



The Swiss Connection

The Role of Switzerland in Shell's Corporate Structure and Tax Planning



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Colophon

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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.

Friends of the Earth Europe campaigns for sustainable and just societies and for the protection of the environment, unites more than 30 national organisations with thousands of local groups and is part of the world's largest grassroots environmental network, Friends of the Earth International.

Contents

1.	Introduction	4
1.1	Goal of the report	4
1.2	Research methodology	4
1.3	Review procedure	4
1.4	How to read this report.....	5
2.	The Swiss connection: why 27,000 companies can't be wrong	6
2.1	The problem of tax avoidance to the developing world	6
2.2	The advantages of Switzerland for multinational companies.....	6
2.3	Switzerland as the world's largest commodity hub	9
3.	Shell's business in Switzerland.....	10
4.	In-depth case studies	13
4.1	Case study: Shell Brands International AG.....	13
4.2	Case study: Solen Versicherungen AG	15
5.	Main findings and policy recommendations	17
5.1	Main findings	17
5.2	Bottlenecks.....	17
5.3	Recommendations	18
	Endnotes	20

1. Introduction

This chapter explains why this report was written, describes the methodology and review procedure and provides a brief reading guide.

1.1 Goal of the report

SOMO and Friends of the Earth Europe jointly took the initiative to clarify the role of Switzerland in Royal Dutch Shell's corporate structure and tax planning. The aim of the research is to highlight the use of low-tax and secrecy jurisdictions by Shell in order to minimize its tax payments in other jurisdictions. This research should be seen in the context of Shell's extensive global network of mailbox companies in tax havens like Bermuda, the Cayman Islands and the Bahamas, where they pay very little or no tax over their profits. Switzerland was chosen as an example because there are indications that Shell may be using Switzerland for tax purposes, at least since 2005, when the company shifted ownership of its brands and trademarks to a Swiss-based subsidiary, Shell Brands International AG. This company was registered in the canton of Zug, which is a very popular location for multinational corporations because of its particularly low income tax rates for foreign companies and because of Switzerland's high secrecy regulations, in combination with Switzerland's extensive network of double taxation treaties. It is hypothesised that Shell's presence in Switzerland is potentially leading to significant tax losses for developing countries because Shell is able to use the specific advantages of the Swiss financial system (and other secrecy jurisdictions and tax havens) to lower its profits in developing countries, leading to lower tax payments there. Different Shell subsidiaries in Switzerland may play similar roles as Shell Brands International AG and have also been included in the research for this report.

1.2 Research methodology

The research was carried out as follows:

- ❑ Quick scan of the company structure of Shell in Switzerland using corporate databases (incl Bloomberg, Orbis and LexisNexis)
- ❑ Analysis of possible tax avoidance mechanisms used by Shell in Switzerland
- ❑ Desk research of 2 subsidiaries of Shell in Switzerland
- ❑ Draft report writing
- ❑ Sending draft report to Swiss tax justice expert
- ❑ Finalize draft report
- ❑ Sending main findings to Royal Dutch Shell for a company review
- ❑ Finalize report

1.3 Review procedure

The report has been reviewed by a number of people, including Mark Herkenrath, a Swiss tax justice expert, to make sure the findings are correct and clear to non-tax experts. It should be mentioned that within the limited scope of this research, a number of issues still remain unclear, especially with regards to the specific advantages of multinational companies in Switzerland in general, and Royal

Dutch Shell in particular. To clarify these issues, the involvement of a tax planning expert with deep knowledge of the Swiss tax landscape would be required.

The findings of the research have been sent to Shell to provide them with the possibility to conduct a fact check and provide possible missing information. The company pointed out their general view on the topic of tax payments to governments, referring to their recently published payments to government's data. However, Shell did not provide any specific information about their tax payments in Switzerland, nor were any specific questions on their business activities in that country answered.

1.4 How to read this report

The report starts from the well-known fact that Switzerland offers manifold and massive incentives for corporate profit-shifting. It then tries to verify the claim that one of the main purposes for Shell to establish affiliates in Switzerland has been tax avoidance. To illustrate the use of Switzerland's fiscal climate by Shell, two cases are provided of Shell subsidiaries related to brand management and insurances. Finally, the report provides recommendations on how to improve transparency, both to Shell as well as to the Swiss government and the European Union.

Disclaimer: It should be noted that there is a crucial distinction between tax avoidance and tax evasion. In this report, the term 'tax avoidance' is used to cover strategies that are legally permissible, but which the Global Alliance for Tax Justice, to which SOMO is a signatory, regards as ethically questionable. 'Tax evasion' on the other hand, refers to illegal methods used to pay less tax, also known as tax fraud. There is no suggestion in this report that Royal Dutch Shell has broken the law by evading tax.

2. The Swiss connection: why 27,000 companies can't be wrong

This chapter gives a general introduction on tax havens and secrecy jurisdictions. This is followed by the role of Switzerland in tax avoidance and providing secrecy to multinational companies, in order to provide a better understanding of the importance of Switzerland and to frame the role of Shell in Switzerland.

2.1 The problem of tax avoidance to the developing world

Tax avoidance has emerged as a global concern. Resource-rich countries in Africa and other developing countries are highly vulnerable to aggressive tax planning and tax evasion facilitated by the extensive use of offshore companies, the high levels of intra-company trade and the commercial secrecy surrounding foreign investment activity. African governments lack the human, financial and technical resources needed to secure tax compliance, and the commercial market intelligence needed to assess company tax liabilities. As a result they are losing significant revenue streams. Hundreds of offshore-registered companies are linked to investment in extractive industry concession trading in Africa. Many are registered in traditional tax havens, such as the Cayman Islands, the British Virgin Islands or Bermuda. Some are associated with shell companies registered in the United Kingdom. Others are integrated into networks that extend from offshore private banking and trading centres in Switzerland or the United States.¹ Over the years, various estimates have been made of the damage that tax avoidance is causing. The most cited estimate of corporate tax evasion is a study by Christian Aid from 2008, which found that developing countries lose US\$160 billion per year to tax evasion by multinational companies using false invoicing and transfer mispricing.² In a more recent Oxfam report, the tax gap for developing countries – the amount of unpaid tax liability faced by companies – is estimated at \$104 billion every year (including profits shifted in and out of tax havens). In addition, governments in these countries give away an estimated \$138 billion each year in income tax exemptions.³ Over the last years, there has been growing criticism on aggressive tax avoidance structures, among others by the OECD, the G8/G20 and the European Union. The OECD, through its work on Base Erosion and Profit Shifting, specifically highlights the role of so-called special purpose entities (SPEs), and how they relate to the possible reduction of source and residence country taxation of dividend, interest and capital gains.⁴ UNCTAD warns that investments through offshore financial centres (OFCs) and special purpose entities (SPEs) remain a concern, as the number of countries offering favourable tax conditions for SPEs is increasing.⁵ In February 2014, European Competition Commissioner Joaquin Almunia has announced that he will start examining corporate tax loopholes across Europe that allow companies to cut their tax bills, to see if they are anti-competitive.⁶

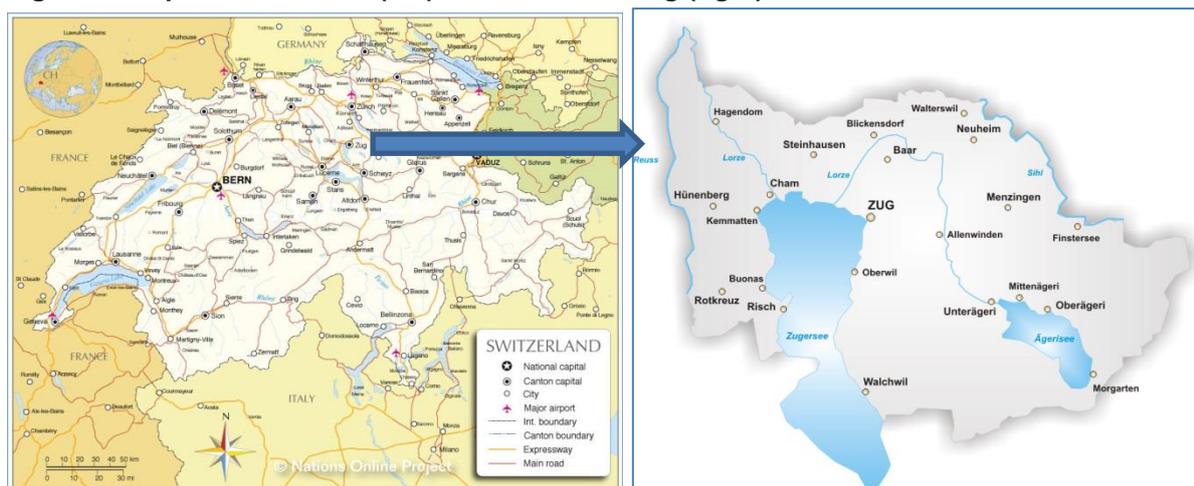
2.2 The advantages of Switzerland for multinational companies

Switzerland ranks number one on the Tax Justice Network's Financial Secrecy Index, scoring higher than the Cayman Islands, Hong Kong and Luxembourg.⁷ Switzerland is the grandfather of the world's tax havens, one of the world's biggest financial centres, and one of the world's biggest secrecy jurisdictions or tax havens. In 2012 approximately \$6 trillion in assets were under management in Switzerland, or about a quarter of the world's market share in cross-border private banking, according to the Swiss Bankers' Association⁸. Switzerland has come under tremendous international pressure in

the past few years to relax its strict bank secrecy laws. In the face of this international pressure, Switzerland has adopted a 'circle the wagons' mentality, with concessions only made under pressure – and usually only when this pressure has been directed against Swiss banks, rather than against Switzerland itself. In recent years, in line with a shrinking international tolerance for financial secrecy, Switzerland has made a few not insignificant concessions on secrecy, agreeing to exchange information on a limited basis with selected other jurisdictions, while largely rebuffing efforts for greater transparency towards other countries, particularly weaker and more vulnerable developing countries.⁹

Within the Swiss context, the canton of Zug is one of the most favoured locations for multinational companies (see map below). According to the government of the canton of Zug, there are 27,000 companies on its commercial register.¹⁰ This small canton, which includes the provincial towns of Zug and Baar, hosts many of the world's largest multinational companies, among which many oil and gas companies. According to a promotional website of the Swiss government, "*record low tax rates, political stability and high living standards have made Zug, one of Switzerland's smallest cantons, a hard-to-beat place to live and work*".¹¹ A major factor is that in 1946, the cantonal government decided it should have one of the world's lowest tax regimes. Since then, it has grown into the hub for multinational companies in Switzerland.

Figure 1: Map of Switzerland (left) and Canton of Zug (right)



Sources: <http://www.nationsonline.org/oneworld/map/switzerland-administrative-map.htm>; http://commons.wikimedia.org/wiki/File:Map_of_Canton_Zug.png (6 Aug 2013)

Secrecy, the cornerstone of Swiss private banking for decades, even centuries, is complemented by a wide array of other services provided by the Swiss financial centre: investment banking, wealth management, insurance and reinsurance, corporate tax avoidance structures, and plenty more. KPMG calls it the '*perfect headquarter location for international companies*' because of its tax laws, political stability, quality of life, educated workforce, extensive network of tax treaties, and strategic position in Europe. Its corporate tax laws, which enticed over 250 mostly European and U.S. companies to shift their headquarters to Switzerland between 2003 and 2009, have also generated considerable antagonism overseas.¹²

Switzerland has an especially attractive fiscal climate for the following types of activities:¹³

- ❑ Trading
- ❑ Finance
- ❑ R&D/IP structures
- ❑ Captive insurance (i.e. intra-company insurance)

Swiss tax law makes a clear distinction between holding companies (with no value-adding activities in Switzerland) and so-called mixed companies (with some value-adding activities at their Swiss location). Holding companies enjoy the largest tax benefits, but also for mixed companies, there are significant tax benefits. According to KPMG Switzerland, "*Companies domiciled in Switzerland and branches of foreign entities located in Switzerland which mainly engage in business activities abroad may benefit from the tax status of a mixed company. Typical examples (of a mixed company status) include international trading activities (purchase and sale of products/services), management and exploitation of IP and administrative functions.*"¹⁴ Currently, so-called "mixed" companies (companies with very limited business activity in Switzerland) are subject to a combined effective tax rate (taking into account federal, cantonal and municipal corporate income taxes, as well as the usual tax deductions) of approximately 9.2% (8.7%-9.8%, depending on the number of employees in Switzerland).¹⁵ Holding companies without substantial value-adding activities in Switzerland are exempt from income taxes at the cantonal and municipal level, but still have to pay taxes at the federal level. Here, the effective tax rate is 7.8% in the case of license and interest income, but variable in the case of dividend income (0-7.8%).¹⁶

The European Union adopted a Code of Conduct for business taxation in 1997, requiring Member States to refrain from introducing any new harmful tax measures ("standstill") and amend any laws or practices that are deemed to be harmful in respect of the principles of the Code ("rollback"). Since Switzerland is not a member of the EU, it is not subject to EU law. However, in 2007, the European Commission formally stated that the Swiss cantons' mixed and domiciliary company regimes and special features of the holding company privilege infringe the 1972 free trade agreement between the European Economic Community and the Swiss Confederation. In 2010, the EU suggested that a dialogue be conducted on the EU Code of Conduct for Business Taxation guidelines. In July 2012, the Swiss Federal Council adopted a mandate to find a solution with the EU on the challenged corporate tax features.¹⁷

While Switzerland has not yet adopted this EU Code of Conduct for business taxation, it is about to abolish its special tax regimes for holding and so-called mixed companies (corporations with limited business activity in Switzerland) – i.e., the differential tax treatment of foreign and domestic income. However, the current official discourse is that Switzerland should replace these special regimes with a) Benelux-style license boxes (as these seem to be tolerated within the EU) and b) a general low tax rate on both foreign and domestic corporate income comparable to Ireland's tax rate. The latter measure would not contradict the current EU regulation on harmful tax practices (ring fencing, etc.), but would "only" constitute (and curb) "normal" international tax competition. It is important to note, however, that low corporate income taxes (as in the case of Ireland and various Eastern European countries) and the near-to-zero taxation of license income (as in the case of Benelux countries' license boxes) constitute similarly strong incentives for corporate profit shifting. Their effect is comparable to that of the Swiss canton's current special tax regimes for holdings and mixed companies. It is therefore crucial to take into account the extensive network of Double Taxation Agreements DTAs of Switzerland as an additional reason to establish companies there.¹⁸ Switzerland has concluded tax treaties with over 85 countries and this network of tax treaties is constantly being expanded and updated. In addition to double tax treaties, Swiss companies can benefit from the EU-Swiss Savings Agreement in relation to dividends paid and interest and royalty payments made between associated companies. In essence, the Savings Agreement grants Switzerland access to the EU Parent/Subsidiary and the EU Interest/Royalty directives. Under this agreement, dividends paid by a subsidiary to a parent company are exempt from withholding tax in the country of source, under certain conditions.¹⁹

A positive move was made in May 2014, when Switzerland agreed to sign up to a new global standard on automatic information exchange, representing a decisive break with its centuries-old commitment to protecting the privacy of banking clients. This took place at a ministerial meeting at the OECD in Paris. The Swiss government said the agreement underscored its commitment to tackling tax fraud and evasion. It said: “*Switzerland supports the OECD ministers’ declaration concerning the development of a new automatic exchange of information (AEOI) standard in tax matters*”.²⁰ The Tax Justice Network has welcomed the global standard as “*the first big step in putting together the nuts and bolts of real change*” but has raised fears that developing countries would not be able to participate because of the cost of implementing the regime. Switzerland had already signalled it was moving towards transparency by joining a multilateral convention on mutual administrative assistance in tax matters in October 2013.²¹

2.3 Switzerland as the world’s largest commodity hub

As a result of Switzerland’s attractiveness to corporate activity, the past two decades have seen the country become the world’s largest commodity hub.²² Companies operating in Switzerland have a 15-20% share of the global trade in commodities; and this market share is continuing to grow. Based on figures from the Geneva Trading and Shipping Association, Switzerland has eclipsed major financial centres including London to become the biggest player in leading commodities such as oil, grain and oil seeds, coffee and sugar.²³ Switzerland’s share in global oil trade reached 35%, compared to London’s 25%. Most of Switzerland’s commodity trade does not involve physical shipments, but rather ‘merchanting’ or ‘transit trade’. In this model, *‘contracts may be concluded, deliveries scheduled and ships chartered from Swiss offices, but the actual goods ... never touch Swiss soil’*.

There is anecdotal evidence to suggest that developing countries trading with Switzerland may have suffered illicit outflows of capital through trade mispricing. Christian Aid estimates that developing countries could have lost more than US\$ 500 billion in ‘Swissploitation’, i.e. capital shifts to Switzerland hidden in the manipulated pricing of commodity trade in the period 2007-2010.²⁴

3. Shell's business in Switzerland

In this chapter, the activities of Shell in Switzerland are described, using corporate databases and other sources. Also, the relationships with other Shell entities are explained.

Royal Dutch Shell, a British/Dutch company, has established eight subsidiaries in Switzerland (see Table 1 and Figure 2). According to the website of Shell Switzerland, the company started its activities in 1906.²⁵ In 1993, it moved its headquarters from Zurich to Baar in the Canton of Zug. All eight companies are registered under the same address in Baar²⁶, except for Shell Lubricants Switzerland AG, which is registered in Bern.²⁷ Baar is a small village in the canton of Zug, which is the hub of tax avoiding entities in Switzerland, as described in Chapter 2. Most of Shell's Swiss subsidiaries are owned by the immediate parent Shell (Switzerland) AG, which in turn is owned by a series of Dutch and British subsidiaries of the ultimate parent, Royal Dutch Shell Plc.²⁸ The two subsidiaries related to Luxembourg are directly owned by Shell Finance Luxembourg, as stated in the Canton of Zug company register (see footnotes below). However, since Switzerland does not require that company accounts are made available on public record, no financial details of Shell's activities were obtained.²⁹

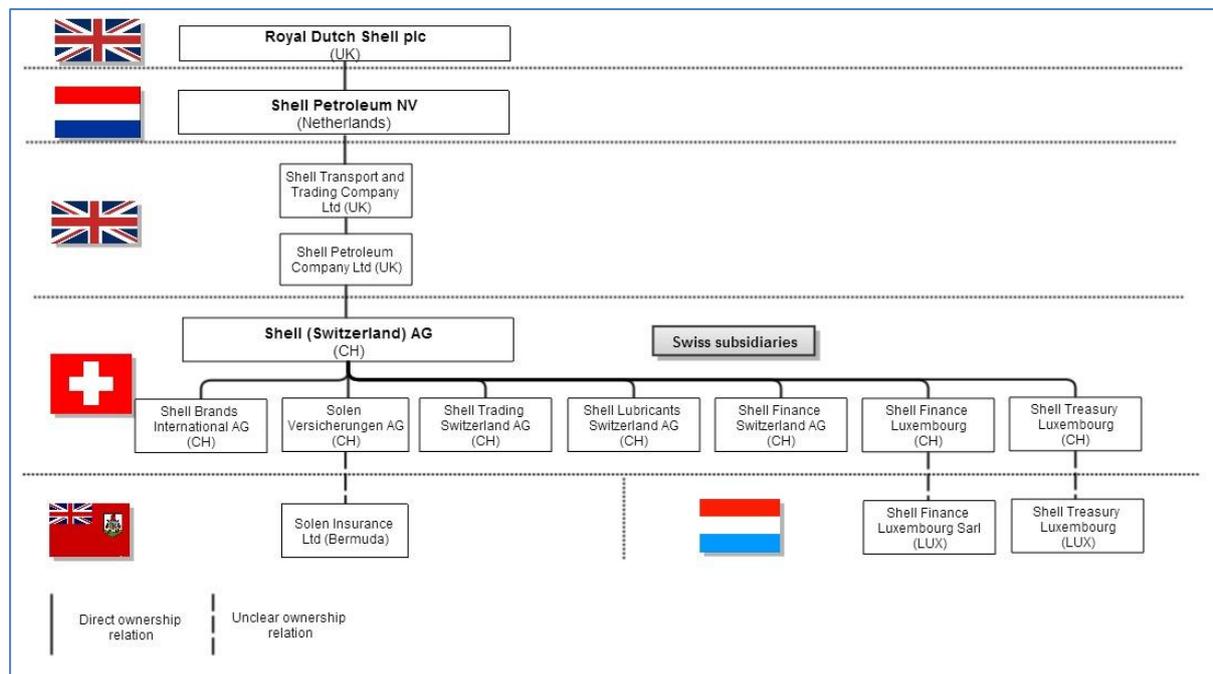
Table 1: Key operational figures for Shell's subsidiaries in Switzerland

Company name	Shell ownership	Year of incorporation	Operating revenue (USD mln)	Number of employees
Shell (Switzerland) AG ³⁰	100%	1906 (since 1993 operating under this name)	n/a	160*
Shell Brands International AG ³¹	100%	2003	5	160*
Shell Finance Switzerland AG ³²	100%	2001	n/a	15
Solen Versicherungen AG ³³	100%	1985 (since 1993 operating under this name)	5	15
Shell Trading Switzerland AG ³⁴	100%	2005	n/a	4
Shell Lubricants Switzerland AG ³⁵	99.98%	1887 since 1925 operating under this name)	n/a	75
Shell Finance Luxembourg (Baar Subsidiary) ³⁶	100%	2001	n/a	n/a
Shell Treasury Luxembourg (Baar Subsidiary) ³⁷	100%	2004	n/a	n/a

Source: Canton of Zug company register; Orbis database; Royal Dutch Shell website³⁸

Note to *: It should be noted that employee figures have been derived from Orbis database and are not conclusive. For instance, there is need for further clarity on the 160 employees of Shell Switzerland AG. It seems most probable that there are 160 employees working for Shell Switzerland AG and Shell Brands International AG combined.³⁹

Figure 2: Ownership relations of Shell subsidiaries in Switzerland



Source: "Royal Dutch Shell PLC", Orbis database

Shell has obviously not established itself in Switzerland because the company has discovered large deposits of oil and gas in the Swiss Alps. Neither is it due to the fact that Peter Voser, Shell's former CEO, is a Swiss national. SOMO suspects that the major reasons for incorporating in Switzerland have to do with the specific advantages of the Swiss banking and fiscal system, as explained in Chapter 2. This is reflected in the activities of its Swiss subsidiaries, most of which are related to non-productive activities such as brand management, finance, insurance and trading:

- ❑ **Shell (Switzerland) AG:** The company's principal subsidiary in Switzerland, is involved in the production, trade, refining, processing, transport of and research in oil and gas derived products, chemical products and other related goods.⁴⁰ This subsidiary is the holding company of all other Swiss-based subsidiaries.
- ❑ **Shell Brands International AG:** Acquires, manages and uses the company's trademarks and other brand-related assets.
- ❑ **Shell Finance Switzerland AG:** Provides intermediate and long-term general and industrial credit lines for other companies in the Shell Group.⁴¹
- ❑ **Solen Versicherungen AG:** Internal insurance company.⁴² Incorporated in 1985, first under the name of Solen Zurich AG, later changed into Solen Versicherungen AG.⁴³
- ❑ **Shell Trading Switzerland AG:** Is involved in the trade of raw materials of all kinds, but especially crude oil and oil derivatives. The company also trades commodity futures, warranties, collateral liabilities and other financial derivative instruments in oil and oil products.⁴⁴
- ❑ **Shell Lubricants Switzerland AG:** The company produces and trades chemical supplies and materials, especially lubricants.⁴⁵
- ❑ **Shell Finance Luxembourg, Bertrange, Zweigniederlassung Baar** (established in 2001) and **Shell Treasury Luxembourg, Bertrange, Zweigniederlassung Baar** (established in 2004): Unclear why these entities were established.⁴⁶

In addition, Shell has established one foundation:

- **Pensionsfonds der Shell (Switzerland):** Foundation in charge of managing the pension fund of employees of Shell's Swiss subsidiaries and of Swiss nationals working for the Royal Dutch Shell Group (established in 1946).⁴⁷

It should be noted that Shell has over 400 service stations in Switzerland.⁴⁸

As indicated in Chapter 2, Swiss tax law makes a clear distinction between holding companies (with no value-adding activities in Switzerland) and mixed companies (with some value-adding activities at their Swiss location). Holding companies enjoy the largest tax benefits, but also for mixed companies, there are significant tax benefits. Probably, most Shell subsidiaries in Switzerland are mixed companies.

Many multinational companies use the so-called 'Dutch-Swiss route' to minimise tax payments in both countries.⁴⁹ Normally, in this construction, the ultimate owner is a mailbox company in an offshore centre or tax haven, but this does not seem to be the case here, as the ultimate owner of the Swiss Shell subsidiaries is Royal Dutch Shell plc, which is tax resident in the Netherlands but formally incorporated in the UK. The fact that Shell is a Dutch/British company makes it very unlikely that the company is using the Netherlands or the UK to avoid taxes, since most fiscal advantages apply to foreign companies only.

Earlier research has shown that Shell has 85 subsidiaries based in six tax havens, including Bermuda, the Cayman Islands and the Bahamas, where they pay zero per cent tax on profits.⁵⁰ Shell's presence in Switzerland should be seen in the context of its extensive global network of mailbox companies that serves the purpose of minimizing the company's tax payments and hiding behind secrecy regulations.

It can be concluded that Shell has 8 subsidiaries in Switzerland, most of which are not involved in productive activities. Instead, the purpose of these non-productive entities is trademark management, financial services, internal insurance, and trading activities. Looking at these activities in combination with the fact that Switzerland is usually chosen because of its low tax rates in combination with favourable secrecy regulations and its extensive network of double taxation treaties, it can be concluded that it is very plausible that these companies have been established for tax purposes. In the next chapter, two of these subsidiaries are described in more detail as an illustration of Shell's presence in Switzerland.

4. In-depth case studies

In this chapter, two of Shell's Swiss subsidiaries are analysed to illustrate the specific advantages of their presence in Switzerland.

4.1 Case study: Shell Brands International AG

Shell Brands International AG was established in 2003 and is responsible for “*acquisition, management and use of trademarks and other brand-related assets, international management, development, marketing and use of trademarks of the Royal Dutch Shell Group and holding of shares and companies in Switzerland and abroad, can perform all commercial and financial transactions, to serve its purpose, including any warranties, guarantees and order of taking over other forms of security for liabilities of third-and group companies and real estate purchase*”.⁵¹

According to *The Guardian* “*in 2005 Shell moved the ownership of its brands to Shell Brands International (SBI) AG, which is entitled to charge royalties for their use to other companies of the Shell Group*”.⁵² An article in *Marketing Week* noted, “*Shell's operating companies worldwide pay a share of their sales in royalties to SBI for using the trademarks, and hence these sums will be taxed at the lower Swiss business rate rather than higher rates of the countries in which Shell's operations are based*”.⁵³ The article continues, “*According to Raoul Pinnell, former chairman of SBI, putting control of trademarks into a single holding company is done mainly to give a corporation greater control over the way its brand is used: SBI is merely the final, logical step towards globalisation marketing. [...] Switzerland is a place that is fiscally attractive, but this [moving the ownership of the Shell brands to Switzerland] is not just a cynical move. SBI is an active company responsible for global strategy for advertising and sponsorship and makes a profit.*”

According to *The Guardian*, “*this means that, legally speaking, Shell is now simultaneously a British public company, tax-resident in Amsterdam, whose brands are Swiss*”. In response, Shell said: “*Shell Brands International paid Shell UK Ltd for certain trademarks. This payment was subject to corporation tax on capital gains in the UK. In the future, royalties are payable for the use of the trademark by UK companies*”. However, according to *the Guardian*, “*in fact, no tax was paid on the sale, because Shell was able to set it against other tax losses. The brand shift was for entirely commercial reasons, the company said. Control of the brands had been very fragmented but now there would be more effective and consistent management of the Shell trademarks*”.



Source: <http://www.steveperrycreative.com/building-a-brand-takes-time/>

An indication of the importance of payments for the use of the Shell trademark is provided by the brand value of Shell in 2012, which amounted to US\$29.8 billion, a AAA– brand rating and a rank of 12th most valuable in the world.⁵⁴ Worldwide there are around 44,000 Shell branded service stations (making it one of the world’s largest retail networks) that serve ten million customers each day with a wide range of products including fuels, such as Shell V-Power and Shell FuelSAVE, motor lubricants, and selected consumer products available through the service stations.⁵⁵ In the company register of the Canton of Zug in Switzerland, it is stated that in 2004, one year after the creation of the company, Shell Brands International has made an “intended acquisition of assets of Trademarks and any related rights to the maximum price of USD 530,000,000”.⁵⁶ This might provide an indication of the assets held by the company.

Shell announced in 2011 that it would divest its downstream activities in Africa as part of its worldwide divestment strategy. According to its website, “Shell continues to divest non-strategic downstream positions. Divestments included retail stations in North America and most of our LPG activities in Asia-Pacific”.⁵⁷ Based on our research, it appears that Shell Brands International AG continues to play a key role in licence agreements. The Swiss subsidiary is mentioned as the licence holder for the continued use of the Shell brand by the newly created companies that are taking over Shell’s divested investments. This includes the following cases (note that this list not conclusive):

- ❑ In 2011, Shell launched Vivo Energy (Shell interest 20%) and Vivo Lubricants (Shell interest 50%). Under the agreements, these entities will continue to market Shell fuels and lubricants, which are available in 14 African countries under the Shell brand.⁵⁸ In the Annual Report of Vivo Energy Mauritius, it is specified that these licence agreements were concluded with Shell Brands International AG.⁵⁹
- ❑ Sol Group, the fuel conglomerate based in the Caribbean, uses the Shell brand across its service station network and acts as the sole distributor of Shell’s fuels and lubricants. Following the purchase of Esso’s distribution and marketing assets in 2007, Sol Guyana Incorporated has since embarked on first, the de-branding of the eight ex-Esso service stations in Guyana and the re-branding as Shell sites based on a licence agreement with Shell Brands International AG.⁶⁰
- ❑ In 2011, Quiñenco, one of Chile’s largest business conglomerates, has announced agreement with Royal Dutch Shell PLC (Shell) to acquire Shell’s assets in Chile, including the distribution of fuel through Shell’s service stations across the country, distribution of lubricants, and other related businesses. The agreement also includes a 5 year renewable license with Shell Brands International A.G. for the use of the Shell trademark.⁶¹
- ❑ As a final example, in Pakistan, as part of the acquisition in 2010 of Shell Gas LPG (Pakistan) Limited by OPI Gas (Private) Limited, an LPG Debranding Agreement has been signed between the new company and Shell Brands International AG regarding the use by the new company of LPG trademarks and manifestations owned by Shell.⁶² The purpose of the debranding agreement is that the use of the Shell brand is to be gradually discontinued.

Assuming that this pattern is applied by Shell on a global level, this means that Shell Brands International AG is receiving large amounts of capital from the use of the Shell brand around the world.

As was noted in Chapter 2, license box regulations lead to a lower effective taxation of license income in the Benelux countries compared to Switzerland, with Luxembourg topping the bill as the most favourable location for tax benefits to trademark management. While effective tax rates for license income range from 5% in the Netherlands to 6.8% in Belgium (compared to 7.8% in Switzerland), only Luxembourg, with an effective tax rate of 5.9%, allows for the inclusion of trademarks and brand

names in these license box arrangements. Nevertheless, the question arises why Shell shifted ownership of its brands and trademarks to a company in Switzerland, and not to Luxembourg. In terms of taxes on profits from the management of brands and trademarks, Luxembourg would have been the preferable option. A possible explanation for Shell's actual choice could be that Switzerland's network of double taxation agreements (DTAs) covers a larger part of the companies' host countries. DTAs main purpose is to curtail the taxation of license and interest payments and dividends in the source country. Hence, locational choices by multinational companies depend not only on the possible locations' own tax rates, but also on the scope and quality of the countries' DTAs. Due to a lack of data, it could not be determined to what extent this had led to tax avoidance by Shell.

As an important side note, it should be mentioned that there are a number of other companies that are strongly related to Shell Brands International AG. These companies have not been researched in depth as this was beyond the scope of this research, but they might be worth investigating in a follow-up study as these companies seem to be at the heart of Shell's brand and trademark management:

- ❑ Shell Trademark Management B.V.: this is a Shell holding company in the Netherlands with no employees; Revenue is derived from royalty payments made by other Shell Group companies, mainly in the US, for the use of the Shell trademark. It is also reported that one of the main related parties, from which the company's revenues and expenses arise, is Shell Brands International AG. In the company's AR2011, it is reported that in 2009, royalty payments from the US based company Regal Murex Inc to Shell Trademark Management B.V. were no longer tax deductible. In response, Shell has set up a complicated construction to ensure that royalty payments become deductible again. New tax rulings have been applied for at the US and Dutch tax authorities. A bilateral Advanced Pricing Agreement (APA) was filed in August 2011, however, the APA process was abandoned in the US in 2012. It is unknown what the current status is.⁶³
- ❑ Shell Global Solutions International B.V.: Shell Global Solutions is one of the key divisions of the Shell Group. It renders services to other Group companies in support of their activities. This includes revenues for license fees. The company has purchased the right to commercialise the intellectual property in the Oil products manufacturing and Chemicals domain. For some of these activities related to IP and licence fees, the connection may run to Shell Brands International AG. However the accounts of Shell Global Solutions do not provide sufficient detail and should be clarified by the company.⁶⁴
- ❑ TSBA AG: this is a Zug-based company, not directly owned by Shell, but the company and its affiliates act as licensees of Shell Brands International AG.⁶⁵ It has been incorporated in June 2012.⁶⁶ No more information about the company is available.

4.2 Case study: Solen Versicherungen AG

Solen Versicherungen AG is a wholly-owned, captive insurer of oil and gas group Royal Dutch Shell Plc.⁶⁷ According to Shell's Annual Report for 2012, "*Shell mainly self-insures its risk exposures. Shell insurance subsidiaries provide insurance coverage to Shell entities, generally up to \$1.15 billion per event and usually limited to Shell's percentage interest in the relevant entity. The type and extent of the coverage provided is equal to that which is otherwise commercially available in the third-party insurance market.*"⁶⁸

The two companies involved in Shell's self-insurance are Solen Versicherungen AG in Switzerland and Solen Insurance Ltd. in Bermuda. Shell does not provide any information whether and how the two companies are linked to each other. According to one external source, "*Solen Versicherungen (in Switzerland) has a wholly owned captive reinsurance subsidiary, Solen Insurance Ltd (in Bermuda), to which it cedes the vast majority of non-life premiums and claims*".⁶⁹ But according to company database Orbis, Solen Insurance Ltd (in Bermuda) is a 100% subsidiary of Royal Dutch Shell Plc.⁷⁰ It is unknown which source is more reliable, but for now we have assumed that the Bermuda-based company is a subsidiary of the Swiss company.

From a historical perspective, initially a UK-based Shell subsidiary, Mytilus Insurance Company Ltd, was set up in 1973 as the captive insurer of the Royal Dutch Shell Group.⁷¹ Since 1986, Mytilus "*significantly reduced the amount of direct business written and has at the same time entered into an inwards quota share reinsurance arrangement with an affiliated company*".⁷² [N.B. it is not specified which company but this is probably Solen Versicherungen AG, which was created in 1985.] *With effect from July 2003 Mytilus ceased underwriting new business and is now in run-off. In 2007, the Company entered into a further agreement with Solen Versicherungen AG (SVAG) to commute current and future liabilities under quota share reinsurance agreements*".⁷³ Links between Shell HQ and the Swiss branch remain very tight, as is shown by fact that Mr. Alan Davies, a British national, is simultaneously the Chairman of the Board of Solen Versicherungen AG and Principal Venture Implementation Advisor at Shell Global Solutions, a Netherlands-based Shell subsidiary. In an internal Shell document from 2009, it was announced that Mr. Davies was appointed Vice President Risk and Insurance at Shell's Finance department.⁷⁴

According to a recent article in the *Volkscrant*, "*Solen Insurance Ltd., which is engaged in the insurance of oil transportation, oil refining and ships, is located in Bermuda (...) because of the very flexible approach to taxes in the country. As the rate of the profit tax is 0 percent, the profits that Solen Insurance makes are not taxed in Bermuda. To take full advantage of the tax on Bermuda the headquarters were not to interfere with the way that Solen calculated the insurance premiums. Otherwise, tax authorities may think that the contributions do not reflect a fair market value and the costs cannot be deducted from the corporation, according to the Shell insurance manager, Andrea Koroluk. The Shell employee explained that in order to achieve this constant monitoring and market research is required. If somewhere in the world a tax rate was changed, Shell's risk managers had to get started immediately*".⁷⁵ As explained in the *Volkscrant* article, "*The advantage of the internal insurance route via Bermuda is that insurance premiums may be deducted from the revenues. As a result, these subsidiaries have to pay less taxes in the countries they are operating in. Subsequently, Solen makes a bigger profit in Bermuda, and does not pay any taxes over these profits. From Bermuda the profit can, in turn, be piped back, wholly untaxed, to the headquarters in the homeland*".⁷⁶

It can be concluded that there are strong indications that both the Swiss and Bermudan subsidiary operating under the name Solen are used for tax avoidance purposes, but that this cannot be proven due to a lack of transparency.

5. Main findings and policy recommendations

In this chapter, the main findings are presented as well as a number of bottlenecks that were encountered during the research. Finally, recommendations are provided to Shell, as well as to the Swiss government and the European Union.

5.1 Main findings

The goal of this report was to clarify the possible role of Switzerland in Royal Dutch Shell's corporate structure and tax planning. Shell has 8 subsidiaries in Switzerland, most of which are not involved in productive activities. The main purposes of these non-productive entities are trademark management, financial services, internal insurance, and trading activities. Looking at these activities in combination with the fact that the canton of Zug is usually chosen because of its low tax rates in combination with favourable secrecy regulations, it can be concluded that it is very plausible that these companies have been mainly established in Switzerland for tax purposes and secrecy purposes.

Some hints of tax avoidance have been provided for the case Shell Brands International AG, as described above. This includes the shifting of profits from countries where Shell is active – either in the upstream or downstream sector – by charging royalty payments for the use of the Shell brands. This could be used to reduce the profitable tax in the countries where economic activities take place, while the Swiss subsidiaries are taxed at the lower Swiss tax rate. It is plausible that the Swiss-based Shell Brands International AG is drawing a significant amount of revenue away from its “sister” companies involved in actual productive activities for the Shell Group by charging high license fees or royalty payments.

Another indication of Shell's use of Switzerland for tax planning purposes is the fact that another Swiss subsidiary, Solen Versicherungen AG, is related to a Bermuda-based subsidiary carrying almost the same name – Solen Insurance Ltd – which might be used to transfer profits on its self-insurance activities. Just like in the case of Shell Brands International, Shell has moved part of its internal business activities related to insurance to Switzerland. Although this cannot be confirmed due to lack of transparency, it is reasonable to assume that this move was also motivated by fiscal or secrecy reasons.

5.2 Bottlenecks

During the research, a number of bottlenecks were encountered:

- ❑ One of the research questions was to find out how much tax was avoided in developing countries by making use of the Swiss subsidiaries. This appeared to be impossible due to a lack of transparency of Shell. To be able to confirm whether or not developing countries suffer from Shell's tax avoidance strategies through Switzerland, there is need to collect evidence of the amount of tax that Shell pays in developing countries in comparison with the amount of tax paid in Switzerland.
- ❑ Another key problem in this research – and probably one of the reasons for shifting some of Shell's activities to Switzerland – are the secrecy regulations, which makes it impossible to obtain and analyse the annual accounts of Shell's Swiss subsidiaries. As a result of this lack of transparency, it is impossible to estimate the total amount of taxes avoided as a result of these

constructions. It can be argued that the new Country-by-Country reporting legislation, in the EU and the US, will provide for the necessary transparency to clarify what Shell is doing in Switzerland. As far as known, Switzerland has no law against disclosing information on corporate finances, because the secrecy regulations only apply to the banking system.

5.3 Recommendations

The following policy recommendations can be made to improve transparency and tax governance of Shell's business in Switzerland and help prevent tax avoidance affecting developing countries.

Policy recommendations to Royal Dutch Shell:

- ❑ Provide full transparency on tax payments made worldwide and extend the overview of "Payments to governments", as published on Shell's website⁷⁷, to include payments to the Swiss government and to other secrecy and low-tax jurisdictions.
- ❑ Provide full Country-by-country reporting, including the following information⁷⁸:
 1. Global Overview of the Group: The name of each country in which it operates and the names of all its subsidiary companies trading in each country in which it operates (including Switzerland);
 2. Financial performance in every country in which it operates, making the distinction between sales within the group and to other companies, including profits, sales, purchases, labour costs and employee numbers;
 3. Assets: All the property the company owns in that country its value and cost to maintain.
 4. Tax information: Full details of the amounts owed and actually paid for each specific tax.
- ❑ Increase transparency of Shell's activities in Switzerland by providing annual accounts for each subsidiary, as well as details of cross border payments to and from each of these subsidiaries.
- ❑ Provide data on the amounts of tax avoided by making use of the Swiss subsidiaries.
- ❑ Stop making use of Switzerland for tax avoidance or secrecy reasons.

Policy recommendations to the Swiss government:

- ❑ Switzerland should scale back its secrecy regulations, and introduce measures for greater transparency on company information and the public availability of annual reports;
- ❑ Switzerland should adopt the EU's Code of Conduct on business taxation, following the tax dialogue that started in 2012 which deals in particular with the different taxation of profits generated domestically and abroad.
- ❑ Switzerland should take appropriate measures to prevent multinational corporations using Switzerland for capital shifts from developing (and developed) countries through manipulated pricing of commodity trade.
- ❑ Following the example of Austria, Hungary, Luxembourg and the Netherlands, Switzerland should report FDI flows in more detail; in addition to standard total FDI flows and positions, the data should be presented with further breakdowns segregating resident Special Purpose Entities (SPE), to allow for insight in the division between "genuine" FDI flows and SPEs.⁷⁹

Policy recommendations to the European Union:

- ❑ In line with the OECD Action Plan on Base Erosion and Profit Shifting, it is recommended to require taxpayers to disclose their aggressive tax planning arrangements. More specifically, it is important that adequate information about the relevant functions performed by other members of a multinational enterprise group in respect of intra-group services and other

transactions is made available to the tax administration, including transactions passing through Switzerland.⁸⁰

- In line with the UNCTAD World Investment Report 2013, it is recommended that moves to combat tax avoidance through OFCs and SPEs must go hand in hand with a discussion of corporate tax rate differentials between countries, the application of extraterritorial tax regimes, and the utility of triggering tax liabilities upon repatriation of earnings.⁸¹
- In the frame of the EU Savings Tax Directive, there is need to expand the savings tax agreement with Switzerland to include certain further holders of capital, as well as intermediary legal entities.
- At the same time, the European Union should consider further measures to keep member countries from providing alternative incentives for corporate profit shifting, as the relocation of Shell's business from Switzerland to low tax and secrecy jurisdictions within the EU would hardly solve the problem of developing countries' potential tax losses.
- The EU should reconsider the strict distinction between "harmful" tax practices and "normal" tax competition, as extremely low corporate tax rates (regardless of whether they apply only to foreign income or all types of corporate income) stimulate the shifting of profits out of developing countries with higher tax rates.
- The EU recently announced its intention to examine anti-competitive corporate tax loopholes across Europe that allow companies to cut their tax bills. In these efforts, the EU should also review the role of Switzerland in such corporate tax structures.

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The Swiss Connection

The Role of Switzerland in Shell's Corporate Structure and Tax Planning

The aim of this report is to highlight how Royal Dutch Shell uses its presence in Switzerland, a notorious tax haven and secrecy jurisdiction, to minimize its tax payments in other countries, including developing countries.

At least since 2001, Shell may have been using Switzerland for tax purposes. In 2005 for example, the company shifted ownership of its brands and trademarks to a Swiss-based subsidiary, Shell Brands International AG. Research conducted for this report indicates that Shell has eight subsidiaries in Switzerland, most of which are not involved in productive activities. The main purpose of these entities is trademark management, financial services, internal insurance, and trading activities for Shell's worldwide oil and gas operations. Shell's presence in Switzerland potentially allows the company to avoid paying a significant amount of taxes in developing countries because Shell is able to exploit the specific advantages of the Swiss fiscal system to lower its profits in developing countries, leading to lower tax payments there.

The report concludes by making recommendations to Shell, including that the company should implement full country-by-country reporting, to live up to their claims of leadership in tax transparency. Policy recommendations are also made to the Swiss Government and to the European Union to end the facilitation of aggressive tax avoidance by multinational corporations.

