

## **FNV-Chevron Complaint**

### **Complainants**

FNV, ITF, PSI, IndustriALL Global Union  
supported by Friends of the Earth

### **Respondents**

Chevron Netherlands BV  
Chevron BV  
Chevron Investments (Netherlands) Inc.  
Chevron Luxembourg BV  
Chevron Finance BV  
Chevron Netherlands Finance BV  
Chevron Lago Maracaibo BV  
Chevron Boscan BV  
Chevron Boscan Finance BV  
Chevron Orinoco BV  
Chevron Orinoco Holdings BV  
Nigeria Chevron Cooperatief UA  
Nigeria Chevron Usan 1 Cooperatief UA  
Chevron Argentina Holdings BV

All of the corporations listed above are registered in one of the following two addresses:

Naritaweg 165, 1043 BW, Amsterdam  
Petroleumweg 32, 3196 KD, Vondelingenplaat, Rotterdam

### **Before the Dutch National Contact Point:**

Dutch National Contact Point for the OECD Guidelines  
Ministry of Foreign Affairs  
Directorate General of Foreign Economic Affairs (IMH)  
Bezuidenhoutseweg 67  
2500EB The Hague  
The Netherlands

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## 1. EXECUTIVE SUMMARY

### A. Introduction to the problem of tax avoidance

Tax avoidance – the legal avoidance or minimisation of tax payments – is a serious problem worldwide. Still commonly practiced amongst most multinational enterprises, companies' erstwhile "tax planning" activities were once accepted as standard, smart business. The financial crisis, however, played a key role in changing how governments and the public perceive corporate tax avoidance. As governments around the world found themselves strapped for funds to support essential services and leaned more heavily on average citizens to make up the difference, policy makers and interested citizens began noticing and questioning multinationals' flagrant avoidance of their own tax obligations. The relation between tax avoidance and inequality and poverty has now become clear: tax avoidance guts public budgets, which decreases public spending on essential services such as schools, health clinics, and infrastructure. Workers and average citizens are asked to bear more of the cost of public goods that are, through insufficient funding, declining in quality. Meanwhile, as citizens and governments face higher tax burdens and budget short cuts, corporations pay less than their due and gain wealth, power, and influence in comparison to the other stakeholders in the free market.

### B. Techniques of tax avoidance

Multinational corporations avoid paying their taxes by setting up a complex hierarchy of subsidiaries and related companies through and between which the corporation passes its money, avoiding tax obligations in some jurisdictions and taking advantage of tax benefits in others. Section 3.E of this complaint elaborates on these structures and techniques, but here a brief summary is given. First, multinationals establish a multi-tiered corporate structure. This typically consists of a parent company at the top; subsidiaries that actually extract oil from producing countries at the bottom; and an array of *largely invisible* intermediaries in between. These intermediaries – which are typically letterbox companies having no employees, no actual economic activity, and no tax footprint themselves – offer holding or financial services to the corporate group. The intermediaries are often located in jurisdictions that are known for facilitating the flow of money to tax havens. The Netherlands is one such leading *conduit* for tax avoidance.

Having established this complex tiered corporate structure, multinationals then avoid taxation by executing a number of financial transactions through these staff-less intermediate entities, in order to legally spirit money away from countries wherein it is earned and could be taxed, towards jurisdictions like the Cayman Islands, the U.S. State of Delaware, or Bermuda where it will face no or almost no tax at all. A wide range of financial transactions, explained later in this complaint, are available for use by corporate tax planners. These transactions share common element of non-business reality: this is to say, they are artificial, circular, or overly complex transactions that would be unnecessary to promote any real business purpose, and instead serve no purpose but to avoid taxation.

A key element to corporates' accomplishment of tax avoidance is secrecy; secrecy of the existence, number, and functions of the financial intermediaries, and secrecy of the nature of the transactions used to divert profit to low-tax regions.

### C. Growing global efforts to prevent tax avoidance

Now regarded as a leading cause of global inequality, tax avoidance is routinely criticized by governments, international organizations, civil society, and the public. International and regional organizations such as the OECD, the United Nations, and the European Union institutions have sought reforms to global tax norms that would ensure greater protection against corporate tax avoidance. At the national level too, reforms have been sought and achieved through legislation and litigation. Countries including Canada, India, South Africa and the UK have adopted new laws or

regulations geared towards reducing corporations' ability to avoid tax payments globally. Additionally, in countries from Nigeria to Australia, legal battles have been waged by tax authorities against corporations, to target their involvement in tax avoidance. Globally, the trend in tax policy is towards seeking greater transparency, accountability, and citizenship from corporations in respect of their tax obligations.

A key focus of policy makers in the fight against tax avoidance is the promotion of greater transparency in corporate tax practices. Without disclosure of the nature of a multinational's organizational structure and use of certain artificial financial transactions, it is difficult to show hard evidence of tax avoidance (or, worse, illegal tax evasion). So long as excessive confidentiality is maintained, identifying a multinational's practice of tax avoidance must rely on collection of various clues that suggest a systematic effort to minimize tax payments.

#### **D. Chevron's practice of tax avoidance through Dutch intermediaries**

Almost all multinational corporations practice tax avoidance. This specific complaint targets the Dutch subsidiaries and related companies of Chevron Corporation because of the multinational's fierce concealment of its tax-related information, its industrial utilization of Dutch subsidiaries in tax-avoidance schemes, and the amount of tax revenue Chevron manages to avoid paying to governments around the world.

Chevron is particularly active in protecting the opacity of its tax practices. When most corporations began committing to greater transparency in their payments to government through the EITI initiative, Chevron fought back hard against that.<sup>i</sup> Chevron has also been the respondent in several of the recent challenges by governments of corporate tax minimisation schemes. Indeed, over the last decade, Chevron has paid billions to settle tax disputes in many countries around the world.<sup>ii</sup> However, using various artificial financial transactions in a complex global corporate structure, Chevron may have avoided many more billions in tax payments.

Chevron has a truly multinational corporate structure, broken into three tiers across numerous countries around the world. Critically for this complaint, Chevron relies extensively on Dutch intermediaries to facilitate transactions that help it avoid tax payments. At least 34 subsidiaries of Chevron are established in the Netherlands, some of which are the respondents in this complaint. These Dutch subsidiaries are typically finance or holding companies with no employees, no physical presence, and no business other than transactions with related parties. Most of the Chevron subsidiaries in the Netherlands are connected to or have been connected to a Dutch-based firm, CITCO (Curaçao International Trust Company), one of the largest and most prominent trust companies that facilitates the creation of tax haven subsidiaries for many of the world's largest corporations.<sup>iii</sup>

#### **E. Dutch Chevron intermediaries' violations of the OECD Guidelines**

Through their facilitation of the Chevron corporate group's tax avoidance, the Dutch subsidiaries named in this complaint have breached two distinct chapters of the OECD Guidelines: on disclosure (Chapter III), and on taxation (Chapter XI). Sections 5 and 6 of this complaint elaborates on these breaches; this subsection provides a brief summary.

##### **i. Breaches of Chapter III provisions on disclosure**

The OECD Guidelines address the topic of disclosure of material information by corporations in Chapter III.<sup>iv</sup> Provision 1 of Chapter III states that "[e]nterprises should ensure that timely and accurate information is disclosed on all material matters regarding their activities, structure, financial situation, performance, ownership and governance." Provision 2 elaborates on what information is material. Of note in this case, the financial and operating results of the enterprise, intra-group relations, and related party transactions. Provision 3 notes that enterprises should also disclose

information on the enterprise's policies relating to other matters covered in the Guidelines, such as taxation.

This complaint demonstrates how Chevron's Dutch subsidiaries breach these disclosure guidelines in respect of their operations with Chevron's Nigerian, Argentinian, and Venezuelan business. Dutch companies *Nigeria Chevron Cooperatief UA* and *Nigeria Chevron Usan 1 Cooperatief UA* do not file any annual reports or verifiable public-access information at all regarding their functions, operations or tax situation. Further, their ownership structure and the function these companies perform in Nigeria is unknown, as no public information is available. The Dutch holding company *Chevron Argentina Holdings BV*'s latest filing locatable (in 2017) does not disclose any verifiable public-access information on its functions, operations or tax situation, only containing a balance sheet without further explanations. Finally, at least five Dutch affiliates of Chevron (*Chevron Orinoco BV*, *Chevron Orinoco Holdings BV*, *Chevron Boscan Finance BV*, *Chevron Boscan BV* and *Chevron Lago Maracaibo BV*) are directly involved in a number of Chevron's joint venture operations in Venezuela. The Dutch annual accounts of these companies show that they each have no employees at all, and that they, like other of the Dutch subsidiaries, share CITCO's office address. Other than this, little or no other relevant information is provided by each company. The filings are not audited and do not contain an income statement or any information regarding operations undertaken and tax liabilities.

The non-existent or incomplete disclosure by these Dutch companies breaches the OECD Guidelines, and also complicates investigation into the tax practices of the Chevron corporation.

#### **ii. Breaches of Chapter XI provisions on taxation**

The OECD Guidelines for Multinational Enterprises address in Chapter XI the topic of taxation by corporations.<sup>v</sup> Provision 1 of Chapter XI states that “[i]t is important that enterprises contribute to the public finances of host countries by making timely payment of their tax liabilities. In particular, enterprises should comply with both the letter and spirit of the tax laws and regulations of the countries in which they operate.” Commentary 103 notes that “[e]conomic relationships between different affiliates of a single economic group [for example, a Dutch and a Nigerian subsidiary of Chevron] may affect the tax liability of the involved parties. The affected tax authorities therefore may need information from outside their jurisdiction to fully comprehend and evaluate the tax situation of affiliates.”

This complaint demonstrates how Chevron's Dutch subsidiaries, through frequent intra-group operations whose main purpose is the avoidance of taxes in multiple jurisdictions, breach the spirit of Dutch law, most specifically the Law on Corporation Tax of 1969 (*wet op de vennootschapsbelasting 1969*) and the Law on Dividend Tax of 1965 (*wet op de dividendbelasting 1965*), which constitutes a breach of the Guidelines themselves. Dutch laws are designed and intended to support entrepreneurship and success of real Dutch companies; their purpose is not to facilitate empty letterbox entities of global multinationals to avoid taxation in other parts of the world. The same can be said regarding the Dutch tax treaty network, which is intended to benefit international operations of entities of both contracting partners, including Dutch holding and financing companies. By manipulating Dutch laws and benefits solely for the potential to enable tax avoidance, Chevron's Dutch subsidiaries have violated the spirit of Dutch law. This constitutes a breach of the OECD Guidelines themselves.

Paragraph 23 of the Commentary to the Procedural Guidance states that, “Generally, issues will be dealt with by the NCP of the country in which the issues have arisen.”<sup>vi</sup> The issues addressed in this complaint arise at the location of incorporation of these companies: it is in the Netherlands that poor decisions on disclosure are made, and that financial transactions are implemented that breach spirit of Dutch tax law. Hence the complaint is filed with the Dutch NCP, to resolve these issues. While the

issues addressed in this complaint occur in the Netherlands, the harms resulting from these actions impact governments and people around the world.

## **2. IDENTIFICATION OF THE PARTIES**

### **A. Complainants**

The complainants filing this specific instance are global union federations, trade unions, and non-governmental organisations.<sup>1</sup> As such, we broadly represent workers and civil society and have a significant interest in ensuring that Chevron and other multinationals terminate their aggressive tax avoidance practices and pay a fair share of tax in the countries where they earn their profits. We have a couple primary interests in this case.

First, we seek to ensure that Chevron changes its tax avoidance practices so as to stop depriving the workers and communities we represent of critical public services. The workers and communities we represent suffer when government-provided services such as health care, education, infrastructure, water, energy, and public safety decline. These services benefit corporations as much as they do regular people: corporations profit from infrastructure in the form of roads, airports, and harbours; from an educated and nourished workforce; and from a judicial and police apparatus that enforces laws and promotes public security. Such public services are primarily funded by tax revenue, and thus there is a direct correlation between low tax revenue and less input of public money into public services. Aggressive tax minimisation by multinationals allows corporations to receive benefits for which they have not fairly contributed. More concerning to the workers and individuals we represent, aggressive tax minimisation also directly leads to a decline in critical services that so many depend on in their daily lives.

Second, we seek to ensure that Chevron changes its tax avoidance practices so that it shoulders a more appropriate portion, vis-à-vis workers, of funding for government services, helping to right an imbalance of burden and power between corporations and workers. When public revenue from corporations declines in a country, workers' income tax is forced to support a larger share of government budgets. As corporations avoid paying taxes, workers are called upon to shoulder a greater share of the burden of ensuring public goods. Tax avoidance thus unduly elevates the power and ability of corporations vis-à-vis workers as well as governments. As unions, we have a direct stake in ensuring an appropriate check on the power and prerogative of management. Unfortunately, multinationals' practice of avoiding paying taxes in the countries in which their wealth is earned deepens global wealth inequality and empowers multinationals against workers and governments.

### **B. Respondents**

The respondents named in this complaint are Netherlands-incorporated subsidiaries and related companies of the Chevron Corporation, a multinational energy corporation engaged in the global exploration and production, refining, transportation, supply and trading, and development of products and services for natural gas, heavy oil, liquefied natural gas, and deep-water and shale extraction, as well as lubricants, chemicals, and additives.

Chevron, like other multinationals, uses Netherlands-incorporated companies in a variety of ways to minimise its tax payments in other countries. Chevron's subsidiaries in the Netherlands play a critical role in facilitation of a global structure designed to minimise Chevron's tax payments. At least 34

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<sup>1</sup> The International Transport Workers' Federation (ITF), through the Sydney Campaign Centre, has been exposing Chevron's tax avoidance practices in Australia and beyond and has assisted the Complainants with this current global analysis of Chevron's corporate structure and the central role of Dutch subsidiaries.

subsidiaries of Chevron are established in the Netherlands, some of which are the respondents in this complaint.

Among the 14 entities singled out as respondents of this complaint, Chevron established: (i) two cooperatives of excluded liability, or *Cooperatief Uitgesloten Aansprakelijkheid (UA)*, which are often utilized by multinational corporations to benefit from exemptions in withholding taxes on dividends; (ii) eleven private limited companies, or *Besloten Vennootschap (BV)*; and (iii) a Delaware incorporated *Chevron Investments (Netherlands) Inc.*, which has an office in the Netherlands.

These Dutch subsidiaries are typically finance or holding companies with no employees, no physical presence, and no business other than transactions with related parties. Most of the Chevron subsidiaries in the Netherlands are connected to or have been connected to a Dutch-based firm, CITCO (Curaçao International Trust Company), one of the largest and most prominent trust companies that facilitates the creation of tax haven subsidiaries for many of the world's largest corporations.<sup>vii</sup> Trust International Management, a subsidiary of CITCO, is or has been a director of most of the Chevron subsidiaries in the Netherlands and shares CITCO's address in the Netherlands.<sup>viii</sup>

### **3. OVERVIEW OF TAX AVOIDANCE GLOBALLY AND BY CHEVRON**

#### **A. Tax avoidance versus tax evasion**

Both tax avoidance and tax evasion are motivated by the desire to minimize tax liability. The distinction between them is a matter of legality, and many times the distinction is not always clear. Tax *evasion* is illegal, consisting in the wilful and fraudulent violation or circumvention of applicable tax laws, such as through deliberately under-reporting or non-reporting of taxes due or the false claim of inappropriate deductions. In contrast, tax *avoidance* uses legal means, such as artificiality, undue complexity, circularity, or lack of business reality to create legal corporate constructions or processes that reduce tax liability.<sup>ix</sup> The complexity of domestic tax systems and the interaction of two or more jurisdictions often offer corporations opportunities to avoid taxation in ways that run contrary to the underlying economic reality of corporate transactions and the original intent of the legislators. While tax avoidance does not violate the letter of the law, it may (as in this case) violate the *spirit of the law*.

#### **B. Widespread harmful effects of tax avoidance**

Tax avoidance or tax minimisation has a direct and severe impact on increasing poverty and extreme inequality. Tax minimisation directly reduces the revenues of states, limiting their ability to fund critical public services such as health care, education, and infrastructure that benefit citizens as well as corporations. Reduction in public revenue from corporations forces workers' income tax to support a growing share of government budgets, even as workers receive fewer and less adequate public goods, and corporations receive goods for which they haven't fairly paid. Tax avoidance thus unduly elevates the power of corporations vis-à-vis workers as well as governments. Finally, tax avoidance gives multinationals an unfair competitive advantage against responsible enterprises that do pay their fair share of tax. This too deepens inequality, as corporations having the knowledge and capacity to utilize avoidance tactics remain better able to grow their businesses, monopolizing resources and government contracts.

The impact of tax avoidance can hardly be overstated, with developing countries suffering the most due to this practice. In 2015, the Independent Commission for the Reform of International Corporate Taxation (ICRICT) estimated that the shifting of profits by corporations to lower-tax jurisdictions costs developing countries \$100bn a year, which is a third of the total corporate tax they should be collecting.<sup>x</sup>

However, tax avoidance also has profound impacts in developed nations. A 2017 research conducted by the Tax Justice Network with a methodology developed by the International Monetary Fund found that tax avoidance generates global losses of around U\$500 billion per year.<sup>xi</sup> The 2008 financial crisis helped generate greater awareness of the negative impacts of tax avoidance on deepening inequality globally. During the fiscal shocks, many European countries were forced to implement austerity policies that most severely impacted average citizens.<sup>xii</sup> As regular people were asked to take on more of the tax burden, corporations continued to utilize legal loopholes to minimize their tax due. The crisis raised the public's intolerance to corporate tax schemes that enable corporations to avoid paying their fair share of taxes, while average people that had not caused the crisis shouldered the heaviest tax burden.

Unfortunately, the financial crisis had lasting impact in helping lower the tax burdens of multinational corporations, which today pay lower taxes than they did a decade ago.<sup>xiii</sup> This demonstrates that the trend of shifting the tax burden from companies to average citizens is still present both in developing and developed countries.

### **C. International focus on reforms to prevent tax avoidance**

One positive outcome of the above-stated situation is that there is growing global awareness of the problems of tax avoidance and increasing consensus on the need to stop tax minimization. As observed by a former UK Financial Secretary to the Treasury, *"It is clear that attitudes to aggressive tax planning are changing. The public, investors and stakeholders now expect higher standards of tax compliance and more transparency from large businesses about the way they approach taxation."*<sup>xiv</sup> Now regarded as a serious cause of global inequality by politicians and regular citizens, tax avoidance is routinely scrutinized in the media and debated by international organizations and national governments.

The OECD has led the international push for reform of certain tax laws that facilitate tax avoidance. In 2012, the G20 asked the OECD to conduct a study and propose reforms to prevent base erosion and profit shifting. This request led to the OECD's creation of the BEPS (Base Erosion and Profit Shifting) project.<sup>xv</sup> Among other topics, the BEPS project has published proposals on taxing the digital economy, limiting interest deduction, countering other harmful tax practices, and developing a multilateral instrument to implement these changes.<sup>xvi</sup>

The United Nations also developed a number of positive policies to reduce the impact of tax avoidance, mainly for developing countries. In 2014, the UN General Assembly adopted a convention on *Transparency in Treaty-Based Investor-State Arbitration*, which increases transparency and public disclosure around investment treaties – a vital development to shed light on international transactions and investments of multinational companies.<sup>xvii</sup> In 2015, the UN published a *Handbook on Selected Issues in Protecting the Tax Base of Developing Countries*, building on the OECD's BEPS project in discussing policies to avoid tax leakage from developing nations.<sup>xviii</sup>

The European Union institutions have also presented important new initiatives for the struggle against tax avoidance. The European Parliament has implemented consecutive sessions of a *Special Committee on Tax Rulings*,<sup>xix</sup> which has investigated recent tax scandals, such as the Panama Papers, Paradise Papers, and LuxLeaks. This committee also held hearings to increase popular understanding of how tax avoidance is utilized in an industrial level, often enabled through special deals agreed between multinational corporations and national tax administrations, resulting in a dramatic reduction of effective tax rates. The EU Commission has developed a list of jurisdictions that have either a high level of secrecy around corporate structures, ultimate ownership or transactions entered into, or domestic legislation that enables harmful competition.<sup>xx</sup> Since December 2017, the *EU Blacklist* project has advanced a number of relevant tax reforms around the globe.



#### **D. National focus on reforms to prevent tax avoidance**

It is not only at the international and regional level that policy makers have begun to seek reforms to prevent corporate tax avoidance. At the national level too, several countries are taking steps to target the problem. Many countries including Canada, India, South Africa, and the UK have decided recently to take a stand against tax avoidance by implementing GAARs (General Anti-Avoidance Rules), either through legislation or judicial doctrine. GAARs seek to prevent avoidance schemes by tackling transactions without economic substance where the principal purpose is reduction of tax liabilities.

In other cases, reform efforts have been led through litigation in the judiciary. The 2017 case of *Chevron Australia Holdings Pty Ltd (CAHPL) v Commissioner of Taxation* is widely recognized as a landmark decision that will have global implications for multinational enterprises.<sup>xxi</sup> The case targeted the particular tax avoidance practice of transfer pricing, focusing on loans provided by a Chevron-controlled entity in Delaware, USA, to a Chevron subsidiary in Australia. The court found that the Delaware entity had loaned money to the Australian subsidiary at interest rates artificially set higher than market rates. By paying the inflated interest rate, profits that should have been taxed in Australia were instead transferred (in the form of exorbitant loan interest payments) to Delaware, a tax haven.<sup>xxii xxiii</sup> As the loans involved sums of \$2.5 billion and \$45 billion, the impact on Australian public revenue collection was massive.<sup>xxiv</sup> Eventually, Chevron reached a settlement with the ATO, cementing the court's decision.<sup>xxv</sup> While the terms of the settlement have not been made public, experts believe Chevron was required to pay back taxes amounting to over \$1 billion, and \$340 million from a previous similar loan.<sup>xxvi</sup>

#### **E. Common strategies of tax avoidance**

Chevron, along with many multinationals, accomplishes its tax avoidance through use of a multinational corporate structure involving Dutch subsidiaries, and through reliance on tell-tale financial transactions that have no purpose but to help the corporation avoid taxation. The following subsection provide an overview of the tax avoidance tactics commonly utilized by multinational corporations.

##### ***i. Failure to disclose essential structural and financial data***

Lack of transparency on business structures, relationships, and practices is one of the chief enablers of tax avoidance. Corporations are aware that the use of accounting manoeuvres and artificial transactions to reduce tax liabilities may be unappreciated by tax officials, and considered indefensible in the arena of public opinion. Fundamentally therefore, lack of disclosure is necessary by corporations to guarantee the opacity needed to mask their transactions and the total amount of taxes they avoid. Because lack of disclosure is so essential to tax avoidance, it can actually be considered not only a tool but an indicator of avoidance, as well. As explained by an article on tax avoidance by extractive companies utilizing Dutch entities, it *"is hard to detect such behaviour, especially when financial details are not reported per jurisdiction but only for the corporate structure as a whole. Creating this lack of transparency by not reporting per jurisdiction is therefore in itself also an indicator."*<sup>xxvii</sup> Thus, lack of transparency is *itself* some evidence of tax avoidance by the company failing to following disclosure standards at the jurisdictional level.

In Section 6, this complaint elaborates in detail on how Chevron's Dutch intermediaries fail to disclose material information at the level of the Dutch jurisdiction, thereby breaching the OECD Guidelines. Lack of information about the Netherlands subsidiaries would be much less of a problem if there were full disclosure in the partner countries. What makes tax avoidance so difficult to target is that other jurisdictions – such as Bermuda, Argentina, Venezuela and Nigeria, which are not the subject of this complaint – also do not disclose key information, yielding an overall picture that is very vague. Where hard evidence of tax avoidance is lacking, this complaint, like other reports on tax avoidance<sup>xxviii</sup>, relies on identifying patterns of practice, use of particular financial transactions, and

establishment of subsidiaries in known tax havens as clues of tax avoidance, “smoking guns” that strongly suggest that tax avoidance is underway.

As a result of Chevron’s chronic disregard for public disclosure policies, the image painted by this complaint most likely only reflects a fraction of Chevron’s operations and its use of tax avoidance techniques.

**ii. Establishment of intermediaries in known as tax havens**

Unsurprisingly, the second most obvious technique of tax avoidance by corporations is to establish subsidiaries or affiliates in known tax havens and in jurisdictions equipped to help pass money through to tax havens. By funnelling money through these subsidiaries, multinationals benefit from their low tax rate or other tax advantages. These subsidiaries help facilitate financial transactions drawing profits from other regions into jurisdictions that will not charge high tax (or any tax at all) on these profits. Many times, the subsidiaries established in known tax havens or tax conduits have no staff or actual physical location, but are instead letterbox companies. As such, these subsidiaries have no real purpose or economic activity, but are established with the sole purpose of taking advantage of favourable tax rules.

Chevron frequently utilizes affiliates in jurisdictions well known for opacity and low tax rates. When required by an Australian Parliamentary Inquiry into Corporate Tax Avoidance to disclose a number of previously unknown subsidiaries, Chevron revealed a total of 211 active subsidiaries in Bermuda and 212 in the state of Delaware, both jurisdictions widely regarded as opaque and enablers of international tax avoidance schemes.<sup>xxx</sup> When questioned at an Australian Senate hearing about the incorporation in Bermuda of a shipping company involved in its Australian business, Chevron claimed it was due to Bermuda’s record of maritime safety, claiming the decision to base its company in Bermuda had no connection to corporate secrecy or Bermuda’s 0% corporate tax rate.<sup>xxx</sup>

**iii. Establishment of intermediaries in countries with a comprehensive tax treaty network**

Some countries have entered into bilateral tax agreements that reduce taxes for transactions involving entities located in the participating jurisdictions. For instance, a tax treaty between countries A and B can totally eliminate the taxation of royalty payments transferred from one jurisdiction to another. Multinationals commonly establish an intermediary in a jurisdiction with a good tax treaty network. Once again, such intermediaries often have no staff or actual physical location; indeed, establishment of the intermediary serves no business purpose, but is an artificial means to benefit from the favourable tax treaties.

The Netherlands is one such country benefiting from a comprehensive tax treaty network, thus a company’s establishment and use of intermediaries in the Netherlands is itself often a clue that the company is using those intermediaries for the primary purpose of tax avoidance. As stated in Article 1 of the OECD Model Tax Convention on Income and on Capital, a reference document utilized by most countries for developing bilateral tax treaties, tax agreements only apply “to persons who are residents of one or both of the Contracting States.”<sup>xxxii</sup> The willful creation of structures in those countries with the main purpose of benefitting from benefits intended for true residents is considered abusive and against the spirit of the bilateral tax agreements.

At least 34 subsidiaries of Chevron are established in the Netherlands, some of which are the respondents in this complaint. These Dutch subsidiaries are typically finance or holding companies with no employees, no physical presence, and no business other than transactions with related parties. The Manager of Chevron’s Europe Regional Treasury Center, based in Rotterdam, is a director of at least 34 Dutch subsidiaries, as well as three in Luxembourg and one in Malta.<sup>xxxii</sup> The Manager’s predecessor, C.J. Van Klink listed his job title in the previous filings of the same Dutch

Chevron subsidiaries as “Tax Manager Benelux/Germany at Chevron Netherlands BV”.<sup>xxxiii</sup> This title evidences the relation of the Dutch subsidiaries to providing tax services to the parent corporation.

The majority of Chevron’s Dutch subsidiaries are now or were previously connected to a Dutch trust firm named CITCO (*Curaçao International Trust Company*). CITCO is recognized as one of the largest and most prominent trust companies in the international tax arena. As described in one article, “*trust offices manage the affairs of multinational companies and rich private individuals, playing a central role in the development of tax avoidance strategies by dealing with the paperwork and administering letterbox companies.*”<sup>xxxiv</sup> CITCO is particularly known for helping numerous multinationals create subsidiaries in jurisdictions with low levels of taxation and poor standards of transparency.<sup>xxxv</sup> A subsidiary of CITCO entitled *Trust International Management (TIM) BV* is or was at a previous moment a director of most of the Chevron subsidiaries in the Netherlands.<sup>xxxvi</sup> It also shared CITCO’s address in the Netherlands.<sup>xxxvii</sup> CITCO coincidentally also shares its address with Chevron affiliates in Malta.

In at least a few cases, the Dutch subsidiaries appear to operate in tandem with Danish subsidiaries to conduct financial transactions. This appears part of Chevron’s modus operandi for tax avoidance. Chevron’s Dutch subsidiaries function either directly or indirectly as owners of affiliates operating in many other countries.

**iv. Profit-shifting through inflated interest rates on intra-group loans**

As occurred in the Australian court case against Chevron described above, corporations commonly utilize debt instruments between two entities of the same economic group to shift profit from one jurisdiction to another. One entity loans money to the other, charging an interest rate that may be justifiable based on economic factors, but is higher than that offered on the free market. Most jurisdictions consider interest payments as regular business expenses and therefore deduct them from the total taxable profits of the taxpayer. The concrete consequence is that the money paid as interest is not taxed in the original jurisdiction. In many circumstances, the corporate group ensures the money is not taxed in the receiving jurisdiction either, by offering the loans from an entity based in a low- or no-corporate-tax jurisdiction.

The key to making this practice *legal* is that the lender must charge an interest rate meeting the OECD’s *arm’s length standard*; i.e. a rate a lender outside the corporate group would charge. In the Australia case mentioned above, Chevron’s mistake was that it charged a rate found by the court to be unduly and artificially higher than what another lender would charge, effectively siphoning away undue profit in the form of excessive interest. Such transactions, whose sole purpose is to shift profits from where value is created to other jurisdictions that have low or no taxation, is considered to be an abuse of the spirit of the law in all countries involved.

**v. Use of hybrid financial instruments manipulating misalignment in global debt/equity definitions**

Just as with the above practice, where interest payments from debt are deducted as corporate expenses, corporations have developed hybrid financial instruments. Said instruments take advantage of differences between domestic legislation on the definition of what exactly categorizes an instrument as debt or equity. If Country A considers a financial instrument as equity while Country B considers the same instrument as debt, corporations can exploit the mismatch through financial transactions exclusively aimed at reducing taxable profit. Again, such a manipulative transaction is considered to be an abuse of the spirit of the law in all countries involved.

**vi. Redirected dividend payments**

Normally, subsidiaries within a single economic group will pay dividends to the parent company, following the hierarchical structure of the organization. However, to benefit from a network of tax

treaties or tax exemptions in a specific jurisdiction, multinationals may redirect dividend payments from the parent company to a subsidiary located in the favourable jurisdiction. That redirection causes a reduction in tax due. As tax treaties are established to be exclusively utilized by taxpayers which are resident or incorporated in the involved jurisdictions, the wilful creation of structures in those countries with the main purpose of benefitting from undue benefits is considered abusive and against the spirit of the bilateral tax agreements.

**vii. Housing intellectual property in low-tax jurisdictions**

Intellectual property is of increasing importance in the current economy, where value is concentrated in patents and trademarks instead of brick and mortar industrial plants. Countries tax intellectual property through charging royalties or licensing fees. Companies, in turn, can avoid these taxes by placing their valuable intellectual property in low-tax jurisdictions, therefore attracting payments from other jurisdictions and effectively reducing the total tax liability of the multinational enterprise.

**F. Chevron's tax avoidance through Dutch intermediaries**

Chevron, like other multinational corporations, engages in worldwide tax avoidance, and it does so in part through facilitation by Dutch subsidiaries and related companies, which enable the flow of Chevron's profit from the countries in which it was earned, to jurisdictions where it will not be taxed.

Chevron is particularly active in protecting the opacity of its tax practices. Chevron has fought against laws to require disclosure of global payments to governments and has refused to participate to disclose tax payments as part of the Extractive Industries Transparency Initiative (EITI) in the U.S.<sup>xxxviii</sup> Due to the opacity of Chevron's complex global corporate structure, it is very likely that only a fraction of Chevron's tax avoidance schemes have been discovered.

Chevron has also been the respondent in several of the recent challenges by governments of corporate tax minimisation schemes. Indeed, over the last decade, Chevron has paid billions to settle tax disputes in many countries around the world.<sup>xxxix</sup> In addition to the Australian case discussed above, Chevron has been the target of other court cases on taxation. For example, in 2016, the Nigerian government began legal proceedings against Chevron and other companies involved in the extractive sector, arguing the failure by the oil & gas sector to declare and make tax payments on more than 57 million barrels of crude oil exported between the period of 2011 and 2014, with an estimated value of \$13 billion.<sup>xl</sup> The case attracted a lot of attention from media and government officials due to the staggering value of lost revenue.

As they do for many multinationals, Dutch subsidiaries play a pivotal role in facilitating Chevron's tax avoidance. A recent report commissioned by the Dutch Ministry of Foreign Affairs notes that Dutch financing and holding companies are frequently set up and utilized by multinationals "for the purpose of avoiding corporate income tax and/or withholding taxes to be paid in ... developing countries."<sup>xli</sup> "The report observed that "[t]he Netherlands runs the risk that its wide network of tax treaties is being abused by international mining groups which have no actual activities in the Netherlands."<sup>xlii</sup> The report suggested that a combination of several indicators – having a subsidiary in a tax haven, along with a Dutch holding or financial company, Dutch cooperative, and trust or services company acting as a director – strongly suggest that tax avoidance is taking place.<sup>xliii</sup>

**4. JURISDICTION: WHY THIS CASE IS FILED AT THE DUTCH NCP**

This complaint identifies how the practices of Chevron's Dutch subsidiaries violate two chapters of the OECD Guidelines: on disclosure (Chapter III), and taxation (Chapter XI). Paragraph 23 of the Commentary to the Procedural Guidance to the OECD Guidelines states that, "Generally, issues will be dealt with by the NCP of the country in which the issues have arisen." Because the issues

addressed in this complaint – failures in disclosure and tax-related transactions that violate the spirit of Dutch law – occur in the Netherlands, this complaint is addressed to the Dutch NCP. Although the issues arise in the Netherlands, the harms resulting from these practices impact countries and people around the world.

#### **A. Breaches on disclosure occurring in the Netherlands**

As is elaborated in the following Section VI, this complaint demonstrates how Chevron’s Dutch subsidiaries breach the OECD Guidelines on disclosure in respect of their operations with Chevron’s Nigerian, Argentinian, and Venezuelan business. **The provisions breached are provisions 1, 2, and 3 of the OECD Guidelines chapter on disclosure. Commentaries 28, 30, 32, and 35 are relevant in understanding these breaches.**

Dutch companies *Nigeria Chevron Cooperatief UA* and *Nigeria Chevron Usan 1 Cooperatief UA* do not file any annual reports or verifiable public-access information at all regarding their functions, operations or tax situation. Further, their ownership structure and the function these companies perform in Nigeria is unknown, as no public information is available. The Dutch holding company *Chevron Argentina Holdings BV*’s latest locatable filing (in 2017) does not disclose any verifiable public-access information on the functions, operations or tax situation of the company, only containing a balance sheet without further explanations on the nature of the fixed assets or the increase in capital. Finally, at least five Dutch affiliates of Chevron (*Chevron Orinoco BV*, *Chevron Orinoco Holdings BV*, *Chevron Boscan Finance BV*, *Chevron Boscan BV* and *Chevron Lago Maracaibo BV*) are directly involved in a number of Chevron’s joint venture operations in Venezuela. The Dutch annual accounts of these companies show that they each have no employees at all, and that they, like other of the Dutch subsidiaries, share CITCO’s office address. Little or no other relevant information is provided. The filings are not audited and do not contain an income statement or any information regarding operations undertaken and tax liabilities.

The non-existent or incomplete disclosure of financial and asset information by these Dutch companies, a failure that occurs in the Netherlands, breaches the OECD Guidelines, and also complicates investigation into the tax practices of the Chevron corporation.

#### **B. Breaches on taxation occurring in the Netherlands**

As is elaborated in Section 6 below, this complaint demonstrates how Chevron’s Dutch subsidiaries breach the OECD Guidelines on taxation in respect of their operations with Chevron’s Venezuelan and Nigerian business. **The provisions breached are provisions 1 and 2 of the OECD Guidelines chapter on taxation. Commentaries 100 through 103 are relevant in understanding these breaches.**

Provision 1 of Chapter XI states that “[i]t is important that enterprises contribute to the public finances of host countries by making timely payment of their tax liabilities. In particular, enterprises should comply with both the letter **and spirit** of the tax laws and regulations of the countries in which they operate” (emphasis added). Section 6 below explains how Chevron’s Dutch intermediaries violate the OECD Guidelines because they violate the spirit of Dutch tax laws and regulations, most specifically the Dutch Law on Corporation Tax of 1969 (*wet op de vennootschapsbelasting 1969*), the Dutch Law on Dividend Tax of 1965 (*wet op de dividendbelasting 1965*), and Dutch bilateral tax treaties. This enables the Chevron corporation not to contribute sufficiently to the public finances of the countries that host their extraction work.

*Chevron Boscan Finance BV*, which operates in respect of Venezuela, has failed to comply with the spirit of the tax laws and regulations as well as of the bilateral tax treaty between the Netherlands and Venezuela. The structuring of multiple loans to reduce total tax liability and the unwarranted obtainment of a reduced withholding tax rate on interests paid to Dutch conduit subsidiaries are clear examples of an abusive utilization of tax law to reduce due taxes. The development of conduit

structures through letterbox companies violates the spirit of Dutch legislation by utilizing exclusively for tax purposes rules intended for economically-sound business operations. *Chevron Boscan Finance BV* appears to have no tax governance or compliance strategy at all to aid its oversight and broader risk management systems.

Meanwhile, *Nigeria Chevron Cooperatief UA* and *Nigeria Chevron Usan 1 Cooperatief* have violated the spirit of the bilateral tax treaty between the Netherlands and Nigeria, of the Law on Corporation Tax of 1969 (*wet op de vennootschapsbelasting 1969*), and of the Law on Dividend Tax of 1965 (*wet op de dividendbelasting 1965*). Given the lack of actual staffing or real economic activity of the Dutch cooperatives, their function could not be but for the purpose of reducing duly owed taxes in Nigeria. They also appear to have no tax governance or compliance strategy at all to aid in their oversight and broader risk management systems.

### **C. Satisfaction of the OECD Guidelines' admissibility criteria**

Paragraph 25 of the Commentary to the Procedural Guidance sets out several criteria complaints must satisfy to be deemed admissible by an NCP.<sup>xliv</sup> These criteria are all met in this case.

- First, Section 2 above explains the identity of the parties and what particular interest they have in resolving this case. The complainants are, as identified, unions and other organizations focused on addressing the global challenge of tax avoidance, for the well-being of citizens globally and in the countries particularly named in this complaint, and to equalize the balance of power between corporations, governments, unions, civil society, and other stakeholders in the economy. The respondents are Dutch subsidiaries of Chevron corporation whose primary function and purpose is to help Chevron avoid paying taxes around the globe.
- Second, the issues raised in this case are material to the Guidelines, implicating breach by multinational corporations of two distinct chapters of the Guidelines on disclosure and taxation. The issues are also substantiated by evidence provided in the annexes.
- Third, Sections 5 and 6 establish clear links between the actions of the Dutch subsidiaries identified as respondents in this case, and the issues in this case, which are the subsidiaries' violation in the Netherlands of Chapters III and XI of the Guidelines.
- Sections 5 and 6 demonstrate how certain laws, treaties, and court rulings in other jurisdictions are relevant to the analysis of the problem of tax avoidance undertaken in this complaint.
- Sections 5 and 6 also identify how the issue of tax avoidance, including through intermediaries like the Dutch subsidiaries identified here, is being treated in other domestic proceedings. Discussion of some of these other proceedings helps demonstrate the relevance and timeliness of this case in the broader context of reform of global corporate tax policy.
- Finally, consideration of this specific instance would contribute to the purpose and effectiveness of the Guidelines. This is the first specific instance applying Chapter XI of the OECD Guidelines to the global challenge of tax avoidance. The Dutch NCP's handling of this case would help establish vital interpretation of this critical chapter in respect of tax avoidance, promote better adherence to the Guidelines by Chevron and its subsidiaries and other multinationals engaged in tax minimization, and advance global dialogue on this important tax policy issue.

## 5. VIOLATIONS OF OECD GUIDELINES CHAPTER III ON DISCLOSURE

### A. Identification of OECD Guidelines provisions breached

The OECD Guidelines address the topic of disclosure of material information by corporations in Chapter III. The lack of complete disclosure by Chevron's Dutch subsidiaries regarding their functions, transactions, and tax obligations violates the OECD Guidelines, as described below. It also generates an environment for impunity not only regarding their Dutch legal obligations, but also their obligations to other countries as well. The current state of limited transparency or plain opacity in which many multinationals operate hampers or outright impedes investigations into many other areas addressed by the OECD Guidelines. This includes taxation, the subject of the present specific instance case, but also human rights, environmental issues, and corruption, among others. In this sense, disclosure must be seen as a gateway into a multitude of critical issues. CEOs and boards of directors have a democratic duty to disclose relevant information to the societies in which they operate. The enforcement of the OECD Guidelines' disclosure provisions is an indispensable first step that will allow governments and civil society to hold multinational corporations to account on a variety of topics.

Lack of information about the Netherlands subsidiaries would be much less of a problem if there were full disclosure in the partner countries. What makes tax avoidance so difficult to target is that other jurisdictions – such as Bermuda, Argentina, Venezuela and Nigeria – also do not disclose key information, yielding an overall picture that is very vague.

This section shows how the failure of Chevron's Dutch subsidiaries to disclose details on their corporate structures and operations violates the following Guidelines provisions:

**Provision Number 1** of Chapter III states:

“Enterprises should ensure that timely and accurate information is disclosed on all material matters regarding their activities, structure, financial situation, performance, ownership and governance. This information should be disclosed for the enterprise as a whole, and, where appropriate, along business lines or geographic areas. Disclosure policies of enterprises should be tailored to the nature, size and location of the enterprise, with due regard taken of costs, business confidentiality and other competitive concerns”.<sup>xlv</sup>

**Provision Number 2** of Chapter III states:

“Disclosure policies of enterprises should include, but not be limited to, material information on:

- a) the financial and operating results of the enterprise;
- b) enterprise objectives;
- c) major share ownership and voting rights, including the structure of a group of enterprises and intra-group relations, as well as control enhancing mechanisms; [...]
- e) related party transactions; [...]
- h) governance structures and policies, in particular, the content of any corporate governance code or policy and its implementation process”.<sup>xlvi</sup>

**Provision Number 3** of Chapter III states:

“Enterprises are encouraged to communicate additional information that could include: a) value statements or statements of business conduct intended for public disclosure including, depending on its relevance for the enterprise's activities, information on the enterprise's policies relating to matters covered by the *Guidelines*;...”<sup>xlvii</sup>

In the context of this specific provision, taxation is one of the matters covered by the Guidelines (Chapter XI).

The OECD Guidelines also provide a number of commentaries to aid interpretation and application of the provisions listed above. The following commentaries help guide a full-perspective examination of how Chevron's chronic lack of transparency constitutes a systematic breach of the OECD Guidelines:

- From **Commentary 28**: This chapter encourages improved understanding of company's operations. Clear and complete information is important to a plurality of stakeholders, including workers, local communities, governments and society at large. To improve disclosure, enterprises should be transparent in their operations and responsive to the public's increasingly sophisticated demands for information.<sup>xlviii</sup>
- From **Commentary 30**: The Guidelines utilize the concept of materiality: information whose omission or misstatement could influence the economic decisions taken by users of the information should be disclosed.<sup>xlix</sup>
- From **Commentary 32**: Related party transactions (which in this complaint include all operations undertaken between Chevron's subsidiaries in the Netherlands and other jurisdictions) constitute additional relevant information that should be disclosed. Material issues regarding workers and other stakeholders should also be disclosed.<sup>i</sup>
- From **Commentary 35**: Enterprises are encouraged to provide easy and economical access to published information and to consider making use of information technologies to meet this goal.<sup>ii</sup>

## **B. Evidence of Breach**

The following subsections identify the Chevron Dutch subsidiaries' breaches of the OECD Guidelines disclosure provisions in respect of operations in three other countries: Nigeria, Argentina, and Venezuela. The disclosure breaches by the Dutch subsidiaries are not limited to these jurisdictions. Indeed, research on the Dutch Chamber of Commerce (*Kamer van Koophandel - Kvk*) demonstrates that a number of other countries are (or have recently been) connected to Chevron's Dutch subsidiaries, including Kazakhstan, Iraq, Brazil, Turkmenistan, Ukraine, Russia, Mexico, Turkey, Azerbaijan, Indonesia, Lithuania, Bulgaria, Romania and Poland.<sup>iii</sup> However, the evidence in respect of disclosure breaches with regard to these countries is lacking. While the Kvk record demonstrates the existence of a number of Chevron subsidiaries, as well as their connection to subsidiaries in third countries, a strong level of opacity around further links with Chevron international subsidiaries and the financial transactions among such entities restricts a thorough inspection of these corporate entities. Disclosure breaches are discussed in relation to Nigeria, Argentina, and Venezuela based on the availability of evidence.<sup>2</sup>

### **i. Nigeria**

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<sup>2</sup> Disclosure failures by the parent company Chevron Corporation are not the focus of this complaint, which instead centres on the disclosure failures of the known Dutch subsidiaries. However, the failure by the parent corporation consistently to disclose even the existence of its Dutch subsidiaries and affiliates highlights part of the challenge governments and civil society face in studying these Dutch companies and their role in facilitating the corporate group's tax avoidance. Although Chevron has a large number of subsidiaries in the Netherlands, Chevron Corporation's global reporting and disclosure does not actually acknowledge the existence of most of them. A recent 10-K report from Chevron discloses only 37 *significant subsidiaries* in total, none of which include Dutch subsidiaries.<sup>2</sup> This means that no information is provided on the purpose of the Dutch subsidiaries within the overall corporate structure. Through diligent research using data from the Dutch Chamber of Commerce and examination of financial statements and transactions from subsidiaries present in the analysed countries, the complainants were able to identify the Chevron intermediaries named in this complaint.



Chevron has a number of oil extraction operations in Nigeria, a country that has suffered recent scandals involving oil companies, corruption of officials, and tax evasion (to be discussed further in the section on breaches of OECD Guidelines taxation provisions).<sup>liii</sup> Nigeria, alongside the United States and Australia, is the only country which individually accounted for 10% or more of Chevron's net properties, plant, and equipment in 2017, demonstrating its importance within Chevron's international structure.<sup>liv</sup>

There are two corporate entities established in the Netherlands (*Nigeria Chevron Cooperatief UA* and *Nigeria Chevron Usan 1 Cooperatief UA*) that are directly connected to Chevron's operations in Nigeria. The registered address of both entities coincides with the address of CITCO's office in Amsterdam. The only publicly available information on these entities identifies TIM BV as the immediate parent entity and a director of both companies.<sup>lv</sup>

The connection with CITCO does not cease here, as three subsidiaries Chevron currently has operating in Nigeria (*Chevron Nigeria Limited*, *Star Deep Water Petroleum Limited* and *Texaco Nigeria Outer Shelf Limited*) are directly owned by *Chevron Malta Limited*, which is located at the Malta office of CITCO.<sup>lvi</sup> Some of Chevron's largest offshore oil fields in Nigeria are operated by subsidiaries directly owned by this Maltese affiliate.<sup>lvii</sup>

The Dutch subsidiaries, *Nigeria Chevron Cooperatief UA* and *Nigeria Chevron Usan 1 Cooperatief UA*, do not file any annual reports or verifiable public-access information on their functions, operations or tax situation. The ownership structure and the function these companies perform in Nigeria is unknown, as no public information is available. The lack of disclosure by these Dutch subsidiaries directly hampers a comprehensive analysis of Chevron's operations in Nigeria.

Indeed, the only instance when these affiliates are mentioned is in the annual report of the ultimate parent (*Chevron Corporation*), without any further significant information as to their role in Chevron's international corporate structure or the impact they have on Chevron's tax obligations in Nigeria.

A connection between the activities and operations undertaken by Chevron in Nigeria and these Dutch-based subsidiaries is clear. Due to the historic levels of tax leakage and questionable dealings between public officials and multinational corporations in Nigeria,<sup>lviii</sup> there are strong indicators that Dutch subsidiaries might facilitate aggressive tax avoidance. The utilization of *cooperatief UA* entities is an indication of aggressive tax avoidance, as such entities are often utilized in international holding structures to avoid dividend withholding taxes in the Netherlands. However, lack of disclosure makes it impossible to understand the role of these subsidiaries in Chevron's tax or other business operations.

The lack of disclosure by Chevron subsidiaries in the Netherlands (*Nigeria Chevron Cooperatief UA* and *Nigeria Chevron Usan 1 Cooperatief UA*) violates the following provisions of OECD Guidelines Chapter III:

**Provision n° 1** – *Nigeria Chevron Cooperatief UA* and *Nigeria Chevron Usan 1 Cooperatief UA* have failed to disclose timely and accurate information on material matters, including their activities, structure, financial situation, and relation to other Chevron subsidiaries, for the enterprise as a whole and along business lines or geographic areas. The information is considered material as it would enable a full-picture analysis of Chevron's operations in Nigeria and the actual economic purpose of the Dutch subsidiaries. Disclosing this information would not result in undue costs, breach of business confidentiality or other competitive concerns.

**Provision n° 2** – *Nigeria Chevron Cooperatief UA* and *Nigeria Chevron Usan 1 Cooperatief UA* have not disclosed any policies at all, meaning they have not demonstrated policies on material subjects such as reporting of financial and operating results of the enterprise (Chp. 3.1.a), the objectives of the enterprises (Chp. 3.1.b), or related party transactions (Chp. 3.1.e).

**Provision n° 3** – *Nigeria Chevron Cooperatief UA* and *Nigeria Chevron Usan 1 Cooperatief UA* failed to disclose information related to their policies relating to matters covered by the Guidelines, most specifically taxation.

Commentary 28, which encourages improved understanding of a company's operations through the disclosure of clear and complete information, has also not been met: *Nigeria Chevron Cooperatief UA* and *Nigeria Chevron Usan 1 Cooperatief UA* have not provided any annual reports or verifiable public-access information on their functions, operations or tax situation.

Additionally, *Nigeria Chevron Cooperatief UA* and *Nigeria Chevron Usan 1 Cooperatief UA* have not met the recommendations of Commentary 32, which stresses the importance of full disclosure of related-party transactions, because *Nigeria Chevron Cooperatief UA* and *Nigeria Chevron Usan 1 Cooperatief UA* have not disclosed the operations between themselves and Chevron's Nigerian subsidiaries.

## ii. Argentina

Chevron has a large oil production in Argentina (reaching 27,000 barrels per day in 2015),<sup>lix</sup> generating the second highest production level for Chevron in Latin America – just behind Venezuela.<sup>lx</sup> Oil production in 2016 generated an estimated profit of \$238 million in Argentina alone.<sup>lxi</sup>

No information regarding possible tax payments by Chevron to Argentina in 2015 or 2016 has been made publicly available; therefore, it is impossible to verify if Chevron paid any taxes on such high profits and at which specific tax rate. The only publicly disclosed interaction between Chevron and the Argentinian tax authority is a legal dispute regarding tax payments over a five-year period.<sup>lxii</sup> The legal case brought forward by the tax authority challenges the deduction of costs by *Chevron Argentina S.R.L.* related to exchange rates and interest payments, which took place between 2001 and 2006. During this period, the questioned deductions reached a total sum of US\$13.7 million, with the tax authorities also claiming additional fees, fines and interest on the unpaid sum. Chevron is currently arguing for the legality of the deductions in Argentinian courts.<sup>lxiii</sup>

A Dutch holding company, *Chevron Argentina Holdings BV*, either directly or indirectly (through several Danish-based entities) owns the totality of Chevron's operations in Argentina.<sup>lxiv</sup> The ownership structure of the Argentinian entities by *Chevron Argentina Holdings BV* is a complex one, with Danish entities (*ApS Dansk Chevron*, *CDHD ApS* and *CFC ApS*) operating as intermediaries and sharing ownership of two Argentinian entities. The local affiliates in Argentina are *Ing. Nortberto Priu SRL* and *Chevron Argentina SRL*, which is the main operator of Chevron's activities in Argentina and listed as a significant subsidiary in the 10-K filing of Chevron.<sup>lxv</sup>

A 2017 filing from *Chevron Argentina Holdings BV*, the most recent in the public domain, contains very little information. The filing does not disclose any verifiable public-access information on the functions, operations or tax situation of the company. For the purpose of clarity, the only relevant information published by the Dutch affiliate is the value of its investment in *ApS Dansk Chevron* (USD\$415 million) with no further explanation, despite its important ownership role over the entirety of Chevron's operations in Argentina, a country that represents a significant share of Chevron's

production in Latin America. The lack of proper disclosure by the Dutch subsidiary regarding its operations directly hampers a comprehensive analysis of Chevron's operations in Argentina.

The lack of disclosure by a Chevron subsidiary in the Netherlands (*Chevron Argentina Holdings BV*), as well as the Danish entities it owns, appear to be a clear violation of the following Provisions:

**Provision nº 1** – *Chevron Argentina Holdings BV* has failed to disclose timely and accurate information on material matters, including their activities, structure, financial situation, and relation to other Chevron subsidiaries, for the enterprise as a whole and along business lines or geographic areas. The information is considered material as it would enable a full-picture analysis of Chevron's operations in Argentina and the actual economic purpose of the *Chevron Argentina Holdings BV*. Disclosing this information would not result in unduly costs, breach of business confidentiality or other competitive concerns.

**Provision nº 2** – Again, the inexistence of publicly stated disclosure policies of *Chevron Argentina Holdings BV* results in the absence of policies on the reporting of financial and operating results of the enterprise (Chp. 3.1.a), the objectives of the enterprises (Chp. 3.1.b), or related party transactions (Chp. 3.1.e).

**Provision nº 3** – *Chevron Argentina Holdings BV* failed to disclose information related to the enterprise's policies relating to matters covered by the Guidelines, most specifically taxation.

*Chevron Argentina Holdings BV* has not met Commentary 28, which encourages improved understanding of a company's operations through the disclosure of clear and complete information. *Chevron Argentina Holdings BV* latest filing, already nearly three years out of date in 2015, does not disclose any verifiable public-access information on the functions, operations or tax situation of the company. For the purpose of clarity, the only relevant information published by the Dutch affiliate is the value of its investment in *ApS Dansk Chevron* (USD\$415 million).

Additionally, *Chevron Argentina Holdings BV* has not met the recommendations of Commentary 32, which stresses the importance of full disclosure of related-party transactions, because *Chevron Argentina Holdings BV* has not disclosed the operations between itself and Chevron's Argentinian subsidiaries.

### iii. Venezuela

As previously stated, Venezuela provides the highest production level to Chevron in Latin America, reaching 59,000 barrels per day in 2016.<sup>lxvi</sup> Oil production that year generated sales revenue of \$945 million and an estimated profit of \$541 million in Venezuela.<sup>lxvii</sup> Despite extensive research on company statements and official publications, no information has been identified regarding any tax payment from Chevron to the Venezuelan government.

At least five Dutch affiliates of Chevron (*Chevron Orinoco BV*, *Chevron Orinoco Holdings BV*, *Chevron Boscan Finance BV*, *Chevron Boscan BV* and *Chevron Lago Maracaibo BV*) are directly involved in a number of Chevron's joint venture operations in Venezuela. Just as with Chevron's Nigerian operations, *Trust International Management (T.I.M.) BV* – a subsidiary of CITCO – is registered as a director of the aforementioned Dutch entities. Beyond their connection with Chevron's Venezuelan operations, these five Dutch affiliates also have ownership ties with other Chevron subsidiaries in Bermuda, Luxembourg, and the state of Delaware (all notorious corporate tax havens).<sup>lxviii</sup>

The Dutch filings of these companies show that they all have no employees, and again that they share CITCO's office address. Little or no other relevant information is provided, with no mention of

the structure, financial situation and governance of the entities. The filings are not audited and do not contain an income statement or any information regarding operations undertaken and tax liabilities.

Recent financial reports covering 2015, received by KvK as late as February 2017, show that the Dutch entities *Chevron Boscan BV* and *Chevron Lago's* main functions are to provide financial services to Venezuelan operations (this will be addressed further in the section regarding breaches of OECD Guidelines provisions on taxation), while *Chevron Orinoco Holdings BV* and *Chevron Orinoco BV* mainly act as holding companies.<sup>lxix</sup> Despite the publication of the main functions of these entities, the fact that they do not disclose information on their the financial operations or links with other Chevron entities prevents a complete analysis of the effects such entities have on tax avoidance in third countries.

Another structural pattern that demonstrates the *modus operandi* of Chevron is the presence of Danish subsidiaries as intermediaries with oil-producing nations, as one Venezuelan joint venture, *Petroindendencia S.A.*, is owned through a Danish subsidiary (*Chevron Carabobo Holdings ApS*).

Chevron has also been linked in Venezuela to contractual irregularities. In 2017, a manager of *Petropiar*, one of Chevron's joint ventures, was arrested after an investigation revealed "*irregularities in the awarding of contracts with over-pricing of goods and services*".<sup>lxx</sup> A 2016 investigation undertaken by the opposition-run Venezuelan Congress stated that a total value of \$11 billion are considered to have been diverted from PDVSA, the Venezuelan state-owned oil company.<sup>lxxi</sup>

While these findings do not establish the commitment of any illicit activities by Chevron, the lack of transparency and public disclosure by these Dutch Chevron subsidiaries, and the Venezuelan entities they own that operate in Venezuela, prevents further examination of corporate activities and operates as a cloak of secrecy. This is what breaches the letter and purpose of the OECD Guidelines chapter on disclosure.

The limited disclosure by Chevron's subsidiaries in the Netherlands (*Chevron Orinoco BV*, *Chevron Orinoco Holdings BV*, *Chevron Boscan Finance BV*, *Chevron Boscan BV* and *Chevron Lago Maracaibo BV*) appear to be a clear violation of the following Provisions:

**Provision nº 1** – *Chevron Orinoco BV*, *Chevron Orinoco Holdings BV*, *Chevron Boscan Finance BV*, *Chevron Boscan BV* and *Chevron Lago Maracaibo BV* have insufficiently disclosed timely and accurate information on material matters, including their activities, structure, financial situation, and relation to other Chevron subsidiaries, for the enterprise as a whole and along business lines or geographic areas. The information is considered material as it would enable a full-picture analysis of Chevron's operations in Venezuela and the actual economic purpose of the five Dutch subsidiaries, as well as *Chevron Carabobo Holdings ApS* from Denmark. Disclosing this information would not result in undue costs, breach of business confidentiality, or other competitive concerns.

**Provision nº 2** – The nonexistence of publicly stated disclosure policies of *Chevron Orinoco BV*, *Chevron Orinoco Holdings BV*, *Chevron Boscan Finance BV*, *Chevron Boscan BV* and *Chevron Lago Maracaibo BV* results in the absence of policies on the reporting of financial and operating results of the enterprise (Chp. 3.1.a), the objectives of the enterprises (Chp. 3.1.b), or related party transactions (Chp. 3.1.e).

**Provision nº 3** – *Chevron Orinoco BV*, *Chevron Orinoco Holdings BV*, *Chevron Boscan Finance BV*, *Chevron Boscan BV* and *Chevron Lago Maracaibo BV* have failed to disclose information

related to their policies relating to matters covered by the Guidelines, most specifically taxation.

Commentary 28 should also be taken into consideration at this point, since it encourages improved understanding of a company's operations through the disclosure of clear and complete information. Clear and complete information is not available on any of the entities, since the information disclosed in recent financial reports from 2015 by *Chevron Boscan BV*, *Chevron Lago*, *Chevron Orinoco Holdings BV* and *Chevron Orinoco BV* is insufficient and refrains from clarifying all financial transactions entered into by the entities and the impact they have on third countries.

Additionally, commentary 32 stresses the relevance of related-party transactions and their full disclosure, which is not observed by Chevron's Dutch subsidiaries in the context of operations between its Dutch and Venezuelan entities.

## **6. VIOLATIONS OF OECD GUIDELINES CHAPTER XI ON TAXATION**

### **A. Identification of OECD Guidelines provisions breached**

The OECD Guidelines address the topic of taxation in Chapter XI. By violating the spirit of Dutch tax laws through their use of them solely for tax avoidance purposes, the below-mentioned Dutch subsidiaries of Chevron have breached the OECD Guidelines, as described below. Although high levels of opacity have prevented the public from accessing much evidence of tax avoidance schemes, the limited information disclosed, paired with other structural indicators, are already sufficient to show occurrence of tax avoidance that benefits the few and the wealthy to the detriment of all others. As a result, despite Chevron's failures on disclosure, there is still enough material information to address the breach of provisions from the taxation chapters of the OECD Guidelines.

#### **OECD Guidelines for Multinational Enterprises on Taxation**

The OECD Guidelines for Multinational Enterprises address in Chapter XI the topic of taxation by corporations. Chevron's activities have led it to breach the following provisions.

**Provision Number 1** of Chapter XI states:

"It is important that enterprises contribute to the public finances of host countries by making timely payment of their tax liabilities. In particular, enterprises should comply with both the letter and spirit of the tax laws and regulations of the countries in which they operate. Complying with the spirit of the law means discerning and following the intention of the legislature. It does not require an enterprise to make payment in excess of the amount legally required pursuant to such an interpretation. Tax compliance includes such measures as providing to the relevant authorities timely information that is relevant or required by law for purposes of the correct determination of taxes to be assessed in connection with their operations and conforming transfer pricing practices to the arm's length principle".<sup>lxxii</sup>

**Provision Number 2** of Chapter XI states:

"Enterprises should treat tax governance and tax compliance as important elements of their oversight and broader risk management systems. In particular, corporate boards should adopt tax risk management strategies to ensure that the financial, regulatory and reputational risks associated with taxation are fully identified and evaluated".<sup>lxxiii</sup>

#### **Commentaries**

Besides the provisions above, the following commentaries to the OECD Guidelines are particularly helpful in understanding how Chevron's utilization of tax avoidance techniques has caused it to breach the OECD Guidelines:

- From **Commentary 100**: Corporations are expected to comply with both the letter and the spirit of the tax legislation in all jurisdictions where they operate, as well as making available information that is relevant or legally required. Enterprises should take reasonable steps to determine the intention of the legislature and interpret those rules in light of the statutory language and contemporaneous legislative history.<sup>lxxiv</sup>
- From **Commentary 100**: Transactions should not be structured to result in tax consequences inconsistent with the underlying economic consequence of the operations, unless there is a specific legislation designed in that way. The tax consequences of an economic operation should follow the intention of the legislature.<sup>lxxv</sup>
- From **Commentary 101**: Companies' compliance with domestic tax legislation in the countries in which they operate entails cooperation with tax authorities and provision of required information.<sup>lxxvi</sup>
- From **Commentary 102**: Companies practices on cooperation, transparency and compliance in taxation should be reflected in official policies. By including tax matters in a comprehensive risk management strategy, corporations exert a positive corporate citizenship and manage tax risks.<sup>lxxvii</sup>
- From **Commentary 103**: Economic relationships between different affiliates of a single economic group (for example, a Dutch and a Nigerian subsidiaries of Chevron) may affect the tax liability of the involved parties. The affected tax authorities therefore may need information from outside their jurisdiction to fully comprehend and evaluate the tax situation of affiliates. Multinational enterprises should cooperate in providing the relevant information.<sup>lxxviii</sup>

#### **B. Interpretation of breach of the “spirit” of Dutch tax laws and regulations**

The OECD Guidelines for Multinational Enterprises address in Chapter XI the topic of taxation by corporations. As shown above, provision 1 of Chapter XI states that “[i]t is important that enterprises contribute to the public finances of host countries by making timely payment of their tax liabilities. In particular, enterprises should comply with both the letter and spirit of the tax laws and regulations of the countries in which they operate.”<sup>lxxix</sup> Chevron’s Dutch intermediaries violate the OECD Guidelines because they violate the spirit of Dutch tax laws and regulations, enabling the Chevron corporation not to contribute sufficiently to the public finances of the countries that host their extraction work.

Before analysing Chevron’s Dutch subsidiaries’ breach of the Guidelines’ provision on taxation, it is important to understand how to interpret the Guidelines’ recommendation that multinational enterprises should comply with both the letter and spirit of the law.

To comply with the *letter of the law*, a company must adhere to “*the strict and exact force of the language used in a statute, as distinguished from the spirit, general purpose, and policy of the statute.*”<sup>lxxx</sup> In contrast, to comply with the *spirit of the law*, a multinational enterprise must meet the meaning and purpose of the law, as well as the original intention of the original legislator, reflecting the social and moral consensus around it.<sup>lxxxi</sup> This means that a legislative document must be interpreted in accordance with the social choices and intentions originally invested into the rule.<sup>lxxxii</sup> It is in this line that the OECD Guidelines’ mention of the *spirit of the law* must be interpreted, as a vindication of the actual purpose of the legislation, which should be upheld against abusive operations.

In the context of taxation, tax avoidance techniques are often said to comply with the letter of the law and therefore to be legal by definition. Whether tax avoidance techniques comply with the spirit of the law has a more nuanced answer, depending on which jurisdiction's tax laws are under consideration. In almost all jurisdictions, including those of Nigeria, Venezuela, and the other regions where Chevron has avoided its tax burden, it is the intent of legislators to garner revenue for the state by taxing specific economic activity and generation of income. Legal persons benefitting from the state's services are expected to pay taxes according to the rates and regulations set for them by law, and deductions are not expected to nearly or completely eliminate overall tax burden, but to accommodate them to the actual profits generated.

In contrast, jurisdictions recognized as tax havens – which reached this status as a result of domestic laws, bilateral tax conventions, and multilateral agreements – develop legislation to attract companies by offering low or no taxation in that jurisdiction or methods to avoid taxation in other jurisdictions. In those countries, the spirit of the tax law is not to tax corporations.

There is a third category of jurisdiction, however, and that is what is at issue in this case: jurisdictions that are *conduits* to tax avoidance. Conduit jurisdictions develop a competitive legal structure which offers opacity and ease for the flow of foreign capital between different jurisdictions, enabling a reduction in total tax liabilities and protection from public scrutiny.

The Netherlands has been widely used as a conduit country because it offers an attractive environment to its businesses due to a few unique characteristics: its highly developed network of bilateral tax treaties, with over 95 bilateral treaties in effect; its membership in the European Union and the single market, allowing its corporations to take advantage of freedom of establishment, freedom to move capital, and other beneficial EU legislation; and its corporate-friendly environment, based in a long tradition of supporting trade and offering flexibility to entrepreneurs..

Undoubtedly, the Netherlands has become a hub for the holding and finance intermediaries that assist multinationals in their effort to avoid paying taxes. Corporate taxation in the Netherlands is governed by the Law on Corporation Tax of 1969 (*wet op de vennootschapsbelasting 1969*). This legislation makes reference to and determines the taxation of all the corporate entities utilized by Chevron, regulates economic group structures and interactions with foreign taxpayers, and determines the deduction of interest payments in respect of loans.

Critical for this case, however, is assessment of whether the benefits described above for Dutch corporations were intended to be manipulated by multinationals for the purpose of tax avoidance. Are these policies intended to benefit businesses with real business purpose in the Netherlands? Or to enable staff-less, office-less letterbox companies to pay no tax in the Netherlands and meanwhile enable multinational corporations to hide their money away from other public coffers?

The answer to the last question is no. Chevron's tax avoidance techniques violate the spirit of Dutch legislation, as Chevron's Dutch subsidiaries are simple letterbox structures without economic activity, staff, proportional expenses or actual physical location. An analysis of the subsidiaries demonstrates that their sole purpose is to allow practices that seek to nearly or entirely eliminate the company's tax burden in third jurisdictions. Artificial transactions and structures that have the exclusive purpose of reducing tax liabilities, without any other economic intention, masked by extreme opacity through lack of disclosures, clearly represent a deceitful intent to elude the original objective of the affected legislation. While Dutch legislators established a competitive and corporate-friendly legislative framework to attract multinationals, the abuse of said framework in the shape of letterbox companies without any substance or economic activity clearly goes beyond the purpose and spirit of the law.

In 2016, the Ministry of Foreign Affairs of the Netherlands commissioned a report entitled *“Tax avoidance by mining companies in developing countries: An analysis of potential Dutch policy initiatives.”*<sup>lxxxiii</sup> The paper disclosed that international mining companies are highly reliant on Dutch financing and holding companies, pointing to the fact that these structures are frequently utilized by multinationals for tax avoidance in developing countries. One conclusion of the report is that there is a high risk that extractive companies *“have set up holding and financing companies in the Netherlands with the purpose of avoiding corporate income tax and/or withholding taxes to be paid in the five developing countries. The Netherlands runs the risk that its wide network of tax treaties is being abused by international mining groups which have no actual activities in the Netherlands.”*<sup>lxxxiv</sup> The same report also identified Bilateral Investment Treaties (BITs) as subject to abuse.<sup>lxxxv</sup>

The Ministry of Foreign Affairs research developed a list of risk indicators which indicate the possible presence of tax avoidance strategies by multinationals. The report suggests that *“a combination of different indicators in a specific context can indicate an increased probability that tax avoidance takes place. Indicators should be seen as a tool to detect tax avoidance.”*<sup>lxxxvi</sup> Indicators related to corporate structure, all of which identified in Chevron’s Dutch corporate structure, are:

- A subsidiary located in a tax haven;
- Dutch holding or financing company;
- Dutch cooperative company; and
- Trust or company services providers acting as director.<sup>lxxxvii</sup>

As mentioned above, many countries have realized that their tax laws are being abused, in combination with complex corporate structures and manipulative financial transactions, in order to enable multinationals to undertake tax avoidance. Countries including Canada, India, South Africa and the UK, decided recently to take a stand against tax avoidance by implementing GAARs (General Anti-Avoidance Rule), either through legislation or judicial doctrine. GAARs seek to prevent avoidance schemes by tackling transactions without economic substance where the principal purpose is reduction of tax liabilities.

The Netherlands is also taking action to prevent its laws from being used to facilitate tax avoidance. New legislative amendments adopted by the Dutch Parliament on 19 November 2017, which went into effect on 1 January 2018, introduced a new “substance” threshold that foreign intermediary holding companies in the form of cooperatives must meet in order to qualify for the withholding exemption.<sup>lxxxviii</sup> The tax avoidance schemes structured by Chevron and detailed in the preceding and following sections often utilize a specific Dutch entity as a holding company: the Dutch cooperative. Dutch cooperatives are known for their flexibility, as they require no minimum capital requirement, and they are traditionally utilized in international structures for holding or financial purposes. The purpose – or spirit – of the amendment is to ensure the presence of genuine economic activity instead of a structure exclusively designed for tax avoidance purposes. According to experts in the field, *“the announced ‘anti-abuse’ withholding tax clearly demonstrate an intention to reduce the attractiveness of the Netherlands as a passive flow-through jurisdiction, while also seeking to further improve the country’s attractiveness for active business operations and headquarters”*.<sup>lxxxix</sup>

Among other requirements, foreign holding companies with an interest of 5% or more in a Dutch cooperative are required to meet the following indicators of substance in order to benefit from the withholding tax exemption on dividend payments:<sup>xc</sup>

- At least 50% of the directors effectively involved in decision-making process must be resident at the jurisdiction of residence of the holding company;
- Said directors must have the required professional knowledge to perform their corporate duties satisfactorily; and



- The most relevant bank accounts must be kept in the same jurisdiction where the holding company is resident.

From 1 April 2018, the following additional substance requirements were implemented:<sup>xcii</sup>

- The foreign holding company must have an actual office at a specific real estate, where activities are effectively performed; and
- The foreign holding company must incur a minimum wage cost of €100,000 multiplied by a specific living index of the residency country.

Following passage of the amendments, critics observed that requiring a wage cost of €100,000 from multinational companies is not a realistic deterrent of avoidance schemes, as that value is quite trivial for large corporations such as Chevron. The Lower House of the Dutch Parliament responded by passing a motion requesting the government to take into account the economic scale and nature of the international activities of enterprises in applying the extended substance requirements.<sup>xciii</sup>

As a further development in 2018, the Dutch Secretary of Finance announced a proposal to apply harsher substance requirements to Dutch holding companies and Dutch financial services companies, as opposed to just foreign holding companies.<sup>xciii</sup> Specifically, the proposal will see two new substance requirements applied to Dutch companies whose main line of activity (a minimum of 70% of the activities in the calendar year) is to perform intra-group financing, licensing, renting, or leasing activities.<sup>xciv</sup> The requirements, which are in line with those implemented in April to foreign holding companies, include: (i) payroll expenses of at least €100,000 in connection with the examined activities; and (ii) an office space in the Netherlands for a minimum period of 24 months where the examined activities are effectively performed.<sup>xcv</sup>

While the new requirements still have no expected implementation date, they represent the understanding of Dutch lawmakers that Dutch laws should not be manipulated for the sole purpose of tax avoidance, and they push back against the reputation of the Netherlands as a secrecy jurisdiction.

### C. Evidence of breach

Now that it is established how the Dutch Chevron subsidiaries named in this case are in violation of the spirit of Dutch law, this section will show how these by the Dutch subsidiaries helps them facilitate avoidance in respect of Chevron's extraction from Venezuela and Nigeria.

#### i. Venezuela

Chevron has a track-record of legal disputes with the Venezuelan tax administration: following an audit of its operations in 2006, Chevron was charged with additional \$75 million in tax interest and fines from the period 2001 to 2004.<sup>xcvi</sup>

As previously addressed in the *disclosure* section of this complaint, Chevron has Dutch entities which are directly involved in its joint venture operations in Venezuela. One of these entities, *Chevron Boscan Finance BV*, mainly operates financial services for the corporate structure.<sup>xcvii</sup> Among other transactions, *Chevron Boscan Finance BV* provided a loan to a related party in Venezuela (presumably *Petro Boscan SA*), with a facility agreement extending a maximum amount of US\$2 billion bearing "interest at 3 month USD LIBOR +4.5% per annum (net of withholding tax)".<sup>xcviii</sup>

The loan-providing Dutch company is owned by a Luxembourgish entity (*Chevron Luxembourg Overseas Finance S.A.R.L.*), which itself is owned by a Bermuda affiliate (*Chevron Venezuela Finance Limited*).<sup>xcix</sup> At the same time that *Chevron Boscan Finance BV* provided the aforementioned loan, it received a loan from the Bermuda affiliate (*Chevron Venezuela Finance Limited*) also extending up to US\$2 billion, with an interest rate of "3 months USD LIBOR + 4.4% per annum."<sup>c</sup>

The utilization of debt instruments to shift profits from Venezuela, through the Netherlands and reaching the final destination in Luxembourg or Bermuda is clear.

Also, it must be analysed why Chevron did not provide a loan directly from either the Luxembourgish or the Bermudian entity to the related Venezuelan party, but instead chose to establish a first loan from Luxembourg to the Dutch entity and a second loan between the Dutch and Venezuelan entities.

A closer analysis into the Venezuelan tax treaty network provides further indications that the Dutch entities were utilized with the clear purpose of reducing total taxation. Venezuela has in place a bilateral tax treaty with the Netherlands, which includes among its contractual clauses the reduction of interest withholding taxes in payments from Venezuela to the Netherlands from the standard 34% to a reduced rate of 5%.<sup>ci</sup> On the other hand, Venezuela has no bilateral tax treaty agreements with Luxembourg. Therefore, by utilizing Dutch subsidiaries as intermediaries between the loans provided from Luxembourg to Venezuela, Chevron benefits from a large potential reduction in withholding taxation of interest paid between Venezuela, the Netherlands and Luxembourg.

In accordance with Dutch legislation, and due to the utilization of this complex corporate structure and multiple loan agreements, *Chevron Boscan Finance BV* is allowed to claim a tax credit and reduce its Dutch corporate tax obligations. As Dutch tax legislation currently allows non-utilized foreign withholding taxes to be carried-forward as tax credits to future years on qualifying foreign income, *Chevron Boscan Finance BV* had accumulated (by the end of 2015) in non-utilized withholding taxes the amount of USD 1,498,233 from Venezuelan interest income.<sup>cii</sup>

The activities described above suggest that *Chevron Boscan Finance BV*, Chevron's subsidiary in the Netherlands which provides financial services to Venezuelan Chevron entities, has violated the following Provisions:

**Provision nº 1** – *Chevron Boscan Finance BV* has failed to comply with the spirit of the tax laws and regulations of the countries in which they operate, including both Venezuela and in the Netherlands, most specifically the Law on Corporation Tax of 1969 (*wet op de vennootschapsbelasting 1969*). Additionally, the loan structure breached the spirit of the bilateral tax treaty between the Netherlands and Venezuela, through the unwarranted obtainment of a reduced withholding tax rate on interests paid to Dutch conduit subsidiaries which merely function as a stepping stone before the income is sent to third jurisdictions. The structuring of multiple loans to reduce total tax liability are a clear example of an abusive utilization of tax law to reduce due taxes. The development of conduit structure through letterbox companies violate the spirit of Dutch legislation by utilizing exclusively for tax purposes rules intended for economically-sound business operations.

**Provision nº 2** – No evidence can be found that *Chevron Boscan Finance BV* has a tax governance or compliance strategy at all, in order to ensure that these feature as an important element of their oversight and broader risk management systems.

Commentary 100 should also be taken into consideration at this point, since it encourages compliance to the spirit of the law and clearly states that transactions shouldn't be structured to result in tax consequences inconsistent with the underlying economic consequence of the operation – as is clearly the case of the loan transactions entered into by Chevron's subsidiaries in Luxembourg, the Netherlands and Venezuela. The utilization of excessive intra-group debt financing and excessive interest rates generates tax results which are inconsistent with the underlying economic consequence of the business operations of Chevron.

Additionally, Commentary 103 addresses intra-group transactions and states that the affected tax authorities require additional information to fully comprehend the international operations entered into, which did not happen in this case.

## ii. Nigeria

As previously stated in the disclosure section of this complaint, Nigeria is one of the principal sources of oil for Chevron. For the period between 2012 and 2015, Nigeria was consistently the 3<sup>rd</sup> largest producing country for Chevron, with an average of 273,000 barrels per day. Only the United States and Kazakhstan had greater production during the same period.<sup>ciii</sup>

In 2016, the Nigerian government began legal proceedings against Chevron and other companies involved in the oil extraction sector, arguing the failure by extractive corporations to declare and make tax payments on more than 57 million barrels of crude oil exported between the period of 2011 and 2014, with an estimated value of \$13 billion.<sup>civ</sup> The case attracted a lot of attention from media and government officials due to the staggering value of lost revenue. Nigeria's parliament ordered a separate investigation into the possible theft of fuel exports. Nigeria's President Buhari stated that "mind-boggling" sums of money had disappeared from Nigeria's oil industry,<sup>cv</sup> which is currently considering new legislation to overhaul governance and taxation around an extractive sector plagued with corruption and leakages.<sup>cvi</sup>

In 2017, a new law enacted in Canada, named the *Extractive Sector Transparency Measures Act* (ESTMA), established a new disclosure requirement for all extractive companies either listed or based in Canada.<sup>cvii</sup> Due to this new legislation, Chevron's Canadian affiliates were required to report their 2016 global payments to governments – which take into account all subsidiaries of Chevron Canada.<sup>cviii</sup>

Chevron's ESTMA report showed a total payment (covering all the oil and gas production of 2016) by Chevron Canada and its subsidiaries to the Nigerian government of US\$761 million, including \$488 million in tax, \$206 million in royalties and \$68 million in fees.<sup>cix</sup>

Calculations based on the ESTMA report suggest 2016 sales in Nigeria worth \$3.6 billion, with an estimated profit of \$2.4 billion.<sup>cx</sup> This would result in an effective tax rate close to 21%, going up to 32% of the estimated profit if total payments are considered (taxes, royalties and fees). The activities undertaken by Chevron in Nigeria are subject to the Petroleum Profits Tax (PPT), with tax rates ranging from 50% to 85%.<sup>cx</sup> Thus, Chevron's estimated effective tax rate of 21% is less than half of the lowest 50% rate and less than a quarter of the higher 85% rate, which unquestionably demonstrates a significant tax gap and possible violation of Nigeria's tax legislation on petroleum profits.

As pointed out in the previous section regarding breaches to disclosure regulations, two subsidiaries in the form of *cooperatief UA* incorporated in the Netherlands are involved with Nigeria (*Nigeria Chevron Cooperatief UA* and *Nigeria Chevron Usan 1 Cooperatief*). Also mentioned, both Dutch entities do not file annual reports or verifiable public-access information regarding their functions, operations or tax situation.

The utilization of *cooperatief UA* entities is, by itself, an indication of aggressive tax avoidance, as such entities are often utilized in international holding structures to avoid dividend withholding taxes in the Netherlands. Due to the utilization of *Cooperatief UA* as a tax avoidance intermediary structure between Nigeria and affiliates in third countries, Chevron benefits from a large potential reduction in withholding taxation of dividends remitted from the Netherlands.

A closer analysis into the Nigerian tax treaty network provides further indications that the utilization of these entities had the clear purpose of reducing total taxation. Nigeria has in place a bilateral tax treaty with the Netherlands, which includes among its contractual clauses the reduction of dividend withholding taxes in payments from Nigeria to the Netherlands from the standard 10% to a reduced rate of 7.5%.<sup>cxii</sup> Nigeria has no bilateral tax treaty agreements with the United States, Bermuda and other jurisdictions utilized by Chevron for the parking of profits. Therefore, by utilizing Dutch subsidiaries as intermediaries between Nigeria and third countries, Chevron benefits from a large potential reduction in withholding taxation of dividends paid between Nigeria and the Netherlands.

It is important to highlight that the lack of disclosure by *Nigeria Chevron Cooperatief UA* and *Nigeria Chevron Usan 1 Cooperatief* entities hampers a full examination of the company's intra-group transactions. Nevertheless, as described above, reliance on Dutch intermediaries and lack of disclosure are themselves evidence of like tax avoidance, particularly paired with Chevron's known use of artificial financial transactions for tax avoidance in other jurisdictions.

The activities described above suggest that *Nigeria Chevron Cooperatief UA* and *Nigeria Chevron Usan 1 Cooperatief*, Chevron's subsidiary in the Netherlands that provide unknown services to Nigerian Chevron entities, have violated the following Provisions:

**Provision n° 1** – *Nigeria Chevron Cooperatief UA* and *Nigeria Chevron Usan 1 Cooperatief* have failed to comply with a number of laws and regulations, including: (i) the letter and spirit of the tax laws and regulations in Nigeria, including the Petroleum Profits Tax Act and the undue avoidance of Nigerian dividend withholding taxes; (ii) the spirit of the bilateral tax treaty between the Netherlands and Nigeria, through the unwarranted obtainment of a reduced withholding tax rate on dividends paid to Dutch conduit subsidiaries which merely function as a stepping stone before the income is sent to third jurisdictions; and (iii) the spirit of the law in the Netherlands, most specifically the Law on Corporation Tax of 1969 (*wet op de vennootschapsbelasting 1969*) and the Law on Dividend Tax of 1965 (*wet op de dividendbelasting 1965*).

Given the lack of actual staffing or real economic activity at the Dutch cooperatives, their engagement with the Netherlands subsidiaries could not but have been for the purpose of reducing duly owed taxes in Nigeria. Deduction must be relied upon to infer, from the conflagration of indicators, that they manipulated Dutch law for the sole purpose of facilitating tax avoidance.

**Provision n° 2** – No evidence can be found that *Nigeria Chevron Cooperatief UA* and *Nigeria Chevron Usan 1 Cooperatief* have tax governance or compliance strategies at all, in order to ensure that these feature as an important element of their oversight and broader risk management systems.

Commentary 100 should also be taken into consideration at this point, since it encourages compliance to the spirit of the law and clearly states that transactions shouldn't be structured to result in tax consequences inconsistent with the underlying economic consequence of the operation – as is the case of Chevron's subsidiaries in Nigeria.

Additionally, Commentary 103 addresses intra-group transactions and states that the affected tax authorities require additional information to fully comprehend the international operations entered into, which did not happen in this case regarding the low effective tax rate in Nigeria.

Finally, Commentary 101 states that compliance with domestic tax legislation in the countries where operations take place entails provision of required information, which did not take place in the Netherlands or Nigeria.

## **7. REQUESTS AND STATEMENT OF GOOD FAITH**

### **A. Requests of the Dutch NCP**

We request that the Netherlands NCP offer its good offices to facilitate mediation between the parties to resolve the respondents breaches of Chapter III (Disclosure) and Chapter XI (Taxation) of the OECD Guidelines by the Dutch Chevron discussed herein. This case represents the first case on tax avoidance filed at any NCP, and as such it represents an important test of whether the OECD Guidelines on taxation, in particular, may be counted upon to support global efforts to promote the fair payment of taxes by corporations around the world. We seek a resolution determining that these companies have breached the Guidelines, and recommending they take tangible steps to end the practices they use to facilitate Chevron's tax avoidance. These outcomes could lead to significant changes in behaviour of these companies, as well as other subsidiaries of Chevron in other countries that similarly support the corporation's tax avoidance schemes. These outcomes would also support the global movement towards greater transparency, accountability, and citizenship in tax payment by all multinational corporations.

### **B. Requests of Chevron's Dutch subsidiaries**

Mediation led by the Netherlands NCP could present Chevron and its Dutch subsidiaries with an opportunity to show global corporate leadership in addressing these issues and developing responsible tax and disclosure practices that are in line with the OECD's Guidelines for Multinational Enterprises.

We hope the dialogue between the parties would result in the following:

- Disclosure by each subsidiary of its purpose and function within Chevron's corporate hierarchy;
- Ongoing written commitment to ensure regular, timely, and complete disclosure;
- Increased transparency of financial transactions entered into by Dutch subsidiaries of Chevron, particularly in the case of intra-group transactions (transactions entered into between two subsidiaries of Chevron), as well as a clarification regarding the economic purpose of such transactions and the specific contractual terms governing the intra-group relations;
- Termination by Chevron's Dutch subsidiaries of all practices primarily designed for the facilitation of tax avoidance by Chevron; and
- Adoption by the named Dutch subsidiaries of disclosure, taxation, and tax risk management systems and policies that prioritize fair payment of taxes in the countries where profits are due, and enable greater transparency into their operations including financial operations.

### **C. Statement of good faith**

We the complainants in this case assert honest intention to engage in the NCP procedure in good faith, with respect towards all parties, with the aim of bringing Chevron's practices into line with the OECD Guidelines for the betterment of the Netherlands, and governments and people around the world. We will respect the confidentiality of any mediation or proceedings that may result from this complaint; however, we intend to keep the public informed about the nature of the nature of the complaint, our demands, and the overall progress of the complaint as it moves through the stages of the NCP's review process.

## 8. CONCLUSION

Tax avoidance is a serious problem worldwide, exacerbating rising global inequality, directly reducing the revenues of states and limiting their ability to fund critical public services such as health care, education, and infrastructure. Chevron, like many multinationals, engages in widespread tax avoidance, in large part through the use of Dutch subsidiaries. These Dutch letterbox companies are established in the Netherlands in order that they may take advantage of Dutch tax treaties and loopholes in tax laws to facilitate Chevron's avoidance of taxes it should pay in the jurisdictions of extraction. This complaint has identified how the practices of Chevron's Dutch subsidiaries violate the OECD Guideline on disclosure (Chapter III), and taxation (Chapter XI). Because the issues addressed in this complaint – failures in disclosure and tax-related transactions that violate the spirit of Dutch law – occur in the Netherlands, this complaint is addressed to the Dutch NCP. Although the issues arise in the Netherlands, the harms resulting from these practices impact countries and people around the world.

We thank the Dutch NCP for its review of this complaint, and look forward to a written confirmation of its receipt. We greatly appreciated your assistance and leadership in addressing the complex issues presented here, and hope for the opportunity to engage directly with Chevron's subsidiaries to resolve our concerns.

Sincerely,  
Name Name  
Title  
Contact Info

## 9. ANNEXES

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<sup>i</sup> Chevron's refusal to participate in the EITI report in the U.S. is commented on here, Global Witness, 3 December 2015, "Exxon and Chevron Keep US Tax Payments Secret, Undermine Government Transparency Push". [www.globalwitness.org/en/press-releases/exxon-and-chevron-keep-us-tax-payments-secret-undermine-government-transparency-push/](http://www.globalwitness.org/en/press-releases/exxon-and-chevron-keep-us-tax-payments-secret-undermine-government-transparency-push/).

<sup>ii</sup> For a current review of Chevron's tax avoidance practices, see [www.chevrontax.info](http://www.chevrontax.info) Here is sample of articles on major Chevron tax disputes around the world, Neela Banerjee and David Cay Johnston, "Study Says ChevronTexaco Evaded Taxes in Price Scheme", *The New York Times*, 13 Sept. 2002.

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Nariman Gizitdinov, "Kazakh Oil Too Rich for Tax to Deter Chevron: Energy Markets", *Bloomberg Business*, 22 July 2010.

[www.bloomberg.com/news/articles/2010-07-20/oil-in-kazakhstan-may-be-too-rich-for-tax-to-deter-chevron-energy-markets](http://www.bloomberg.com/news/articles/2010-07-20/oil-in-kazakhstan-may-be-too-rich-for-tax-to-deter-chevron-energy-markets)

<sup>iii</sup> More information on CITCO can be found on the company website, <https://www.citco.com/> A recent media account of CITCO and Intertrust, another Dutch based trust company, and their role in global tax avoidance can be found here, <https://www.michaelwest.com.au/tilting-at-windmills-bhps-secret-dutch-directors/>

<sup>iv</sup> OECD Guidelines for Multinational Enterprises 2011 Edition, Chapter III Disclosure.

<sup>v</sup> OECD Guidelines for Multinational Enterprises 2011 Edition, Chapter XI Taxation.

<sup>vi</sup> OECD Guidelines for Multinational Enterprises 2011 Edition, Paragraph 23, Commentary on the Implementation Procedures of the OECD Guidelines for Multinational Enterprises, pg. 82.

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- vii More information on CITCO can be found on the company website, <https://www.citco.com/> A recent media account of CITCO and Intertrust, another Dutch based trust company, and their role in global tax avoidance can be found here, <https://www.michaelwest.com.au/tilting-at-windmills-bhps-secret-dutch-directors/>
- viii The ownership structure of one of the Chevron subsidiaries in the Netherlands, Chevron Orinoco Holdings, obtained from the Kamer van Koophandel website on 19 April 2016 shows that Trust International Management (T.I.M.) B.V. is a subsidiary of Citco Nederland B.V. and an indirect subsidiary of CCT Finance (Luxembourg) S.a.r.l. in Luxembourg. In addition to being a director of dozens of Chevron subsidiaries in the Netherlands. T.I.M. is a director of subsidiaries connected to dozens of multinationals, including UL, Chiquita, BHP Billiton, South 32, Duke Energy, Verizon, Marriott, Ralph Lauren, E\*Trade, Ritz-Carlton, Sysco, Freeport-McMoRan and Afrimax (Vodafone).
- ix Barclays Mercantile Bus. Fin. Ltd. v. Mawson, [2004] U.K.H.L. 51, [2004] 3 W.L.R. 1383 (H.L.) (U.K.) (citing the High Court).
- x Ibid.
- xi Tax Justice Network – New estimates reveal the extent of tax avoidance by multinationals. 22 March 2017 <https://www.taxjustice.net/2017/03/22/new-estimates-tax-avoidance-multinationals/>
- xii The European Institute – Austerity Measures in the EU: a country-by-country table <https://www.europeaninstitute.org/index.php/112-european-affairs/special-g-20-issue-on-financial-reform/1180-austerity-measures-in-the-eu>
- xiii Financial Times – Multinationals pay lower taxes than a decade ago <https://www.ft.com/content/2b356956-17fc-11e8-9376-4a6390addb44>
- xiv The Guardian, “Big business should agree to renounce aggressive tax planning, says HMRC” – <http://www.theguardian.com/business/2015/jul/23/big-businesses-agree-stop-aggressive-tax-planning-hmrc>
- xv The OECD work on Base Erosion and Profit Shifting. OECD, 04 February 2013. <https://www.oecd.org/ctp/TheOECDworkonBEPS.pdf>
- xvi OECD/G20 Base Erosion and Profit Shifting Project – 2015 Final Report, Executive Summaries. OECD. <http://www.oecd.org/ctp/beps-reports-2015-executive-summaries.pdf>
- xvii United Nations Convention on Transparency in Treaty-based Investor-State Arbitration [http://www.uncitral.org/uncitral/en/uncitral\\_texts/arbitration/2014Transparency\\_Convention.html](http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/2014Transparency_Convention.html)
- xviii United Nations. Handbook on Selected Issues in Protecting the Tax Base of Developing Countries. <http://www.un.org/esa/ffd/publications/handbook-tb.html>
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<sup>xxxix</sup> OECD, Model Tax Convention on Income and on Capital: Condensed Version 2017. Published on 18 December 2017, <http://www.oecd.org/ctp/treaties/model-tax-convention-on-income-and-on-capital-condensed-version-20745419.htm>.

<sup>xxxii</sup> Matthew Edward Murin is the Manager of the Europe Regional Treasury Center at Chevron, his LinkedIn profile is here, <https://www.linkedin.com/in/matt-murrin-3357b24/> (accessed 14 Sept 2017) The list of companies of which he is director is on p.112 of a company report on Chevron Malta Ltd, purchased from Dato Capital on 13 June 2017. His position as director of the Dutch companies is confirmed through recent filing in the Netherlands.

<sup>xxxiii</sup> Mr. Murrin, a Chevron employee, replaced Cornelius Johannes Van Klink (aka C. J. Van Klink or Cees Van Klink), who listed his job title as “Tax Manager Benelux/Germany at Chevron Netherlands BV” on his LinkedIn profile <https://www.linkedin.com/in/cees-van-klink-b894385/?ppe=1> (accessed 14 Sept 2017). C.J. Van Klink appears as a director in the previous filings of the same Dutch Chevron subsidiaries.

<sup>xxxiv</sup> Ibid.

<sup>xxxv</sup> More information on CITCO can be found on the company website, <https://www.citco.com/> A recent media account of CITCO and Intertrust, another Dutch based trust company, and their role in global tax avoidance can be found here, <https://www.michaelwest.com.au/tilting-at-windmills-bhps-secret-dutch-directors/>

<sup>xxxvi</sup> The ownership structure of one of the Chevron subsidiaries in the Netherlands, Chevron Orinoco Holdings, obtained from the Kamer van Koophandel website on 19 April 2016 shows that Trust International Management (T.I.M.) B.V. is a subsidiary of Citco Nederland B.V. and an indirect subsidiary of CCT Finance (Luxembourg) S.a.r.l. in Luxembourg. In addition to being a director of dozens of Chevron subsidiaries in the Netherlands. T.I.M. is a director of subsidiaries connected to dozens of multinationals, including UL, Chiquita, BHP Billiton, South 32, Duke Energy, Verizon, Marriott, Ralph Lauren, E\*Trade, Ritz-Carlton, Sysco, Freeport-McMoRan and Afrimax (Vodafone).

<sup>xxxvii</sup> The ownership structure of one of the Chevron subsidiaries in the Netherlands, Chevron Orinoco Holdings, obtained from the Kamer van Koophandel website on 19 April 2016 shows that Trust International Management (T.I.M.) B.V. is a subsidiary of Citco Nederland B.V. and an indirect subsidiary of CCT Finance (Luxembourg) S.a.r.l. in Luxembourg. In addition to being a director of dozens of Chevron subsidiaries in the Netherlands. T.I.M. is a director of subsidiaries connected to dozens of multinationals, including UL, Chiquita, BHP Billiton, South 32, Duke Energy, Verizon, Marriott, Ralph Lauren, E\*Trade, Ritz-Carlton, Sysco, Freeport-McMoRan and Afrimax (Vodafone).

<sup>xxxviii</sup> Chevron’s opposition to disclosure requirements in the U.S. is commented on here, Natural Resource Governance Institute, 27 June 2016, “U.S. Oil and Mining Companies to Disclose Payments to Governments”. [resourcegovernance.org/news/2016-dodd-frank-ruling](http://resourcegovernance.org/news/2016-dodd-frank-ruling) ; The disclosure requirements were reversed by the Trump Administration in the U.S. and have not gone into effect. Chevron’s refusal to participate in the EITI report in the U.S. is commented on here, Global Witness, 3 December 2015, “Exxon and Chevron Keep US Tax Payments Secret, Undermine Government Transparency Push”. [www.globalwitness.org/en/press-releases/exxon-and-chevron-keep-us-tax-payments-secret-undermine-government-transparency-push/](http://www.globalwitness.org/en/press-releases/exxon-and-chevron-keep-us-tax-payments-secret-undermine-government-transparency-push/)

<sup>xxxix</sup> For a current review of Chevron’s tax avoidance practices, see [www.chevrontax.info](http://www.chevrontax.info) Here is sample of articles on major Chevron tax disputes around the world, Neela Banerjee and David Cay Johnston, “Study Says ChevronTexaco Evaded Taxes in Price Scheme”, *The New York Times*, 13 Sept. 2002.

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<sup>xl</sup> Tope Alake and Paul Wallace, 30 September 2016, *Bloomberg*, “Nigeria Can Sue Chevron, Total Over Illegal Exports, Judge Says”. [www.bloomberg.com/news/articles/2016-09-30/nigeria-can-sue-chevron-total-over-illegal-exports-judge-says](http://www.bloomberg.com/news/articles/2016-09-30/nigeria-can-sue-chevron-total-over-illegal-exports-judge-says)



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- <sup>xli</sup> Van Gelder, J.W., J. de Wilde, J. van Koningsveld and J. Ferwerda (2016, November), *Tax avoidance by mining companies in developing countries – An analysis of potential Dutch policy initiatives*, Amsterdam, The Netherlands: Profundo. <https://www.rijksoverheid.nl/documenten/rapporten/2016/12/23/tax-avoidance-and-mining-report>
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- <sup>xliii</sup> Ibid, p.16.
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- <sup>xlvi</sup> Ibid, Page 27, Paragraph 2
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- <sup>xlviii</sup> Ibid, Page 28, Commentary 28
- <sup>xlix</sup> Ibid, Page 29, Commentary 30
- <sup>l</sup> Ibid, Page 29, Commentary 32
- <sup>li</sup> Ibid, Page 30, Commentary 35
- <sup>lii</sup> A search of Chevron related companies on the Kamer van Koophandel website identifies companies with these countries in the name or obtaining company files has connected them to these countries.
- <sup>liii</sup> The Atlantic – The Nigerian Oil Company’s Missing Billions  
<https://www.theatlantic.com/international/archive/2016/03/nigeria-oil-corruption-buhari/473850/>
- <sup>liv</sup> The 2017 annual report contains this detailed information, with the specific numbers listed in p.69, Note 24, <https://www.chevron.com/-/media/chevron/annual-report/2017/2017-Annual-Report.pdf> (accessed 18 August 2018).
- <sup>lv</sup> The limited information on the two Dutch cooperative countries is from available filings and searches of company information on the Kamer van Koophandel website.
- <sup>lvi</sup> The 2015 annual report and related filings of Chevron Malta Ltd, as obtained from Dato Capital on 13 June 2017, reveal ownership of the two Danish companies and the shared address with CITCO in Malta.
- <sup>lvii</sup> Ownership of Chevron Malta’s subsidiaries are listed on p.17, Note 4 of the 2015 Annual Report. Chevron Corporation describes its Nigerian operations and ownership here, [www.chevron.com/worldwide/nigeria](http://www.chevron.com/worldwide/nigeria) (accessed 18 September 2017).
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- <sup>lx</sup> Ibid.
- <sup>lxi</sup> The methodology and rationale of the calculations are explained above in the U.K. section, using sales price of \$43.89 per barrel in Other Americas in 2016 and average cost of production per barrel of \$18.79 as reported in Chevron Corporation 2016 Annual Report, p.77, Table IV – Results of Operations for Oil and Gas Producing Activities – Unit Prices and Costs.
- <sup>lxii</sup> 2016 annual reports of CDC ApS, CDHC ApS and ApS Dansk Chevron. Note 5, Investments in subsidiaries.
- <sup>lxiii</sup> Note 5, Investments in subsidiaries.
- <sup>lxiv</sup> The ownership structure was identified through the most recent annual reports of the relevant Dutch and Danish companies and other searches and information obtained from both Kamer van Koophandel in the Netherlands and Denmark’s Central Business Register (CVR).
- <sup>lxv</sup> Ownership information from the 2016 annual reports of CDC ApS and CDHC ApS, significant subsidiaries disclosed in Chevron Corporation’s 10-K annual report, p.E-5, Exhibit 21.1, Subsidiaries of Chevron Corporation.
- <sup>lxvi</sup> Chevron Corporation 2016 Supplement to the Annual Report, p.33
- <sup>lxvii</sup> The methodology and rationale of the calculations are explained above in the U.K. section, using sales price of \$43.89 per barrel in Other Americas in 2016 and average cost of production per barrel of \$18.79 as reported in Chevron Corporation 2016 Annual Report, p.77, Table IV – Results of Operations for Oil and Gas Producing Activities – Unit Prices and Costs.
- <sup>lxviii</sup> All information from 2015 annual filings of the Dutch companies as obtained from Kamer van Koophandel or information obtained from searches on the Kamer van Koophandel website.
- <sup>lxix</sup> Information from the 2015 annual reports of the relevant companies, filing dates are stamped on the first page of each report and note 1 gives the description of the company.
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- lxxix OECD Guidelines for Multinational Enterprises 2011 Edition, Chapter XI on Taxation, Provision 1.
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- lxxxi Ostas, D. T. Cooperate, comply, or evade? A corporate executive's social responsibilities with regard to law. *American Business Law Journal*, 41, (2004) page 594.
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- xcii Ibid
- xciii Spring Dutch Tax Update, 03 March 2018. Andersen Tax & Legal <https://www.andersentaxlegal.nl/en/news/spring-dutch-tax-update/>
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- xcvii Chevron Boscan Finance BV 2015 annual report, as obtained from Kamer van Koophandel, p.3, Note 1.
- xcviii Ibid, p.6, Note 5.
- xcix Ownership is indicated in an Extract of Chevron Luxembourg Overseas Finance S.a.r.l. obtained from Registre de Commerce et des Societes in Luxembourg on 20 April 2016.
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- ci EY Worldwide Corporate Tax Guide 2018, Page 1773
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- ciii Chevron Corporation 2016 Supplement to the Annual Report, p.33
- civ Tope Alake and Paul Wallace, 30 September 2016, *Bloomberg*, "Nigeria Can Sue Chevron, Total Over Illegal Exports, Judge Says". [www.bloomberg.com/news/articles/2016-09-30/nigeria-can-sue-chevron-total-over-illegal-exports-judge-says](http://www.bloomberg.com/news/articles/2016-09-30/nigeria-can-sue-chevron-total-over-illegal-exports-judge-says)
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<sup>cx</sup> The methodology and rationale of the calculations are explained above in the U.K. section, using sales price of \$41.42 per barrel in Africa in 2016 and average cost of production per barrel of \$13.80 as reported in Chevron Corporation 2016 Annual Report, p.77, Table IV – Results of Operations for Oil and Gas Producing Activities – Unit Prices and Costs.

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<sup>cx<sup>ii</sup></sup> EY Worldwide Corporate Tax Guide 2018, Page 1151