

A fox in the henhouse

How Ukrainian chicken farmer MHP receives massive subsidies while avoiding taxes



Vincent Kiezebrink

Colophon

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October 2020

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(This photo was not taken at MHP's production facilities.)

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The Centre for Research on Multinational Corporations (SOMO) is an independent, not-for-profit research and network organisation working on social, ecological and economic issues related to sustainable development. Since 1973, the organisation investigates multinational corporations and the consequences of their activities for people and the environment around the world.



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SOMO

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Amsterdam, October 2020

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1 Introducing MHP

Myronivsky Hliboproduct – better known as MHP – is Ukraine’s largest agricultural company, and one of Europe’s foremost poultry producers. The company is majority owned (65%)¹ by the fourth richest man in Ukraine, Yuriy Kosyuk.² As well as his work as an entrepreneur, Mr. Kosyuk has served in high-level positions within the Ukrainian Government and appears to be politically well connected.³ In 2014, then Ukrainian President Viktor Yushchenko gave Mr. Kosyuk the so-called “Hero of Ukraine” award for his agricultural achievements. One of the company’s former directors, Kucher Mykola, currently serves as a member of Ukrainian parliament.⁴

MHP is a so-called vertically integrated poultry producer. The company produces and hatches eggs, generates the feed it uses to raise chickens, raises and slaughters chickens, and then distributes and markets the meat to consumers around the world. In Ukraine, MHP has a market share of about 35% of the total chicken meat consumption and more than 55% of industrially produced poultry.⁵ As well as poultry, MHP also grows grain and produces vegetable oil, making up respectively 21% and 26% of its export revenues in 2019.⁶

In 2019, MHP produced about 728,917 tonnes of chicken meat, of which one third was exported to the European Union.⁷ Other important export destinations for MHP’s chicken were the Middle East and Northern Africa (32%) and Eurasia (24%). MHP’s exports make up approximately 58% of its revenues.⁸ Furthermore, MHP boasts that its poultry farm in Vinnytsia, Ukraine, is the largest poultry farm in Europe.⁹

Since its inception in 1998, MHP has primarily been a Ukrainian agricultural producer.¹⁰ Owned by a Ukrainian billionaire and with the vast majority of its production facilities operating in Ukraine, its roots are clear. Over the past few years, the company has been expanding abroad, setting up de-boning facilities in the Netherlands and Slovakia, as well as acquiring a Slovenian vertically integrated poultry producing company called Perutnina Ptuj.¹¹ While maintaining its primary operations in Ukraine,¹² MHP’s expansion has led to it now being incorporated in 14 countries.¹³

Kosyuk’s company MHP has been constantly embroiled in various controversies. Ranging from allegations of air and water pollution to the threatening of people that oppose it,¹⁴ MHP’s role in Ukrainian society appears to be highly controversial. In 2018, MHP was at the centre of a political furore in the EU, when the company was shown to be using a loophole in EU import quotas for chicken meat, allowing the company to avoid the quotas altogether. It did this by exporting chicken breasts to the EU with some bones left inside – an unusual type of cut that did not correspond to any of the chicken products the EU subjected to import quotas.¹⁵ MHP exported these newfound chicken breasts with bone – since named the ‘Batman cut’ – to the Netherlands, Poland and Slovakia,¹⁶ where the bone could be removed. This allowed the company to sell regular chicken breasts in the EU free from any quotas. To close this loophole, the EU conceded a 170% increase on the import quota MHP had previously avoided.¹⁷

MHP has a dominant position in Ukraine's poultry market, reportedly producing 38% of Ukraine's chicken meat.¹⁸ Ukraine's Antimonopoly Committee has investigated the company, reportedly concluding that MHP uses its power to consolidate its sales territory, pressures buyers into applying its pricing policy and prevents them from selling competing poultry producers' products.¹⁹ This report provides further insight into MHP's contribution to Ukrainian society, focusing specifically on its tax practice and the taxes it should – but does not – pay.

1.1 Research objective and methodology

The aim of this research is to analyse MHP's tax practices, and to determine whether the company uses aggressive tax planning to avoid taxes. Through this research, the Centre for Research on Multinational Corporations (SOMO) intends to add to existing knowledge regarding MHP's human rights and environmental impact in Ukraine, to broaden the perspective on the company's practice.

The research for this report uses various sources, including academic literature, media reports, corporate information databases like Reuters Eikon and Orbis, as well as financial reports and annual accounts from MHP and its shareholders. As part of SOMO's internal quality assurance policies, we provided MHP with the opportunity to respond to these research findings. Where relevant, MHP's response has been integrated into the report. Section 2.5 provides a summary of MHP's overall response.

1.2 MHP's tax haven subsidiaries

MHP's domestic Ukrainian profile stands in stark contrast to the amount of mailbox subsidiaries it owns abroad, which are registered mostly in tax haven jurisdictions. The company's parent company was located in Luxembourg from 2006 until 2017, when the group moved its parent company to Cyprus.²⁰ This means that ownership of the company resides outside Ukraine, which will be discussed further in section 2.3.

Looking beyond the economic reality of MHP's operations in Ukraine, there is a paper reality of MHP subsidiaries with little economic substance, which allows the MHP group to avoid Ukrainian taxes. Seven such subsidiaries owned by MHP are located in Luxembourg, Cyprus and the British Virgin Islands, and the United Arab Emirates – all countries known as tax havens.²¹ The corporate structure in Figure 1 on the next page shows how these subsidiaries fit into the MHP group.

Many of MHP's subsidiaries outside Ukraine are administered by trust firms, or have very few employees. Several of its Cypriot subsidiaries, including Eledem Investments, Raftan Holding, and the group's ultimate owner WTI Trading Limited, all list Confitrust Limited as their company secretary, indicating that this trust firm is administering them. Furthermore, Eledem Investments²² and Raftan Holding²³ also list Confida Secretarial Limited as their director. Meanwhile two of WTI Trading Limited's directors also appear to be associated with Confida Secretarial Limited, as they serve as directors for several companies for which Confida serves as a secretary.²⁴ The fact that all of the roles are fulfilled by these organisations, instead of by MHP's own employees, indicates that these companies serve merely as mailbox companies.

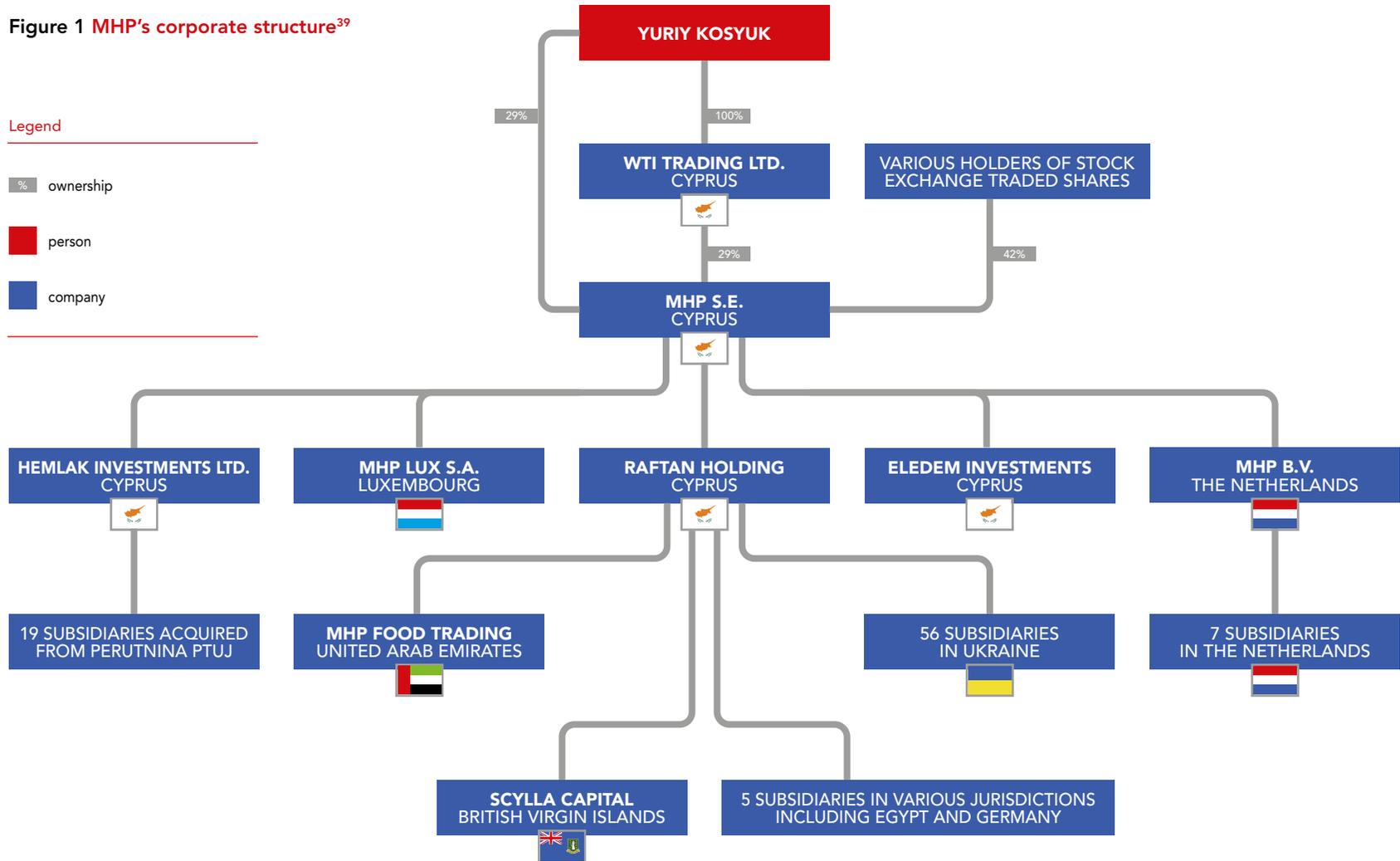
Figure 1 MHP's corporate structure³⁹

Legend

% ownership

person

company



Furthermore, MHP’s subsidiary in the Caribbean British Virgin Islands (BVI) – Scylla Capital – is registered at the same address as trust company Harneys Corporate Services Limited.²⁵ MHP states that this company is in the process of being liquidated, and as such it is not relevant with regard to potential tax avoidance. However, in claiming this, MHP does not explain why it set up Scylla Capital, and what the objective of incorporating it in the BVI was originally.

MHP’s Cypriot and BVI subsidiaries do not disclose any information about the number of employees they have on their books. However, in its last available annual report, the group’s parent company MHP S.A. in Luxembourg reported having zero employees.²⁶ The fact that MHP owns subsidiaries in the tax haven jurisdictions listed above is a clear red flag for tax avoidance. This is further compounded by the fact that these companies either have no employees or appear to be managed by trust firms.

1.3 Development finance for MHP

Over the past few years, MHP has been expanding its operations rapidly, both at home in Ukraine as well as abroad. To finance its expansion, the company has received loans from several Development Finance Institutions (DFIs). An overview of these loans is provided in Table 1.

Table 1 Development finance for MHP

	2003	2005	2006	2010	2012	2013	2014	2015	2017
International Finance Corporation (IFC)	\$30 million loans ²⁷	\$60 million loans and \$20 Equity ²⁸		\$50 million loan into project, \$18 million Partial Credit Guarantee ²⁹	\$50 million from its own account for working capital financing ³⁰		\$250 million loan ³¹		
European Investment Bank (EIB)							€85 million ³²		
European Bank for Reconstruction and Development (EBRD)				\$65 million ³³		\$55 million ³⁴		\$85 million ³⁵	€25 million ³⁶

These three banks use finance provided by its member states to support commercial projects, thereby aiming to stimulate development in countries like Ukraine. The banks’ standards guide the investments they make, and aim to ensure that development efforts are sustainable and that they make investments in a transparent manner.³⁷ Hence, public finance – provided by individual and corporate taxpayers in donor countries – is used to develop projects like MHP’s Ukrainian poultry farms, in the hope that this will stimulate sustainable development there. In practice, however, DFI loans often go to corporations that disrupt people’s livelihoods and damage the environment they live in. This is illustrated by the many complaints that have been filed with these banks by affected communities.³⁸

Beyond DFI financing for MHP, the company also enjoys the indirect support of export credit insurance provided by Dutch insurer Atradius DSB. Atradius provides export credit insurance as a service to the Dutch Government to stimulate exports, and uses Dutch public finance to cover any losses on the insurance.⁴⁰ In this case, Atradius insures the export of goods by Dutch companies doing business with MHP, allowing those companies to decrease their risks and thereby increase their access to finance when selling machinery and other goods to MHP. Between 2012 and 2020, Atradius insured exports valued up to €53.7 million, all done through MHP's agro-industrial suppliers financed by the Rabobank.⁴¹

The use of public finance to support MHP has in the past led to a multitude of questions in Dutch parliament,⁴² as well as several motions in parliament. In 2015, the Dutch parliament passed a motion to request the Dutch representative at the European Bank for Reconstruction and Development (EBRD) to vote against any future loans to MHP.⁴³ Parliament reaffirmed this motion in 2019,⁴⁴ apparently in response to a new loan application by MHP.⁴⁵ The EBRD board's vote on the loan was scheduled but then postponed.⁴⁶ Media reports indicated that the EBRD was unwilling to provide a new loan due to MHP's earlier circumvention of EU quotas⁴⁷ and Mr. Kosyuk's alleged association with Alexey Omelyanenko, the subject of various criminal cases and investigations in Ukraine.⁴⁸ Media subsequently reported that MHP withdrew its loan application with the EBRD later that year, deciding instead to issue bonds to attract finance.⁴⁹

MHP has also enjoyed the financial support of other commercial banks, including Dutch bank ING and French bank Credit Agricole, which both provided the company with several loans since 2015.⁵⁰

1.4 Rights violations in Ukraine

The development aim of the finance provided to MHP stands in stark contrast with the controversy the company has been mired in for many years. In 2015, SOMO documented how the foul odour of manure polluted the area around MHP's Vinnytsia operations in Ukraine, and how increased traffic damaged public infrastructure as well as buildings off the main roads.⁵¹ Furthermore, SOMO found that MHP provided insufficient information on its operations to people in the villages nearby, while unduly pressuring people close to its operations to sell their land to the company.

Over the past few years, NGO Network Bankwatch has tracked the continuing impacts of MHP's operations in Ukraine. They report human rights abuses ranging from beatings to public smear campaigns – mostly carried out by anonymous perpetrators – targeting activists opposed to MHP.⁵² The one rights abuse with a proven link to MHP was the brutal beating of Nina Martynovska, who was attacked in June 2016, apparently to silence her opposition to MHP's poultry farm near the village of Ratseve.⁵³

Beyond its hard-handed treatment of activists, MHP appears to have structurally failed to inform affected communities about its operations. Public consultations reportedly serve more as a platform for MHP to present promises about all the good they will do, rather than presenting a realistic picture of the expected impacts of the company's operations.⁵⁴ Furthermore, Environmental and Social Impact Assessments, which MHP is legally required to publish to inform those affected

by its business, have been found to be lacking necessary information, making them unhelpful to communities.⁵⁵

Although MHP responded to ongoing conflicts by setting up a grievance mechanism in 2017, opposition to the company has continued. In 2018, three communities affected by MHP's Vinnytsia poultry farm filed a complaint with the International Finance Corporation (IFC) and the European Bank of Reconstruction and Development (EBRD), with whom MHP has outstanding loans.⁵⁶ The complaint has led to an ongoing mediation process between the parties to the conflict, which has mostly been kept confidential. What has been made public is that there has been some progress – including the creation of a bypass road that will likely decrease further damage to public roads – although many contentious issues between the affected communities and MHP seem to remain unresolved. The conflicting parties appear to be seeking funding to set up a joint fact-finding mission at the moment, in the hope that this will help to settle some disagreements.⁵⁷



MHP chicken farm in Ukraine - Photo by SOMO

2 MHP's tax practice

2.1 Why MHP pays no income tax in Ukraine

Ukraine has a special fiscal regime for agricultural companies. Since 1995, agricultural companies have had the option to choose between paying regular corporate income tax and paying the Fixed Agricultural Tax (FAT). Where tax authorities calculate corporate income taxes based on a company's profits, the FAT is instead based on a combination of the amount of arable land the company owns and the value of that land.⁵⁸ The more land a company owns, and the higher the value of that land, the more FAT it is required to pay. Because the FAT was reportedly set at a very low rate, however, agricultural companies ended up paying next to nothing in taxes to the Ukrainian state. In 2010, the average FAT payment made was reportedly US\$0.75 per hectare of arable land.⁵⁹

The FAT regime allowed MHP to enjoy extremely low effective tax rates (ETR).⁶⁰ In its bonds prospectuses, the company states that the actual tax rate it was subject to was stable at 0.1% for the years 2005-2014.⁶¹ In 2015, the Ukrainian Government replaced the FAT with the Unified Tax Payer regime, for which taxes appear to be similarly calculated, on the basis of the value and amount of land owned by a company. Regarding the 2017-2019 period, the company states the following:

"The aggregate amount of the Unified Tax paid by MHP was U.S.\$4.0 million and U.S.\$4.0 million in the years ended 31 December 2017 and 2018, respectively, and U.S.\$1.4 million and U.S.\$1.3 million in the six months ended 30 June 2018 and 2019, respectively. This represented 1.4% and 2.2%, and 0.7% and 1.1% of the income generated by MHP's Unified Tax payers in the relevant periods. If MHP were not eligible for the benefits provided by the Unified Tax payer status of its Ukrainian companies, it would have been taxed on corporate profits in Ukraine at the rate of 18%, which would have resulted in reversal of income tax benefits in the amount of U.S.\$57.9 million and U.S.\$33.1 million in the years ended 31 December 2017 and 2018, respectively, and U.S.\$33.8 million and U.S.\$21.5 million in the six months ended 30 June 2018 and 2019, respectively."⁶²

In short, from 2017-2019, MHP paid \$10.7 million in Unified Tax. If MHP's subsidiaries had been subject to regular Ukrainian income taxes for their agricultural activities – instead of the Unified Tax Payer regime – SOMO estimates the company would have owed Ukraine an additional \$146.3 million.

Throughout MHP's existence, special tax regimes have allowed MHP to pay no income taxes in Ukraine. Presumably, this is because tax credits among MHP's subsidiaries that fall outside the Unified Tax regime nullify even the small tax contributions made by MHP's agricultural subsidiaries – like the \$10.7 million referenced in the previous paragraph. For the period of 2003-2019, MHP's financial figures show that it made a total of US\$3 billion in profits, for which the company paid a total of \$0 in taxes. Instead it received approximately US\$32 million in tax credits.⁶³ Considering MHP's Ukrainian origin, it seems likely that these tax credits have come primarily from the Ukrainian state.

Meanwhile, MHP is dependent on the Ukrainian state's ability to create a good business environment in which it can operate. The government does this through public spending on things like infrastructure, education for its labour force, and healthcare for sick workers. The Ukrainian Government finances such spending through taxation on various economic activities within its jurisdiction, including taxing profitable businesses. A properly functioning tax system thus raises revenue that the government then uses to fulfil essential functions within society. Following this line of reasoning, one would expect MHP to pay taxes in Ukraine as part of its contribution to Ukrainian society. Reviewing MHP's tax practice since 2003, if the company had not benefitted from Ukraine's overly generous special tax regimes, but had instead been subject to the country's statutory income tax rate,⁶⁴ it would have paid approximately US\$759 million in Ukrainian corporate income taxes.⁶⁵

2.2 Why MHP pays so little VAT in Ukraine

Beyond the FAT and Unified Tax Payer regimes that allow agricultural producers to lower their corporate income taxes, MHP appears to have also made use of various value added tax (VAT) regimes, further lowering its Ukrainian tax obligation.

Under these VAT regimes – known as AgVAT before 2017 and quasi accumulation VAT since⁶⁶ – MHP received VAT refunds and subsidies. The AgVAT regime entitled agricultural producers to retain the VAT that they received through their sales, in order to recover the VAT that the farmers had paid to their suppliers. The system was eliminated in 2017, reportedly under pressure from the International Monetary Fund (IMF) and the World Bank.⁶⁷ AgVAT was then replaced by the Quasi Accumulation regime, which provides subsidies to agricultural producers, allowing them to recover some of the VAT they pay to suppliers.⁶⁸ This regime was reportedly less expensive for the Ukrainian state, but is said to favour large agricultural companies over smaller ones.⁶⁹

In its own bond prospectus, MHP states that it has organised its corporate structure in such a way as to increase eligibility for state support and to maximise the effect of such support.⁷⁰ It appears to have done so with great effect. Media reports state that, in 2017, MHP received approximately 35% of the total \$145 million quasi accumulation budget.⁷¹

During the 2007-2019 period, MHP received a total \$1.1 billion in VAT refunds or subsidies, primarily from the Ukrainian state.⁷² During the same period, MHP made a total of \$1.3 billion in profits.⁷³ MHP received this public support entirely legally. However, it seems that making a profitable company like MHP even more profitable in this way is not sound public policy to stimulate the Ukrainian economy. Nor does it serve to make Ukraine into a more economically just society.

2.3 How MHP avoids Ukrainian withholding taxes

As described above, MHP has made use of loans from DFIs to finance its operations. To supplement this DFI financing, MHP has issued various corporate bonds since 2006. Bonds are a type of IOU that a lender can buy, which entitles the lender to periodic interest payments from the borrower – MHP in this case. MHP has issued six rounds of bonds over the past 15 years, all of which were issued from

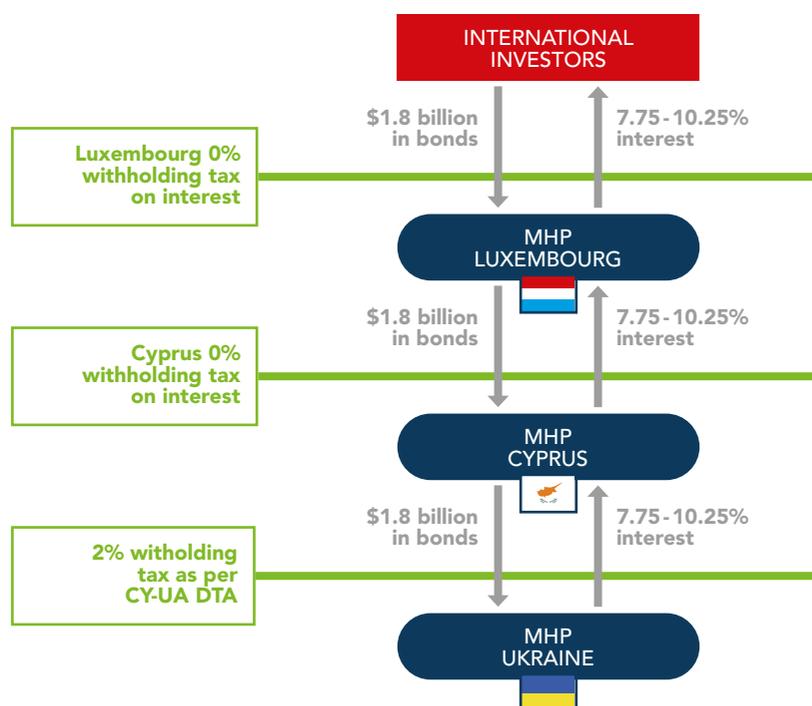
an MHP group company in the tax haven Luxembourg, and which it offered to buyers at the stock exchange in London and Ireland.⁷⁴ For the purpose of this report, the focus will be on the first four rounds of bonds issued by MHP, as these were part of an elaborate tax avoidance scheme set up by the company. The total value of these four bonds is \$1.8 billion. Of these four different bonds, three have since been repaid by MHP, while one is scheduled to be repaid in 2024.⁷⁵ The interest rates related to the bonds have varied from 7.75% to 10.25% on an annual basis.⁷⁶

MHP's bonds prospectuses state that the company uses the finance from its bonds for its operations in Ukraine. To get the finance to Ukraine, the company provides loans to its Ukrainian subsidiaries, which then pay back these loans plus interest over multiple years. When companies make these kinds of cross-border interest payments, states generally levy what are called withholding taxes on interest. Ukraine's statutory withholding tax rate on interest is 15%, which means interest payments from MHP's Ukrainian subsidiaries to sister companies abroad would generally incur a tax payment of 15% on the interest to Ukraine's tax authorities.

To increase international investments, countries bilaterally negotiate so-called Double Taxation Agreements (DTA). These agreements often lower withholding tax rates applied to cross-border payments between the signatory states, with the aim of stimulating investment. Ukraine is currently a party to 75 DTAs.⁷⁷ The negotiated withholding tax rates that are applicable on the basis of the DTA differ between DTAs. International investors intent on avoiding taxes tend to structure their investment through the most 'beneficial' DTAs by setting up mailbox subsidiaries in the countries that are party to this DTA. For example, a German company looking to invest in Uganda is not willing to pay Uganda's statutory withholding tax rates, but Germany and Uganda currently do not have a DTA.⁷⁸ So the company decides to set up a subsidiary in the Netherlands, which then makes the investment in Uganda instead. This company will then be able to make use of the Uganda-Netherlands DTA, which provides for lower withholding taxes, despite the fact that the investment actually originates in Germany. This practice is known as 'treaty shopping', which the Organisation for Economic Co-operation and Development (OECD) has acknowledged as one of the most important sources of tax avoidance.⁷⁹

This is where MHP's tax avoidance scheme comes in: in order to avoid paying Ukraine's 15% withholding tax rate on the interest paid on its bonds, the company has chosen to issue the bonds from a company in Luxembourg. After this, that company loans the money onwards to Ukraine using a subsidiary in Cyprus as a conduit. The Cypriot subsidiaries allow MHP to make use of the Ukraine-Cyprus DTA, which provided for a lowered 2% withholding tax on interest until 2019.⁸⁰ The way MHP has structured its finances allows the company to avoid paying Ukraine's statutory 15% withholding tax rate on interest, allowing it to pay the preferential 2% rate instead.⁸¹ In practice, MHP has issued its first four bonds from its Luxembourg parent company, MHP S.A. After receiving the bond finance, MHP S.A. loaned this money to its Cypriot subsidiary Eledem Investments Limited, which served as a conduit, lending the finance on to various subsidiaries in Ukraine.⁸²

Figure 2 MHP's financing structure



MHP appears to have used the structure presented in Figure 2 to avoid paying Ukrainian withholding taxes. Considering the company's Ukrainian nature, and the fact that it seems to undertake no real economic activities and have few, if any, employees in Luxembourg and Cyprus, MHP's presence in these tax havens seems to be primarily motivated by tax avoidance.

To determine how much withholding tax MHP has avoided through its financing structure, it is important to imagine how the company would have financed its operations if taxes did not impact its operations. By construing such a counterfactual scenario and comparing that to what MHP currently pays in Ukrainian withholding taxes, it becomes possible to determine how much tax the company has avoided. In such a hypothetical alternative, the most straightforward way for MHP to issue its bonds would appear to be simply to emit them from its holding company in Ukraine, called Myronivsky Hliboproduct Public Joint-Stock Company. If MHP had instead issued its bonds from there, interest payments to bondholders abroad would generally have been subject to Ukrainian withholding taxes, instead of being subject to the lowered 2% Ukraine-Cyprus DTA rate.

Figure 3 How MHP might structure its finance in a world without tax avoidance

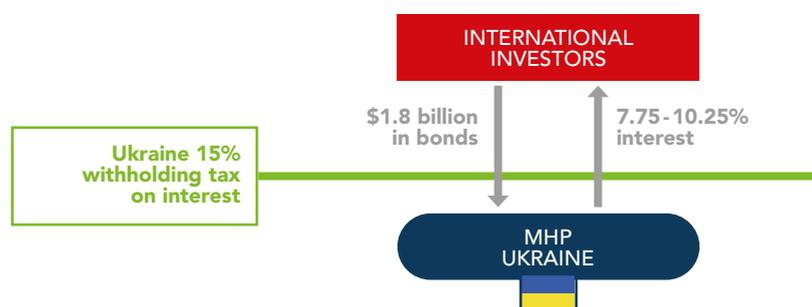


Figure 3 illustrates how this simpler financing structure would have led to MHP paying more in Ukrainian tax. Table 2 estimates how much more withholding tax MHP would have owed in Ukraine, if it had not made use of its tax haven subsidiaries.

Table 2 Ukrainian withholding tax avoidance by MHP
All figures in million US\$

	Bond I (2006-2011)	Bond II (2010-2015)	Bond III (2013-2020)	Bond IV (2017-2024)	Total
Value of the bond	250	330	750	500	1830
Interest rate (%)	10.25%	10.25%	8.25%	7.75%	n.a.
Annual interest	25.6	33.8	61.9	38.8	160.1
Total interest	128.1	169.1	433.1	271.3	1001.6
Average withholding tax applicable on interest	2.00%	2.00%	2.00%	3.86% ⁸³	n.a.
Statutory withholding tax rate Ukraine	15.00%	15.00%	15.00%	5.00%	n.a.
Ukrainian withholding tax losses	16.7	22.0	56.3	3.1	98.0

The figures in Table 2 were estimated using the data for each of the bonds in MHP's respective prospectuses.⁸⁴ Using these bond prospectuses, the annual interest per bond was calculated, and then multiplied by the years of duration per bond to come to the total interest owed per bond. Then, the average applicable Ukrainian withholding tax for each bond was calculated. The statutory withholding tax in Ukraine was 2% until 2020, when Ukraine and Cyprus agreed on an increase to 5%.⁸⁵ To calculate what would have been owed if statutory withholding tax rates had been applied, the total interest was multiplied by the statutory rates. Taking this figure (approx. \$148.3 million) and subtracting what MHP has actually paid in Ukrainian withholding taxes on its bond interest

(approx. \$50.2 million), brings us to the estimated \$98 million in Ukrainian tax losses. As such, the figures show how making use of the extremely low 2% withholding tax rate on interest agreed between Cyprus and Ukraine, MHP was able to avoid up to \$98 million in withholding taxes over the past 14 years. By using mailbox subsidiaries in Luxembourg and Cyprus, the company managed to create a paper presence in those jurisdictions, allowing it to enjoy the fiscal benefits provided by these tax havens.

A caveat to this analysis is that, if MHP had instead issued its bonds from its Ukrainian holding company, some of its bondholders might have been located in Ukraine's DTA partner countries. For example, if a Canadian investor had bought some of these bonds issued in Ukraine, the Ukraine-Canada DTA would have allowed them to be subject to a lowered 10% withholding tax rate.⁸⁶ On average, Ukraine's 31 DTAs prescribe an 8.2% withholding tax on interest,⁸⁷ a significantly higher rate than the 2% that was provided by the DTA with Cyprus. As the data on the location of bondholders is not publicly available, however, it is impossible for SOMO to ascertain where MHP's bondholders have been located over the years, and thereby more precisely estimate Ukraine's tax revenue losses.

2.4 How MHP offshores its profits

The previous sections have described how MHP enjoys near zero corporate income tax rates in Ukraine, while avoiding Ukrainian withholding taxes. The fiscal benefits MHP enjoys allows the company to pocket nearly all the profits it makes, contributing very little to Ukrainian public coffers. MHP's Ukrainian subsidiaries that generate these profits initially pay them out to Raftan Holdings Limited in Cyprus, after which they accrue at MHP's Cypriot parent company, MHP S.E.⁸⁸ As Mr. Kosyuk is and has been MHP's majority shareholder (65% ownership),⁸⁹ most dividends are then paid out to Mr. Kosyuk's Cypriot holding company WTI Trading Limited.⁹⁰ From the moment that MHP started paying out dividends (in 2013) until the latest dividend distribution of April 2020, Mr. Kosyuk's holding on Cyprus received approximately \$390 million.⁹¹

The most recent annual accounts for WTI Trading Limited show that the company receives dividends from MHP, but only pays a small percentage out to its owner.⁹² MHP representatives state that, since 2018, WTI Trading paid approximately \$31 million to Mr. Kosyuk. By keeping his profits outside Ukraine, Mr. Kosyuk – reportedly a resident of Kyiv⁹³ – is potentially able to avoid paying Ukrainian personal income taxes. Should WTI Trading Limited pay out all \$390 million in retained dividends, Mr. Kosyuk would have to declare these profits on his personal income taxes, at which point tax authorities in Ukraine would likely apply the 10.5% personal income from ordinary dividends tax rate.⁹⁴ In response to these findings, MHP states that WTI Trading Limited invests the dividends it receives in other businesses outside MHP, instead of paying it out to its shareholder, Mr. Kosyuk. By keeping MHP's dividends offshore in Cyprus, the payment of these taxes can be delayed, or hypothetically could be avoided entirely, should Mr. Kosyuk eventually choose to move his residence to a low-tax jurisdiction.

2.5 MHP's review response

In advance of the publication of this report, SOMO sent the research findings presented above to MHP for review. The company's representatives took the time to respond, and provided detailed comments and criticism of the report. While some of their comments are represented in the previous sections, it is worthwhile reviewing the tone of MHP's response.

On several occasions, the company's review response mentions that its conduct is in line with the law, in an apparent attempt to justify its conduct. For example, with regard to the sections regarding the low amount of income tax and VAT MHP pays in Ukraine, the review response details the workings of Ukrainian fiscal facilities for agricultural companies, which it uses to great lengths, all within the confines of the law.

Concerning the company's apparent mailbox subsidiaries in Cyprus, the company responds saying it fulfils all legal requirements to have a legal presence in Cyprus. However, the question raised in this report is not whether MHP has done anything illegal, but whether it has sought out gaps in legislation to avoid contributing its fair share in taxes, while benefitting from the subsidies provided by the Ukrainian state as well as accepting development finance from several DFIs.

With regard to the tax avoidance findings presented in section 2.3, MHP states it "uses legally permitted ways to optimize taxation" and refers to the legality of using Double Taxation Agreements to enjoy lower tax rates. As such, MHP's response does not appear to challenge the assertion that it avoids taxes, but rather seems to emphasise that tax avoidance is legal, which it is by definition.

However, in making these comments, MHP appears to miss the point of this report, which is that the company's tax avoidance – its practice of willfully seeking out gaps in tax legislation to avoid paying its fair share in Ukraine – is damaging to the society it operates in, and means that the company benefits from public spending that it does not make a fair contribution towards.

3 Conclusion

The findings on MHP presented in this report paint a troubling picture of a company that enjoys tax benefits and subsidies in its home state of Ukraine, while using its artificial presence in various tax havens to avoid Ukrainian taxes. Although it is primarily a Ukrainian agricultural producer – having recently expanded to several other jurisdictions – MHP’s ultimate parent company was located in the tax haven of Luxembourg for 11 years, and then moved to another tax haven, Cyprus, in 2017.⁹⁵ MHP’s many group companies in known tax havens, and the fact that many of them appear to be little more than mailbox companies set up to gain access to the fiscal benefits provided by those jurisdictions, indicates that MHP’s tax planning is geared towards avoiding taxes in the countries where it generates its profits, most prominently Ukraine.

The current analysis of MHP’s network of loans used to avoid Ukraine’s withholding tax on interest strengthens this image. Making use of the double taxation agreement between Ukraine and Cyprus, MHP was able to avoid up to \$98 million in Ukrainian withholding taxes between 2006 and 2020. In the meantime, MHP enjoyed generous VAT refunds and subsidies from the Ukrainian state, as well as preferential Ukrainian tax regimes that allowed the company to pay no corporate income taxes on its \$3 billion in profits.

MHP’s high profit levels over the past few years call into question the usefulness of preferential tax regimes and subsidies provided to the company, as it is unclear how these are supposed to stimulate economic activity.⁹⁶ At face value, it seems that the Ukrainian Government would do better to provide its support to companies whose operations could benefit more from such a stimulus. MHP’s aggressive tax avoidance strategy gives rise to the question whether a company that actively avoids contributing its fair share to society should be rewarded with subsidies and tax breaks.

The illustration of MHP’s fiscal misconduct compounds previous findings on the company’s many human rights and environmental violations, abuse of its monopoly position in Ukraine and controversy surrounding its evasion of EU import quotas. Although many of these allegations have been public knowledge for years, MHP has enjoyed continued support from publicly funded developmental financial institutions like the International Finance Corporation (IFC), European Bank for Reconstruction and Development (EBRD) and the European Investment Bank (EIB). Furthermore, the company has benefitted from export credit insurance provided to its suppliers by insurer Atradius, with financial backing from the Dutch state.

Considering the above-mentioned allegations of human rights and environmental violations, the willful avoidance of EU quotas and now the avoidance of Ukrainian taxes, these organizations should reevaluate whether MHP’s continued abuses are acceptable to them, and whether using their financial means to support MHP best serves their goals of sustainable economic development in Ukraine.

3.1 Recommendations

- ❑ **MHP** needs to stop avoiding taxes. It should abandon its presence in tax havens and stop the treaty shopping through which it avoids paying Ukrainian taxes.
- ❑ **MHP** needs to respect the rights of communities affected by its facilities, and should provide remedy for any adverse impacts it has caused in the past.
- ❑ The **Government of Ukraine** should refrain from signing tax treaties with extremely low withholding tax rates in the future, and should seek to renegotiate some of its many existing treaties that provide such rates.
- ❑ The **Government of Ukraine** should review its subsidy regime; stop providing public funds to large and profitable companies like MHP, and should instead apply Ukraine's regular 18 per cent corporate income tax rate.
- ❑ **Developmental financial institutions** – including the EBRD, IFC and EIB – should refrain from making any future investments in MHP, and should review how their policies allowed them to invest in this company, considering its human rights record and tax avoidance strategies.
- ❑ **Member States** that contribute to the above-mentioned developmental financial institutions should use their vote to change the banks' practice, and make sure that investees respect human rights and pay their fair share of taxes.
- ❑ The **Dutch Government** and its export credit insurer *Atradius* should refrain from insuring future Dutch sales to MHP, and review their policies to make sure their public support does not end up with companies that violate human rights or avoid taxes.

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