choice. In that sense, the programme might have contributed to better informed decision-making on these issues, but the outcome of these choices cannot be interpreted as an indication of the effectiveness (or lack thereof) of the programme.

Effect on tax treaty negotiations

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

The training programme was designed and implemented after the inclusion of the anti-abuse clauses in the tax treaty between Ghana and the Netherlands had already been concluded. The training was therefore not relevant for the negotiations about the anti-abuse clauses in the treaty between Ghana and the Netherlands. While the improved knowledge in this area could still be of use in the enforcement of these anti-abuse clauses, too little time has passed since the training to be able to observe such results. IBFD experts noted more generally that the results of these programmes only tend to materialise over time (examples mentioned were Kenya and Malawi). Moreover, it is conceptually very difficult to attribute the results to the training.

Effect on the application of anti-abuse clauses

RQ 7.2: Are authorities able to effectively apply anti-abuse clauses in tax treaties with the Netherlands?

Anti-abuse provisions were an explicit part of the training programme. Half a day was dedicated to aggressive international tax planning, followed by the various courses of action a country can take, including anti-abuse clauses. It addressed issues concerning general anti-avoidance clauses used in DTTs in the context of the BEPS programme. Moreover, the various options (PPT, LOB and UN Model) were presented and analysed on a case study basis. The IBFD presented the MLI mainly in the context of minimum BEPS standards, namely PPT and LOB clauses and the mutual agreement procedure (possibility to submit the request only to the country of residence).

There are indications that this training programme influenced Ghana's position on anti-abuse clauses in its national tax treaty model. While this model is an internal document and not publicly available, interviewees from the GRA confirmed that, following this IBFD course, Ghana did change its position on which anti-avoidance clause to include in their DTTs. Originally, Ghana opted for the use of the PPT clause in its tax treaties, whereas it now prefers to include the LOB clause supplemented by aPPT (based on Article 29 of the UN Model).²⁹

It is too early to tell whether this impact on the treaty model in turn had an actual impact on the introduction and application of new anti-abuse clauses into new treaties. The training took place only half a year before the drafting of this evaluation report, and since then no new tax treaties were concluded by Ghana.

²⁹ The training programme also addressed some issues related to the interaction between DTTs and domestic law. In other words, the influence of the dependent agent PE definition provided in the Ghanaian domestic tax law on the application of DTTs and the models of the collection of withholding taxes (whether to give DTTs benefits directly or on refund basis).

6 Case study 4: Transfer CD Pricing by NTCA (via TIWB)

6.1 Introduction

Since 2014, Dutch experts from the Netherlands Tax and Customs Authority (NTCA) have been providing hands-on capacity development (CD) support to the GRA in the area of Transfer Pricing (TP). This CD programme was carried out by NTCA as part of the OECD Tax Inspectors Without Border (TIWB) programme, and has continued into 2020. The main recipients have been the staff of the GRA TP unit, which is part of the Large Taxpayers Unit (LTU).

Following a scoping mission to the GRA in December 2013, the NTCA carried out nine missions between 2014-2018 with regard to transfer pricing in Ghana. During the first two rounds of the programme (2014-2018), the NTCA carried out around two missions per year on average. In the beginning, the programme was put on hold for almost a year due to Ebola. At the end of the second round, both parties wanted to continue the collaboration and the NTCA carried out an additional mission in the beginning of 2018.

Table 6.1 The NTCA carried out 10 mission with regard to transfer pricing in Ghana

Programme	Period	Type of mission
First round (2014-2015)	December 2013	High level study visit (i.e. a scoping mission)
	2014	Valuation & classification of goods
	2014	Workshops Improvement of the trusted trader process
	2015	Valuation & classification of goods
	2015	Workshops Improvement of the trusted trader process
Second round (2016-2017)	September 2016	Training
	January 2017	Training
	October 2017	Training
	February 2018	Training MTO
Third Round (01/2020-06/2021)³⁰	February 2020	Restart of the collaboration (MOU signed)

Source: SEO Amsterdam Economics, based on information obtained from NTCA.

After this ninth mission, the programme was put on hold temporarily. During the second half of 2018 and 2019, the NTCA still collaborated with the GRA on other matters (including compliance risk management) beyond the TIWB programme with regular visits to GRA. However, the TIWB programme was put on hold in part because of internal capacity constraints at NTCA.

At the end of 2019, the NTCA and GRA started discussions on the 'renewal' of the TIWB programme. As a result, both parties signed a new Memorandum of Understanding (MoU) in the beginning of 2020, in part owing to the active involvement of the Dutch Ambassador. Due to

³⁰ Exact dates to be confirmed.

COVID-19, however, it appears that the implementation slowed down. One NTCA representative noted that the programme had been continuing to provide remote input to the Ghanaian team even during the COVID-19 lockdown period.

6.2 Relevance

According to the Dutch tax authorities (NTCA), the CD activities in TP had two main objectives: skills and revenues. The first objective was to improve the GRA’s knowledge and skills in the area of TP. The second objective was to improve tax revenues. In their view, if the first objective is achieved, this also leads to the second objective: more skills will lead to more revenues.³¹

The project took place under the Tax Inspectors Without Border (TIWB) programme, which is an initiative of the OECD, later joined by the UN,³² aimed specifically at supporting countries in “building tax audit capacity”. The broader objective of TIWB is to “strengthen co-operation on tax matters and contribute to the domestic resource mobilisation efforts of developing countries.”³³

RQ 5.2: How has the Netherlands identified the tax-related TA and training needs?

NTCA received Ghana’s request for CD indirectly via TIWB. In 2012-13, a Dutch NTCA expert had spent one year at the OECD in order to help create the TIWB programme. According to one NTCA representative, this person was seen as “one of the founding fathers” of TIWB, but another NTCA representative noted that it was mostly a G20 initiative. In any case, owing in part to Dutch Development Minister Ploumen, the Netherlands was very eager to participate in TIWB. Given the Dutch involvement from the very beginning, it was therefore seen as “logical” that the Netherlands was also one of the first to receive requests for assistance. This was confirmed by two separate interviewees from NTCA. One of them mentioned that this CD project was in fact the very first project of the TIWB programme, as Ghana had been the first country to request assistance. At the time, in 2013, only the Netherlands and the UK (HMRC) were active partner countries of TIWB. Later, they were joined by Italy and a number of other countries.

Following the request from TWIB in 2013, NTCA conducted a scoping mission to the GRA in December 2013. Following the scoping mission, it was decided that NTCA would provide several experts to carry out this TIWB project to build TP capacity in Ghana. According to the NTCA, all later requests for programme renewal came from NTCA, not from GRA.

RQ 5.2: To what extent did it address the most urgent needs?

The request from Ghana was ‘demand driven’ in the sense that it came directly from the authorities. During an interview conducted by SEO in 2015,³⁴ a GRA representative mentioned that they had received an earlier general training by OECD on transfer pricing. Following that training, the documentation and regulation on transfer pricing did improve, but the GRA realised

³¹ In Dutch, they referred to these goals as “meer kunde en meer geld,” while noticing that “meer kunde leidt tot meer geld.”

³² Formally, the United Nations Development Programme (UNDP)

³³ <http://www.tiwb.org/>

³⁴ As part of the midterm evaluation of this CD programme: SEO (2016), p. 22

that their staff had insufficient experience to *apply* the new knowledge. According to the GRA representative, this motivated their request for hands-on assistance and follow-up one-on-one training that eventually was provided by the Dutch experts under the TIWB programme. The request for training was therefore mostly ‘demand driven’ and the topic of the training appeared to correspond to specific needs from the GRA side. In any case, it was not driven by NTCA, because an NTCA official noted that they themselves only responded to a formal request: “we will not do anything without a formal request, since we want to prevent that we are following our own hobbies and do not focus on the priorities of a country.”

However, without the OECD’s initiative, the GRA’s request for training in transfer pricing may not have come about. As noted above, the request from Ghana followed an earlier training in transfer pricing that appeared to have been initiated by OECD. According to another NTCA official, “OECD realised the complexity of their ideas and believed developing countries should be helped with that.” The OECD (and the Netherlands) had also created TIWB as an initiative that would focus specifically on ‘tax audit capacity’ and which itself conducted ‘gap assessments’ in this area to identify needs. One could therefore say that the OECD (and indirectly the Netherlands through their support for TIWB) helped GRA to identify their own needs. This bit of steering from the ‘supply side’ is not the same as being ‘supply driven’ and seems appropriate, because “one does not know what one does not know,” according to one expert.

It is possible that Ghana had a specific interest in working with the Netherlands. According to NTCA, what may have played a role is that Ghana had already had some positive experience with the Netherlands through another CD project in the area of Customs (see SEO 2016). Given that NTCA, unlikely various other revenue administrations, covers both customs and tax, this may have been of additional interest to GRA, according to NTCA staff.

There are several indications that the project was relevant to Ghana.

- First, since Ghana has a large extractive sector (gold, oil, gas) that attracts foreign investment from multinationals, TP was clearly a relevant topic to them, according to an NTCA official.
- Second, the Ministry of Finance had allegedly decided in 2014 to double the budget for international taxation. According to NTCA, “there was an increase in awareness that too much revenue was flowing away through multinationals.”
- Third, the midterm evaluation of this programme (SEO 2016, p. 22) reported that the authorities at the time considered it “a good programme that should continue”. They found it to be in line with their priorities (i.e., relevant), and considered TIWB’s “hands-on peer assistance” even more useful than OECD’s more general training on transfer pricing provided earlier. They only would have liked longer TA visits in the beginning of the programme, and would have liked more study visits and on-the-job training in the Netherlands.

6.3 Effectiveness

In terms of its objectives (improving “skills” and “revenues”), this NTCA programme had a mixed level of success. NTCA staff itself is divided as to whether the Transfer Pricing programme was successful. One representative from NTCA called the Ghana international taxation programme “successful” and a “good experience”. However, several other interviewees

(from NTCA, GRA, and the Netherlands Embassy) highlighted where the programme could have been more effective, particularly in terms of achieving a sustainable improvement in organisational capacity, as explained below.

Effects on individual capacity

GRA recipients were pleased that this CD programme strengthened their skills through its practical and hands-on assistance. Current representatives from the GRA as well as a former GRA official all noted that the biggest value of this CD programme was its practical applicability. While other development partners sometimes only provide training, this Dutch programme was praised for “giving us the opportunity for practical hands-on assistance.” They considered it very helpful that Dutch auditors were directly involved in the audits, and noted that the practical skills they taught (for example, techniques for interviewing companies during visits) gave their auditors confidence when they had to face large companies.

Effects on organisational capacity

The programme was somewhat effective in bringing about organisational change. In particular, it led to the creation of a separate Transfer Pricing unit (or “international taxation unit”) within the existing Large Taxpayer Unit. According to NTCA experts, the TP team was initially not part of the LTU, which NTCA saw as a problem because TP issues typically occur with large taxpayers, hence the TP auditors needed to work together with the relevant LTU colleagues who covered the same taxpayers. NTCA therefore sent memos formally advising to put the TP unit under the LTU, which eventually happened.

However, the organisational change achieved was mostly a formality, with limited impact. As an NTCA expert explained, “While they are now in the same building, on the same floor, they still do not work together.” Moreover, the staffing of the TP unit was disappointing: they started with 20 people, but were left with only 6-12 people. At the end of the second round of the program, the TP unit consisted of nine team members and one team leader. As described below, the high turnover and limited capacity of TP staff (both in terms of quantity and quality) were major constraint to the effectiveness of the NTCA programme.

Due to the lack of a strong HR policy at GRA, the impact on individual capacity strengthening did not automatically lead to organisational capacity strengthening. In particular, NTCA trainers and GRA recipients mentioned the following limiting factors:

- **First, there were issues with ensuring that auditors had a basic level of knowledge.** In the beginning, TIWB experts had expected all TP team members in Ghana to have been trained by the OECD. However, when they started, it turned out that some of the team members had not received this training, in part due to turnover at GRA. (SEO 2016, p. 20)
- **Second, there were issues with the level of TP staff.** According to a former GRA official, the auditors in the TP team were not the strongest ones within the GRA. In his view, GRA should have assigned stronger auditors to the TP unit because they had to deal with large companies and complex issues. Subsequently, the Dutch CD experts could only work with a few people, the strongest auditors in the TP team, because “you cannot teach poor auditors about the complexity of TP”. In his view, it would have been better if NTCA had trained a wider group of auditors with good auditing skills, including auditors from the LTU.

- **Third, there were issues with turnover and sudden transfers of staff, implying that the improvements in individual capacity did not lead to sustainable organisational change.** For example, the team leader of the TP unit, who had acquired good knowledge on TP, suddenly resigned or “had to leave” GRA. However, at some point he was called back because of the pressure to bring in revenue. As another example, the head of the TP team retired, after which “there was nobody left at GRA to lead the TP team.” This could potentially have been avoided with better succession policies. (Eventually, this gap was filled by bringing in someone from the private sector). According to an NTCA expert, out of all people they had trained, only two were left in 2019: “In this way, you are not building up much capacity.”

Effect on revenue collection

According to various sources, the impact of the Dutch CD on tax revenues collected was a major success in the beginning of the programme. According to the GRA and the NTCA’s own evaluation report (2017), the NTCA project helped the GRA to collect a significant amount of additional tax revenue, based on 3-4 audits, estimated at GHS 600 million, which was around EUR 90 million at the end of the second round of the programme in 2018, but which at that time was closer to EUR 130 million.³⁵ Both NTCA and GRA representatives agreed that this amount would not have been collected without the assistance from NTCA, and the way in which this additional revenue was calculated (based on corrected tax claims that otherwise would not have been corrected) seems convincing.

Multiple stakeholders (from both NTCA and GRA) confirmed that this additional revenue was the direct result of the Dutch CD support. The NTCA provided advice on how to correct the audits, while GRA carried out those corrections. NTCA also provided advice on how to measure the increases in revenue, so as to make this visible. They explained that the additional revenue collected as a result of improved audits is the “audit yield” and can be measured as the difference between the revenue following an ‘audit correction’ and the original pre-audit amount. This amount was estimated by NTCA and allegedly validated by other experts. However, it appears that GRA did not continue to report how much additional revenue was collected through audits.

While impressive, the increase in revenues appears to have been mostly a one-off success. According to an NTCA official, there is still a lot of additional revenue that could be collected through improved audits. However, a former GRA representative believed that it was only possible to achieve this large increase in the very beginning, because it was “low hanging fruit.” In his view, companies had been reporting things in a certain way for years without ever being audited carefully. They had therefore underestimated what would be the impact of the TP audits. When this suddenly led to new tax liabilities, it took them by surprise: “nobody had warned them.” But following this surprise, companies quickly adapted their strategies and the low hanging fruit disappeared. He explained, “When the GRA now audits companies that are prepared for these audits, it becomes a lot more difficult. There is little the GRA can do when multinationals are flying in foreign tax advisers.”

³⁵ Three other interviewees mentioned different numbers: EUR 80 million, EUR 100 million, and even EUR 140 million. However, these differences likely have to do with the fact that Ghana experienced a significant exchange rate depreciation, with the GHS/EUR rising from around 4.5 in Jan 2017 until 6.5 in July 2020.

Factors that limited effectiveness

One factor that limited effectiveness were difficulties in communication with the GRA. The midterm evaluation (SEO 2016, p. 20) already reported that it was often difficult for NTCA to plan activities in Ghana, because the Ghanaian authorities often did not respond to emails and did not prepare in advance. During the first TIWB mission in Ghana in December 2013, the team manager was not present during this mission except for a short period on the final day. These problems were resolved later when, in December 2014, a contract was signed between the Dutch embassy and GIZ to coordinate Dutch CD activities, including those for the TIWB programme. According to SEO (2016, p. 21) this was successful in that GIZ ensured that participants were identified, dates were agreed, hotels and flights were arranged, and that participants were prepared for the mission. From 2018, however, the coordination was taken over by GRA itself, with mixed results. According to an NTCA official, “it was always very difficult to arrange meetings within a period of 3 months. The GRA was never ready for that and needed at least 5-6 months.” While the Dutch embassy also played an important role in the coordination, and was very involved, NTCA staff noted that it sometimes continued to be difficult to make agreements with GRA.

Second, donor coordination was an issue that according to NTCA “could certainly have been better.” In NTCA’s view, this should have been the responsibility of the GRA, but GRA appeared to have an incentive to accept all types of support. According to a former GRA staff member, this is in line with the Ghanaian proverb that says “too much meat does not spoil the soup”. In addition to the Netherlands, various other institutions were also mentioned as having provided CD on transfer pricing, but NTCA was not well aware of these other programmes and there was little or no contact or coordination with these other CD providers. According to a former GRA representative, the following agencies offered CD in related areas:

- **Norway:** this was not so much transfer pricing but they had oil and gas experts providing assistance to GRA related to oil audits, which could have been an interesting area for collaboration, as Norad had the oil sector expertise while NTCA had the audit expertise. According to NTCA, the lack of collaboration with Norway was a “missed opportunity”
- **IMF:** assistance related to risk assessment in the petroleum industry.
- **Canada:** According to NTCA, it happened once that they came to Ghana to give a training, but at the same time those participants already attended another training given by Canada.
- **EU:** According to GRA, there was an EU project with the same TP unit, but NTCA was not aware of this EU project and did not coordinate with them.
- **ATAF:** ATAF was providing various types of CD to Ghana. NTCA had recommended GRA to request an African expert from ATAF to assist with TP. GRA did put in a formal request but “this never led to anything”, according to NTCA.

A third factor that hindered effectiveness was a lack of access to confidential documents.

The interim evaluation mentioned that there were initially legal constraints to sharing information between GRA and NTCA (notably confidential tax files), particularly when related to audits of Dutch companies. However, an NTCA representative reported that these legal constraints had later been resolved to some extent by anonymising files. In this way, NTCA experts were able to work with Ghanaian experts on actual tax files, and received authorisation to conduct audits jointly with the GRA on a confidential basis. The GRA also noted that not everything could be shared.

A final factor was limited capacity and ownership at NTCA itself. According to one of the NTCA experts who was actively involved in this programme, the NTCA Large Taxpayer Directorate was facing internal capacity constraints. As a result, they initially limited participation in this CD programme to two TP experts, and later indicated that they could no longer provide any expert to this programme because they did not see it as their “core function”. The international department that was coordinating this CD programme therefore had to hire expertise from the SME department at NTCA. According to one NTCA official, these SME experts had only limited expertise in TP issues. According to another NTCA official, they did have TP experience and the businesses in question show similarities to Dutch SMEs in terms of size and financial interests.

Impact on DTT negotiations

While there was no direct link between this programme and the DTT negotiations, it is possible that this CD helped indirectly. According to a (former) representative of the Dutch embassy in Ghana, the “tax treaty negotiations in Ghana [were] going well in part thanks to the Dutch assistance programme.” (SEO 2016, p.35).

References

- Dutch Ministry of Foreign Affairs. (2017, March 10). *Letter to parliament. 34783*.
<https://zoek.officielebekendmakingen.nl/kst-34783-1.html>
- Fenochietto, M. R., & Pessino, M. C. (2013). Understanding countries' tax effort (No. 13-244).
International Monetary Fund.
- GIPC (2018). Ghana incentives inventory.
<https://www.gipcghana.com/invest-in-ghana/why-ghana/tax-regime-and-incentives.html>
- Glenday, G., I. Bharali, and Z. Wang, 2019, Enhancing domestic revenues: constraint and opportunities - A cross country comparative study of tax capacity, effort and gaps, Duke University Research Paper
- Global Forum, Peer Review Ghana (2011)
https://www.oecd-ilibrary.org/taxation/global-forum-on-transparency-and-exchange-of-information-for-tax-purposes-peer-reviews-ghana-2011_9789264108868-en
- Global Forum, Peer Review Ghana (2014)
https://www.oecd-ilibrary.org/taxation/global-forum-on-transparency-and-exchange-of-information-for-tax-purposes-peer-reviews-ghana-2014_9789264222878-en
- Global Forum (2019)
https://www.oecd-ilibrary.org/taxation/global-forum-on-transparency-and-exchange-of-information-for-tax-purposes-ghana-2018-second-round_9789264291119-en
- IMF (2019), Ghana: 2019 Article IV Consultation, IMF Country Report No. 19/367, Washington DC: International Monetary Fund.
- Moss, T. and S. Majerowicz (2012), "No Longer Poor: Ghana's New Income Status and Implications of Graduation from IDA." CGD Working Paper 300. Washington, D.C.: Center for Global Development. Available at:
<http://www.cgdev.org/content/publications/detail/1426321>

Appendix A List of interviewees

Table A.1 Interviewees for the purpose of the Ghanaian case study report

Name	Role and organisation
Francis Amankwa-Poku	Economics officer at the Ghanaian Ministry of Finance and Economic Planning
Bernard Anaba	Policy analyst and coordinator for Tax Justice Coalition
Mawutor Anku	Analyst at the international desk at the Ghanaian Ministry of Finance and Economic Planning
Veronica Josiah-Aryeh	Policy advisor at the Ghanaian Ministry of Finance and Economic Planning
Adrie van Braak	Chartered accountant at the NTCA, involved with TIWB
Henri ten Broeke	Senior Programme Manager Local Taxation on Tree Programma Ghana, VNG
Frank van Brunshot	Technical assistance advisor at the IMF (formerly strategic advisor international affairs at the NTCA)
Jürgen Ehrke	Advisor at the GIZ in Ghana and head of the DRM component of GIZ's governance programme
Victor Raphael Frerking	Programme manager 'Good Financial Governance' at the GIZ
Ridha Hamzaoui	Regional Tax Manager for Africa and Middle East regions under the IBFD Africa, Middle East and Latin America Knowledge Group
Thierry van Helden	Policy advisor at the Embassy of the Kingdom of the Netherlands to Ghana
Geert Holterman	Policy advisor at the Sustainable Economic Development Department of the Ministry of Foreign Affairs
Peter Jongkind	Project Director Local Taxes at VNG International
Bart Kusters	Senior Principal Research Associate in International Bureau of Fiscal Documentation's (IBFD) Tax Services Department
Benjamin Kwafo	Tax policy Analyst at the Ghanaian Ministry of Finance and Economic Planning
Eric Mensah	Assistant Commissioner in charge of Legal Affairs and International Taxation Agreements at the Ghana Revenue Authority and currently the lead treaty negotiator for the Ghana double taxation treaty team
Phillip Jude Mensah	Deputy Assistant Commissioner, Board Secretariat and Legal Affairs, at the Ghana Revenue Authority
Mr. Musah	Transfer pricing unit at the GRA, TIWB recipient
Emily Muyaa	Managing Principal for Sub-Saharan Africa in the IBFD Africa and Middle East Department
Dominic Naab	Auditor at the Ghanaian Revenue Authority
Danuel Nuer	Head of tax policy unit at the Ghanaian Ministry of Finance and Economic Planning
Guswin Okkerse	Transfer pricing expert at the NTCA
Siebe Stellingwerf	Project Manager Taxation at VNG International
Ron Strikker	Ambassador of the Kingdom of the Netherlands to the Republic of Ghana
Peter van Tienhoven	Strategic advisor International affairs at the NTCA
Gijs Verbraak	Senior Policy Advisor at ActionAid
Norbert Vis	Tax inspector at the NTCA, involved with TIWB
Henry Yentumi	Strategic tax advisor to the GRA
Moses Yidana	Head of the transfer pricing unit at the GRA, TIWB recipient
-	<i>Academic and tax expert</i>
-	<i>Representative of a Big-4 firm in Ghana</i>
-	<i>IMF expert</i>

Source: SEO Amsterdam Economics

Appendix B BEPS actions³⁶

- **Action 1 Tax Challenges Arising from Digitalisation**

Addressing the tax challenges raised by digitalisation is currently the top priority for the OECD/G20 Inclusive Framework, and has been a key area of focus of the BEPS Project since its inception. This work has delivered several important outputs covering both direct and indirect tax issues.

- **Action 2 Neutralising the effects of hybrid mismatch arrangements**

BEPS Action 2 called for the development of model treaty provisions and recommendations regarding the design of domestic rules to neutralise the effects of hybrid instruments and entities. The work by OECD member states and Inclusive Framework member jurisdictions on BEPS Action 2 culminated in the 2015 OECD report on Neutralising the Effects of Hybrid Mismatch Arrangements.

- **Action 3 Controlled Foreign Company**

The Action 3 recommendations outline approaches to attribute certain categories of income of foreign companies to the shareholder(s) in order to counter offshore structures that shift income from the shareholder jurisdiction. The work by OECD member states and Inclusive Framework member jurisdictions on BEPS Action 3 culminated in the 2015 OECD report Designing Effective Controlled Foreign Company Rules

- **Action 4 Limitation on Interest Deductions**

The Action 4 recommendations aim to limit base erosion through the use of interest expense to achieve excessive interest deductions or to finance the production of exempt or deferred income. The work by the Inclusive Framework member jurisdictions on Action 4 resulted in the 2015 OECD report Limiting Base Erosion Involving Interest Deductions and Other Financial Payments.

- **Action 5 Harmful tax practices (Minimum Standard)**

The Action 5 Report is one of the four BEPS minimum standards. Each of the four BEPS minimum standards is subject to peer review in order to ensure timely and accurate implementation and thus safeguard the level playing field. All members of the Inclusive Framework on BEPS commit to implementing the Action 5 minimum standard, and commit to participating in the peer review.

- **Action 6 Prevention of tax treaty abuse (Minimum Standard)**

BEPS Action 6 addresses treaty shopping through new treaty provisions whose adoption forms part of a minimum standard that members of the BEPS Inclusive Framework have agreed to implement. It also includes specific rules and recommendations to address other forms of treaty abuse. Action 6 identifies tax policy considerations jurisdictions should address before deciding to enter into a tax agreement.

- **Action 7 Permanent establishment status**

The work carried under BEPS Action 7 provides changes to the definition of permanent establishment in the OECD Model Tax Convention to address strategies used to avoid having a taxable presence in a jurisdiction under tax treaties.

- **Action 8-10 Transfer Pricing**

³⁶ <http://www.oecd.org/tax/beps/beps-actions/>

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

- **Action 8 – Intangibles**

Action 8 addresses transfer pricing issues relating to controlled transactions involving intangibles, since intangibles are by definition mobile and they are often hard-to-value. Misallocation of the profits generated by valuable intangibles has heavily contributed to base erosion and profit shifting.

- **Action 9 - Risks & Capital**

Work under Action 9 considers the contractual allocation of risks, and the resulting allocation of profits to these risks, which may not correspond with the activities actually carried out. Moreover, Action 9 addresses the level of returns to funding provided by a capital-rich MNE group member, where those returns do not correspond to the level of activity undertaken by the funding company.

- **Action 10 - High-Risk Transactions**

Action 10 focuses on other high-risk areas, including the scope for addressing profit allocations resulting from controlled transactions which are not commercially rational, the scope for targeting the use of transfer pricing methods in a way which results in diverting profits from the most economically important activities of the MNE group, and the use of certain type of payments between members of the MNE group (such as management fees and head office expenses) to erode the tax base in the absence of alignment with the value-creation.

- **Action 11 BEPS data analysis**

The BEPS Action 11 report Measuring and Monitoring BEPS established methodologies to collect and analyse data on the economic and fiscal effects of tax avoidance behaviours and on the impact of measures proposed under the BEPS Project.

- **Action 12 Mandatory Disclosure Rules**

BEPS Action 12 provides recommendations for the design of rules to require taxpayers and advisors to disclose aggressive tax planning arrangements. These recommendations seek a balance between the need for early information on aggressive tax planning schemes with a requirement that disclosure is appropriately targeted, enforceable and avoids placing undue compliance burden on taxpayers.

- **Action 13 Country-by-Country Reporting (Minimum Standard)**

Under BEPS Action 13, all large multinational enterprises (MNEs) are required to prepare a country-by-country (CbC) report with aggregate data on the global allocation of income, profit, taxes paid and economic activity among tax jurisdictions in which it operates. This CbC report is shared with tax administrations in these jurisdictions, for use in high level transfer pricing and BEPS risk assessments.

- **Action 14 Mutual Agreement Procedure (Minimum Standard)**

The BEPS Action 14 Minimum Standard seeks to improve the resolution of tax-related disputes between jurisdictions. Inclusive Framework jurisdictions have committed to have their compliance with the minimum standard reviewed and monitored by its peers through a robust peer review process that seeks to increase efficiencies and improve the timeliness of the resolution of double taxation disputes.

- **Action 15 Multilateral Instrument**

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