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Tax treaties with developing countries

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Monday, 20 June 2016

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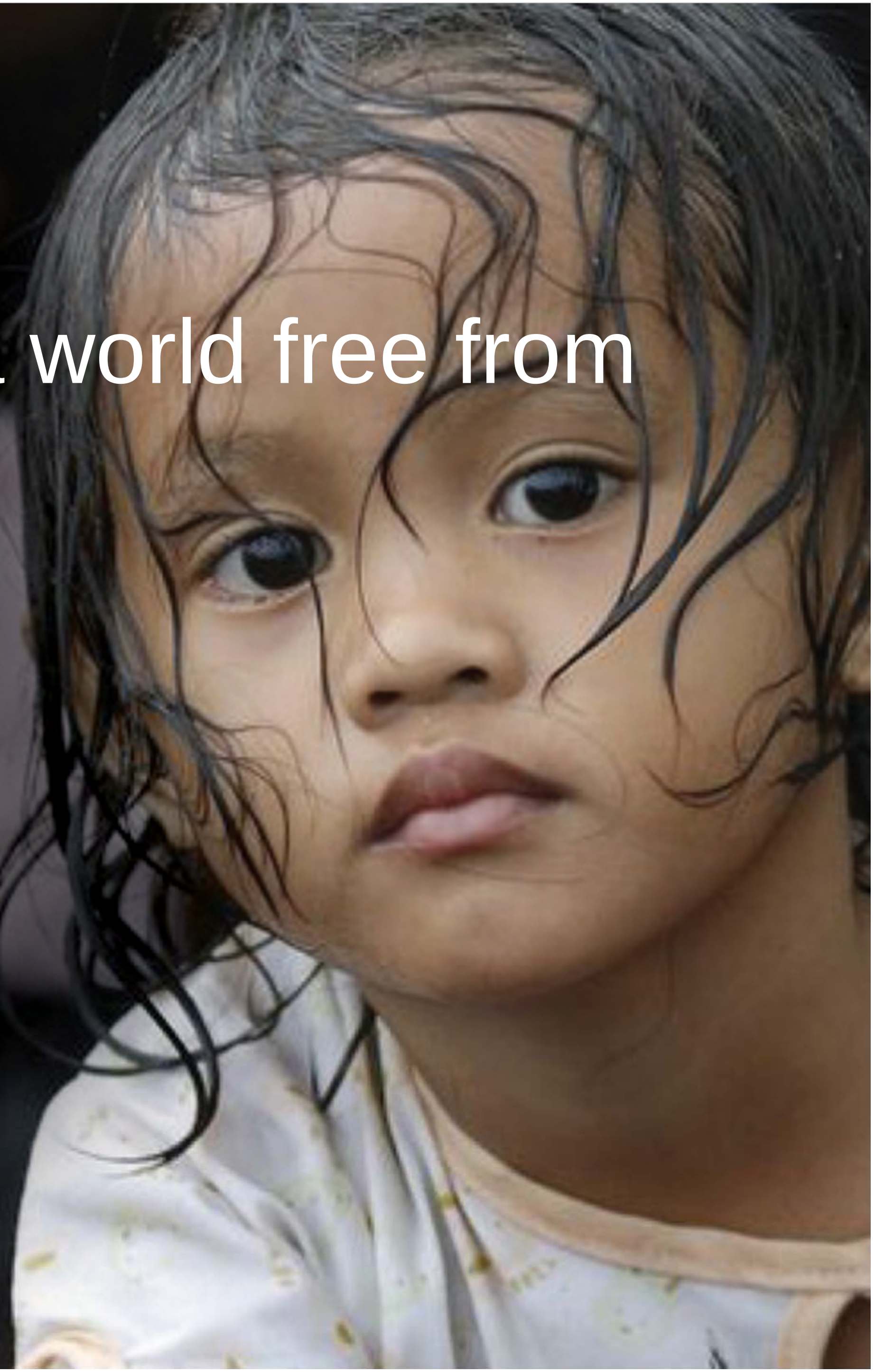
ActionAid works for a world free from poverty and injustice.

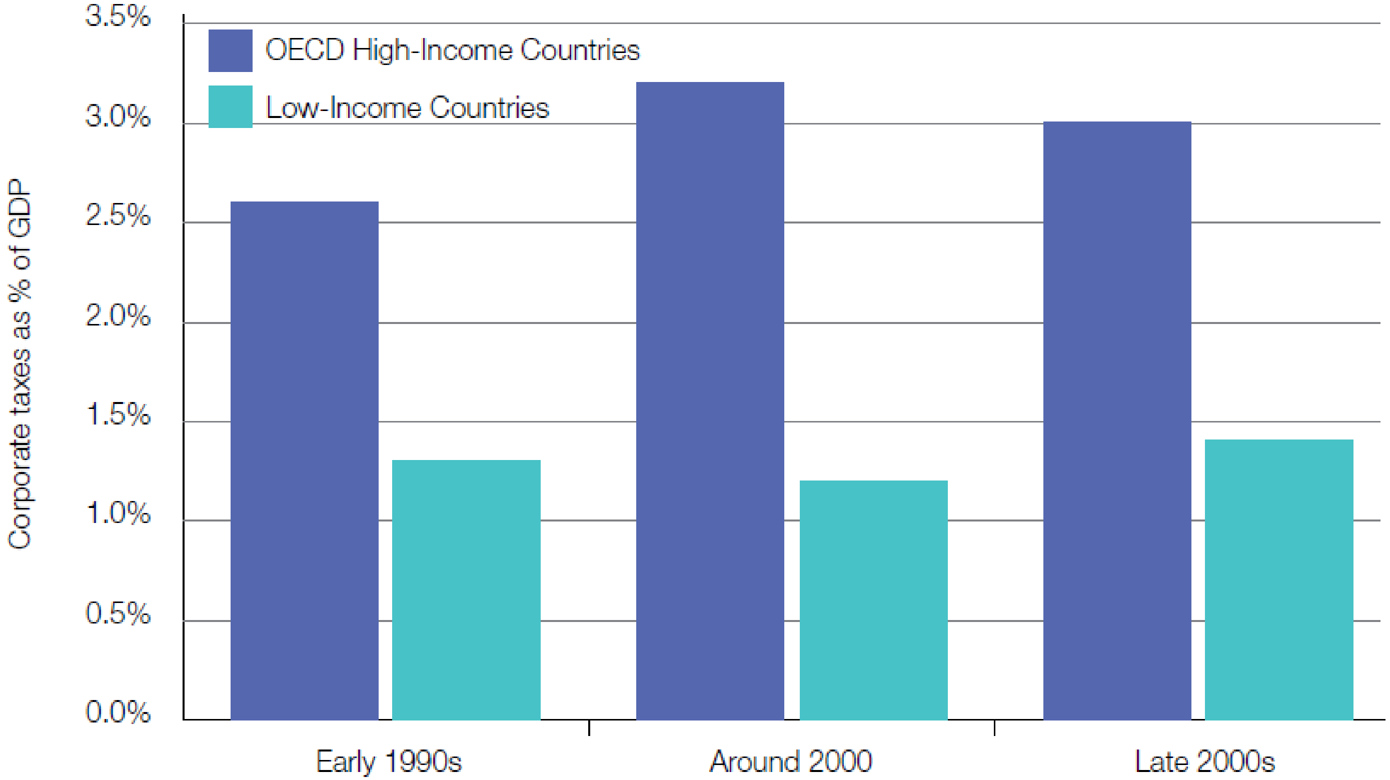


An international organisation headquartered in South Africa.

Work with over 15 million people in 45 countries.

Campaign on tax justice.

Rich countries collect far more tax from corporations than poor countries



Source: ActionAid estimates, based on data from the International Centre for Tax and Development (ICTD)

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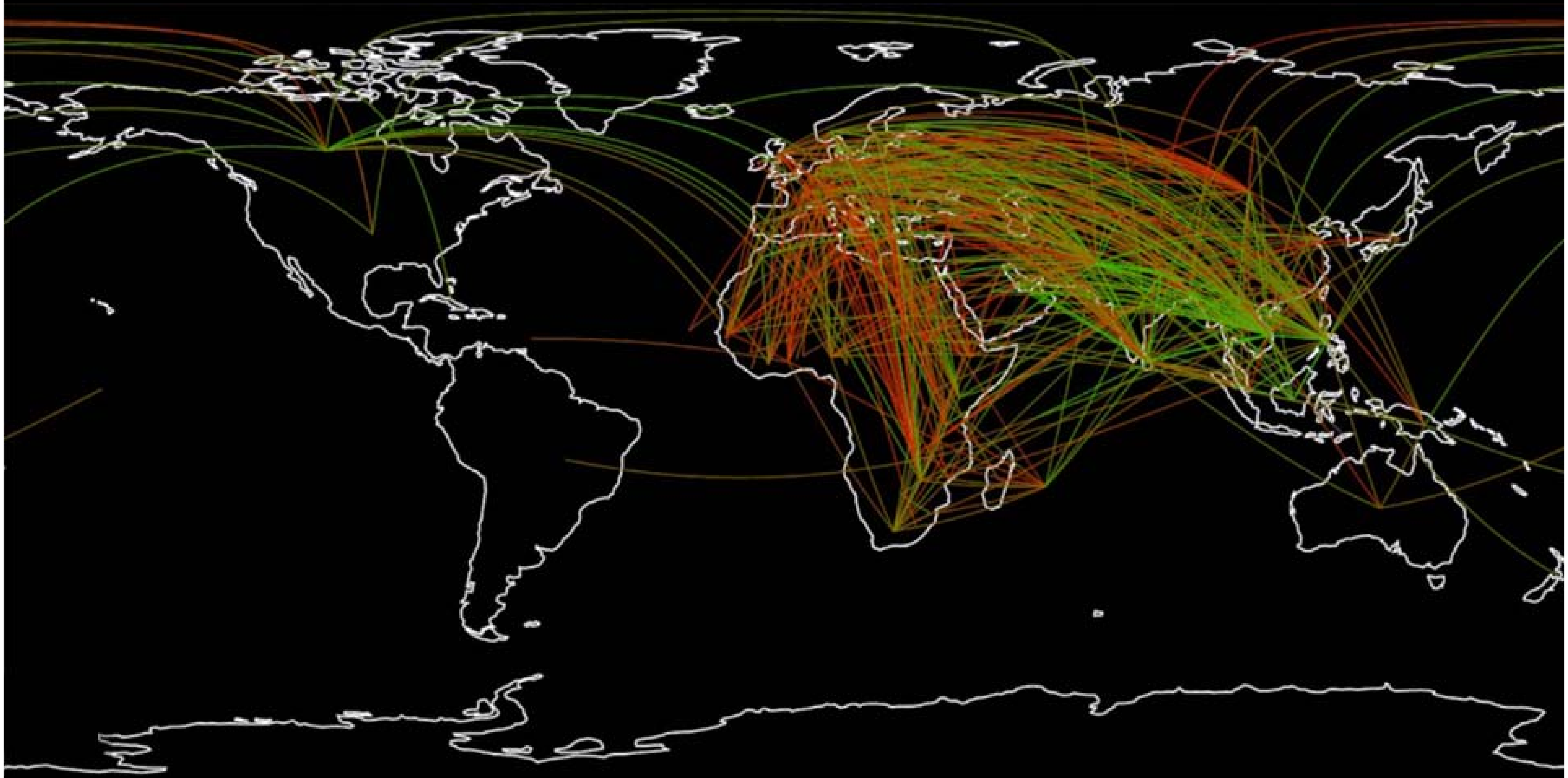
>1,500 tax treaties between developed and developing countries



Source: Visual by Zachary Korman @ZackKorman,
data from ActionAid Tax Treaties Dataset

Presentation overview

1. Distribution of taxing rights and its impact

2. Previous recommendations

3. The ActionAid Tax Treaties Dataset
    - the overall source – residence balance
    - profits tax limitations
    - withholding tax limitations
    - capital gains tax limitations

4. What can be done

Distribution of taxing rights

Distribution principles:

1) Allow the source country to fully tax the income derived in its territory

2) Remove entirely the source country's right to tax a particular type of income derived in its territory and assign taxing right on that income exclusively to the residence country

3) Divide the taxing rights between the source and residence countries

In treaties with lower income countries, whilst clauses are neutral in theory, the impact will be asymmetric.

The amount of tax revenue at stake

- SOMO report: Interest and dividend provisions in Dutch tax treaties cost developing countries roughly €770 million (in 2011)
- IMF report: Interest and dividend provisions in US tax treaties cost non-OECD countries roughly US$ 1.6 billion (in 2010)
- ActionAid report: Dividend provisions in Bangladesh's tax treaties cost Bangladesh roughly US$85 million (in 2013)

Dividend and interest payment clauses in tax treaties are likely to cost developing countries billions of dollars each year.

The cost of other treaty provisions have not been established.

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Previous recommendations

"'Treaty shopping'—the use of tax treaty networks to reduce tax payments—is a major issue for many developing countries, which would be well-advised to sign treaties only with considerable caution."

IMF Staff Report on Spillovers on International Corporate Taxation (2014)

"Where Member States, in double taxation conventions which they have concluded among themselves or with third countries, have committed not to tax a given item of income, Member States should ensure that such commitment only applies where the item is subject to tax in the other party to that convention."

Commission Recommendation of 6.12.2012 on aggressive tax planning (2012)

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Lack of publicly available information

What does best practice look like in treaties with developing countries?

Which treaties limit developing countries' taxing rights more than most?

How has a re-negotiation altered the source-residence balance in a certain treaty?

The ActionAid Tax Treaties Dataset

Aim:

Enable analysis of the source – residence balance in tax treaties.

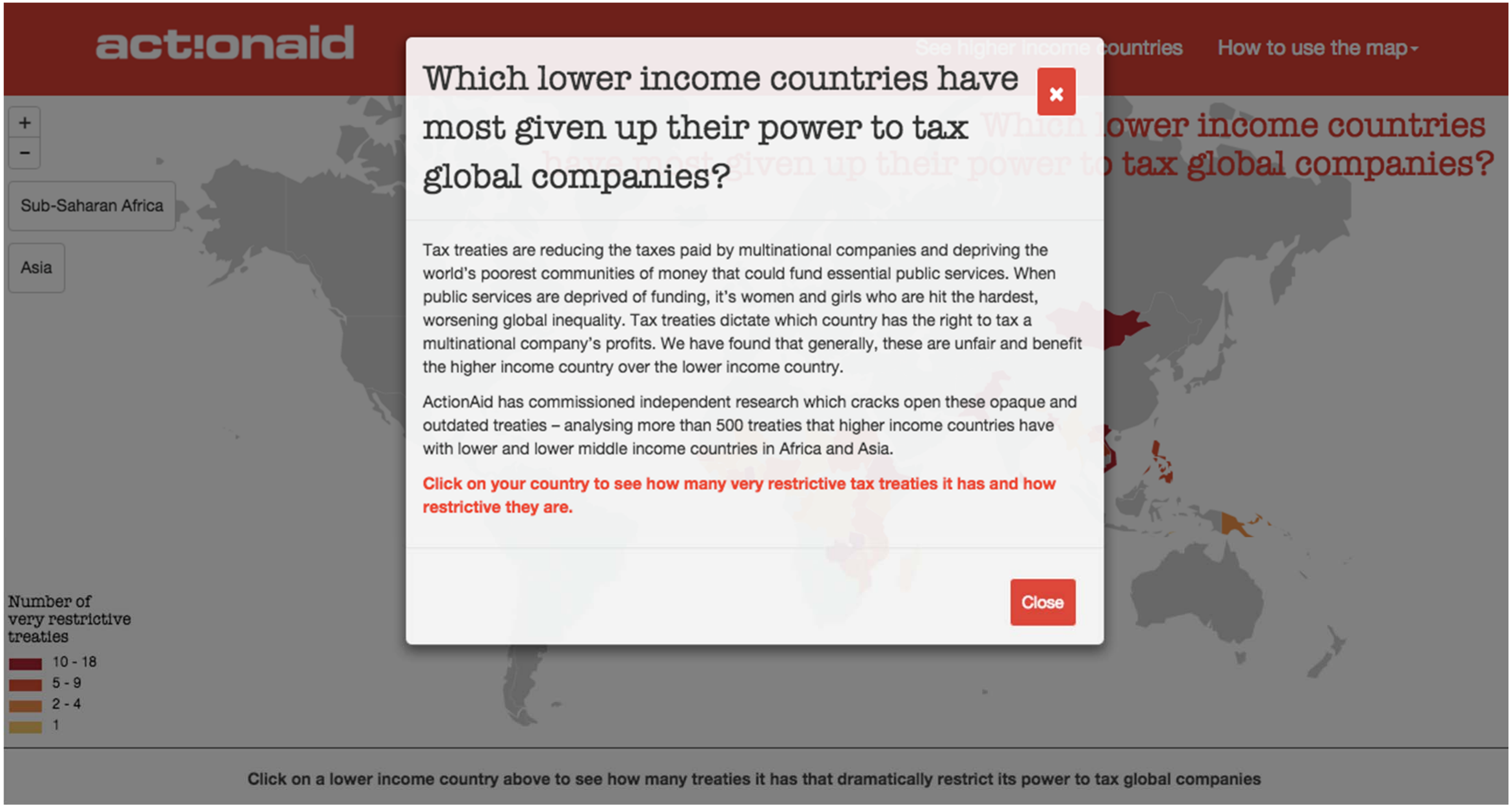
Scope:

The content of 519 treaties signed by low and lower middle income countries in Asia and sub-Saharan Africa. An EU Member State is party to 177 of these.

Main insight:

The tax rights that tax treaties remove from lower income countries varies widely from treaty to treaty – huge improvements could be made by implementing best practice.

http://taxtreaties.taxpower.org/



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Profits tax

Figure 1: Services PE clause included (% of treaties, over time)

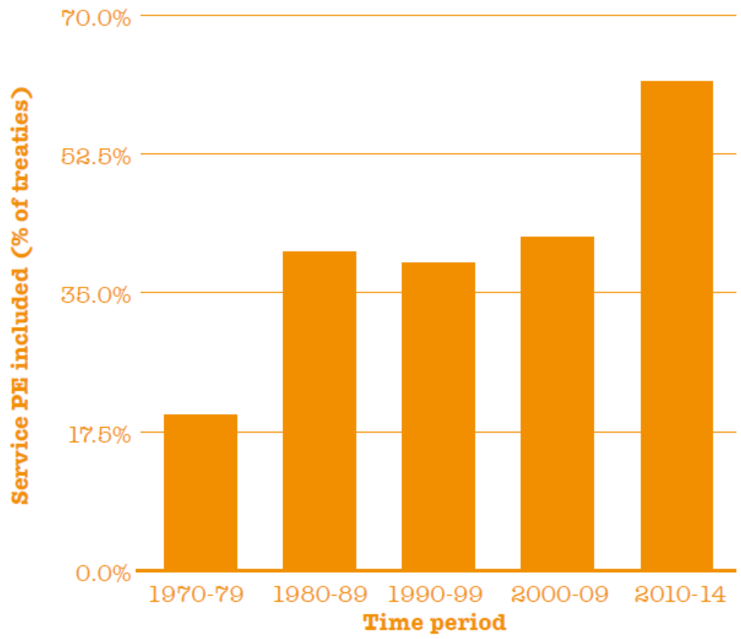
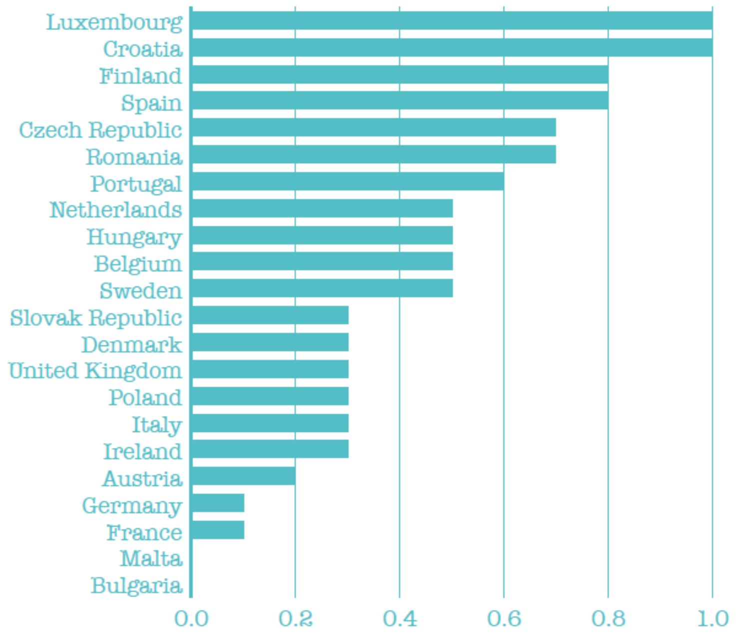


Figure 2: Services PE clause included (% of treaties, by country)



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Withholding tax

Figure 3: Source taxation of dividends (averge cap in %, over time)

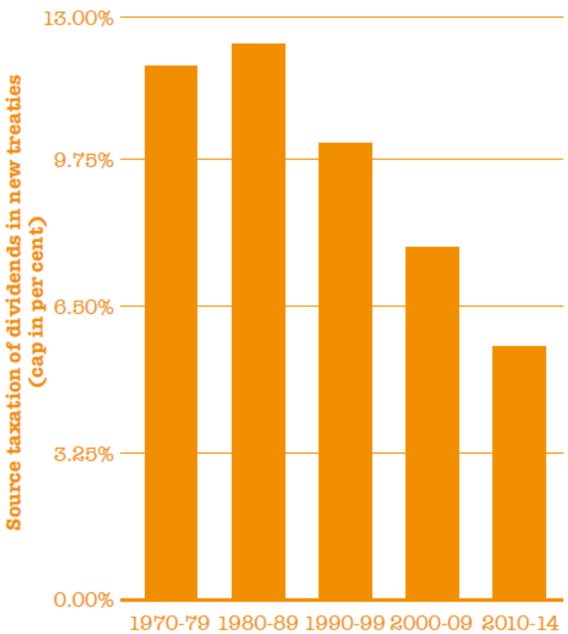
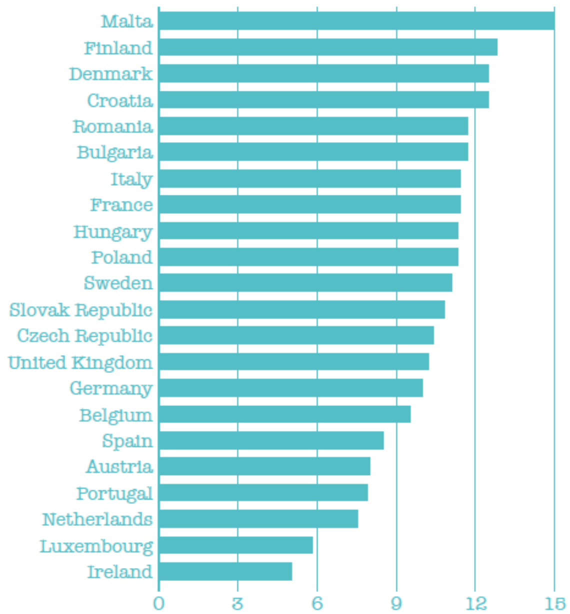


Figure 4: Source taxation of dividends (average cap in %, by country)



Capital gains tax

Figure 5: Source taxation of capital gains on 'land rich' company (% of treaties, over time)

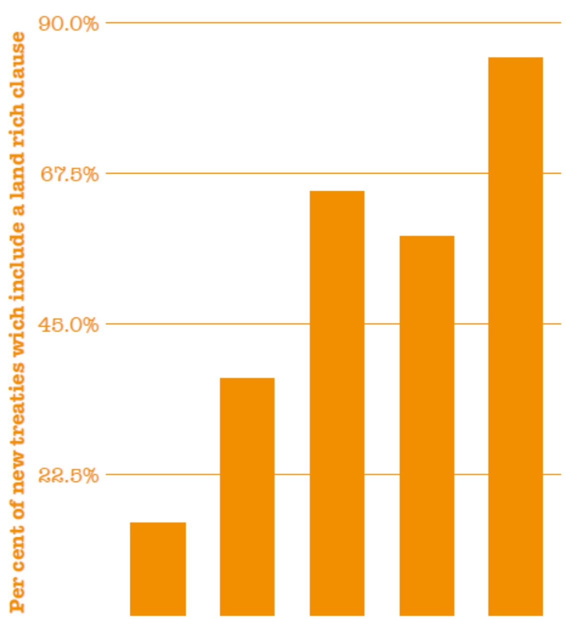
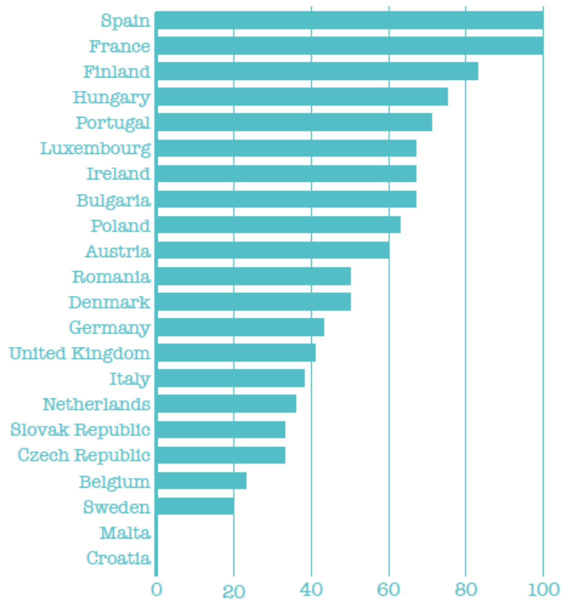


Figure 6: Source taxation of capital gains on 'land rich' company (% of treaties, by country)



What can be done?

Unequal treaties can be renegotiated, if there’s political will.

A political commitment to reassess the balance of taxing rights that EU countries have with low and lower middle income countries would be a very important step in this process.

Efforts can be made to increase transparency.

Transparency & accountability

Suggested improvements:

- Make tax treaty negotiations known to the public.
- Publish impact assessments.
- Conduct stakeholder consultations based on draft negotiation texts.

ActionAid are calling for governments to:

- Urgently reconsider the treaties that most restrict the tax rights of low and lower-middle income countries.

- Subject treaty negotiation, ratification and impact assessments to far greater public scrutiny.

- Take a pro-development approach to the negotiation of tax treaties with developing countries, by adopting the UN model tax treaty as the minimum standard.

The role of the European Commission

ActionAid would welcome:

- Continued strong work on tax treaties, covering more than just withholding taxes, with a strong result, such as an EC Communication.
- Spillover analyses (involving stakeholder input) of the impact of Member States' tax treaties, and other tax policies, on developing countries.
- Further the work in the Platform on the impact of Member States' tax regimes on developing countries more broadly.

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Thank you.