Eldorado Gold

The role of Dutch mailbox companies in tax avoidance and human rights violations in Greece

Discussion paper

Disseminated for review to selected stakeholders
October 2014
Eldorado Gold
The role of Dutch mailbox companies in tax avoidance and human rights violations in Greece
Discussion Paper

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.
Contents

Acronyms ................................................................................................................................. 5
1. Introduction .......................................................................................................................... 6
  1.1. Focus of the report ........................................................................................................... 6
  1.2. Tax and human rights ...................................................................................................... 7
  1.3. Failure to regulate the extraterritorial impact of businesses ........................................ 9
  1.4. Is gold mining the answer to Greece’s financial crisis? .................................................. 10
  1.5. Structure of the report .................................................................................................. 12
  1.6. Methodology ................................................................................................................ 13
  1.7. Definitions .................................................................................................................. 14
  1.8. Limitations and follow-up research .............................................................................. 15
2. Eldorado Gold in Greece: a human rights case ............................................................. 17
  2.1. Introduction .................................................................................................................. 17
  2.2. Eldorado Gold Corporation: facts and figures ............................................................... 18
  2.3. Eldorado Gold in Greece ............................................................................................... 20
  2.4. Mining in Halkidiki: selling out the public interest ...................................................... 23
  2.5. Environmental destruction .......................................................................................... 24
  2.6. Protest and criminalisation ......................................................................................... 30
  2.7. Conclusion .................................................................................................................. 33
3. State subsidy ...................................................................................................................... 35
  3.1. Introduction .................................................................................................................. 35
  3.2. Support from Export Development Canada (EDC) .................................................... 35
  3.3. An Eldorado for investors: fast-track fiscal benefits .................................................. 37
  3.4. Conclusion .................................................................................................................. 38
4. Avoiding tax through the Netherlands ........................................................................ 40
  4.1. Introduction .................................................................................................................. 40
  4.2. The Netherlands: a tax haven - for mining companies ................................................ 41
  4.3. Eldorado Gold in the Netherlands .............................................................................. 43
  4.4. Functions of Eldorado’s Dutch subsidiaries ................................................................ 47
  4.5. Tax base erosion through interest payments .............................................................. 49
  4.5.1. Policy history .......................................................................................................... 49
  4.5.2. Method: Rerouting interest payments ...................................................................... 49
  4.5.3. Using a Cooperative and tax rulings ...................................................................... 55
  4.6. Other potential tax gaps to consider .......................................................................... 56
  4.7. Eldorado Gold’s reported tax payments ...................................................................... 59
  4.8. Conclusion .................................................................................................................. 60
5. Investments between Greece and EU tax havens ........................................................... 62
  5.1. Introduction .................................................................................................................. 62
  5.2. Mailbox companies (SPEs) and international tax avoidance ........................................ 62
  5.3. The relevance of SPEs to FDI statistics for the Netherlands and Luxemburg ........... 64
  5.4. Foreign direct investment in Greece ............................................................................ 64
  5.5. Investment routed via SPEs .......................................................................................... 66
  5.6. Companies using the Netherlands as a conduit for investing in Greece .................... 69
  5.7. Conclusion .................................................................................................................. 71
6. Regressive taxation and Troika measures in Greece ......................... 73
6.1. Introduction ....................................................................................... 73
6.2. Focus of public debate and (imposed) reforms in Greece................. 73
6.3. Greece’s regressive tax regime and its causes .................................. 74
6.4. Troika-imposed ‘fiscal consolidation’ .................................................. 76
6.4.1. Troika-imposed fiscal and investment policies .................................. 78
6.4.2. The impact of fiscal consolidation .................................................... 78
6.5. The impact of austerity in Greece ...................................................... 79
6.6. Conclusion ....................................................................................... 81
7. Conclusions ....................................................................................... 82
7.1. Recommendations ............................................................................. 84
7.2. Further research .............................................................................. 89
## Acronyms

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>APA</td>
<td>Advance pricing agreement</td>
</tr>
<tr>
<td>ATR</td>
<td>Advance tax ruling</td>
</tr>
<tr>
<td>BC</td>
<td>British Columbia (Canada)</td>
</tr>
<tr>
<td>BEPS</td>
<td>Base erosion and profit shifting</td>
</tr>
<tr>
<td>BIT</td>
<td>Bilateral Investment Treaty</td>
</tr>
<tr>
<td>CBCR</td>
<td>Country-by-country reporting</td>
</tr>
<tr>
<td>CIT</td>
<td>Corporate income tax</td>
</tr>
<tr>
<td>DNB</td>
<td><em>De Nederlandsche Bank</em> (Dutch Central Bank)</td>
</tr>
<tr>
<td>DTT</td>
<td>Double taxation treaty</td>
</tr>
<tr>
<td>ECB</td>
<td>European Central Bank</td>
</tr>
<tr>
<td>EDC</td>
<td>Export Development Canada</td>
</tr>
<tr>
<td>EU</td>
<td>European Union</td>
</tr>
<tr>
<td>FDI</td>
<td>Foreign direct investment</td>
</tr>
<tr>
<td>IMF</td>
<td>International Monetary Fund</td>
</tr>
<tr>
<td>MNC</td>
<td>Multinational Corporation</td>
</tr>
<tr>
<td>NGO</td>
<td>Non-governmental organisation</td>
</tr>
<tr>
<td>OECD</td>
<td>Organisation for Economic Co-operation and Development</td>
</tr>
<tr>
<td>PRC</td>
<td>People’s Republic of China</td>
</tr>
<tr>
<td>SFI</td>
<td>Special Financial Institution</td>
</tr>
<tr>
<td>SOMO</td>
<td><em>Stichting Onderzoek Multinationale Ondernemingen</em> (Centre for Research on Multinational Corporations)</td>
</tr>
<tr>
<td>SPE</td>
<td>Special Purpose Entity</td>
</tr>
<tr>
<td>UN</td>
<td>United Nations</td>
</tr>
<tr>
<td>UNGP</td>
<td>United Nations Guiding Principles on Business and Human Rights</td>
</tr>
<tr>
<td>WHT</td>
<td>Withholding tax</td>
</tr>
</tbody>
</table>
1. Introduction

In the Skouries forest near Ierissos, the Canadian mining company Eldorado Gold is planning to clear-cut a large swath of old-growth forest and reengineer the local water system in order to build a massive open-pit gold and copper mine, along with a processing plant, and a large underground mine.

Despite its remote location, the fate of the Skouries forest is a matter of intense preoccupation for the entire country. It is debated in the national parliament and on evening talk shows. For Greece’s huge progressive movement, it is something of a cause célèbre: urban activists in Thessaloniki and Athens organize mass demonstrations and travel to the woods for action days and fundraising concerts. “Save Skouries” graffiti can be seen all over the country and the official opposition party, the left-wing Syriza, has pledged that, if elected, it will cancel the mine as one of its first acts in power.

The governing austerity-enforcing coalition, on the other hand, has also seized on Skouries as a symbol. Greek prime minister Antonis Samaras has announced that the Eldorado mine will go ahead “at all costs”, such is the importance of protecting “foreign investment in the country”. Invoking Greece’s ongoing economic troubles, his coalition has claimed that building the mine, despite the local opposition, is critical to sending a signal to world markets that the country is open for business.

Naomi Klein, 2014

1.1. Focus of the report

The plans by a Canadian company - ironically called Eldorado Gold - to build a massive open-pit gold and copper mine in north-eastern Greece have led to massive demonstrations in the country. It has become a symbol for the defence of public goods vs. the sell-out of Greece in the midst of the biggest economic crisis the country has seen since WWII.

Yet, hardly anyone in the rest of Europe has heard of the Skouries forest, which has already been partially destroyed, or indeed of Eldorado Gold, a name which has become synonymous in Greece with the selling out of public interests. Even less known is the fact that Eldorado Gold’s Greek subsidiary responsible for the controversial gold and copper mining projects in Halkidiki and Thrace are, respectively, owned by two Dutch mailbox company called Eldorado Gold (Greece) BV and Eldorado Thrace (Greece) BV. Or that this and three more Dutch mailbox companies finance the

---

1 Antonis Samaras is party leader of the liberal-conservative party New Democracy (Νέα Δημοκρατία, ND), one of the two major parties in Greece. New Democracy governs in coalition with the Panhellenic Socialist Movement (PASOK) and Democratic Left (DIMAR).

2 Naomi Klein, 2014, This changes everything, Penguin Group, page 297.
Greek subsidiary with bond loans, and receive large amounts of interest payments from Greece, which end up with another mailbox company in Barbados.

The legal presence of Eldorado Gold in the Netherlands raises questions with regard to the ultimate fiscal and economic contribution that a company with such an intricate tax planning structure will have in a crisis-ridden country with a weak tax administration, such as Greece. If the use of Dutch mailbox companies by companies active in Greece leads to tax avoidance in Greece, this also raises questions with regard to the role of the Netherlands and the EU, as Greece’s creditor, have in this potential tax base erosion. It is their fiscal climate and policies that enable Eldorado Gold to set up aggressive tax avoidance structures. Finally, with view to the recent development of the UN’s ‘Protect, Respect and Remedy’ Framework, the social and environmental controversies and local resistance to Eldorado Gold’s projects and related social and environmental rights issues raise questions with regard to the extent to which the Netherlands, Canada and the EU are complicit in these rights violations,.

This report discusses the above questions by looking at the human rights impact of Eldorado Gold’s activities in Greece. It looks at the company’s tax avoidance strategies and related impact on Greek state revenue as well as the responsibility of the Dutch state and the EU therein. The research focuses on two important and inter-related human rights dimensions, namely, the direct civil rights violations and potential environmental impacts resulting from Eldorado Gold’s operations and the private gain and public loss mechanism related to corporate tax avoidance in Greece. Research has also been conducted with regard to bilateral investment flows that take place through mailbox companies between Greece and EU Member States, highlighting the role of the Netherlands and Luxemburg in tax avoidance. The data show that far from an isolated case, tax avoidance using legal yet aggressive tax planning methods is wide-spread in Greece. Last but not least, the above issues are put into context of the Greek crisis and related structural adjustment measures imposed by Greece’s creditors: the EU, IMF and European Central Bank (Troika). The current regressive nature of the Greek fiscal regime is also analysed.

### 1.2. Tax and human rights

The link between human rights and tax avoidance has been analysed in detail in a SOMO report from July 2013. The research found that subsidiaries of Dutch extractive industry companies are associated with serious human rights violations, ranging from environmental pollution damaging the health of local communities to militia violence, killings and displacements. Eldorado Gold is yet another example of the controversial companies that the Netherlands attracts by offering generous fiscal benefits to large foreign firms. Next to irregularities during the environmental approval process, the expected environmental damage from Eldorado Gold’s open-pit mining plans range from arsenic air and water pollution to deforestation, related land erosion and groundwater depletion. The local community, largely dependent on the land for its subsistence, is resisting the plans with multiple forms of protest, ranging from legal suits to sit-ins and material damage to Eldorado’s equipment; they are severely repressed by the Greek police and criminalised by the Greek state.

Next to direct human rights violations generated by operational business activities, SOMO’s 2013 report also discussed a research area that is currently developing, namely the relation between tax

---

(avoidance) and human rights. To be able to realise economic and social human rights, states need sufficient financial and administrative resources. This is particularly pertinent in the case of Greece, where serious human rights issues are developing as a direct result of the economic crisis. Tax fraud in Greece is estimated to have cost the Greek state €19.1 billion in 2009, equivalent to 27.5% of government spending that year. The legal version of tax dodging, tax avoidance, is not calculated, yet can be expected to be similarly rampant. Internationally operating corporations exploit legal loopholes arising from an imperfect and nationally administered tax system as a matter of course, with the help of intricate legal schemes devised by large accountancy firms.

Fiscal and tax policies (revenue-raising and expenditure) are an essential tool for States to meet their human rights commitments and combat poverty. [...] A human rights-based assessment of fiscal policy is particularly necessary due to the ongoing repercussions of the global financial and economic crises and their impact on the enjoyment of human rights worldwide. The impacts of revenue shortfalls and increased public debt are primarily felt by the poorest and most vulnerable both domestically and abroad, through cuts to budgets for social protection and public services, and a reduction in aid budgets. In many States, efforts to respond to the crisis have not been made in line with international human rights obligations.

Magdalena Sepúlveda Carmona, UN Special Rapporteur on extreme poverty and human rights, 2014

In addition to the 2011 UN ‘Protect, Respect and Remedy’ Framework, the recent report by the UN Special Rapporteur on extreme poverty and human rights discusses in detail the human rights impact of fiscal and tax policy. The responsibility for tax avoidance and its negative impacts on human rights has been clearly articulated to lie with corporations as well as states. Corporations shift profits from operating subsidiaries, making them appear to make losses, resulting in no or very low corporate income tax being paid in those countries. But it is states, including the Netherlands, Luxemburg and - as this report shows - the EU; that actively facilitate this type of tax avoidance with harmful tax regimes. EU Directives harm the tax base of EU Member States by allowing for profit shifting with interest, royalties and dividends. These states thus hinder other states to potentially use their maximum available resources to realise the human rights of their citizens.


1.3. Regulating the extraterritorial impact of businesses

The responsibility of states, however, lies not only in stopping the tax base erosion that takes place because of the harmful tax regimes they actively sustain, but also in stopping the negative impact of businesses incorporated in their jurisdiction. The current territorial model of regulating corporate human rights abuses is inadequate to deal effectively with violations of human rights by companies that operate at a transnational level. MNCs are not, legally speaking, single enterprises but conglomerations of separate legal entities, incorporated in many different states and linked together by relationships of ownership and control. This is why there is a growing recognition - by civil society, academia and international institutions such as the OECD, the IMF and the United Nations - that some degree of control over the extraterritorial impacts of activities of businesses is necessary. Several UN Treaty Bodies, for instance, encourage home states to take steps to prevent abuse abroad by businesses incorporated within their jurisdiction.

The Dutch government takes enormous human rights risks by actively attracting global corporations to incorporate in its jurisdiction. It offers companies fiscal benefits without linking these benefits to any form of regulation or responsibilities. As a home state that offers many advantages to multinational corporations, the Netherlands has a responsibility to address human rights violations. The Dutch state is therefore implicit in two ways. Firstly, it facilitates tax avoidance whilst neglecting the potential negative impact this avoidance has on human rights. Secondly, the Netherlands also fails to effectively regulate multinational companies that contribute to human rights violations abroad. This latter point also applies to Canada. For example:

- Supervision of compliance with key CSR standards is absent.
- Lack of transparency surrounding the operations of MNCs is hardly addressed. This creates ample scope to manipulate ownership and financial structures and thereby avoid accountability and escape states’ regulatory efforts.
- When human rights abuses take place in a host state several obstacles hinder effective access to justice to judicial and non-judicial mechanisms.

There is a shared responsibility between Canada, hosting the company’s headquarters, the Netherlands, hosting the direct parent of the Greek subsidiary and Greece, host to the controversial operations. They share a responsibility for the adverse impacts that are already manifesting themselves in Greece in relation to Eldorado Gold’s operations, as well as the expected devastating environmental and economic consequences in case the open-mine pit will be developed.

---

11. UN Guiding Principles for Business and Human Rights.
13. For a more detailed legal argument for the failure to comply with this responsibility to protect, see SOMO, July 2013, Private gain, public loss, http://somo.nl/publications-en/Publication_3975.
1.4. Is gold mining the answer to Greece’s financial crisis?

What Greece experiences today is a regression from a developed to an extractivist state, similar to the process many Latin American countries underwent in the 1980s. Extractivist is a State whose sole function is to provide the global economy with cheap raw materials, often at the cost of its own people and its own development.

Giorgos Kallis, 2013

The struggle to save the Skouries forest “is more than a conventional standoff between the forces of development and environmental protection,” according to Bloomberg, the main news service of and for the business sector, which has published several in-depth articles on Eldorado Gold’s operations in the context of the Greek debt crisis. Some commentators are convinced that “this is the type of project that the country needs to overcome the economic crisis.” Yet it is far from certain that extractive industry operations will provide essential state revenues to underfunded government budgets, especially in the context of scarce local capital, substantive market power of extractive companies and weak tax administrations, as is the case in Greece. Furthermore, with view to the current austerity budget, any increase in state revenues would have to be carefully monitored on the budget-side, to assess whether revenues actually serve to improve redistribution and public services.

Governments have a responsibility to demonstrate that their decisions prioritise, and at the very least do not impede, the realisation of human rights. States which receive international financial assistance should be empowered to ensure that the enjoyment of human rights is protected in international loan agreements. Governments should enhance co-operation on tax matters for combating tax evasion to help states mobilise the resources necessary for fulfilling their human rights obligations.

Council of Europe, 2014

With its acquisition of the Canadian European Goldfields in 2012 and the Australian Glory Resources in 2013, Eldorado Gold now owns all gold projects in Greece. The corporation operates in a context of a severe debt crisis and ensuing subjection to a shock therapy by its European creditors and the IMF since 2010. It has a well-developed tax avoidance structure using 12 Dutch mailbox companies and various subsidiaries in Barbados as well as the British Virgin and Cayman Islands.

The context of a debt crisis, ensuing structural adjustment programmes and high pressure to attract foreign investment is a typical developing country context, which is why commentators draw parallels between the current situation in Greece and Latin America in the 1980s. Like Latin America and

16 George Tzogopoulos, research fellow at the Hellenic Foundation for European and Foreign Policy in Athens, cited in ibid.
African and Asian countries then, Greece has been hit by a debt crisis so severe it depends on external financing and is subjected to neo-liberal structural adjustment programmes imposed by its creditors encompassing a ferocious attack on labour and public goods vis-à-vis capital. To illustrate the losses that tax dodging practices imply for resource-rich countries, the case of Zambia, which has been studied in detail,19 is a case at hand. The US-based research organisation Global Financial Integrity estimated20 that US$ 8.8 billion left Zambia in illicit financial flows between 2001 and 2010, of which US$ 4.9 billion can be attributed to false invoicing. In 2012 Zambia’s Deputy Finance Minister reported the country lost US$ 2 billion every year to corporate tax avoidance. Indeed, of all major multinationals that export copper and other metals out of Zambia, just “one or two” officially recorded a profit and therefore the rest pay no corporate tax.21 Barrick Gold, Vedanta Resources, Glencore and First Quantum all operate mines in the country. Glencore’s Zambian subsidiary Mopani Copper Mines and First Quantum have been found to engage in transfer mispricing practices by an audit firm and have had a complaint filed against them by a number of NGOs for violations of the OECD Guidelines.22

Often, natural resources are extracted by foreign firms as local capital is scarce and FDI is much needed. Those producers often have substantive market power and are better informed than many governments as the process of discovery and appraisal is often driven by private companies. It is likely that those companies have more expertise and special knowledge in understanding an industry and in dealing with taxation issues than under-resourced tax administrations, which may not have the same expertise and information readily available. There will also commonly be disparities in general negotiation experience.

UN Tax Committee23

The reality of profit-shifting in the extractive industry stands in stark contrast to the official reasoning by corporations and states hosting them that justifies the pursuance of large-scale mining, namely, with the argument that the developments are necessary for the creation of jobs and generation of public revenues. Especially in the context of high fiscal pressure, as is the case in Greece, which faces the threat of defaulting on its debts and related lack of external credit, governments feel compelled to provide generous fiscal incentives and permits for projects that are seen to attract much needed foreign direct investment - even if they are shown to have negative impacts on its citizens. “We want to promote all the investments that bring capital to Greece and create new jobs,” Assimakis Papageorgiou, deputy head of the Greek energy and environment ministry for the conservative-liberal

---

19 See, for instance, Written evidence submitted by The Centre for Trade Policy and Development (Zambia) to the UK House of Commons International Development Select Committee, February 2012, http://www.publications.parliament.uk/pa/cm201213/cmselect/cmintdev/130/130we07.htm
New Democracy party said in 2013. This report shows that this pursuit of foreign investment is far from certain to result in sustainable economic development, and comes at a high cost to the environment as well as democracy as the local community suffers police brutality and criminalisation.

1.5. Structure of the report

This report is structured as follows:

It provides a human rights angle to the current debate on austerity in Greece and links it to aggressive tax planning strategies by multinational corporations incorporated in the Netherlands, with the example of Eldorado Gold. To this aim, the present chapter has outlined some research questions pertaining to the Eldorado Gold’s incorporation in the Netherlands. It discusses the human rights implications of the company’s operations in Greece and the regulatory consequences this should have in the Netherlands, Canada and Greece and the EU with regard to human rights due diligence requirements and business regulation pertaining to tax and human rights.

Chapter two provides facts and figures on the Canadian gold mining company Eldorado Gold, on its global operations, financing and presence in Greece. Controversies surrounding the company’s planned projects and current and preparatory work are discussed in detail, ranging from irregularities during the environmental approval process to potential threats to health and safety of the local community were the plans to go ahead. The police repression and criminalisation of the protests are also discussed.

Give that this report discusses the proclaimed economic contribution of Eldorado Gold to the public, chapter 3 outlines the state subsidies the companies has received or is expected to receive. After all, an assessment of the contribution of private investments to the development of country’s domestic resources should take into account subsidies the company has received which were paid for by public money. This relates to an export credit loan provided by the Canadian government and expected fiscal benefits under Greece’s fast-track investment procedure.

Chapter 4 provides an analysis of Eldorado Gold’s Dutch accounts, the impact that the company’s bond loan structure has on interest payments from the Greek to the Dutch subsidiaries and the potential tax base erosion this structure has in Greece. Related Dutch and EU policies are explained. Furthermore, given that the focus on one tax avoidance opportunity is limited, the chapter discusses other potential tax base erosion methods that should be scrutinised for an assessment of the ultimate contribution Eldorado Gold might or might not provide for Greece.

Chapter 5 analyses Greece’s inward and outward investment positions and specifies how much of this investment is channelled through mailbox companies, as this provides an indication of corporate tax avoidance. Given that tax avoidance and evasion have negative impacts on the protection of human rights, the role of the Netherlands and Luxemburg as well as the EU in this tax avoidance is critically assessed.

Finally, the context in which corporate tax avoidance is taking place is important to understand the problem at hand and the possible political solutions. Chapter 6 therefore analyses the current regressive fiscal regime in Greece and the ‘fiscal consolidation’ measures imposed by Greece’s creditors, the EU, ECB and IMF. In a tandem, these lead to extreme inequality and redistribution of capital from public to private hands. Corporate tax avoidance, a problem that involves not only Greece’s tax administration but also harmful tax regimes in the rest of Europe and EU law itself, can only be tackled with adequate political will to regulate and reform fiscal systems in the interests of the public rather than in corporate interests.

1.6. Methodology

With regard to the anticipated negative environmental impact of Eldorado Gold’s operations in Greece, a desk research was conducted scanning available literature in English and Greek with the help of translators. The campaigning and advocacy networks Hellenic Mining Watch and SOS Halkidiki provided much source material, such as environmental impact assessments and technical reports. Eldorado Gold’s own statements were also included in the source material. A Greek consultant was used to translate relevant passages from Greek source materials. All sources are cited in footnotes in the text.

With regard to the reported criminalisation of protests against the companies operations in Halkidiki the past years, SOMO interviewed a number of local campaigners in relation to the protests and criminalisation. Three reports by Amnesty International were used to corroborate the violations reported by the activists. More interviews with local residents and Greek experts will be held in November 2014 in Greece, when the present report findings and conclusions will be presented to and discussed with local campaign groups.

For an analysis of financial company data, Eldorado Gold’s SEC filings and annual accounts of its Dutch and Greek subsidiaries published by the Dutch and Greek Chambers of Commerce were analysed. Relevant EU, Dutch and Greek tax policies were also analysed to provide a policy context for the possible motivations of the company’s tax planning structure. Investment data analysed are based on the IMD, OECD and Eurostat databases, also referenced where relevant.

The Canadian headquarters of Eldorado Gold as well as its Dutch and Greek subsidiaries were informed about the research in advance and given a standard period to review a draft of the relevant information related to their operations and tax planning practices to identify potential mistakes in the findings. SOMO was informed by the law firm representing Eldorado Gold (Fasken Martineau) that the company had no interest in engaging in the review process.

Given the disputed nature of Eldorado’s mining projects in Halkidiki and Thrace and the importance of an assessment of their potential economic contribution to Greece, SOMO has chosen to publish this report as a discussion paper to allow for a review by relevant stakeholders before final publication. This report will be distributed to a number of stakeholders in the period of November 2014, and a final publication is planned for December 2014 or January 2015, depending on the nature of the comments received. Stakeholders here include the Greek local networks of campaign organisations and active individuals affected by the mining operations, academic fiscal and economic experts, the Dutch Ministry of Finance and relevant Greek authorities. The discussion paper will also be sent to Eldorado Gold again with an invitation to comment on the findings. This report refers to a number of Annexes that provide data and methodological details. These are not included in the PDF version but will be published online together with the final report. The Annexes can be requested for review purposes.
1.7. Definitions

The report refers to technical and umbrella definitions that require some explanation:

Mailbox, shell, holding or conduit companies and Special Purpose Entities

The above terms are used interchangeably, referring to legal entities that have no material operations in a given jurisdictions (no staff, sales or physical assets) and fulfill financing and/or holding operations for the corporate group. The Dutch Central Bank, Chamber of Commerce, Central Statistics Bureau and the Ministry of Finance use varying classifications for mailbox companies. A term often used to describe shell companies by international bodies collecting investment statistics such as the OECD is Special Purpose Entities (SPEs). Eurostat defines SPEs as “foreign-owned, and principally engaged in cross-border financial transactions, with little or no activity in the Member State of residence.” The Dutch Central Bank (DNB) defines a Special Financial Institutions in a slightly narrower sense as entities where “non-residents hold a direct or indirect participating interest through a shareholding or otherwise.” As the definitions are so similar, the two terms are used interchangeably in this report.

Tax havens and secrecy jurisdictions

There is no internationally agreed definition of tax havens. Secrecy jurisdiction refers to states that have bank secrecy, allow for the creation of entities whose ownership, functioning and/or purpose is kept secret, or put up barriers to co-operation and information exchange between tax and other authorities to identify tax payments and other money transfers. A tax haven in this report refers to any jurisdiction that allows companies or individuals to avoid or evade tax, either with low or no corporate tax rates for conduit structures that allow international payments to remain untaxed or taxed at a very low level.

26 F.H.H. Weekers, 25.06.2012, Kamerbrief betreft uitvoering motie leden Braakhuis en Groot, Doc. IFZ/2012/85, http://www.rijksoverheid.nl/bestanden/documenten-en-publicaties/kamerstukken/2012/06/25/kamerbrief-inzake-uitvoering-substance-motie-braakhuis-en-groot/kamerbrief/inzake-uitvoering-substance-motie-braakhuis-en-groot.pdf. SFIs are defined as: “Netherlands-based companies or institutions whose shares are held directly or indirectly by non-residents, which specialize in raising funds outside the Netherlands and on-lending or investing them outside the Netherlands. The funds raised by these institutions are on-lent or invested almost entirely within the group of which they form part. These institutions [...] called mailbox companies, are based in the Netherlands partly for fiscal reasons, enjoying tax advantages either in the Netherlands, or in the country where the parent company is established.”

27 OECD, 2013, Addressing base erosion and profit shifting, http://www.oecd.org/tax/beps-reports.htm, pages 18 and 22. The full OECD definition of SPEs is as follows: “Multinational enterprises (MNEs) often diversify their investments geographically through various organisational structures. These may include certain types of Special Purpose Entities. Examples are financing subsidiaries, conduits, holding companies, shelf companies, shell companies and brass-plate companies. Although there is no universal definition of SPEs, they do share a number of features. They are all legal entities that have little or no employment, or operations, or physical presence in the jurisdiction in which they are created by their parent enterprises which are typically located in other jurisdictions (economies). They are often used as devices to raise capital or to hold assets and liabilities and usually do not undertake significant production. An enterprise is usually considered as an SPE if it meets the following criteria: (i) The enterprise is a legal entity, a. Formally registered with a national authority; and b. subject to fiscal and other legal obligations of the economy in which it is resident. (ii) The enterprise is ultimately controlled by a non-resident parent, directly or indirectly. (iii) The enterprise has no or few employees, little or no production in the host economy and little or no physical presence. (iv) Almost all the assets and liabilities of the enterprise represent investments in or from other countries. (v) The core business of the enterprise consists of group financing or holding activities, that is – viewed from the perspective of the compiler in a given country – the channelling of funds from non-residents to other non-residents. However, in its daily activities, managing and directing plays only a minor role.”


30 See website: http://www.financialsecrecyindex.com

Tax evasion and tax avoidance

A distinction is often made in tax literature between (legal) tax avoidance and (illegal) tax evasion. The former is the use of loopholes in the international tax system to reduce the amount of tax payable whilst not technically violating the letter of the law. The latter refers to tax planning methods that violate laws by falsely declaring less income, profits or gains than actually earned or overstating deductions. In practice, however, the line between the two is not always clear: practices are only found to be illegal when identified as fraudulent by tax authorities, which in turn require sufficient resources to identify and prosecute aggressive tax planning methods. Furthermore, tax planning methods that significantly reduce tax payments are in violation of the spirit of the law, which courts may find unlawful if cases are brought forward but remain legal if unchallenged. The term tax avoidance is used throughout this report, but these practices could also entail tax evasion if tested in court and found fraudulent.

Home and host state liability

Much of the discussion about extraterritorial regulation of the human rights performance of multinational enterprises focuses on the role of the home state (where the parent company of a multinational group is incorporated or managed). Given the complexity and variety of multinational organisation structures, the home state is not always easy to identify. In some enterprises – e.g. those with devolved management structures or those linked by contractual rather than equity relationships – it may be possible to identify any number of operational subgroups, each with its own “parent.”

The United Nations Guiding Principles on Business and Human Rights do not attempt to define what is meant by home state, nor do they seek to provide any guidance on the difficult issue of what is meant by a “business enterprise”, and how the limits of that enterprise (and hence the limit of home state responsibilities) are to be ascertained. These issues are left to individual states to resolve. Nevertheless, the wording of the Guiding Principles implies that each state which acts as a “base” for a business enterprise – no matter how big or small, and whether a single economic unit in its own right or whether part of a wider enterprise – does indeed have a role to play in relation to the extraterritorial human rights impacts of that enterprise’s activities. In this respect, all states should adopt preventative as well as remedial measures.

1.8. Limitations and follow-up research

This report links tax avoidance and human rights by indicating the potential revenue losses for Greece as a result of tax avoidance. No in-depth research was conducted, however, on how these foregone revenues could have been used by Greece to protect human rights. This warrants specific analyses linking fiscal policies with human rights. What equitable fiscal reform could look like and how raised revenue could be earmarked for the protection of human rights rather servicing debt are timely research questions for Greece with view to severe austerity and human rights violations resulting from the same.

Furthermore, the tax avoidance research for this report only related to one specific tax planning technique, namely, financing arrangements leading to interest income being shifted out of a host state that eventually ends up in a low- or no-tax jurisdictions, in this case Barbados. Other potential tax base erosion related to transfer pricing, Value Added Tax or capital gains was not scrutinised. It is difficult for NGOs to conduct this type of research, as holding and financing structures of a multinational group are very complex and research to assess the taxation consequences of these structures is time-consuming, expensive, knowledge-intensive and often impossible due to lack of financial
transparency. The red flags identified in this report, however, should be used by the Greek, Dutch and Canadian tax authorities to conduct further research into possible aggressive tax avoidance strategies used by Eldorado Gold or indeed other large foreign corporations active in Greece.

Finally, the report only touches upon the issue of potential legal liability of Eldorado Gold’s Dutch mailbox companies with regard to potential environmental rights violations in Greece and access to justice for the local communities. Extraterritorial regulation is an evolving field where liability and precedents are created in courts and by the testing of soft law instruments. It is therefore desirable that extraterritorial regulation is not only progressively interpreted by governments but also claimed by civil society through test cases.
2. Eldorado Gold in Greece: a human rights case

The forest has been transformed into a battle zone, with rubber bullets reportedly fired and tear gas so thick it caused older residents to collapse. And of course the checkpoints, which are staggered along all the roads where heavy construction equipment has moved in.

In Ierissos, local residents set up checkpoints at each entrance to their village after two hundred fully armed riot police marched through the town’s narrow streets firing tear gas canisters in all directions; one exploded in the school year, causing children to choke in class.

Naomi Klein, 2014

2.1. Introduction

This chapter describes and discusses the controversies surrounding Eldorado Gold’s mining operations in Greece. Some facts and figures of the company’s global mining projects and financing structure are presented, followed by an outline of the history of mining in the Halkidiki region, Eldorado Gold’s acquisition of the Greek gold operations and its plans for large-scale mining in the country.

The main controversies related to the company’s mining plans concern environmental destruction, ranging from clearing of large parts of the original primeval forest lands to water and air pollution. The chapter provides an overview of the main sources regarding environmental impact assessments and prognoses. It also draws on various news reports and witness accounts of human rights concerns, particularly with regard to the brutal police repression and criminalisation of the local resistance movement. These were subject to public interventions by Amnesty International and beggar the question of whether the Greek state is protecting its citizens’, or rather private interests. Irregularities in the provision of permits and accusations of conflict of interests also raise serious concerns as the democratic process in Greece with regard to Eldorado Gold’s operations.

The mining plans in Halkidiki have led to a deep rift in the local community. Enforced in the context of high unemployment and a deep financial crisis, villages and families have been set against each other in support or rejection of Eldorado’s mining plans. Those that support it, which are fewer in number yet still significant, are dependent on the mines for jobs; those that reject it, are not only trying to save their direct environment and health, but are also dependent on the land for their income in form of tourism, farming, beekeeping and fishery. Next to negative impacts on the environment and democracy, Eldorado Gold’s operations have therefore also created societal tensions. Although not the subject of this report, this negative impact should be documented in the context of

32 Naomi Klein, 2014, This changes everything, Penguin Group.
recommendations for an adequate business and human rights framework in general and responsible mining practices in particular.

2.2. Eldorado Gold Corporation: facts and figures

Eldorado Gold Corporation owns and operates gold, iron ore and silver-lead-zinc mines in Brazil, China, Turkey, Greece, and Romania. It engages in a number of mining industry activities, including exploration, discovery, development, production and reclamation. The company is headquartered in Vancouver (Canada) and publicly traded on the Toronto and the New York Stock Exchange (since 2009), and started paying annual dividends to its shareholders in 2010.34

History

The company was first incorporate as in April 1992 as Eldorado Corporation Ltd. in Bermuda, and was renamed Eldorado Gold Corporation and continued under Canada Business Corporations Act (the CBCA) in June 1996.35 The same year, Eldorado amalgamated with HRC Development Corporation under the name Eldorado Gold Corporation, under a plan of arrangement through the CBCA.36

Staff

Eldorado employs around 7,000 people worldwide and has offices in Canada (Head Office), Turkey (4), China (5), Brazil (2), Greece (4), Romania (1), Barbados (1) and the Netherlands (1).

Table 1: Eldorado Gold staff and contractors37

<table>
<thead>
<tr>
<th>Country</th>
<th>No of people</th>
</tr>
</thead>
<tbody>
<tr>
<td>Turkey</td>
<td>1,754</td>
</tr>
<tr>
<td>China</td>
<td>3,144</td>
</tr>
<tr>
<td>Brazil</td>
<td>438</td>
</tr>
<tr>
<td>Greece</td>
<td>1,696</td>
</tr>
<tr>
<td>Canada</td>
<td>46</td>
</tr>
<tr>
<td>Romania</td>
<td>179</td>
</tr>
<tr>
<td>Barbados</td>
<td>1</td>
</tr>
<tr>
<td>Netherlands</td>
<td>3</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>7,261</strong></td>
</tr>
</tbody>
</table>

34 See the annual report for the United States Securities and Exchange Commission (SEC), for the fiscal year ended 13 December 2011, URL, page 4 and Eldorado’s website: http://www.eldoradogold.com/s/Operations.asp and http://www.eldoradogold.com/i/pdf/Greece-Whitepaper.pdf. Information on dividends can be found in in the US SEC report 2013, page 103. 2010: annual dividend of Cdn$0.05 per common share. 2011: semi-annual dividends of Cdn$0.05 per common share and Cdn$0.06 per common share, respectively. 2012: semi-annual dividends of Cdn$0.09 per common share and Cdn$0.06 per common share, respectively. 2013: semi-annual dividends of Cdn$0.07 per common share and Cdn$0.05 per common share, respectively. First semi-annual dividend for 2014: Cdn$0.01 per common share.

35 A corporation formed under laws other than the federal laws of Canada may apply to be “continued” under the federal Canada Business Corporations Act (the CBCA) by applying for a certificate of continuance from the Corporations Directorate. Once the certificate is issued, the CBCA applies to the corporation as if the corporation was incorporated under the CBCA, ibid, page 103.


Mining operations

At the end of 2013, Eldorado Gold Corporation owns its mining assets through more than 40 subsidiaries. As at March 2014, Eldorado Gold owns and operates six gold mines and a silver/lead/zinc mine. The company has six development projects and several exploration programmes in its operating countries. An overview of its current properties is given in Table 2, with Greek operations highlighted.

Table 2: Eldorado’s properties as of March 2014

<table>
<thead>
<tr>
<th>Operating gold mines</th>
<th>Other Operating Mines and Development projects</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kisladag, in Turkey (100%)*</td>
<td>Vila Nova, in Brazil (100%), Iron Ore mine</td>
</tr>
<tr>
<td>Efemcukuru, in Turkey (100%)</td>
<td>Stratoni, in Greece (95%), Silver, Lead, Zinc mine</td>
</tr>
<tr>
<td>Jinfeng, in China (82%)</td>
<td>Skouries, in Greece (95%) development project</td>
</tr>
<tr>
<td>White Mountain, in China (95%)</td>
<td>Perama Hill, in Greece (100%) development project</td>
</tr>
<tr>
<td>Tanjianshan, in China (90%)</td>
<td>Eastern Dragon, in China (75%) development project</td>
</tr>
<tr>
<td>Olympics, in Greece (95%)**</td>
<td>Certej, in Romania (80.5%) development project</td>
</tr>
<tr>
<td></td>
<td>Tocantinzinho, in Brazil (100%) development project</td>
</tr>
<tr>
<td></td>
<td>Sapes, in Greece (100%) development project</td>
</tr>
</tbody>
</table>

* Percentages indicate ownership percentages.  
** The mine is reprocessing old tailings and developing for future mining operations. The company is producing a concentrate from these tailings and selling it. Gold that has already been extracted. Current commercial profits are thus currently not made from mining operations

Production

In 2013, Eldorado achieved a production of 721,201 ounces of gold, made gross profits from gold mining operations of US$ 481.1 million (down from US$ 595 million in 2012).

Eldorado advertises itself to investors as “one of the world’s lowest cost gold producers, with new mines, robust margins and a strong balance sheet.” The company has ambitious global expansion plans, with a goal “to double its current production over the next four to five years”. According to the company’s annual report for the United States Securities and Exchange Commission, its strategy is:

“to actively pursue growth opportunities by discovering deposits through grassroots exploration projects and acquiring advanced exploration, development or low-cost production assets with a focus on the regions where it has an existing presence, preferably with the potential for increased mineral resources.”

How is Eldorado financed?

Eldorado Gold is financed through share capital, bonds issuance and loans (see Annex 1 for a full list of financiers). Eldorado Gold is a public company, whose shares are traded on the Toronto Stock Exchange.

---

38 The assets of any subsidiary not exceeding 10% of Eldorado’s consolidated assets are not included in that number.  
43 Information on financing construction of Eldorado is based largely on Bloomberg database, accessed 19 August 2014.
Exchange. Almost all (99%) of its shares are floating, meaning that practically all its shares are available for trading on the exchange. Eldorado’s annual revenues for 2013 were US$ 1.1 billion, which makes it part of the largest gold mining companies worldwide.

Eldorado is financed largely through shareholders equity; the company is for almost 75% financed through shares. Eldorado’s largest shareholder by far is BlackRock, who owns around 18% of the shares. BlackRock is one of the largest investment management corporation worldwide, managing assets worth a total US$ 3.86 trillion. Other important shareholders, owning 8% and 7% of Eldorado’s shares, are Van Eck Associates Corporation and Fidelity Management and Research, both US-based investment management firms. Most of Eldorado’s shareholders belong to the category of investment advisors.

Another means of financing is debt, which can consist of bonds or loans. Eldorado issued bonds, financing around 8% of the total company. Its largest bondholder is Franklin Advisers Inc., another privately-owned investment manager in the US. Eldorado also has access to a so-called revolving credit facility, which is a type of flexible loan: the company has the possibility to decide when and how much money it will borrow (although there is a maximum). Eldorado has a US$ 375 million revolving credit facility which is provided by a syndicate of banks. One of those banks is Export Development Canada, Canada’s Export Credit Agency (see also chapter 3.2). Other loans reported by the company in its annual financial statements (2013) are two loans provided by Chinese banks directly to Eldorado’s Chinese subsidiaries, Heihe Rockmining Limited (“Eastern Dragon”) and Sino Guizhou Jinfeng Mining Limited (“Jinfeng”). These loans consist of much lower amounts, respectively US$13 million and US$ 16 million.

### 2.3. Eldorado Gold in Greece

Eldorado Gold has been active in Greece since 2008, when it acquired the Perama Hill Gold Project (run by the Greek entity Thracean Gold Mining) via the acquisition of the Canadian Frontier Pacific Mining Corporation. In 2010, the company submitted a preliminary Environmental Impact Assessment (EIA) for Perama Hill, which received approval in 2012. The final EIA approval, however, has not yet been granted by the Greek state due to local opposition to the project on environmental grounds (see further below).

In 2011, Eldorado announced the acquisition of mining corporation European Goldfields, then owner of the Kassandra mines (Stratoni/Skouries/Olympias) on the Halkidiki peninsula near Thessaloniki. The projects mine silver, lead and zinc and are preparing for the extraction of copper and gold (see overview below) and are operated by the Greek entity Hellas Gold. The acquisition was finalised in 2012. Eldorado took over the Dutch investment structure of European Goldfields and later expanded this structure to play a central financing role of its global operations.

---


45 All banks that are part of this syndicate of banks are: HSBC Securities (bookrunner), JP Morgan Securities (bookrunner), Bank of America NA (lender), Cibitbank NA/Canada (lender), Export Development Canada (lender), HSBC Bank USA (lender), JP Morgan Chase Bank NA (lender).

This significant increase in Eldorado’s ownership of Greek mines with the acquisition of European Goldfields was further increased in 2014, when the company finalised the acquisition of its fifth project in Greece, the Sapes gold and copper mine, by buying the outstanding - not already owned - shares of the Australian corporation Glory Resources Ltd through its Dutch subsidiary Eldorado Gold Cooperatief U.A.  

The company’s mining activities are concentrated in two locations:
- The Kassandra mines on the Halkidiki peninsula near Thessaloniki, operated by Eldorado’s Greek subsidiary Hellas Gold SA.
- The Perama Hill and Sapes gold projects in in the Thrace region (north-eastern Greece), operated by the Greek subsidiaries Thracean Gold Mining SA and Thrace Minerals SA respectively.

**Figure 1: Eldorado Gold’s mining projects in Greece**

The Kassandra mine complex is made up of three projects on the Halkidiki peninsula, described in more detail here below. All three projects were acquired by Eldorado via the acquisition of European Goldfields in 2012. When in full production, these three assets are said to produce 430,000 ounces of gold annually.  

The Madem Lakkos and Mavres Petres underground silver-lead-zinc producing mines of the Kassandra mine complex are collectively called **Stratoni**. Stratoni has been operating on a small scale for over a century under the ownership of various companies and was closed in 2003 after the environmental approval issued to former owner, TVX Gold, for operating the Mavres Petres base metals mine underneath the village of Stratoni was annulled by the Council of State (Greece’s highest administrative court).

---

The second project is an underground, polymetallic mine called Olympias. Olympias was in operation from 1976 to 1996 under previous owners and was mined using drift and fill, producing lead/silver, zinc and gold-bearing pyrite concentrates. It is currently re-developed in phases. In the late '90s, TVX Gold secured a permit from the state to establish a gold processing plant at Olympias. The Council of State however later annulled this permit and the project was abandoned. The greenfield project currently under development in Skouries as part of the Kassandra mine complex is a copper/gold porphyry deposit that the company plans to develop using both open pit and underground mining methods.\textsuperscript{49}

The investment plan of Eldorado Gold in Halkidiki thus includes further development of the Mavres Petres mine, a new open pit and underground mine in Skouries, an underground mine in Olympias, a 8.5 kilometer underground tunnel for the transport of ore and access to other underground mining targets, a copper-gold metallurgy plant, a sulphuric acid plant, three tailings disposal and storage sites, an industrial port, storage tanks and exploration of multiple other potential mining areas.\textsuperscript{50} Three potential mining areas are currently being explored, namely Piavitsa, Fisoka and Tsikara.\textsuperscript{51}

Eldorado Gold currently lacks the most essential permit to launch full-scale operations. While the Environmental Impact Assessment was approved by the Greek state in 2011 (see below) and ad hoc permits were secured for specific activities that have already begun, official approval of the investment plan is still pending, leaving the entire operation in legal limbo.\textsuperscript{52}

\textbf{Figure 2: Kassandra mines of Eldorado Gold in Greece}

\begin{figure}
\centering
\includegraphics[width=\textwidth]{kassandra_mines.png}
\caption{Kassandra mines of Eldorado Gold in Greece}
\end{figure}

\begin{itemize}
\item \textsuperscript{49} Eldorado Gold as cited by The Council of Canadians, 28.02.2013, \url{http://canadians.org/fr/node/9304}.
\item \textsuperscript{50} SOS Halkidiki, November 2012, Social, economic and environmental impacts of gold mining in Halkidiki, \url{http://soshalkidiki.files.wordpress.com/2012/11/impacts-of-gold-mining.pdf}.
\item \textsuperscript{51} Eldorado Gold, 12.04.2012, Eldorado’s growth continues; annual gold production to reach 1.7 M oz. within 5 years, \url{http://www.eldoradogold.com/news-media/news/eldorados-growth-continues-annual-gold-production-to-reach-17-m}.
\item \textsuperscript{52} For a detailed description see Christodoulos Aggeloglou. 19.11.2013, The implementation of Hellas Gold’s investment project is illegal, because the Investment Plan has not been approved as defined by law 3220/2004, \url{http://vasilinos.files.wordpress.com/2013/11/dimosia-anafora-blog.pdf}.
\item \textsuperscript{53} Eldorado Gold, corporate website, \url{http://www.egoldfields.com/s/Olympias.asp?ReportID=518477}.
\end{itemize}
2.4. Mining in Halkidiki: selling out the public interest

Eldorado’s activities in Greece are part of a broader public scandal that predates the company’s acquisition of the Greek projects. As is often the case with extractive operations, the history of ore mining in Halkidiki over the past 30 years is one that is fraught with scandals, violence and environmental disasters, in which Canadian companies take centre stage.54

In the 1990s, a first Canadian company, TVX Gold, tried to expand mining activities in Halkidiki, which were then still in the early industrial stage, to include the actual processing of gold in the region through the establishment of a metallurgy plant, thus putting the region at risk of additional industry-driven environmental damage. TVX Gold was supported by the Greek government and authorities, who emphasised the development that the expansion of mining activities would bring to the region and the country, but local people feared that they would have to abandon their region because of the pollution of soil, sea, air and water. After consulting with independent experts, the people of Halkidiki engaged in a long struggle to prevent TVX Gold from implementing its projects.55 In 2003, TVX Hellas, the Greek subsidiary of TVX Gold, filed for bankruptcy and the Greek state purchased the mining projects and rights from TVX Gold for €11 million.

However, this brief nationalisation did not lead to the mining plans being abandoned. Instead, the mine was sold the very same day for the purchasing price of €11 million to Hellas Gold SA,56 which was set up only a few days before. The shares of Hellas Gold were eventually bought by European Goldfields, another Canadian mining company. The link between Hellas Gold and European Goldfields was present from the Greek company’s inception, seeing that this company’s first board of directors included Christopher David Grannell, former financial director of European Goldfields.

The Greek state made no profit on the transfer. Furthermore, specific clauses of the contract exempt Hellas Gold from any transfer tax or other taxes and relieve it in advance from any financial obligations concerning environmental damage resulting from operation of the mines under previous owners, while the outgoing owner, TVX Gold, was also relieved of any civil or penal liability for environmental damage that may have occurred under its tenure.57 It is noteworthy that these exceedingly generous terms were enshrined in Greek Law,58 while the Greek Mining Regulation59 at the time also granted the mining company full possession of the minerals contained in the granted concessions, while not requiring it to pay any royalties for their depletion.60

---

56 On 9 December 2003 a new company called Hellas Gold was founded by Dimitrios Koutras, then president of the Greek construction company Aktor (which now owns 5% of Hellas Gold and shares of Eldorado Gold), and George Sossidis with a capital of the minimum required 60,000 EUR. Act of incorporation of Hellas Gold SA: http://www.et.gr/idocs/nph/search/pdfViewerForm.html?args=5C7QrtC22wFahFZ2BrTT7HdvScCrl8LOXZB17YxgFAFzgBNPL--YlqfrTN_OYbt19FWHqy-snlFqgQNK x ymQSQULRIR6RhF4M9uFmN-U33yMPlU1x8ycwWLCeC162ZK9UPVSTtumoPPrimmggsB3koXnm4ucy130HSC70YeMebwLy
58 Greek Law No 3220/2004
59 Greek Law 210/1973
60 SOS Halkidiki, November 2012, Social, economic and environmental impacts of gold mining in Halkidiki, http://soshalkidiki.files.wordpress.com/2012/11/impacts-of-gold-mining.pdf. The Mining Regulation was modified by law
European Commission fine for illegal state aid

The above transfer of property from the Greek state to Hellas Gold SA was challenged and became subject to a European Commission investigation and positive decision that the deal constituted illegal state aid by way of a sale of assets and land below its value and a waiver of the associated taxes.\(^{61}\) In February 2011, the EU Directorate-General for Competition found that:\(^{62}\)

1. The price of the sale was below market value, which it set at €25 million, providing Hellas Gold SA with a benefit of €14 million.
2. Mining rights were transferred to Hellas Gold without a fair and open public tendering process.
3. The transfer took place without an estimate of the company’s assets by an independent auditor.
4. The sale contract foresaw zero tax for the transfer, which also constituted state aid. The taxes due were €0.8 million on the transfer of the mines and €0.54 million on the transfer of the land (€1.34 million in total).

The Directorate-General (DG) ordered the Greek state to “re-establish the previously existing situation” by recovering the total amount of €15.34 million, plus interest. Two months after publication of the DG’s decision, the Greek state appealed against it to the European Court of Justice, the decision of which is still pending.\(^{63}\)

It is reported that Hellas Gold has paid the last instalment of the total debt of €21.6 million (the illegal state aid plus interest and legal surcharges) to the Greek Ministry of Finance. It was also reported that a portion of the debt was offset by VAT credited to Hellas Gold SA, the amount of which is not specified.\(^{64}\) The appeal to the European Court of Justice of the Commission’s decision, however, has not been withdrawn, so that it is uncertain whether Hellas Gold SA’s debt will indeed remain in the hands of the Greek state or might have to be paid back to the company if the European Court of Justice grants the appeal.

2.5. Environmental destruction

Halkidiki is a biologically diverse peninsula in Northern Greece consisting of mountainous old growth forests and primeval coastal environments. Environmental activists and local communities argue that

\[^{61}\] On 9 July 2007, the Commission received a complaint alleging that Greece had granted two State aid measures in favour of Hellas Gold SA (Ellinikos Xrysos in Greek), upon which the Commission opened the formal investigation procedure on the alleged measures in December 2008. Comments were received from four parties, namely Hellas Gold, from European Goldfields Ltd, the main shareholder of Hellas Gold on 10 April 2009, from the Cassandra Mines trade unions and from the advocacy group Hellenic Mining Watch.


\[^{64}\] Capital.gr, Dimitri Delevugkou, 18.10.2013, Τι πραγματικά συμβαίνει με το πρόστιμο στην Ελληνικός Χρυσός [What is really happening to the fine of Hellas Gold], http://www.capital.gr/Articles.asp?id=1891705
mining activity can only be sustainable if it does not alter the character of the region and preserves local livelihoods deriving from the natural environment and overall public interest. The economy of the region relies heavily on, fishery, forestry, beekeeping, farming and tourism, all activities which are dependent on a well-balanced ecosystem. The proclaimed financial benefits from large-scale mining therefore come at a high cost not only to the regional economy, but also quality of life and future generations. A local activist explains that “mining in the area has always been small-scale and underground, but even this small-scale activity has left the area with a legacy of pollution. We are now talking about a huge expansion of mining, incompatible with the scale of the Halkidiki peninsula which is not a desert but a densely populated area with a rich natural environment and cultural history – and the third most popular tourist destination in the country.”

**Adverse environmental impacts: pollution and erosion**

Eldorado Gold’s most controversial project is the development of an open-pit mine in the middle of the Skouries forest on the Kakavos mountain, which is also the main freshwater source for the entire region. According to the company’s own estimates, the open pit and related activities can generate up to three thousand tons of dust per hour, containing carbon monoxide, nitrogen oxides, volatile organic compounds, sulphur dioxide and particulate matter. Despite the company’s claims to the contrary, local residents are concerned that the winds will transport this toxic dust over long distances, thus contaminating a far larger area than anticipated. Furthermore, the mining galleries will go more than 700m deep into the mountain, which entails total depletion of the layer of rock or sand that can absorb and hold water (aquifer).

Finally, the mining activity will result in topsoil drying out within kilometres of the open-pit mine and severe soil erosion which can lead to catastrophic floods. Of particular concern to the local community are the two tailing disposal facilities or mine dumps of the Skouries project, which are to be established in the beds of two large mountain streams with 150m-high dams to hold back the toxic waste while the stream water is diverted.

A number of scientific studies have warned against the negative impact of this type of large-scale mining in the region: “due to the steep slopes of the woodland climate with a long and hot dry season, torrential rains and the shallow depth of the soil, there is always a significant risk of erosion soil, devastating floods and water losses due to increased surface runoff.”

The mining project has been deemed dangerous for the environment and inadequately designed by several independent scientific institutions in Greece, most notably the Aristotle University of

---

69 Tailings are materials left over after the process of separating the valuable fraction from the uneconomic fraction of an ore.
Thessaloniki71 and the Technical Chamber of Greece, Regional Department of Central Macedonia72. The latter’s conclusions state specifically:

“The plans to minimize impact, the gaps in security measures and scientific methodology, the violation of processes that are required under European and domestic law, the anticipated dimension of irreversible damage to the environment (mainly to the aquifers), the use and management of dangerous, toxic materials and, finally, the proposed development model, which excludes the possibility of co-existence with other development activities that are typical of the region, cannot be deemed acceptable.”

According to the Technical Chamber of Greece, Dimitris Melas (Associate Professor of Environmental Physics AUTH) and Alexis Benos (Professor of Hygiene, Social Medicine, Medical School of Aristotle University) there are also many deficiencies in the company’s documentation: they say the scientific data is incomplete, consists of problematic methodologies, deviates from the procedures of the European Commission and contains a misinterpretation of statutory limits of pollutants.73

Irregularities during the environmental approval process

The conditions for public consultation stipulated under Greek law do not fulfil European requirements under the Aarhus Convention, in which public participation in decision-making is recognised as an essential component of sustainable development.74 Lack of consultation and proper information, a central element of responsible mining, is one of the main complaints by local communities.75 A local activist informed SOMO76 that the residents of the area who wished to better understand the possible consequences of the mining project had a two-month period in 2010 to borrow the more than 4000 page-long Environmental Impact Assessment (EIA) document from regional administration offices in the capital of Halkidiki (Polygyros) to make a copy at their own expense and to consult it in hard copy and only in Greek. This made it impossible for community groups to seek independent advice from foreign experts. The EIA was made available online only a few days before the end of consultation process - through a private blog and not through the Ministry of Environment or any other state authority.

The activist also told SOMO that only one public consultation meeting took place, again in Polygyros, in the presence of Eldorado Gold’s security guards. According to the then Special Secretary of Environmental and Energy Inspection, the ministry of environment had to “confront the company’s people, who had the nerve to set up a “face control” system at the entrance [of the public consultation meeting] and to tear apart the lists of names and ID card numbers they had collected.”77

71 Aristotle University of Thessaloniki, 27.02.2013, Εισήγηση Συμβουλίου Περιβάλλοντος ΑΠΘ για τη μεταλλευτική δραστηριότητα στη Βόρεια Χαλκιδική (Presentation environment council AUTH for mining activity in northern Halkidiki), http://www.auth.gr/news/announcements/15528


76 Telephone interview, 19 September 2014.

The ministerial approval of the EIA is also clouded in political scandal: the EIA was approved in July 2011 by the former finance minister George Papaconstantinou (who also appealed the decision of the European Commission that forced TVX Gold to pay 15.3 million Euros to the Greek state), only 25 days after he replaced Tina Birbili as minister of Environment, Energy and Climate Change (see also below). Birbili’s replacement is reportedly directly linked to neo-liberal reforms related to the crisis. When George Papandreou was elected prime minister in 2009, he established the new Ministry and appointed Birbili, an environmentalist, to head it. But as Greece entered the financial crisis, she was replaced by Papaconstantinou, a controversial figure who not only showed his support of mining corporations by appealing the European Commission decision, but is also embroiled in a public scandal over whether he removed family members from a list of Greeks with Swiss bank accounts.

Flash smelting

Hellas Gold’s most fundamental obligation under its contract with the Greek state, which was signed on 12.12.2003 and ratified by law 3220/2004, is to construct and operate a gold metallurgy plant. Currently, the Greek mines produce gold concentrates which are sold to China, where the processing of the concentrates to whole metals, i.e. refined gold, takes place. The refining of the gold is more profitable and therefore generates more state revenue from taxes, so that the Greek state stipulated that Hellas Gold had to ensure processing in Greece through a gold metallurgy plant. However, this processing is highly toxic. When TVX Gold was operating the Kassandra mines and sought to establish such a gold metallurgy plant, a key concern which resulted in their activity plan being rejected by the Council of State was the fact that the company intended to use highly toxic cyanide.

In order to avoid legal entanglements arising from the use of cyanide in gold production, European Goldfields and later Eldorado Gold submitted to the Greek State a business plan based on novel application of flash smelting, a widely used copper smelting technology that can, in the case of certain copper concentrate feedstocks, recover gold and other precious metals and PGEs as by-products during copper extraction. This flash smelting technology is central to the approval of the general Environmental Impact Assessment. The viability of this plan is therefore central to whether the company’s operations will fulfill the EIA’s conditions. Scientific reports and the local communities, however, contest that the flash smelting technology can be applied in the case of the Cassandra mines. The following section outlines the relevant evidence and dispute in more detail.

The main issue at hand is that international technical literature and metallurgical plant practice suggest that flash smelting cannot be applied to Halkidiki’s pyrites concentrates, because they are high in detrimental impurities such as iron, arsenic and sulphur. Even in the case of successful technical implementation of the process it could prove extremely dangerous to the plant operators and the environment due to production of large volumes of toxic sulphur and arsenic rich off gases resulting in

78 Leonidas Oikonomakis , 13.03.2013, Halkidiki: where neither numbers nor people thrive, http://roarmag.org/2013/03/halkidiki-eldorado-gold-mine-greece
82 Flash smelting is a smelting process for sulfur-containing ores. The process was developed by the company Outokumpu in Finland and first applied at the Finnish Harjavalta plant in 1949 for smelting copper ore. It has also been adapted for nickel and lead production. http://en.wikipedia.org/wiki/Flash_smelting
high risk of lethal fugitive gases emissions. European Goldfields already admitted in its own Technical Report on the Olympias Project that “flash smelting as applied to the treatment of arsenopyrite/pyrite concentrates is a new application of the technology which is still in the research and development phase”. Yet in the EIA submitted to the Greek State in 2010, European Goldfields claimed the process had been thoroughly tested on a pilot plant scale in Finland using the specific concentrates of Halkidiki (i.e. high in arsenic) and proven for use on an industrial scale. Although Eldorado Gold has since been challenged to publish these test data, so far the company has not done so, claiming that “it is confidential information which we’re not obliged to disclose”. According to an independent review of the proposed process by mining engineer George Psychogiopoulos (formerly with Greek Geological Survey), the technique of flash smelting cannot be considered a best available technique (BAT) for gold production in the case of Halkidiki’s pyrites concentrate feed, despite the company’s claims to the contrary.

Furthermore, in the aforementioned technical report by European Goldfields and in more recent site presentations by Eldorado Gold, the companies present a different process flowsheet (i.e. proposed refining process) than the one presented in the EIA. This process is shorter than the one presented in the approved EIA. It also results in a saleable gold-copper concentrate rather than metallic gold and copper. More recent presentations therefore appear to be in contradiction to Eldorado Gold’s approved EIA and the Greek State approval. It also appears to constitute a breach of the company’s contract with the Greek State, ratified by law 3220/2004, which foresees the production of gold metals rather than concentrates.

The advocacy group Hellenic Mining Watch has thus lodged an official letter of complaint to the Special Environment Agency of the Environment, Energy and Climate Change, which provides environmental permits, about Eldorado Gold’s flash smelting, arguing that the company never provided an example of this technology being successfully applied to the copper and pyrite feed characteristic for the Halkidiki area, i.e. one that is high in arsenic. The practice example given by the company, namely, the operations of the German copper company Aurubis in Bulgaria near the village of Pirdop is a “false”, according to the NGO, because this mine, and in fact all operations using flash smelting,

---

83 George Psychogiopoulos, December 2012, Observations on the planned application of the Flash Smelting method on the processing of the Olympias pyrite concentrate - A proposal for the removal of arsenic from the concentrate before its processing with the Flash Smelting method, https://docs.google.com/viewer?a=v&pid=sites&srcid=ZGVMvYXVsdGRvbWFpbmxncH5N5Y2hvZ3lpb3xmeDoyNTU0Y2UwZjY2NgpNtC3
85 Statement made by Mr. Dimitris Dimitriadis of Hellas Gold during the visit of Canadian MP Elizabeth May at the company’s headquarters in Stratoni on 26.6.2013, telephone interview with Hellenic Mining Watch, 19 September 2014.
86 George Psychogiopoulos, July 2013, Σχολιασμός της 1492/2013 απόφασης του ΣΤΕ σε ά,ί αφορά την εφαρμογότητα της μεταλλουργικής μεθόδου ακαριαίας τήξης (Commentary on the Council of State Ruling Nr 1492/2013, with regard to the applicability of the metallurgical method of flash smelting), http://www.iekemtee.gr/images/artrho.pdf
88 The EIA is reproduced at: http://soshalkidiki.gr/sos_documents/Kyria_Meleti.pdf
89 Joint ministerial decision 201745/2011, http://static.diavgeia.gov.gr/doc/4%CE%91%CE%A3%CE%940-%CE%A9%CE%940.pdf
91 In the 1990s the plant of the company MDK (now Aurubis Bulgaria AD) processed the high arsenic concentrate of the nearby Chelopech mine resulting in significant pollution of the area, which in turn led to the Bulgarian Government decreeing on 1
melting technology, only treats feeds that are very low in arsenic. Hellenic Mining Watch argues that this puts into question the construction of the Halkidiki gold metallurgical plant and vertical metal value exploitation, from which the entire expected state revenue is supposed to be generated, as well as raising concerns as to “the credibility of the company, which is allowed to carry out a large-scale operation in such a sensitive area.”

Public woodlands
The mines will require the destruction of significant areas of forest, the clearing of which has already begun. According to the company 180 hectares of forest must be cleared for the Skouries mine.

Local campaigners argue that a much greater area of forest land will be affected since Eldorado did not factor in the space needed for roads and access facilities on top of the mine and tailings facilities. The company however claims that the open pit will be re-filled and the landscape rehabilitated at the end of operations in Skouries.

However, according to Theocharis Zagkas, professor of forestry and natural resources at the Aristotle University of Thessaloniki:

“the consequences for the forest and plant life, as well as for the soil of the region, are permanent and irreversible [...]. It will therefore result with absolute certainty in the disappearance of an important natural capital at the local, national and European level. This is why we insist on prevention, in order to safeguard these resources for the benefit of today’s but also of future generations.”

In the summer of 2014, a new law was introduced to the Chamber of Parliament during summer recession by the Ministry of Environment, Energy and Climate Change to open up protected public woodlands to every form of private exploitation. While the concerned forest areas of Halkidiki did not fall under the definition of “protected public woodlands” under the terms of the law, an eleventh-hour addition that was irrelevant to the matter at hand was inserted to legalise Eldorado’s plans to build a flotation plant in Skouries, for which Eldorado could not secure a permit as it failed to comply with legislation pertaining to construction.

Potential threats to health and safety
Potential health and safety issues are also a concern of local residents, as they have been experienced in the past when TVX Gold owned mining operations there. In the 2001 and 2002, operations in the Mavres Petres base metals mine underneath the village of Stratoniki in Halkidiki had led to the land surface to cave in, causing considerable damage to houses and the village church. In

April 1990 that the Chelopech concentrate could no longer be treated at the Pirdop smelter, see http://www.dundeeprecious.com/English/operations/producing-mines/Chelopech/overview/default.aspx
95 Hellenic Mining Watch, 8.7.2012, Η σημασία των δασών της Αν. Χαλκιδικής και οι επιπτώσεις του Επενδυτικού Σχεδίου της ΕΛΛΗΝΙΚΟΣ ΧΡΥΣΟΣ (The importance of forests in Halkidiki and the impact of the investment plan Greek Gold), http://antigoldgr.org/blog/2012/07/08/zagas-gnomodotisi/
96 Greek Law 3220/2004
2002, the miners themselves went on strike due to unacceptable health and safety conditions. The union announced that due to a significant increase in rates of production, dust and explosion of gases were on the increase and underground audits (entrances to the mine) were becoming increasingly dangerous. The subsidence is still occurring as mining operations are ongoing.

A further expected threat to the health of residents of the entire region is the above-mentioned high concentration of arsenic in the ore resources of Halkidiki and the dispersion of arsenic in the atmosphere, soil and water due to mining. According to a recent document released by the Directorate for Water Resource Management of the Central Macedonia regional authority, the groundwater reserves of the entire area around the Mavres Petres mine are already contaminated with unacceptably high levels of lead and arsenic and are not fit for human consumption and use. Furthermore, the concentration of arsenic in existing and planned tailings storage facilities poses a threat of its own, as rainwater runoff further disperses arsenic over the surface and into the groundwater. Lastly, TVX Gold and now Eldorado Gold have been backfilling depleted mining galleries with a mix containing flotation tailings from the Stratoni plant which are high in sulphur, thus aggravating acid drainage and contaminating groundwater with arsenic and heavy metals.

### 2.6. Protest and criminalisation

Resistance to high-risk extreme extraction is building a global, grassroots and broad-based network the likes of which the environmental movement has rarely seen. And perhaps this phenomenon shouldn't even be referred to as an environmental movement at all, since it is primarily driven by a desire for a deeper form of democracy, one that provides communities with real control over those resources that are most critical to collective survival - the health of the water, air, and soil. In the process, these place-based stands are stopping real climate crises in progress.

*Naomi Klein, 2014*

Due to the environmental threat posed by these large-scale mining operations, the region of Halkidiki has become the centre of a growing protest movement against the current government's economic and foreign investment policies. Local residents have staged numerous protests, ranging from legal...
action to demonstrations and sit-ins. Physical protests have been met with extreme repression and police brutality in Halkidiki, which has led to concern expressed by Amnesty International and other high profile people such as Naomi Klein. These human rights concerns, which foreshadow a dangerous anti-democratic development in southern periphery European states, pose serious questions as to the Greek state’s failure in its duty to protect and Eldorado Gold’s failure in its duty to respect human rights under the UN Business and Human Rights framework.

As to date, no official investigation of police repression of the protests against Eldorado Gold’s operations has been conducted, the overview below is based on selected telephone interviews SOMO conducted with local activists, witness accounts published on the local campaign website anti-gold.gr, news reports and three publications by Amnesty International from October 2012, March 2013 and April 2014. SOMO will conduct interviews with local activists in Skouries at the end of October to cross-check some of the claims contained in this report. Some of the most notable events in the region over the past two years are highlighted here.

According to multiple eyewitness reports, on 20 March 2012, a group of miners attacked and evicted a sit-in of anti-mining activists in the Skouries forest. On 25 March, following the schoolchildren’s parades on Greek national day, a large, peaceful group of residents walked up to the mountain to protest the eviction of the sit-in and was confronted with brutal police repression and teargas attacks when they reached the junction leading up to the worksite. On 31 March, the residents of Irisissos surrounded the town hall as the municipal council was in session to protest the mayor’s and deputy mayor’s behaviour during these events. The opposition to mining became so antagonistic that the mayor Christos Pachtas and his faction left Irisissos under the protection of the riot police as the situation got out of hand, and decided to move the central municipal institutions to the mayor’s home village of Arnaia in contravention of the Kallikrates law on municipalities.

On 5 August 2012, anti-mining activists organised another demonstration in the mountain, which was met with brutal police repression. After the protesters returned to their villages, a rally was held on the central junction of Irisissos, with residents of all ages sitting and standing and distributing leaflets. The riot police chose that moment to invade the town. Amnesty International was able to collect sufficient testimonies on the excessive use of teargas, batons and rubber bullets by the police to warrant a mention of this specific protest in its report on Policing Demonstrations in the EU.

On 21 October 2012, another anti-mining demonstration in the mountain was met with police brutality so extreme locals say had not been witnessed in Greece for decades. Police used excessive amounts of tear gas against protesters and physically assaulted the crowd as it was already retreating, beating demonstrators at random and smashing vehicle windows, in one case throwing a tear gas canister inside a car whose elderly driver subsequently lost control and was accused by the police of seeking to deliberately wound a policeman (the driver was later found innocent in court). Another, elderly woman sustained heavy leg injuries when riot policemen demanded that she kneels and

---


106 See also Naomi Klein, 2014, This changes everything, Penguin Group, for a description of police brutality and military-type controls in Halkidiki in relation to the protests.
trampled her ankle. The state conducted no investigation into reported police brutality, despite the availability of abundant picture and video material.\textsuperscript{107}

On 17 February 2013, a group of some 50 individuals (by Eldorado’s security guards’ estimate) conducted an arson attack on the Skouries mining site, destroying machinery, equipment, trucks and prefabs. On 7 March, riot police and the anti-terrorism brigade (EKAM) descended on Ierissos in a show of force to conduct house-to-house searches. When residents protested the invasion of their town, the police fired tear gas canisters in all directions; one exploded in the school yard, causing children to choke and some to faint.\textsuperscript{108} More than 250 residents of the region were detained and interrogated by the police over the weeks following the arson attack, with several reported cases of police brutality akin to torture against detainees, including against minors, and forced DNA sampling without a court warrant as required under Greek law.\textsuperscript{109} Amnesty International intervened again, calling on the Greek authorities “to conduct prompt, impartial and effective investigations into allegations of human rights violations by police in the village of Ierissos”.\textsuperscript{110} No investigation has as yet taken place. Two residents of Ierissos were arrested in their homes in the middle of the night on 10 April, and another two on 10 July. They were held on remand for 6 months and finally released without their case having gone to court.\textsuperscript{111}

On 12 May 2013, a group of residents protesting logging and excavation works conducted by the mining company in the basin of the Karatzas river, which they denounced as illegal, clashed with the police guarding the site, resulting in one policeman being wounded. The police claim that this injury was caused by a hunting rifle, which the protesters deny. Following these events, in October 2013, 29 anti-mining activists were charged with forming of a criminal organisation aiming at disrupting ore mining activities in north-eastern Halkidiki and harming the national interest. No weapons or ammunition were found in their possession, nor has any evidence been supplied that they were laundering money, but their crime is explicitly described as trying to prevent or postpone mining activities by the company Hellas Gold SA. The evidence presented against the 29 individuals is their participation in anti-mine rallies and having publicly expressed their opinion against the mines. The 3,500 pages of the case file contain recorded phone conversations of the activists, in which they encourage other individuals to join the anti-mining movement, as well as interviews with a variety of Greek and international media.\textsuperscript{112}

Numerous other protests were held in the region as well as in Athens and Thessaloniki, gathering thousands of people from Halkidiki and other parts of Greece.\textsuperscript{113} Most notable among them was a

\textsuperscript{107} Alter Thess, 23.10.2012, Chalkidiki: Brutal repression at demonstration against gold-mining industry in Skouries, http://www.alterthess.gr/content/chalkidiki-brutal-repression-demonstration-against-gold-mining-industry-skouries

\textsuperscript{108} Naomi Klein, 2014, This Changes Everything, Penguin Group, page 298.

\textsuperscript{109} Activist blogger, 5.3.2013, Skouries: from intimidation to terror, http://theirategreek.wordpress.com/2013/03/05/skouries-from-intimidation-to-terror/


\textsuperscript{111} SOS Halkidiki, November 2012, Social, economic and environmental impacts of gold mining in Halkidiki, http://theirategreek.wordpress.com/2013/07/14/rbnews-weekly-bulletin-06-12-july-2013/


demonstration held in Thessaloniki on 9 March 2013, where an estimated 15,000 people marched on the Canadian consulate to protest Eldorado Gold’s aggressive tactics. Furthermore, a wide variety of national and local associations as well as municipal councils in Halkidiki and around the country have issued statements and voted motions in support of the people of north-eastern Halkidiki and against mining activities.

**Media bias**

The local campaigners argue that few of the numerous protests were reported by Greek media, and if report often showed bias. The Greek media landscape has often been denounced as corrupt and intrinsically linked to big business interests. An EU Commission-funded study on media freedom and independence found that “media policy-making has been thoroughly influenced, albeit in opaque and informal ways, by powerful economic and business interests who have sought to gain power, profit, or both, at the expense of the normative functions that the media is expected to perform in the public interest.” Reuters dedicated a special report on the issue, showing deep-seated conflicts of interest of media corporations journalists, who interests are intertwined with those of the private sector and politicians.

Local activists report that this conflict of interest became also visible in the mining projects of Halkidiki. The Bobolas family, the majority shareholder of Greece’s biggest private TV station that owns various newspapers, other print media and websites, has a construction firm which has a stake in the mining project, for instance.

### 2.7. Conclusion

This chapter showed that there are serious environmental and human rights controversies related to Eldorado Gold’s activities in Halkidiki. The company claims that an ambitious plan for mining of gold and copper in the area – including deforestation and open pit mining with excavation and everyday use of explosives – will benefit the region through the creation of some 1,300 direct and 880 indirect jobs, while local residents argue that the planned investment will cause considerable damage to the environment and livelihoods, expected to result in jobs losses in the existing sectors of the local economy. Halkidiki relies heavily on beekeeping, fishery, forestry, farming, pasture land and tourism; economic activities that are dependent on a well-balanced ecosystem. Scientific environmental impact assessment.
reports have supported the concerns of the local community that the planned mining operations and related clearing of forests on mountainous areas will potentially cause serious soil erosion as well as water and air pollution. There are also outstanding questions regarding the feasibility of the flash smelting ore processing technology proposed by the company. Furthermore, locals say they have not been properly consulted and necessary information to assess the potential impacts of the operations has not been provided by the company.

Local resistance to the company’s operations has been heavily repressed by the Greek state and met with police brutality and far-reaching criminalisation. The Greek state is protecting Eldorado Gold’s interests with the argument that Greece needs to attract foreign direct investment and related revenue and job creation to pay for the debt and financial crisis the country is experiencing. As this and the following chapter show, however, it is not at all guaranteed that the mining operations will benefit the local community or even Greek society as a whole financially. Indeed, financial benefits are not only made up of revenues and jobs but must include the financial costs resulting from environmental destruction, health and safety impacts and job losses resulting from these. These are typically referred to as externalities, which are often borne by the public rather than the corporation that is making profits. As the next chapters show, state aid, tax incentives and tax avoidance schemes make this project most likely a financial loss, even in purely economic terms, for Greece.

From a human rights and civil liberties perspective, this chapter showed that there are serious risks for the Canadian, Dutch and Greek state with regard to their duty to protect human rights, in the case of Canada and the Netherlands in relation to supply chain due diligence of businesses incorporated in their jurisdiction (see chapter 1.3). Neither of these countries proactively monitor the conduct of their companies abroad, nor do they investigate credible allegations of human rights abuse linked to those operations. They thus maintain what Human Rights Watch calls an "indefensible status quo where governments refuse to find out whether their corporate citizens are credibly implicated in serious human rights abuses abroad." 120

3. State subsidy

3.1. Introduction

Research for this report identified three ways which Eldorado benefits financially from operations in Greece, which should be scrutinised to enable a general assessment of whether Eldorado’s activities in Greece will actually benefit Greek society as a whole.

Firstly, Eldorado receives financial support from Export Development Canada (EDC), the Canadian export credit agency. Secondly, in the context of Troika-imposed investment promotion measures, the company’s Perama Hill project will benefit from Greece’s fast-track investment programme if all permits are approved. In its original contract transferring the mines and land to the company, the Greek state has also exempted Hellas Gold from claims that might have arisen from the mining activities of the previous owner TVX Gold. Thirdly, Eldorado structures its investments through the Netherlands and Barbados, allowing for substantial reductions in tax payments in Greece and resulting public revenue losses.

The first two gains represent forms of state subsidies. The first, namely an EDC loan from the Canadian government, has already been granted. The second concerns a series of expected fiscal incentives and procedural facilitations offered by the Greek government under Troika measures and will only come into effect when the project has received final approval, including environmental permits. As the fast-track investment project for Perama Hill is as yet not fully approved, further research is needed to assess the potential future impact of the fiscal benefits granted under this procedure on revenues in Greece.

The third financial gain is of a different nature, namely, a fiscal benefit unintended by the Greek state acquired as a result of using Dutch and Barbados holding companies. This issue will be discussed in more detail in the next chapter. The following paragraphs discuss respectively the financial support from Export Development Canada (EDC) to Eldorado and the benefits offered by the Greek state.

3.2. Support from Export Development Canada (EDC)

Export credit agencies are public entities that provide corporations with government-backed loans, guarantees, credits and insurance to support exports and foreign investment. Export Development Canada (EDC), a public corporation, is the Canadian export credit agency.

In November 2012, EDC provided Eldorado Gold with between CDN$25 and 50 million in the form of a ‘general corporate purposes’ loan. EDC does not disclose the precise dollar amounts of its loans. General corporate loans are used at the discretion of the client, within the commercial terms and conditions of the credit facility. According to EDC, the agency’s “rigorous due diligence requirements” ensure that all projects and transactions they support are “financially,

---

121 EDC does not disclose the precise dollar amounts of its loans.
122 Within the commercial terms and conditions of the credit facility.
123 Personal communication from Yolanda Banks, Senior Corporate Social Responsibility Advisor, EDC to Lauren Sheffield. 14.9.2010.

“Our review of corporate loans focuses on the ability of the company to manage its environmental and social risks. These reviews take into account several factors such as the industry sector being supported, the countries in which the borrower operates, the borrower’s environmental and social track record (including compliance with applicable regulations) and the borrower’s corporate capacity to manage the environmental and social risks of its operations.”

EDC does not provide access basic information about the agency’s operations, including its due diligence processes. It also does not disclose information about how it conducts its loan reviews, including its assessments of factors such as a potential client’s capacity to manage environmental and social risks or their compliance with domestic law.

In May 2013, the Mayor of Alexandroupoli and two members of Hellenic Mining Watch met with representatives of EDC, including the Vice President of Corporate Social Responsibility, at EDC’s headquarters in Ottawa. They provided EDC with publicly-available information about Eldorado Gold’s operations in Halkidiki expressing concern regarding the company’s operations, including: serious inaccuracies in Eldorado’s environmental impact assessment; the anticipated negative impact of the project on extremely scarce local water resources; outstanding questions regarding the feasibility of the ore processing technology proposed by the company; and violent state oppression in the face of widespread resistance to the project (see chapter 2). They emphasised that these and other social and environmental issues were raised by local residents and civil society organisations in Greece long before EDC provided Eldorado with financing.\footnote{Halifax Initiative, June 2013, Greeks question EDC financing for Eldorado, \url{http://www.halifaxinitiative.org/content/greeks-question-edc-financing-eldorado}.}

During this visit EDC has been asked for information about its social and environmental due diligence process and whether EDC was aware of the serious social and environmental issues associated with the project when it decided to finance the company. Finally, the Mayor of Alexandroupoli and Hellenic Mining Watch representatives asked EDC for information regarding the specific steps that it would take to ensure that its client, Eldorado Gold, comply with EDC’s environmental and social standards.

EDC responded the following: “We regularly review our internal processes to look at these types of financial arrangements known as corporate facilities to ensure that relevant environmental and social issues are identified and addressed. When stakeholders raise issues with us, we re-visit the transaction. In this regard, we re-examined this particular transaction, including information that has become available since our initial review. We are confident that our process identified the potential environmental and social issues around operations with the size and scope of Eldorado, and that the company had the capacity to address these issues in the event that those issues materialized.”\footnote{Personal communication from Signi Schneider, VP Corporate Social Responsibility, EDC to Maria Kadoglou, Hellenic Mining Watch. 2.10.2013.}

In its application of standards and responses to raised concerns related to Eldorado, EDC does not respond to the actual environmental and social impacts associated with Eldorado’s Greek operations.
On grounds of the human rights concerns raised, MiningWatch Canada petitioned the Canadian government to end the financial support for Eldorado Gold in northern Greece, without success.\(^{128}\)

3.3. An Eldorado for investors: fast-track fiscal benefits

Under the European bail-out programme for indebted EU countries, Greece has so far received two three-year loan agreements, one in May 2010 (2010-2012) and one in March 2012 (2012-2014), amounting to €237 billion in total (€73 billion and €164.5 billion respectively). Part of the conditionality of these loans is to ‘improve the business environment’ (European Commission\(^{129}\)) and to ‘attract investment’ (IMF\(^{130}\)). A plethora of legal measures have been put in place as a result, including a special agency set up to promote investments (Invest in Greece, IIG), as well as a ‘fast-track’ procedure that allows the IIG to speed up licensing procedures in certain sectors and provide tax incentives.\(^{131}\) Next to accelerated licensing procedures, these incentives include:

- Exemption from payment of income tax on pre-tax profits from the enterprise’s activities;
- Subsidy in form of a free-of-charge payment by the state of a sum of money to cover part of the cost of the investment;
- ‘Leasing subsidy’, including payment by the state of part of the instalments under a leasing agreement for new machinery and/or other equipment.\(^{132}\)

In March 2012, Eldorado’s Gold Perama Hill project (gold and silver mining) was approved by an Inter-Ministerial decision for this special fast-track procedure for investments.\(^{133}\) Perama Hill Gold is the only mining industry project that has been approved by the IIG. Of the ten approved projects, five projects are in the energy sector, one in the commercial sector and three in tourism.\(^{134}\) According to the company, the approval “signals a significant political message demonstrating the coalition Government’s will to advance the Perama Hill project and in general, the development of the mineral resources sector in Greece.”\(^{135}\)

---


\(^{131}\) These apply to investments in all economic sectors by both Greek and foreign entities for a period of six years for existing companies and eight years for start-ups.


However, with this decision, the Greek state is pre-empting an approval of the necessary environmental impact assessment (EIA) for the Perama Hill project\textsuperscript{136} which has not been granted due to strong local resistance to the operations.

The IIG justifies its approval with the following argumentation: “The Golden Perama project will be one of the most important and productive investments at the area of Thraki to this day, having a positive contribution to the economy and employment of the area. In particular, during the construction period, approximately 300 people will be hired and upon operation the permanent staff will be 200 full time employees. At a local level, entrepreneurship will be enhanced, regional inequality will be decreased and social consistency will be enforced through direct tax collection.

According to the company, the technology methods that are used are absolutely safe for the environment and the local society and in complete accordance with both Greek and European legislation. […]\textsuperscript{137}

This report shows that there are serious grounds to question the promised environmental, economic and fiscal benefits of Eldorado’s gold projects. Chapter 2 further shows that local communities not only in Skouries but also Thrace, where Perama Hill is located, have struggled for decades against large-scale mining in the area. Next to the expected environmental destruction, they argue the project has very little to offer by way of boosting employment, especially at a time of an exceptionally high rate of unemployment.\textsuperscript{138}

Whilst the project does not offer major employment opportunities, the subsidies - paid for by public revenues - are expected to be overly generous. The project budget is almost 129 million Euros; the related incentives (grants, tax relief, etc.) are therefore potentially significant as well.

3.4. Conclusion

In conclusion, whilst a case can be made for promoting and attracting investment with incentives such as offered by the Canadian and the Greek state, they need to be offset with (future) public benefits. In order to ensure the public benefitting from foreign investments, projects supported by public money should only be implemented after extensive consultation of affected communities and they need be embedded in a broader plan fostering economic and social sustainability. This requires specifying the types of investment deemed desirable in relation to the economic, social and environmental development goals envisaged by the authorities.

This does not seem to be the case with respect to both the procedures of EDC as well as the fast-track investment projects in place in Greece. EDC’s response communicates its satisfaction with the company’s performance. The agency appears to be indifferent to the conflict, social unrest and violent repression associated with its client’s presence in Greece. With regard to the proposed fast-track procedure and its fiscal incentives, the urgency created by the conditionalities of the Troika

\textsuperscript{137} Invest in Greece Agency, April 2012, newsletter,\url{http://www.investingreece.gov.gr/default.asp?pid=127&nwslID=21&sec=2&la=4}
\textsuperscript{138} Sarah Steffen, 16.01.2014, Gold mining stirs up controversy in Greece, \url{http://www.dw.de/gold-mining-stirs-up-controversy-in-greece/a-17365784}
agreements appears to have led to one-sided measures that lack proper impact assessment taking into account negative externalities and local resistance. Moreover, effective measures to combat profit shifting to ensure investments serve public interests, appear to be lacking.
4. Avoiding tax through the Netherlands

We structure, and restructure from time to time, our corporate organization in a commercially efficient manner and if any such planning effort is considered by a taxation authority to constitute tax avoidance, then this could result in increased taxes and tax penalties which could have a material adverse effect on our financial condition.

Eldorado Gold, 2013

139

4.1. Introduction

Evidence suggests that the extractive sector is associated with aggressive tax planning (tax avoidance) in the legal grey zone, as well as illicit financial flows, which “is generated by corruption, illegal resource exploitation, and tax evasion.” Extractive companies can minimise their tax contribution in several ways: “some are legal, some are illegal, and some are in the grey area between the two; all are difficult to detect.”

Aggressive tax planning methods shift income from high tax jurisdictions via group companies in conduit jurisdictions to low-tax jurisdictions. Dutch mailbox companies play a central role in international profit-shifting as they act as conduit entities. Indeed, the world’s largest mining companies have chosen to invest in and finance operational activities via the Netherlands using Dutch holding and conduit entities, which largely provide group loans and channel corresponding interest income from host states to tax havens. Publish What You Pay research found that after the US secrecy jurisdiction of Delaware, the Netherlands is the second favourite jurisdiction of the 10 biggest extractive companies in the world for incorporation of their subsidiaries.

Only one possible method of profit-shifting was researched for this report, namely, potential corporate income tax avoidance by Eldorado Gold in Greece through financing the Greek subsidiary Hellas Gold with bond loans from Dutch related companies, which in turn receive bonds from a Barbados group company. The details of this research are outlined in this chapter.

More revenue concerns are relevant to Eldorado Gold’s operations in Greece, however, which were not researched in detail here. An important aggressive tax planning technique is transfer mispricing\textsuperscript{145}, documented as being widely used by MNCs and in particular extractive industry companies. These and other issues are outlined in more detail at the end of this chapter with view to alerting civil society groups as well as the Greek revenue authorities to existing literature and guidelines to prevent potential tax base erosion by Eldorado Gold in Greece.

4.2. The Netherlands: a tax haven - for mining companies

The Netherlands is not a low-tax jurisdiction or a tax haven in the sense that it offers a near-to-zero corporate tax rate or bank secrecy. Rather it facilitates tax avoidance by letting MNCs channel their income through the Netherlands from high- to low-tax jurisdictions where they remain untaxed.

In brief this is what happens: bilateral tax treaties and EU Directives allow for capital in the form of passive income (dividends, royalties, interest, capital gains) to leave a home country and enter the Netherlands without being taxed (or at a very low rate). Dutch domestic legislation ensures that the tax on that income remains low in the Netherlands (through the participation exemption and generous rules on tax deductible items, for instance). Lack of withholding taxes on outgoing payments means that income can leave the country without being taxed - typically into a low-tax haven - leading to double non-taxation.\textsuperscript{146}

Dutch financial and/or holding company thus help to reduce source taxation by:
- Facilitating inflow of untaxed or low-taxed capital
- Reducing the tax rate in the Netherlands
- Facilitating outflow

Figure 3 represents this conduit structure graphically.

\textsuperscript{145} Transfer prices in effect allocate profit to subsidiaries in a group and therefore the jurisdiction in which it is located, based on the amount of value added at each step along the supply chain of a product from extraction to consumption.

\textsuperscript{146} Capital might not be paid out to its parent. A Dutch holding company that receives low-taxed income or payments from its own subsidiary companies can effectively defer these gains for its parent company, almost indefinitely, and reinvest it in the group in a tax-efficient manner.
The legal entities used for such a tax planning technique is typically a holding or financing company, termed Special Financial Institution (SFI) in the Netherlands, or Special Purpose Entity (SPE) by international bodies such as the IMF and OECD. A holding company is a corporation that owns shares in related companies (subsidiaries) and unrelated companies and/or finances other group entities through loans (financial holding). A Dutch holding can make use of the Dutch tax treaty network that reduces withholding taxes at source and can receive tax free dividends and capital gains from its (foreign) subsidiaries under the participation exemption. A financing company can deduct expenses, including interest on funding loans - even if these are made to tax havens - and does not have pay withholding taxes in the Netherlands on outgoing interest, royalty and most dividend payments. Often these functions are combined in one company. Because the Netherlands has lose substance rules, i.e. any company that fulfills minimum requirements can make use of the treaty network and domestic fiscal advantages, any foreign company can use the Netherlands to shift income out of countries of operation to tax havens. As mentioned above, the type of payments that are routed through the Netherlands for tax avoidance purposes are often royalties, Intellectual Property (IP) rights (fees paid for using licences or brand names), dividends and interest payments. The Netherlands is also used to avoid capital gains tax resulting from the sale of subsidiaries.

The Netherlands is not alone in facilitating tax avoidance, but it exists in tandem with Cyprus, Luxembourg, Austria and other European offshore jurisdictions as well as those outside of the EU. A good description of the global network of tax havens can be found in: Ronen Palan et al, 2010, Tax havens: How globalization really works, Cornell University Press.
while Luxembourg is the largest source of inward FDI of this type for Greece. This indicates profit-shifting from Greece through these jurisdictions as well (see chapter 5).

Although the Netherlands is certainly not the only country offering the above-named tax and investment incentives, it is one of the biggest players in the international tax avoidance industry. The country is the biggest investor in the world, a top ranking it owes to its conduit status, as mailbox companies account for roughly 75% of total Dutch direct investment.\textsuperscript{148} Given that corporations that operate in high risk sectors with regard to human rights massively make use of the Netherlands, the regulatory implications for the Netherlands, similar to that of Canada, should be far-reaching. Yet both fail to monitor the human rights impact of these entities incorporated in their jurisdictions.\textsuperscript{149}

4.3. Eldorado Gold in the Netherlands

As can be seen in Eldorado Gold’s corporate structure below, Eldorado Gold invests in Greece but also Romania, Turkey and Canada through a series of Dutch mailbox companies. In total the company owns 12 subsidiaries in the Netherlands. According to 2013 annual accounts, they have total assets worth some 1.9 billion US$. All of Eldorado’s Dutch subsidiaries are registered at Barbara Strozzilaan 101 in Amsterdam, an address which hosts some 70 more companies according to the Dutch Chamber of Commerce.\textsuperscript{150} None of the Dutch subsidiaries employ any personnel, with the exception of one subsidiary (Eldorado Gold Coöperatief U.A.), which employed three people in 2013.\textsuperscript{151}

Eldorado Gold took some of these Dutch companies over from European Goldfields in 2012; others were acquired before and after the Goldfields takeover. Table 3 below provides information on the total net assets, the number of employees and the function per subsidiary. The corporate structure below (Figure 4) shows the links between the Dutch subsidiaries and subsidiaries in countries of operation. The structure illustrates the central role of a few Dutch subsidiaries in the company’s financing structure.

Eldorado Gold already used the Netherlands since 2006, when it bought SG Resources BV (which was managed by the Dutch trust office Intertrust until at least 2012),\textsuperscript{152} which fully owns the Turkish subsidiary Tuprag Metal SA, which operates the Kisdag and Efemcukuru gold mines.

With the acquisition of European Goldfields, a process that started in 2011, the Dutch subsidiaries started to gain increasing relevance in financing Eldorado Gold’s European operations as well as managing takeovers. The company not only took over the Dutch structure of European Goldfields but extended it with the incorporation of a cooperative (Eldorado Gold Coöperatief UA) and started up a financing structure with a Barbados group company (see Error! Reference source not found.), and significantly increasing the financing of the Greek operations through bond loans from its Dutch entities. Whilst total bond loans issued by Hellas Gold to Dutch subsidiaries started at 8 million € in 2009, this


\textsuperscript{150} Dutch Chamber of Commerce website, www.kvk.nl

\textsuperscript{151} Eldorado Gold Coöperatief U.A, Annual report 2013, Dutch Chamber of Commerce.

\textsuperscript{152} Dutch Chamber of Commerce, history of SG Resources BV (33213149).
grew to 86.2 million € in 2012 and a staggering 176.4 million € in 2013. (Untaxed) interest payments from Greece to Dutch subsidiaries grew accordingly (see Table ).
Table 3: Eldorado’s Dutch subsidiaries related to its Greek operations, 2013 (assets in million US$)

<table>
<thead>
<tr>
<th>Name</th>
<th>Total assets</th>
<th>Staff</th>
<th>Owned since</th>
<th>Principal activity / function</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. SG Resources BV</td>
<td>266</td>
<td>0</td>
<td>2006</td>
<td>Holding and finance company</td>
<td>The cooperative was incorporated on 6 October 2011. Members were Eldorado Gold Corporation (Canada) and D.L. Moss (but her membership was transferred to Eldorado Gold Holdings (BC) Limited (Canada) in February 2012.</td>
</tr>
<tr>
<td>2. Eldorado Gold Coöperatief UA</td>
<td>170</td>
<td>3</td>
<td>2011</td>
<td>Holding and finance company</td>
<td></td>
</tr>
<tr>
<td>3. Eldorado Gold (Netherlands) BV</td>
<td>477</td>
<td>0</td>
<td>2012</td>
<td>Holding and finance company</td>
<td>Formerly known as European Goldfields Mining (Netherlands) BV.</td>
</tr>
<tr>
<td>4. Eldorado Thrace (Greece) BV</td>
<td>22</td>
<td>0</td>
<td>2012</td>
<td>Holding and finance company</td>
<td>Formerly known as European Goldfields (Treasury) BV.</td>
</tr>
<tr>
<td>5. Eldorado Gold (Greece) BV</td>
<td>549</td>
<td>0</td>
<td>2012</td>
<td>Holding and finance company</td>
<td>Formerly known as European Goldfields (Greece) BV.</td>
</tr>
<tr>
<td>6. Deva Gold (Barbados) Ltd</td>
<td>12</td>
<td>n/a</td>
<td></td>
<td>Financing of Romanian subsidiaries through shareholdings and loans</td>
<td>This is a company based Barbados that, during 2012, changed its place of effective management to Amsterdam. However, the company delisted from the Dutch Chamber of Commerce after that and only the annual accounts of 2012 are available.</td>
</tr>
<tr>
<td>7. Eldorado Gold Treasury BV</td>
<td>121</td>
<td>0</td>
<td>2013</td>
<td>Financing company</td>
<td></td>
</tr>
<tr>
<td>8. Scarborough Minerals International BV</td>
<td>234</td>
<td>-</td>
<td>2014</td>
<td>Holding and finance company</td>
<td>Incorporated on 20 February 2013 by its shareholder Eldorado Coöperatief UA.</td>
</tr>
<tr>
<td>9. Thrace Investments BV</td>
<td>-</td>
<td>-</td>
<td>2014</td>
<td>Holding and finance company</td>
<td></td>
</tr>
</tbody>
</table>

Dutch subsidiaries related to operations in Turkey and Romania

<table>
<thead>
<tr>
<th>Name</th>
<th>Total assets</th>
<th>Staff</th>
<th>Owned since</th>
<th>Principal activity / function</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>10. Greater Pontides Exploration BV</td>
<td>8</td>
<td>0</td>
<td></td>
<td>Holding and finance company</td>
<td>The company is for 51% held by Eldorado Gold (Netherlands) BV, and the remaining 49% is held by Ariana Exploration and Development Limited (UK).</td>
</tr>
<tr>
<td>11. Greater Anatolia BV</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>This company delisted from the Chamber of Commerce</td>
</tr>
<tr>
<td>12. Eldorado Gold (Romania) BV</td>
<td>15</td>
<td>0</td>
<td></td>
<td>Holding and finance company</td>
<td></td>
</tr>
</tbody>
</table>

---

153 Figures are retrieved from annual reports for 2013 (the year ending on 31 December 2013) as deposited by the companies at the Dutch Chamber of Commerce, www.kvk.nl. Exceptions are Scarborough Minerals Internationals BV and Thrace Investments BV. For these two companies, the figures are based on the annual accounts 2013, for the year ending on 30 September 2013. The total assets figures for these two companies represent total net assets.

154 History of the company as retrieved from the Chamber of Commerce, www.kvk.nl.


156 Amendment to the statutes, as submitted to the Chamber of Commerce by the company on 12 May 2014 The amendment states that since 6 May 2014, the company moved from Delft to Amsterdam and is now based at the Barbara Strozzilaan 101, Amsterdam, like all other Eldorado subsidiaries.

Figure 4: Direct subsidiaries and parents of Eldorado Gold’s Dutch incorporations

Source: Eldorado Gold 2013\textsuperscript{158}, Dutch Chamber of Commerce.

4.4. Functions of Eldorado’s Dutch subsidiaries

Eldorado’s Dutch subsidiaries have the legal form of a private limited liability company\(^ {159}\) (except one which is a cooperative) and act as\(^ {160}\):

a) Intermediate holding companies, which own the shares of other, typically operating, group companies. Fiscal advantages\(^ {161}\) of a Dutch holding include the avoidance of host country dividend withholding or capital gains tax and home country tax on foreign profits\(^ {162}\);

b) Financing conduit companies, either by buying up bonds of local subsidiaries or by providing direct loans to related companies. Dutch conduit financing entities allow for the avoidance of interest withholding tax at source and can be used to shift profits out of operating subsidiaries located in high-tax jurisdictions to group companies in low-tax jurisdictions.

In terms of assets, Eldorado’s largest Dutch subsidiaries are:

1. **Eldorado Gold (Netherlands) BV**
   The company finances Hellas Gold SA (Greece) by bond loan subscription. It also owns 100% of the shares of Eldorado Gold (Greece) BV and of Greater Anatolia BV. In 2013, Eldorado Gold (Netherlands) BV also acquired 100% of the shares of SG Resources BV. It also holds 51% of the shares of Greater Pontides Exploration BV. The company itself is partly financed by Barbados subsidiary, and is a wholly-owned subsidiary of Eldorado Gold Corporation (Canada).

2. **Eldorado Gold (Greece) BV**
   Eldorado Gold (Greece) BV owns 95% of the shares of Hellas Gold SA. It also finances Hellas Gold through subscription to bond loans. Like Eldorado Gold (Netherlands), it is partly financed by a Barbados subsidiary through a credit facility.

3. **Eldorado Gold Coöperatief UA**
   Current members of the cooperative are Eldorado Gold Holding (BC) Limited (Canada) and Frontier Pacific Mining Corporation (Canada). The company has several links to the Greek region of Thrace, since it is the sole shareholder of Eldorado Thrace (Greece) BV and in 2014 took over Glory Resources Ltd,\(^ {163}\) an Australian gold exploration and development company which operates the Sapes Gold mine in the Thrace region (in which it already had a minority shareholding of 20%). Eldorado Gold Coöperatief UA also owns 100% of the shares of Eldorado Gold (Romania) BV, which owns gold mining operations in Romania. The Romanian subsidiaries also make use of subsidiaries in Barbados.\(^ {164}\) It is also the sole shareholder of

---

\(^{159}\) Private limited liability company, which means the company is owned by shareholders and its shares are privately registered and not freely transferable.

\(^{160}\) See also Deloitte The Netherlands, undated, As an intermediary, https://www.deloitte.com/assets/Dcom-Azerbaijan/Site%20SMF/EN/Events/The%20Netherlands_As%20an%20Intermediary.pdf

\(^{161}\) A holding also reduces risk in case operating companies go bankrupt and centralises ownership and management of the shareholdings of a group of companies.

\(^{162}\) Without a holding structure, the regular CIT of 25% would apply. If assets are held by a Dutch holding company and sold, then the profits can effectively be deferred for its parent company, almost indefinitely, and reinvest it in the group in a tax-efficient manner.


\(^{164}\) Eldorado Gold Coöperatief U.A., 2012 annual accounts as deposited at the Dutch Chamber of Commerce, www.kvk.nl
Eldorado Gold Treasury BV. The cooperative also has minority shareholdings in Swedish and Australian subsidiaries. As mentioned above, Eldorado Gold Coöperatief UA is the company’s only subsidiary in the Netherlands which employs personnel (three employees). The cooperative has subsidiaries in Romania and minority shareholdings in mines in Russia, Finland, Sweden and Canada.\textsuperscript{165}

4. **Eldorado Gold Treasury BV**

This company was set up as a financing company in 2013 by its sole shareholder, Eldorado Gold Coöperatief UA who bought all shares in said year for a total amount of € 85 million. It finances Hellas Gold SA through bond loans. It also concluded a credit facility worth US$ 200 million with Eldorado subsidiary Deva Gold SA, located in Romania. Deva Gold SA operates the Certej open pit mining project in the Apuseni Mountains.\textsuperscript{166} Eldorado Gold Treasury BV itself is financed through promissory notes issued to its shareholder (Eldorado Gold Coöperatief).

5. **Eldorado Thrace (Greece) BV**

The company acts as a holding and financing company and owns a Greek subsidiary Thracean Gold Mining, which in turn is owner of the Perama Hill gold mining project. This project has been approved for benefits under the Greece’s accelerated investment procedure introduced as part of the Troika measures (see chapter 4).

6. **Scarborough Minerals International BV**

Scarborough Minerals International BV is the sole shareholder of Thrace Investment BV (Netherlands) and Kyprou Gold Ltd (UK) that together own a Greek subsidiary operating the Sapes Gold Project in Greece. Scarborough Minerals International BV also owns 100% of the shares of a Czech company (Greenwich Resources).

7. **SG Resources BV**

The company finances Turkish subsidiaries through shareholdings.

**Explanation of the links to Greek operations in Skouries**

As can be seen from Eldorado’s Dutch corporate structure and the overview provided above, the first two Dutch companies have a direct ownership link to the controversial operations in Halkidiki: Eldorado Gold (Netherlands) owns Eldorado Gold (Greece) which in turn owns 95% of Hellas Gold SA, the Greek company responsible for the Kassandra mines (Stratoni, Skouries and Olympias projects). The remaining 5% of the shares of Hellas Gold are owned by Ellaktor (AKTOR Investment Holding Limited), a Greek construction company.\textsuperscript{167}


\textsuperscript{167} Aktor, website, Mining activities, http://en.aktor.gr/article.asp?catid=20139
4.5. Tax base erosion through interest payments

The previous sections described Eldorado’s corporate structure in the Netherlands and explained the relations with Eldorado’s Greek operations and developments. This section looks into the details of some of the tax avoidance mechanisms that Eldorado seems to use with a central role for the Netherlands as a conduit country, starting with an outline of policies that enable this tax planning.

4.5.1. Policy history

A historical reading of tax policies can help to explain corporate structures. As described above and in previous chapters, Eldorado Gold acquired the majority of its Dutch subsidiaries when it took over European Goldfields in 2012. European Goldfields decided to structure its investment in Greece through the Netherlands in early 2001, with the creation of a Dutch holding company (now Eldorado Gold (Netherlands) BV). The consideration to set up a Dutch holding structure was thus taken in the year 2000 or earlier on the basis of the fiscal climate at the time.

There were a number of fiscal advantages for this structure at the time, some of which have been restricted, and others remain intact. For instance, in 2000, the Netherlands provided for a participation exemption, a large network of double taxation treaties reducing withholding taxes at source and a generous advance pricing agreement and tax ruling practice, whereby the revenue authorities agree on transfer pricing methods in advance and thus offer investors security in their tax planning strategies.

Moreover, the internationally accepted transfer pricing guidelines were not yet implemented in Dutch tax law and the number of restrictions to deduct interest from taxable profits were very limited. The participation exemption and double tax treaties have since remained unchanged, whilst transfer pricing guidelines have been implemented in national law and some restrictions in the reduction from interest to taxable profits have been introduced. Information on whether these restrictions are currently applied in the case of Eldorado Gold is not publicly available.

Other newly introduced policies, such as EU Directives discussed further below, have increased fiscal advantages compared to more than a decade ago. Eldorado Gold has built on the Dutch holding structure set up by European Goldfields and expanded it since.

4.5.2. Method: Rerouting interest payments

Hellas Gold SA issued several unsecured bonds and bond loans in previous years to finance its operations. The bonds require Hellas Gold SA to pay interest to the four Dutch companies that subscribed to the bonds, namely, Eldorado Gold (Greece) BV, Eldorado Gold (Netherlands) BV, Eldorado Thrace (Greece) BV and Eldorado Gold Treasury BV. The total value of the bonds and bond loans that the Dutch companies have subscribed to, has increased from €8 million in 2009 to €176 million in 2013.

Several policies and treaties enable Eldorado Gold to structure its interest payments in such a way that interest payments are deducted from its profit in Greece and end up virtually untaxed in Barbados. These are explained in the section below, which also provides calculations on the amounts of money involved and the resulting tax revenue losses for Greece.
**Tax treaties and EU Directives: lowering withholding tax at source**

The Netherlands was chosen as location by the former owner European Goldfields as intermediate holdings in 2001, in a period of time when there was no double taxation treaty (DTT) between Greece and Canada. Double taxation treaties have multiple purposes. Next to facilitating information exchange and administrative cooperation, they allocate taxing rights between the signatory states and define who is entitled to enjoy treaty benefits. DTTs aim to avoid double taxation; however, they can also lead to double non-taxation.

In order to fulfil these purposes, treaties, amongst other things, set withholding tax rates that are often lower than national withholding tax rates with the proclaimed aim of stimulating investment between two countries. Withholding tax (WHT) is tax levied on source income that is paid to foreign persons (which can be individuals as well as companies). WHT is generally levied on dividends, royalties, and interest.

Although withholding taxes are arguably an imperfect tool to tax international economic activity, the ample opportunities and wide-spread use of avoidance techniques by MNCs means that WHTs are not only a legitimate but often the only effective way for states to collect direct taxes\(^{168}\) and lessen their dependence on indirect regressive forms of taxation, such as VAT.

Even within limited treaty networks a combination of a treaty with a very low withholding tax rate and treaty shopping by taxpayers can deprive the source country of significant withholding tax revenues on dividends, interest or royalties for the use of intellectual property and the like – the effect can be especially detrimental to developing countries.

**UN Tax Committee\(^ {169}\)**

Whilst tax treaties are bilateral, the use of mailbox or shell companies allows MNCs to benefit from treaties even if they have no economic activities in one of the treaty states. This is termed treaty shopping, and there is an increasing literature from NGOs,\(^ {170}\) research institutes and international organisations such as the UN, OECD and IMF on the negative impact double taxation treaties can have on domestic revenues. As the UN Tax Committee has pointed out, a combination of a treaty with a very low withholding tax rate and corporation engaging in treaty shopping can deprive source countries of significant withholding tax revenues. There is thus an increasing call for governments to review their tax treaties for potential tax base erosion, which Greece could implement, too, with particular focus on its extractives sector. The IMF advised Mongolia, for instance, to review its treaty network as it identified a number of tax leaks in the extractive industry, large MNCs were shown to structure their investments using treaty shopping techniques and substantially reducing their taxes in Mongolia as a result.

---


169 ibid.

Relevant tax treaties

In 2001, the Netherlands had a treaty with Greece as well as with Canada, while a DTT between Canada and Greece was not yet concluded. National WHT rate on interest in Greece was at that time 35% (and 20% on royalty payments), meaning that interest payments from Greek entities to Canadian shareholders would be subject to a 35% WHT. The Dutch-Greek DTT included much lower withholding tax rates: 10% on interest and 7% on royalties, substantially lower than the domestic Greek withholding tax rates.

Since 1 January 2011, a tax treaty exists between Canada and Greece that lowers the WHT rate to 10% as well. However, despite this treaty, financing the Greek operation through a Dutch structure remains fiscally more attractive that through a Canadian one, because in 2009, the EU Interest and Royalties Directive was implemented which results in an even lower withholding tax rate on interest payments\(^\text{171}\), which was abolished altogether in 2013.\(^\text{172}\) This means that interest payments from Hellas Gold SA to its related Dutch companies were only subject to 5% Greek withholding tax, and from July 2013 these interest payments should not be subject to Greek withholding tax at all.

In conclusion, the large network of double taxation treaties of the Netherlands and the EU Interest and Royalties Directive reduce withholding taxes at source to such an extent that it is beneficial for Eldorado Gold to channel their means of financing and resulting interest payments through the Netherlands instead of directly to the parent company in Canada.

What are the resulting tax revenue losses for Greece, when only looking at the interest payments from Hellas Gold SA to the four Dutch subsidiaries? We calculate the withholding tax that Greece has lost by comparing the current situation in which Hellas Gold SA has been paying interest to a Dutch company, to the scenario in which Hellas Gold SA would have paid interest directly to its Canadian parent company.

<table>
<thead>
<tr>
<th>Table 4: Comparison of withholding tax (WHT) rates</th>
</tr>
</thead>
<tbody>
<tr>
<td>WHT rates Greece - Netherlands</td>
</tr>
<tr>
<td>---------------------------------</td>
</tr>
<tr>
<td>Until 2009</td>
</tr>
<tr>
<td>2009 – 2013</td>
</tr>
<tr>
<td>Since July 2013</td>
</tr>
<tr>
<td>Withholding tax rates Greece - Canada</td>
</tr>
<tr>
<td>Until 2011</td>
</tr>
<tr>
<td>Since 2011</td>
</tr>
</tbody>
</table>

The WHT rates are applied to the different interest payments that Hellas Gold is expected to have paid to the four Dutch subsidiaries of Eldorado Gold. Because the amount and value of the bonds increased, the interest payments increased as well, from €32 thousands in 2009 to over €7 million in 2013. These figures have been calculated based on the amounts of bond loans the subsidiaries

\(^{171}\) Payment to certain EU group companies at a maximum rate of 5% (instead of 10%) Article 6 paragraph 1 of the Council Directive of 3 June 2003 on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States (2003/49/EC).

\(^{172}\) The Interest and Royalty Directive, and the Parent-Subsidiary Directive lower WHT rates to 0%. Greece (as well as Portugal) made use of transitional arrangements, meaning that the 0% rate was not applicable to them until July 2013, see Council Directive 2003/49/EC, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003L0049:en:HTML. The transitional arrangements were designed for countries with weak fiscal systems and intended to prevent profit shifting.
subscribed to, their value and the interest rate that applied. The difference between the interest payments Hellas Gold SA paid to Dutch companies and the interest payments Hellas Gold SA would have paid to Canadian (parent) company, result in different amounts withholding taxes due to the Greek government. Based on these amounts, we can calculate the differences in tax payments between the two scenarios which represent the tax revenue losses for the Greek government.  

**Table 5: Calculating tax revenues losses for Greece, Part One**

<table>
<thead>
<tr>
<th>Year</th>
<th>Value of bonds and bond loans subscribed to by Dutch companies at end of year</th>
<th>Total amounts that were due by Hellas Gold SA on the bonds issued to four Dutch companies</th>
<th>Withholding taxes due by Hellas Gold SA to Dutch companies</th>
<th>Withholding taxes due by Hellas Gold SA to Canadian companies</th>
<th>Calculated losses for Greek tax revenues</th>
</tr>
</thead>
<tbody>
<tr>
<td>2009</td>
<td>€ 8.000.000</td>
<td>€ 32.356</td>
<td>€ 1.618</td>
<td>€ 11.325</td>
<td>€ 9.707</td>
</tr>
<tr>
<td>2010</td>
<td>€ 21.000.000</td>
<td>€ 582.898</td>
<td>€ 29.145</td>
<td>€ 204.014</td>
<td>€ 174.869</td>
</tr>
<tr>
<td>2011</td>
<td>€ 24.000.000</td>
<td>€ 1.203.735</td>
<td>€ 60.187</td>
<td>€ 120.373</td>
<td>€ 60.187</td>
</tr>
<tr>
<td>2012</td>
<td>€ 86.197.000</td>
<td>€ 4.128.499</td>
<td>€ 206.425</td>
<td>€ 412.850</td>
<td>€ 206.425</td>
</tr>
<tr>
<td>2013 (until 30 June)</td>
<td>€ 176.418.000</td>
<td>€ 3.507.862</td>
<td>€ 175.393</td>
<td>€ 350.786</td>
<td>€ 175.393</td>
</tr>
<tr>
<td>2013 (since 1 July)</td>
<td>€ 176.418.000</td>
<td>€ 3.507.862</td>
<td>€ -</td>
<td>€ 350.786</td>
<td>€ 350.786</td>
</tr>
<tr>
<td>Total</td>
<td>€ 12.963.211</td>
<td>€ 472.767</td>
<td>€ 1.450.135</td>
<td>€ 977.367</td>
<td>€ 977.367</td>
</tr>
</tbody>
</table>

Because the financing of Hellas Gold SA is routed through the Netherlands, using bonds, instead of direct finance from the Canadian parent company, it can be argued that the Greek government lost almost 1 million Euros in 5 years. More than 500 000 Euros, over half of the total amount, according to these calculations were lost in 2013 alone. This means that instead of decreasing, tax revenues losses caused by Eldorado’s tax planning tactics are increasing.

**The Netherlands: mailbox companies and tax free outgoing payments**

It is important to note that Hellas Gold SA can deduct the interest payments made to the Dutch subsidiaries from its profits that are taxable in Greece (statutory tax rate varied between 20 - 26% from 2009 to 2013). From its financial statements (2009-2013) it becomes clear that Hellas Gold SA indeed deducted its interest expenses from its taxable profit, which increased the company’s losses even more. Since Hellas Gold SA has been reporting losses in the years under analysis (2009-2013), it can be assumed that the company has not been paying corporate income tax in previous years.

A company is allowed to deduct its interest expenses from its taxable profits, to avoid double taxation, based on the assumption that the income will be taxed elsewhere. In this case, because the interest expenses are not taxed in Greece, the corresponding interest income should be taxed in the Netherlands. However, all Dutch subsidiaries have found a way to avoid that by acquiring intra-group loans. This subparagraph will in more detail explain how that works, as well as calculate losses that arise as a consequence of these fiscal tricks.

---

173 See Annex 7 which describes the methodology of these calculations into detail, explaining which data has been used and which assumptions are made. In the Methodology Annex, our calculations are also compared to figures reported by Hellas Gold SA in Greece. Differences between these figures and our calculations are explained there as well.

174 Since the 0% WHT on interest was applicable since July 2013, after the ending of the transitional period for Greece of the implementation of the EU Interest and Royalty Directive, the total amount of interest payments due by Hellas Gold SA in 2013 (EUR 7.015.724) was divided by 2 in order to reflect the two different WHT rates applicable in 2013.
The annual accounts of the four Dutch subsidiaries show that the number of bonds acquired from Hellas Gold SA increased substantially. This is also illustrated by the table above: the calculated interest payments on the bonds increased in 2012. The further increase in 2013 is explained by the establishment of Eldorado Gold Treasury BV that subscribed to the largest amount of bonds. This shows that even after the take-over of European Goldfields in 2011, Eldorado further developed the aggressive tax planning structure resulting in tax revenue losses for Greece.

The increase in bonds was financed by the Dutch companies by entering various credit facilities. Both Eldorado Gold (Greece) BV and Eldorado Gold (Netherlands) BV entered into credit facilities with Eldorado Gold (Barbados) Ltd. on 25 April 2012. The credit facilities have total amounts of respectively US$ 95 million and US$ 5 million (in 2013). The Dutch BVs are required to pay interest to the Barbados company.

Eldorado Thrace (Greece) BV and Eldorado Gold Treasury BV both received financing from their shareholder, Eldorado Gold Coöperatief U.A., against the issuance of promissory notes, worth respectively US$ 0.5 million and US$10 million (in 2013). Eldorado Gold Coöperatief, in turn, received loans from Eldorado Gold (Barbados) Ltd. (amounting to US$ 100 million at 31 December 2013) and TJS Ltd (amounting to US$ 25 million at 31 December 2013) which is another group entity of Eldorado, located in Barbados. It is clear that all four Dutch companies are directly or indirectly financed by loans from Barbados group entities.

The Netherlands does not levy any withholding taxes on outgoing interest and royalty payments, making it beneficial for the company to route its investments in Greece through intermediary holdings in the Netherlands.

In the case of Barbados, by financing the new bonds with interest bearing loans, the Dutch companies are likely to try to deduct the interest expenses on the Barbados loan from the interest income to be received on the bonds loans acquired from Hellas Gold SA. Instead of having the bond interest income taxed in the Netherlands at a relatively high statutory corporate income tax rate, it would eventually be taxed in Barbados at a low tax rate or no tax rate at all. In other words, Eldorado seems to deduct interest expenses from high taxed Greek profits, and eventually collects the corresponding interest income (via the Netherlands) at low or no tax cost in Barbados. This becomes increasingly clear when we offset the interest rates on the bonds (between Hellas Gold SA and Dutch companies) and the interest rates on loans (between Dutch companies and Barbados entity): the bonds Eldorado Gold (Greece) BV as well as Eldorado Gold (Netherlands) BV subscribed to had an interest rate of 5.2% and 6.75%, while the interest rate on the loans they received from Eldorado Gold (Barbados) Ltd was 6.58%. It can be expected that the companies reported a small profit margin in the Netherlands in order to fulfill the requirement of having an economic presence in the Netherlands. However, the small differences in interest rates indicate that the loans received from the Barbados group entity are used to shift profits (interest income) out of the Netherlands towards a renowned tax haven.

In order to calculate the revenue losses of corporate income tax that Greece loses, we calculate what amount of corporate income tax the company would have to pay on the interest expenses that are currently deducted from its profits and collected in Barbados. The table below firstly shows the interest payments the Dutch subsidiaries are expected to pay to the Barbados group companies. These figures are calculated based on the borrowed amount, interest date and dates of the long term liability as reported in the annual reports, as deposited by the companies to the Dutch Chamber of Commerce.
Table 6: Calculating tax revenues losses for Greece, Part Two

<table>
<thead>
<tr>
<th>Year</th>
<th>Total amounts of interest that were due by three Dutch companies on loans received by Barbados entities</th>
<th>Corporate income tax rates in Greece</th>
<th>Calculated losses for Greek tax revenues</th>
</tr>
</thead>
<tbody>
<tr>
<td>2012</td>
<td>€ 3,363,750.08</td>
<td>20%</td>
<td>€ 672,750</td>
</tr>
<tr>
<td>2013</td>
<td>€ 4,150,084.63</td>
<td>26%</td>
<td>€ 1,079,022.00</td>
</tr>
<tr>
<td>Total</td>
<td>€ 7,513,834.71</td>
<td></td>
<td>€ 1,751,772.02</td>
</tr>
</tbody>
</table>

Since Eldorado Gold is able to deduct its interest expenses in Greece from its taxable profits, and subsequently routes its interest income via Dutch group entities to low-tax jurisdiction Barbados, it can be calculated that the Greek government lost US$ 1.8 million in the years 2012 and 2013.

In conclusion, we estimate that the Greek government lost almost one million in withholding taxes and almost two million in corporate income tax since 1) treaties and EU directives ensured low or no withholding taxes on interest payments and 2) Eldorado is able to ensure double non-taxation of interest income by deducting interest expenses of group companies (in Greece as well as the Netherlands) and reporting its profit ultimately in tax haven Barbados.

The figure below visualises the financing structure set up by Eldorado. It includes the calculations of interest payments due from Greek entity to Dutch entities, and from Dutch entities to the Barbados entity. It also shows which elements offered by the three jurisdictions (Greece, Netherlands, and Barbados) enable the company to set up a company financing structure that is used for profit shifting. Lastly, the figure includes our calculations for tax revenues lost by Greece.

---

175 Because it is not clear whether Eldorado Gold Coöperatief, Eldorado Thrace (Greece) BV and Eldorado Gold Treasury BV form a fiscal unity, it cannot be assumed that interest payments made by the subsidiaries are deducted from its shareholder’s (Eldorado Gold Coöperatief) taxable profits – an advantage that a fiscal unity would offer. That is why the credit facility of Eldorado Gold Coöperatief is not included in the calculations.
4.5.3. Using a Cooperative and tax rulings

Eldorado Gold’s only subsidiary in the Netherlands that has employees is a cooperative: Eldorado Gold Coöperatief UA. A cooperative has several advantages:

- **Liability:** The members [i.e. the parent company, Eldorado Gold (BC) Corp in Canada and Frontier Pacific Mining Corporation in Canada] shall not be held liable for the Cooperative’s debts and they shall be under no obligation to contribute to a deficit existing at the time of dissolution of the Cooperative, if any.  

- **No withholding tax:** At the time of incorporation (2011), the cooperative form was a known avoidance vehicle with regard to the Dutch 15% statutory withholding tax on outgoing dividend payments. A series of investigative article by the Dutch Financial Times uncovered that foreign companies increasingly chose the cooperative to circumvent this tax as at the time, Dutch law fully exempted members of a cooperative from this withholding tax. However, in 2012, the law has been adapted with an anti-abuse clause that lays down that the cooperative cannot enjoy this exemption if it only functions as a tax avoidance entity.

- **Flexibility:** cooperative is easy to set up, e.g. no involvement of a notary is necessary.

It is very likely that the only motive to use the legal form of a cooperative rather than a limited liability company (BV or NV) was to prevent the withholding of Dutch dividend tax. Whether this exemption still applies to Eldorado Gold’s cooperative cannot be deciphered from its annual accounts. In practice, anti-abuse rules are rarely applied and there are serious questions as to the effectiveness of the new anti-abuse rule as it is too undefined to be usefully applied.

Finally, a possible ‘tax optimal’ use of the Dutch cooperative might have been the takeover of the Australian gold mining company Glory Resources Ltd, which previously owned the Greek Sapes Gold mine in Thrace.

In conclusion, Eldorado’s cooperative in the Netherland seems to have been set up out of fiscal considerations, although no specific research has been conducted for this report on the potential revenue losses this implies for the jurisdictions where the ultimate beneficiaries (shareholders) are resident, such as Canada.

Eldorado Gold is also a likely beneficiary of a so-called tax ruling with the Dutch government. Advanced Price Agreements and Advanced Tax Rulings provide companies with clarity on their future tax liabilities in the Netherlands and thus allow for risk-free transfer pricing, i.e. tax planning, reducing profits in countries of operation. The corporate income tax rate is non-negotiable, but the ruling does allow for deals on what accounts as the tax base (taxable profits) in the Netherlands. Current

176 Eldorado Gold Coöperatief U.A., Annual Accounts 2013, as deposited at the Dutch Chamber of Commerce.
178 The number of cooperatives registered in the Dutch chamber of commerce rose from 3834 in 2006 to 5062 in 2010, the ‘members’ of the cooperative were mostly incorporated in tax havens such as the Cayman or Channel Islands, Bermuda or Delaware, see Eikelenboom & De Groot; 13.9.2011, Fiscale coöperatie schaadt imago [Fiscal cooperation damages reputation], http://fd.nl/ondernemen/613455/fiscale-cooperatie-schaadt-imago
investigations by the European Commission show the growing concerns surrounding these non-transparent practices. The annual accounts of Eldorado’s Dutch subsidiaries do not make note of the existence of such a tax ruling. The company is not obliged to report them in their annual accounts.

4.6. Other potential tax gaps to consider

As already mentioned above, this report only researched a very limited tax planning technique that Eldorado Gold applies. The available financial data only allows us to see interest income being shifted from Greece via the Netherlands to Barbados, leading to double non-taxation of interest income and a reduction in profits in Greece.

Yet there are abundant case studies that the extractive industry fails to generate the expected revenues in countries that are poor and competing for FDI due to a number of available tax planning techniques. The UN Tax Committee has identified a number of critical issues in extractive industry taxation, which are relevant for the case of Eldorado Gold in Greece, given that Eldorado Gold operates a Dutch holding structure that provides a number of tax avoidance opportunities.

Unless Greece opts for a different development model that is not based on large-scale extractive operations and privatisation, which important commentators on the current Greek crisis are suggesting, civil society groups and the Greek revenue authorities should at least consider the following taxation issues.

**Transfer mispricing though commodity trading, financing or intellectual property**

An overarching tax avoidance technique that encompasses many different forms of profit-shifting is transfer mispricing, that is the pricing of intra-firm transactions between related parties (subsidiaries) in different jurisdictions involving the transfer of property or services as reflected in a “market” or “arm’s length” value. When a price used by subsidiaries of a multinational group does not reflect the true value of the property or service, i.e. is below or above the price established by the market between two unrelated companies, this might be considered transfer ‘mispricing’. A non-market price is typically used by large MNCs to shift profits from high- to low-tax jurisdictions. “Mispricing denies a country the ability to tax value created or added in that economy”, according to the UN Tax Committee. The Committee explains:

“Extracted resources need to be processed to be of value involving many different functions. In this case, one key transfer pricing risk arises where private companies enter in convoluted structures involving the inter-positioning of multiple companies, most often in low-tax or no-tax jurisdictions with

---


little exchange of tax information possible, in order to apportion profits. The issue of a fragmentation of the supply chain leads to serious transfer pricing issues through the use of offshore marketing or procurement entities and offshore hedging structures as well as in the provision of intra-group services.”

Indeed, tracking value-added through a maze of interconnected (shell) companies registered in financial secrecy jurisdictions such as Bermuda, the British Virgin Islands, Switzerland or Delaware “is challenging for even the most developed tax bodies in the OECD - and governments across the OECD have identified transfer pricing as a threat to their tax base.”\(^{183}\) One of the most renowned cases of trade mispricing in the extractive industry involves the Swiss-based mining company Glencore.\(^{184}\) Its Zambian mining company Mopani Copper Mines (part-owned by First Quantum Minerals) was found to sell copper to its Swiss parent at prices far below those on international markets. Although the company denies wrongdoing, the European Investment Bank, which had financed Mopani Copper Mines with a loan, expressed “serious concerns about Glencore’s governance” and froze all loans to the company in 2011.\(^{185}\)

Transfer mispricing occurs not only with traded goods and services but also the provision of credit, i.e. financing operations. Deductions for interest paid on offshore loans may artificially reduce or nullify profits. In order to avoid profit-shifting through this financing method, many countries have so-called thin capitalisation rules (setting a maximum percentage of financing through loans vis-a-vis equity) or deny deductibility of interest payments if they are made to jurisdictions known not to tax that interest income adequately. Developing countries have reported to the UN Tax Committee that they have trouble tackling this specific avoidance method despite existing rules. Whilst revenue authorities have limited resources to detect fraud, MNCs use the services of accountancy firm specialising in this type of tax avoidance. KPMG, by way of example, advertises that “the world’s biggest oil and gas and mining majors have set up international trading structures to win competitive advantage,” which include tax and investment incentives, and offers specialist advice on “tax-efficient supply change management in the energy and natural resource industries.”\(^{186}\) The case of Eldorado Gold shows that also Greece is losing out on revenue due to the use of financing from related companies using conduit entities and tax havens; whether this constitutes a case of transfer mispricing, however, will have to be assessed by the Greek revenue authorities.

Another income shifting method involving transfer pricing is the use of intellectual property by transferring legal rights of such property offshore, or to conduit jurisdictions such as the Netherlands, which is well-known to offer tax advantages for royalty structures. Again, no research has been conducted for this report on Eldorado Gold’s management of intellectual property.


Capital gains

The avoidance of capital gains tax is also a known problem in the mining industry and occurs when “artificial structures are being used [...] to make an ‘indirect transfer’; for example through the sale of the shares in the company that owns the asset rather than the sale of the asset itself.” Eldorado Gold used a Dutch subsidiary to buy the Australian Glory Resources Ltd in 2013, for instance, and research should be conducted into the impact of the use of Eldorado Gold Coöperatief UA in this takeover on the taxation of the capital gain. As the avoidance of capital gains tax is a serious revenue leak in developing countries, it is increasingly debated and the UN Tax Committee proposes that countries suffering from this revenue leak should “establish and properly administer a capital gains tax to ensure that in the case of indirect transfer of mines by sale of a foreign entity owning the mine, taxes are due and payable to an entity within the jurisdiction of the source country.” The Committee points out, that governments need to invest in expertise and implement proper regulation if they do not want to forego revenue: “There are obviously operational intelligence issues in terms of knowing when such a foreign sale, which represents an indirect sale of a local concession, is occurring. There are also legislative issues involved in ensuring any tax owing will be paid, such as by the new owner being responsible, with recourse against mine assets. Moreover, general or even specific anti-avoidance rules might be needed to deal with issues that are not necessarily confined to the extractive industries, but may be especially relevant to that sector because of its importance to a country’s economy.”

VAT

Another issue not researched for this report is the potential problem of value-added tax (VAT) from a revenue perspective. Although VAT is a tax on final domestic consumption and should thus have little impact on the generally export oriented extractive industries, the “export orientation could pose problems as there are large up-front costs involved in extracting resources and relief for VAT charged on inputs cannot be obtained by crediting them against that liabilities but must instead be refunded [...]. Where VAT does apply, the opportunities for fraud are often great, and the administrative challenge of confronting VAT fraud is not always fully recognized.”

It was mentioned in chapter 2.4 that a portion of Hellas Gold SA’s debt of € 21.6 million (the illegal state aid plus interest and legal surcharges) to the Greek Ministry of Finance was offset by VAT credited to the company. Whilst this might have been entirely legitimate, there should be transparency about these types of tax issues so that public scrutiny of potential fraud is made possible.

Issue of Contracts

Last, but not least, civil society organisations should scrutinise whether taxation issues that might infringe on the state’s ability to raise fair revenues from extractive activities are contained in secret contracts. The UN Tax Committee highlights the fact that “the negotiation of contracts is a decisive

---


191 Capital.gr, Dimitri Delevegkou, 18.10.2013, Τι πραγματικά συμβαίνει με το πρόστιμο στην Ελληνικός Χρυσός [What is really happening to the fine of Hellas Gold], http://www.capital.gr/Articles.asp?id=1891705
stage that determines whether or not a country will be able to ensure a “fair” share of the revenues but also whether the project is worth proceeding with from the company perspective. It is thus of utmost importance that contracts are clear, concise and easily enforceable."

The Committee suggests for taxation issues, such as a definition of the taxable income and tax base, taxation rules that apply to the extractive industries, underlying debt to equity and depreciation rules and applicable transfer pricing rules, not to be regulated in contracts but rather in domestic law to increase transparency and public scrutiny and to give governments the opportunity to change fiscal regimes that apply to the extractive industries when new circumstances arise, such as rising commodity prices. Secret agreements, such as contracts or stability clauses in agreements between the state and private companies are generally favoured by investors as they provide certainty and hedge against future tax increases. From a public interest perspective, however, they are undesirable. For instance, whilst Mongolia renegotiated tax treaties when it found that they were eroding the country’s revenue base, the extractive company Rio Tinto said that the cancellation of the tax treaty with the Netherlands would not affect the use of its Dutch holding company, because the firm has a separate investment agreement with Mongolia which “stabilises” treaties that were in force in 2009. The clause therefore made a public interest ruling impossible.

4.7. Eldorado Gold’s reported tax payments

Eldorado Gold Corporation pays taxes in several jurisdictions. According to its financial statements of 2013, the company paid taxes in Turkey, Greece, Romania, Canada, China, Brazil and ‘other jurisdictions’, together amounting to US$ 144 million. Eldorado carries out mining activities in all these countries. Eldorado reports its tax payments for each of those jurisdictions, as well as sales and gross profit. This allows the reader to offset tax payments against profit. The company reports the following figures for tax payments and profits made in Greece:

<table>
<thead>
<tr>
<th>Year</th>
<th>Gross profit</th>
<th>Income tax paid</th>
</tr>
</thead>
<tbody>
<tr>
<td>2010</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>2011</td>
<td>0</td>
<td>260</td>
</tr>
<tr>
<td>2012</td>
<td>3.601</td>
<td>847</td>
</tr>
<tr>
<td>2013</td>
<td>-5.022</td>
<td>122.657</td>
</tr>
</tbody>
</table>

Note: Expressed in thousands of US dollars

In 2011, the reporting segment included only the development activities of the Perama Hill project. Since the project was in the development stage, there was no production or sales, and therefore no

---

192 These are legally binding commitments by the host country’s government and either guarantee the contract’s fiscal terms or guarantee investors a share of economic rents over an agreed upon period or for the length of the agreement.
195 All figures are based on the Financial Statements as displayed by Eldorado in SEC Filings Form 40-F, https://www.sec.gov/cgi-bin/browse-edgar?action=getcompany&CIK=0000918608&type=40-F&dateb=&owner=exclude&count=40
profit to be reported. After the acquisition of European Goldfields in 2012, the reporting also included the Stratoni mine and the Olympias and Skouries development projects.

The income tax expenses increased substantially in 2013, while the company reported a gross loss for its Greek operations, but this increase seems to consist of largely deferred taxes, which are taxes that the company owes, but has not yet paid.

In its 2012 financial statements, Eldorado Gold explains that legislative changes had occurred, raising corporate income tax rate from 20% to 26%, effective as of 1 January 2013. The company thus created a post of deferred taxes, noting that when an income tax rate has changed the deferred tax liability must be adjusted to reflect the change in the income tax rate. The resulting expected in deferred tax liability was set at US$ 130 million and reduced in 2013 to US$ 125.1 million. However, often deferred tax is not paid at all, and is a recognised tax avoidance tactic.

The company does not report to what extent the report US$122 income tax expenses are deferred taxes. However, it can be assumed that the majority (if not all) of the US$122 million income tax expense are deferred tax expenses, and thus not (yet) paid by the company. This distorts the picture Eldorado presents of its tax payments in Greece and indeed worldwide.

In 2013, the company reports US$144 million income tax expenses on its global operations, while reporting a US$ 505 million loss. The loss is for a large part explained by the relatively (compared to 2012) high amount spent on impairment loss on property, plant and equipment and goodwill. The vast majority of the US$144 million income tax expenses consist of the taxes paid in Greece (US$ 122 million), of which 85 per cent might thus be deferred taxes.

Regarding its overall company structure and related tax payments, the company notes that fiscal policies and tax regimes can have a material impact on the company’s results, in particular is this structure is classified as tax avoidance: “We structure, and restructure from time to time, our corporate organization in a commercially efficient manner and if any such planning effort is considered by a taxation authority to constitute tax avoidance, then this could result in increased taxes and tax penalties which could have a material adverse effect on our financial condition.”

4.8. Conclusion

Multinationals use aggressive tax planning methods to shift income from high tax jurisdictions to low-tax jurisdictions. Dutch mailbox companies play a central role in international profit-shifting as they act

---

200 However, the company does note that the USD 125.1 million is a "non-cash adjustment" that "is required to be charged to deferred income tax expense".
as conduit entities. This chapter researched the possible tax avoidance methods used by Eldorado Gold and the resulting tax revenues losses for Greece. Eldorado owns multiple mailbox companies in the Netherlands, using them to finance their activities in Romania, Greece, Turkey, and Canada. With the exception of one subsidiary, none of the Dutch companies have any employees, while owning assets together worth almost €2 billion. With the acquisition of European Goldfields in 2012, Eldorado also inherited a corporate structure in which Dutch subsidiaries played a central role. Eldorado has since built and expanded this structure, by incorporating a cooperative (Eldorado Gold Coöperatief UA) and setting up a financing structure with a Barbados group company. The main functions of Eldorado’s subsidiaries are therefore holding and financing companies that hold shares and/or provide loans to other group companies.

There are several links between the Netherlands and Greece. Eldorado Gold (Netherlands) BV owns Eldorado Gold (Greece) BV which in turn owns 95% of Hellas Gold SA, the Greek company responsible for the Kassandra mines (Stratoni, Skouries and Olympias projects). Both those Dutch subsidiaries as well as two others finance Hellas Gold SA through the subscribing to bonds issued by Hellas Gold SA. The total value of the bonds and bond loans these Dutch companies subscribed to, increased from €8 million in 2009 to €176 million in 2013. Due to existing tax treaties and EU directives, the withholding tax due on the interest payments from Hellas Gold SA to the Netherlands was low and decreased to 0% in 2013. The tax rates would have been much higher when the Greek activities were financed directly by its Canadian parent company, leading to possible tax revenues losses of almost €1 million in withholding taxes in the years 2009 - 2013.

The Dutch subsidiaries, in turn, financed the increase in bonds subscriptions by entering credit facilities with a Barbados group entity, with a total worth of US$100 million. The resulting interest payments to Barbados are not subject to withholding taxes, since the Netherlands does not levy withholding taxes on interest and royalty payments. Moreover, the Dutch subsidiaries are allowed to deduct their interest payments from their profit, and in the same manner Hellas Gold SA is entitled to do the same. Although it is expected that the interest income will be taxed elsewhere, this does not happen in the end, since the interest income is ultimately collected in tax haven Barbados. In conclusion, since Eldorado Gold is able to deduct its interest expenses in Greece from its taxable profits, and subsequently routes its interest income via Dutch group entities to low-tax jurisdiction Barbados, it can be calculated that the Greek government lost US$1.8 million in corporate income tax in the years 2012 and 2013.

Eldorado made use of rerouting their interest income in order to avoid paying taxes on their profits. Several elements used by Eldorado allow companies to shift their profits: Tax treaties setting low withholding tax rates, EU directives aiming to avoid double taxation but resulting in the opposite double non-taxation, and the possibility to set up mailbox companies with no real economic activity. This chapter aimed to address some of them that are especially of importance within the extractives industry, such as transfer mispricing, the avoidance of capital gains tax, the potential problem of value-added tax (VAT), and the issue of contracts.

Lastly, the chapter provided insights into the tax payments of Eldorado Gold worldwide. Although the company provides much transparency, reporting its revenues, profits and tax payments for each jurisdiction it has mining activities, it is important to note the difference between actual paid tax expenses and deferred tax liabilities that are expected to be paid in the future, but might be postponed forever. This raises serious questions as to the proclaimed economic benefit the company will provide to Greece, independent of the expected cost of externalities, such as environmental destruction and the destruction of existing local economies.
5. Investments between Greece and EU tax havens

5.1. Introduction

Large investment stocks and flows usually indicate that there is an active economic relationship between two countries. If a major part of the investments, however, takes place through mailbox companies, it can also be an indication of tax planning through these jurisdictions. This chapter gives insights in the role and use of mailbox companies in investment flows. Thereafter, it provides an overview of Greece’s inward and outward investment positions and specifies how much of this investment is channelled through mailbox companies, which we term Special Purpose Entities here (see Chapter 1). It finds that the top seven counterpart economies of Greece’s inward or outgoing investments include major tax haven jurisdictions, namely, Luxembourg, Switzerland, the Netherlands, Cyprus, and the Cayman Islands. Thereafter, an overview is given of foreign companies using the Netherlands as a conduit for investing in Greece.

5.2. Mailbox companies (SPEs) and international tax avoidance

Recent economic globalisation or the increase in cross-border capital flows – and the shift of manufacturing bases from high-cost to low-cost locations - is typically attributed to growth of international trade and foreign direct investment through. MNC’s intra-group transactions have become increasingly complex and capital from a range of sources often flows to multiple destinations via group entities based in several countries. It is estimated that these intra-company transaction account for some 60 per cent of global trade. Error! Reference source not found. With regard to the tax treatment of these intra-group global value chains, there are two important challenges.

The first concerns the assessment of how much value is added to a product or service at which stage and location of the production process (i.e. the determination of the taxable base). The second is the mismatch in national tax legislations regarding the treatment of global income, coupled with the flexibility of classification of passive income, which is being exploited by MNCs with intricate tax planning schemes.

With an international economic system based on competition, there is an inherent tendency for profit maximisation by businesses being sought in increasing internationalisation, by way of international takeovers and the reinvestment of profits and loans between group entities based all over the world.205

---

203 Note that the tables here are based on investment stocks. Flows are measured annually and stocks are investments that are built up over time.

204 UNCTAD, 2013, World Investment Report 2013, http://unctad.org/en/publicationslibrary/wir2013_en.pdf. Value to products and services is no longer only added in only one but in several production processes or locations, leading to global value chains whereby “intermediate goods and services are traded in fragmented and internationally dispersed production processes”. These chains are not incidental by typically coordinated by MNCs with an integrated corporate strategy, “with cross-border trade of inputs and outputs taking place within their networks of affiliates, contractual partners and arm’s-length suppliers”.

Central MNC strategies have therefore evolved that aim at maximising profits and minimising expenses and costs, including the payment of corporate income taxes. Whilst MNCs can relocate production hubs to low-wage countries, they can also locate intellectual property rights or financing subsidiaries in the Netherlands or Barbados, avoiding or evading tax and/or laundering money in the process. The ability to set up subsidiaries in jurisdictions that offer ‘preferential tax regimes’ and financial secrecy is a central enabling element for MNCs aggressive tax planning.

A number of countries have developed fiscal systems in their competition to attract FDI, and a central element of a preferential tax regime is allowing for the creation of mailbox companies that have no or little physical but only a legal presence in the country. These mailbox, shell or conduit companies are subsidiaries dealing with investment, financing and royalty flows, and they are responsible for the major part of global capital flows today. They are commonly referred to as Special Purpose Entities (SPEs) by the IMF, UNCTAD and OECD (see Chapter 1 for definitions).

UNCTAD highlighted the increasing importance of offshore finance mechanisms in FDI through (i) offshore financial centres (OFCs) or tax havens and (ii) special purpose entities (SPEs) in its 2013 World Investment Report (WIR).\(^{206}\) SPEs play an even larger role than offshore financial centres relative to FDI flows and stocks in a number of important investor countries, acting as a channel for more than US$ 600 billion of investment flows.\(^{207}\) SPEs have thus gained increasing importance in investment flows in most countries hosting SPEs, and the number of countries offering favourable tax treatment to SPEs is on the increase.\(^{208}\)

As the previous chapter showed, Dutch SPEs have direct links with subsidiaries in tax havens, shifting profit through various types of passive income payments from operating subsidiaries via the Netherlands, making use of various fiscal rules and tax treaties in the process. This leads to a reduction of MNC’s tax payments in countries of operation; a process the OECD terms Base Erosion and Profit Shifting (BEPS).\(^{209}\) There is currently no method available to calculate at SPE or FDI data level the precise amount of income channelled through SPEs for tax avoidance purposes and the related revenue loss in jurisdictions with taxing rights as this would require micro data on firm level.\(^{210}\)

\(^{206}\) According to the latest World Investment Report, investment in OFCs remains at historically high levels. Flows to OFCs amounted to almost USD 80 billion in 2012, down USD 10 billion from 2011, but well above the USD 15 billion average of the pre-2007 period. OFCs account for an increasing share of global FDI flows, at about 6 per cent. See UNCTAD (2013). Indeed, "in consultation with a number of countries that offer investors the option to create SPEs, and on the basis of information on SPE-related FDI obtained directly from those countries, UNCTAD removes SPE data from FDI flows and stocks, in order to minimise double counting. The countries include Austria, Hungary, Luxembourg, Mauritius and the Netherlands." http://unctad.org/en/publicationslibrary/wir2013_en.pdf, page xiv.


\(^{209}\) OECD, 2013, Addressing Base Erosion and Profit Shifting, http://www.oecd.org/tax/beps-reports.htm, page 73-81. The OECD explains the role of SPEs in aggressive tax planning rather carefully as follows: "Although the use of a low or no tax company for holding or intra-group financing purposes does not imply that they are being used for BEPS purposes, a closer analysis of the data related to these structures may well provide useful insights on the use of certain regimes to channel investments and intra-group financing from one country to another through conduit structures. This includes, for example, issues related to reduction of source and residence country taxation of dividends and interest during the course of the investment and the taxation of capital gains upon exit." The OECD BEPS report, based on preceding NGO, governmental and media reports, has identified a number of corporate structures that have shown to be commonly used for a number of aggressive tax planning strategies. They all involve SPE group entities holding licensing and IP rights or fulfilling financing and holding functions.

\(^{210}\) Although the IMF has plans to disclose information of SPE vs non SPE investment flows as of 2015.
5.3. The relevance of SPEs to FDI statistics for the Netherlands and Luxemburg

Investment data show that the Netherlands and Luxemburg, both OECD members, are two of the most important global financial conduit countries. The Netherlands has headed global investment rankings - at least those that include SPEs in their data - in the last decade as a result of the vast amounts of capital flowing through its conduit entities. At the end of 2012, total inward FDI position of the Netherlands totalled almost €3.700 billion, 80% of which was attributable to SPEs. The share of SPEs in the Dutch outward FDI positions - with more than €3.000 billion - was even larger, approximately 85%. Most of these assets (inward positions) and liabilities (outward positions) of Dutch SPEs concern foreign direct investment, largely of intra-group loans.\footnote{End-2012 SPEs had outstanding loans of no less than EUR 900 billion with foreign group companies, versus liabilities of EUR 675 billion. See Dutch Central Bank, The effects of including SPEs on BOP and FDI statistics, twenty-sixth meeting of the IMF Committee on Balance of Payments Statistics, October 28–30, 2013, http://www.imf.org/external/pubs/ft/bop/2013/13-15.pdf, page 3.} The Dutch Central Bank points out that “these amounts dwarf the FDI positions of non-SPEs” and that the contribution of regular companies to Dutch net FDI positions “is mainly due to considerable capital participations of large multinational companies like Royal Dutch Shell, Unilever, Philips, Heineken etc.”\footnote{Ibid, page 4.} For Luxemburg, the per centages for inward stock investments being made through SPEs were around 81% in 2011 and more than 90% of the outward stock investments can be attributed to SPEs.\footnote{OECD, 2013, http://www.oecd.org/tax/beps-reports.htm, page 18.}

Next to the Netherlands and Luxemburg, the United States and the United Kingdom together account for approximately 40% of all assets and liabilities of SPEs, being countries of origin more often than they are countries of destination. Again, the Dutch Central Bank points out that whilst it is “not surprising to find countries like the US and the UK in the top ten of positions, in view of the size of their economies and the presence of financial centres within their borders [...] Luxembourg's share is large because it acts as a financial turntable, just like the Netherlands.” As this next section shows, next to Cyprus, Luxemburg and the Netherlands indeed play a central role as financial conduit jurisdictions in - and therefore corporate tax avoidance from - Greece.

5.4. Foreign direct investment in Greece

Compared to other EU countries, Greece attracts a relatively small amount of foreign direct investment.\footnote{UNCTAD, February 2012, Investment country profiles: Greece, http://unctad.org/en/PublicationsLibrary/webdiaeia2012d9_en.pdf; investment data for Greece used in this report is taken from the IMF’s Coordinated Direct Investment Survey (CDIS), http://cdis.imf.org.} As can be seen in Figure 5 below, the total outward investment slightly increased during the crisis, while inward investment decreased considerably.
Table 8 shows that countries in the EU were the source of more than 70 per cent of the inward FDI stock of Greece between 2009 and 2012, with Luxembourg alone accounting for 20 to 30 per cent of the total inward FDI every year. The Netherlands (13-21 per cent) is the second biggest source of FDI for Greece, followed by Germany (10-16 per cent), France (8-16 per cent) and Cyprus (5-6 per cent). Switzerland joined the source countries in 2012 with 5 per cent inward FDI.

Table 8: Inward Direct Investment Positions, Greece (million US Dollars)

<table>
<thead>
<tr>
<th>Year</th>
<th>Investment from:</th>
<th>Inward FDI</th>
<th>% of total</th>
<th>Investment from:</th>
<th>Inward FDI</th>
<th>% of total</th>
</tr>
</thead>
<tbody>
<tr>
<td>2009</td>
<td>Total</td>
<td>42,001</td>
<td></td>
<td>Total</td>
<td>39,959</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Luxembourg</td>
<td>9,158</td>
<td>22%</td>
<td>Luxembourg</td>
<td>7,203</td>
<td>18%</td>
</tr>
<tr>
<td></td>
<td>Netherlands</td>
<td>8,818</td>
<td>21%</td>
<td>Netherlands</td>
<td>7,089</td>
<td>18%</td>
</tr>
<tr>
<td></td>
<td>Germany</td>
<td>4,600</td>
<td>11%</td>
<td>Germany</td>
<td>4,013</td>
<td>10%</td>
</tr>
<tr>
<td></td>
<td>France</td>
<td>4,077</td>
<td>10%</td>
<td>United States</td>
<td>3,675</td>
<td>9%</td>
</tr>
<tr>
<td></td>
<td>United States</td>
<td>2,494</td>
<td>6%</td>
<td>United Kingdom</td>
<td>3,199</td>
<td>8%</td>
</tr>
<tr>
<td></td>
<td>Cyprus</td>
<td>2,223</td>
<td>5%</td>
<td>France</td>
<td>3,002</td>
<td>8%</td>
</tr>
<tr>
<td></td>
<td>Austria</td>
<td>1,560</td>
<td>4%</td>
<td>Cyprus</td>
<td>2,925</td>
<td>7%</td>
</tr>
<tr>
<td>2010</td>
<td>Total</td>
<td>29,094</td>
<td></td>
<td>Total</td>
<td>25,445</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Luxembourg</td>
<td>6,586</td>
<td>23%</td>
<td>Luxembourg</td>
<td>7,943</td>
<td>31%</td>
</tr>
<tr>
<td></td>
<td>Netherlands</td>
<td>3,663</td>
<td>13%</td>
<td>France</td>
<td>4,149</td>
<td>16%</td>
</tr>
<tr>
<td></td>
<td>Germany</td>
<td>3,646</td>
<td>13%</td>
<td>Germany</td>
<td>4,051</td>
<td>16%</td>
</tr>
<tr>
<td></td>
<td>United States</td>
<td>2,643</td>
<td>9%</td>
<td>Netherlands</td>
<td>3,611</td>
<td>14%</td>
</tr>
<tr>
<td></td>
<td>France</td>
<td>2,614</td>
<td>9%</td>
<td>United States</td>
<td>2,835</td>
<td>11%</td>
</tr>
<tr>
<td></td>
<td>Cyprus</td>
<td>1,635</td>
<td>6%</td>
<td>Switzerland</td>
<td>1,338</td>
<td>5%</td>
</tr>
<tr>
<td></td>
<td>United Kingdom</td>
<td>1,493</td>
<td>5%</td>
<td>Spain</td>
<td>1,021</td>
<td>4%</td>
</tr>
</tbody>
</table>

Table 9 shows Greek investments (FDI stocks) in European destination countries between 2009 and 2012, headed by Cyprus (25-29 per cent), the Netherlands (14-17 per cent), Turkey (11-13 per cent), Romania (8-11 per cent), and Serbia and Bulgaria (5-7 per cent). It is noteworthy that investments in the Cayman Islands reached 5 per cent in 2012.

<table>
<thead>
<tr>
<th>Investment in:</th>
<th>Outward FDI</th>
<th>% of total</th>
<th>Investment in:</th>
<th>Outward FDI</th>
<th>% of total</th>
</tr>
</thead>
<tbody>
<tr>
<td>2009</td>
<td></td>
<td></td>
<td>2010</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>39.014</td>
<td>Total</td>
<td>42.761</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cyprus</td>
<td>11.140</td>
<td>29%</td>
<td>Cyprus</td>
<td>11.829</td>
<td>28%</td>
</tr>
<tr>
<td>Netherlands</td>
<td>6.522</td>
<td>17%</td>
<td>Turkey</td>
<td>6.033</td>
<td>14%</td>
</tr>
<tr>
<td>Turkey</td>
<td>4.856</td>
<td>12%</td>
<td>Romania</td>
<td>5.048</td>
<td>12%</td>
</tr>
<tr>
<td>Romania</td>
<td>4.369</td>
<td>11%</td>
<td>Netherlands</td>
<td>3.282</td>
<td>8%</td>
</tr>
<tr>
<td>Serbia, Republic of Bulgaria</td>
<td>2.661</td>
<td>7%</td>
<td>Serbia, Republic of Bulgaria</td>
<td>2.841</td>
<td>7%</td>
</tr>
<tr>
<td>Bulgaria</td>
<td>1.994</td>
<td>5%</td>
<td>United States</td>
<td>2.819</td>
<td>7%</td>
</tr>
<tr>
<td>United States</td>
<td>1.890</td>
<td>5%</td>
<td>Bulgaria</td>
<td>2.761</td>
<td>6%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Investment in:</th>
<th>Outward FDI</th>
<th>% of total</th>
<th>Investment in:</th>
<th>Outward FDI</th>
<th>% of total</th>
</tr>
</thead>
<tbody>
<tr>
<td>2011</td>
<td></td>
<td></td>
<td>2012</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>48.153</td>
<td>Total</td>
<td>44.952</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cyprus</td>
<td>12.010</td>
<td>25%</td>
<td>Cyprus</td>
<td>11.690</td>
<td>26%</td>
</tr>
<tr>
<td>Netherlands</td>
<td>7.577</td>
<td>16%</td>
<td>Netherlands</td>
<td>7.132</td>
<td>16%</td>
</tr>
<tr>
<td>Turkey</td>
<td>6.309</td>
<td>13%</td>
<td>Turkey</td>
<td>4.921</td>
<td>11%</td>
</tr>
<tr>
<td>Romania</td>
<td>4.031</td>
<td>8%</td>
<td>Romania</td>
<td>3.702</td>
<td>8%</td>
</tr>
<tr>
<td>United States</td>
<td>2.981</td>
<td>6%</td>
<td>United States</td>
<td>2.584</td>
<td>6%</td>
</tr>
<tr>
<td>Bulgaria</td>
<td>2.622</td>
<td>5%</td>
<td>Bulgaria</td>
<td>2.567</td>
<td>6%</td>
</tr>
<tr>
<td>Serbia, Republic of Bulgaria</td>
<td>2.359</td>
<td>5%</td>
<td>Cayman Islands</td>
<td>2.219</td>
<td>5%</td>
</tr>
</tbody>
</table>


In sum, it can be said that the top seven counterpart economies of Greece’s inward and outgoing investments include major tax haven jurisdictions, namely, Luxembourg (inward), Switzerland (inward), the Netherlands (in- and outward), Cyprus (outward), and the Cayman Islands (outward).

### 5.5. Investment routed via SPEs

The fact that the destinations or source countries of FDI are tax havens might indicate that the investment itself is only routed through these jurisdictions for tax planning purposes. Looking at Greek bilateral investment data, we find that SPEs have played an important role in both outward and inward investments from and in Greece.

### Method

Figure 5 above is based on IMF data. The OECD also collects data on bilateral direct investment. However, the OECD filters the financial flows that run through Dutch SPEs. If we subtract these figures from the IMF data, the SPE portion of total direct investment remains. Unfortunately, this can only be done for outward investments from the Netherlands. The result is shown in Figure 6 below.
The difference is caused because different national statistical offices are responsible for supplying data. The figures held by the Netherlands about inbound and outbound investments are not the same as Greece indicates. However, the comparison between the IMF and OECD data sets allow us to draw conclusions with regard to the proportion of direct bilateral investment vis à vis investment that is routed via SPEs. The most important aspect of Figure 6, therefore, is not to show the exact investment flows through SPEs but the ratio between investments of SPEs and non-SPEs.

Most investments from the Netherlands to Greece are thus routed through SFIs. The Netherlands therefore serves as a financial conduit for Greek companies that invest in Greece and other countries via the Netherlands.

![Figure 6: SPE share in outward FDI position of the Netherlands in Greece (million €)](image)

Source: own calculations based on IMF CDIS and OECD data.

**Role of SPEs located in other European countries**

The above method of subtractive data excluding SPEs from data including SPEs to arrive at an indication of SPE-related FDI stocks can also be applied to other EU counterpart economies. Because not all countries are covered by all databases, three databases were used for these calculations, namely, those of Eurostat, IMF and OECD. The statistical notes from Eurostat state that SPEs are excluded from their bilateral FDI data from Austria, Cyprus, Hungary, Luxembourg and the Netherlands. Similar bilateral FDI data from both the IMF and the OECD do contain SPEs for different countries as no such statistical exclusion is practiced. In the case of Luxembourg, there were no estimates of non-SPE FDI stocks so a general 85% figure was used, as the country's investment and tax conduit structure is comparable to that of the Netherlands.216

---

215 Eurostat, European Union direct investments, [http://epp.eurostat.ec.europa.eu/cache/ITY_SDDS/EN/bop_fdi_esms.htm](http://epp.eurostat.ec.europa.eu/cache/ITY_SDDS/EN/bop_fdi_esms.htm), section 16. Negative FDI stocks were not counted as not enough is known why they occur. An OECD Statistical Guidebook mentions that such a situation “may be due to the advance and redemption of inter-company loans or movements in short term trade credit”.

What we find from the SPE vs. non-SPE FDI data comparison is that Greek SPE investments to European tax havens account for approximately 75% of all Greek FDI positions.

The data shows that while inward volumes of FDI have decreased during the Greek economic and fiscal crisis, the outward FDI stocks have increased quite dramatically. Also the share of SPE investments as a share of total investments has risen over the years. This can be partly explained by greater availability of data from the IMF concerning FDI since 2009, but also it is an indication of how during the crisis outward FDI has accelerated and that it has done so using SPEs.

**Figure 7: Greek inward FDI 2009-2012 via European SPEs (million Euros)**

![Graph showing inward FDI via European SPEs from 2006 to 2012](image_url)

Source: SOMO calculations based on IMF CDIS, OECD FDI and Eurostat FDI data.

There is no Greece disaggregated data from Luxembourg available via Eurostat (non-SPE) data, you only get a global figure of non-SPE FDI. Meanwhile the IMF’s FDI data (which has SPEs), has country level data.

Annex 3 presents country-specific data on these investment stocks. They indicate that Luxembourg owns largest proportion of SPE-related inward FDI, followed by the Netherlands (see Figure 7). Austria, Cyprus and Hungary are not important source countries for inward FDI in Greece. Cyprus and the Netherlands receive most of Greece’s SPE-related outward FDI, while Luxembourg, Austria and Hungary were not important destination countries.

If Greece, and specifically the EU and its members states, aim to end tax base erosion in Greece, coordinated measured should be taken by the Netherlands, Luxembourg and Cyprus to analyse these data in more depth to identify specific corporate tax avoidance mechanisms and sectors underlying them. These insights should be used to tackle the use of these SPEs for tax avoidance purposes.

5.6. Companies using the Netherlands as a conduit for investing in Greece

There are indications that corporate tax avoidance has grown as a result of the financial crisis and related corporate income tax rate increases in European periphery countries in their attempt to raise more domestic revenues to solve the debt crisis. FDI data suggest that the Netherlands is a preferred choice for companies to restructure their investments to avoid paying taxes in these countries.

The total accounts receivable owed to SPEs - established in the Netherlands - by Greece, Italy, Portugal and Spain grew from 178 billion Euros to 304 billion Europe (an increase of 71 per cent) between 2006 and 2011.\footnote{DNB, Table 1: Vorderingen en schulden van BFI's op het buitenland, http://www.dnb.nl/en/binaries/284530_Tabellen.pdf, see also SOMO, September 2013, Avoiding Tax in Times of Austerity, http://www.somo.nl/publications-en/Publication_3987, page 8.} The debts owed by Dutch SPEs to these countries grew in this period from 72 billion Euros to 163 billion Euros (125 per cent).\footnote{Ibid.} This is in stark contrast to the development of
the receivables and debts by Dutch SFIs to Germany, for instance, where the increase in debt was 73 per cent in this period and the increase in receivables, 13 per cent.

**German multinationals found to evade tax in Greece**

Recently, there have been some tax evasion scandals involving German multinationals operating in Greece. In September 2014, an Athens court confirmed the Greek government’s tax claims from the German construction company Hochtief. The Greek government can now claim approximately €600 million from the company that runs Athens airport “Eleftherios Venizelos”. The company has not paid any Value Added Tax since 2001.

Also in September 2014, fines worth €600 million were issued over German car imports to Greece. Greece’s tax authorities are reported to have issued these fines to representatives of German car manufacturers following the uncovering of a transfer mispricing scam whereby top-range cars were exported to Greece at extremely low factory prices in order to avoid luxury taxes and duties. The investigation, which was initiated last year by the Financial and Economic Crime Unit (SDOE), is focused on luxury cars manufactured by BMW, Mercedes-Benz and Opel that were imported into Greece from 2011 to 2013. The investigation also involved the European Anti-fraud Office (Olaf).

From a public interest perspective, it is of course interesting – for the Greek revenue authorities and the general public - to identify the companies that are using profit shifting techniques to circumvent corporate taxes, in particular in times of crisis. Whilst the table below does not identify aggressive tax planning practices, it can give an indication as to which companies could be screened for possibly contributing to tax base erosion in Greece.

In the short-term, the identification of aggressive tax planning methods is necessary to close loopholes in existing tax laws and if there are sufficient legal grounds, to impose fines on companies using these methods to recuperate some of the losses that are currently occurring. They also serve to understand the problem of profit shifting and work towards longer term solutions such as unitary taxation.

**Method**

Publicly available investment data currently do not provide the level of detail necessary to analyse tax losses. The aggregate level FDI data does not identify companies and due to inadequate financial reporting requirements, there is no publicly available company transaction data, or country-specific corporate tax data. There are therefore only incomplete methods to identify companies engaging in aggressive tax planning. However, because corporate tax avoidance requires the use of legal entities in tax havens, incorporation in these jurisdictions without a material presence is an indication of tax avoidance.

---


221 International rules such as the OECD Model Tax Convention, its Commentaries and corresponding Transfer Pricing Guidelines state that intra-group transactions should take place under the same comparable conditions as transactions between independent third parties. In the Netherlands this principle was set out on 1 January 2002 in Article 8b of the Corporate Tax Act, and almost all OECD countries apply it, while an increasing number of also non-OECD countries adopt transfer pricing rules in the 2000s. The Netherlands also makes use of Advance Tax Ruling (ATR) or an Advance Pricing Agreement (APA), which are arrangements of transfer prices between MNCs and tax authorities. The key problem is that there are no comparable prices of transactions between unrelated parties that can be easily applied to determine a market price for an intra-firm transaction (so called comparables). This is especially true for transactions involving so-called ‘intangibles’ such as royalties, transfers of intellectual property, or financial services. Due to the difficulty of establishing transfer prices, the OECD has launched a project called Base Erosion and Profit Shifting (BEPS), which addresses some of the shortcomings of the current transfer pricing regime.

A number of databases and individual searches can identify Dutch SPEs used to invest in Greece; the data is, however, incomplete. Although Table 10 below is not comprehensive, it might provide grounds for careful screening by tax authorities in both the Netherlands and Greece.

Table 10: Greek subsidiaries of foreign companies with Dutch SPEs

<table>
<thead>
<tr>
<th>Company</th>
<th>Greek subsidiary</th>
<th>Industry</th>
<th>Dutch holdings and/or investment institutions</th>
<th>Staff in NL</th>
<th>Total assets in NL (mln €)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bayer (Germany)</td>
<td>Bayer Hellas</td>
<td>Pharmaceutical</td>
<td>Bayer Global Investments BV</td>
<td></td>
<td></td>
</tr>
<tr>
<td>BMW (Germany)</td>
<td>BMW Hellas</td>
<td>Automobile</td>
<td>BMW Holdings BV</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dole (USA)</td>
<td>Dole Hellas</td>
<td>Packaged Foods</td>
<td>Dole Europe BV</td>
<td>0</td>
<td>92</td>
</tr>
<tr>
<td>Coca-Cola HBC AG (Switzerland)</td>
<td>Coca Cola Hellenic Bottling Company SA</td>
<td>Beverages and bottling</td>
<td>Coca-Cola HBC Finance BV</td>
<td>1</td>
<td>3477</td>
</tr>
<tr>
<td>Dupont (Usa)</td>
<td>Du Pont Agro Hellas</td>
<td>Chemicals</td>
<td>Pioneer Seed Holding Nederland BV</td>
<td>0</td>
<td>90</td>
</tr>
<tr>
<td>Edison Spa (Italy)</td>
<td>Elpedison</td>
<td>Energy</td>
<td>Edison International Holding NV</td>
<td>5</td>
<td>175</td>
</tr>
<tr>
<td>Eldorado Gold Corp., (Canada)</td>
<td>Hellas Gold SA</td>
<td>Mining</td>
<td>Eldorado Gold’s Dutch subsidiaries</td>
<td>3</td>
<td>1873</td>
</tr>
<tr>
<td>Emc Corporation (USA)</td>
<td>Tellas (EMC)</td>
<td>IT Hardware</td>
<td>Emc (Benelux) BV</td>
<td>0</td>
<td>339</td>
</tr>
<tr>
<td>Euronet Worldwide Inc (Delaware USA)</td>
<td>Euronet Card Services Greece</td>
<td>Electronic Payments</td>
<td>Eft Services Holding BV</td>
<td>1</td>
<td>562</td>
</tr>
<tr>
<td>Footlocker (USA)</td>
<td>Foot locker Greece</td>
<td>Sportswear &amp; Footwear</td>
<td>Fle Holdings BV</td>
<td>4</td>
<td>326</td>
</tr>
<tr>
<td>Havells India Ltd (India)</td>
<td>Havells Sylvania Greece</td>
<td>Lightings</td>
<td>Fiowil International Lighting (Holding) BV</td>
<td>0</td>
<td>167</td>
</tr>
<tr>
<td>Inchcape Corporate Services Li (UK)</td>
<td>Inchcape Shipping Services</td>
<td>Automotive Distribution &amp; Retail</td>
<td>Inchcape International Group BV</td>
<td>3</td>
<td>545</td>
</tr>
<tr>
<td>Mondi Plc (UK)</td>
<td>Mondi</td>
<td>Packaging &amp; Paper</td>
<td>Mondi Industrial Bags BV</td>
<td>0</td>
<td>201</td>
</tr>
<tr>
<td>Mylan Inc (Usa)</td>
<td>Generics Pharma Greece</td>
<td>Pharmaceuticals</td>
<td>Mylan Group BV</td>
<td>0</td>
<td>130</td>
</tr>
<tr>
<td>Robert Bosch Gmbh (Germany)</td>
<td>Bosch Greece</td>
<td>Household Appliances</td>
<td>Robert Bosch Investment Nederland BV</td>
<td>4</td>
<td>7561</td>
</tr>
<tr>
<td>Safilo Group Spa (Italy)</td>
<td>Safilo Hellas</td>
<td>Eyewear</td>
<td>Safilo International BV</td>
<td>0</td>
<td>209</td>
</tr>
<tr>
<td>The Sol Group (Italy)</td>
<td>SOL Hellas</td>
<td>Medical, Industrial Gas</td>
<td>Airsolv BV</td>
<td>0</td>
<td>134</td>
</tr>
</tbody>
</table>

Sources: Bloomberg, Bureau Van Dijk (Orbis), Dutch Chamber of Commerce

5.7. Conclusion

This chapter analysed the origin of investments in Greece (FDI stock held by foreign entities) and Greek FDI stock abroad. It further specified how much of this stock was related to SPEs, commonly termed mailbox companies, which is an indication of tax planning occurring through a jurisdiction. It finds that the top seven counterpart economies of Greece’s inward or outgoing investments include major tax haven jurisdictions, namely, Luxembourg, Switzerland, the Netherlands, Cyprus, and the Cayman Islands. In particular the Netherlands, but also Luxemburg and Cyprus have high SPE-related investments. All three countries have relatively small economies and financial centres, yet they offer generous tax incentives to and serve as large financial turntables for MNCs. This indicates significant tax base erosion of the volume of taxable transactions in counterpart economies. As many tax avoidance techniques are not captured by FDI data, such as transfer mispricing, the total amount of transactions related to tax base erosion will be much higher than only SPE-related investments.
Furthermore, bilateral data between crisis-ridden EU economies and the Netherlands points to corporations reacting to corporate income tax rate increases in response to the crisis by avoiding tax through the Netherlands.

The chapter also provided an, albeit incomplete, indicative list of foreign companies using the Netherlands as a conduit for investing in Greece. The data presented in this chapter should be taken by the revenue authorities in Greece and the Netherlands to identify companies potentially eroding Greece’s tax base. It should also create a sense of urgency among policy makers of not only Greece, the Netherlands and Luxemburg but also the EU to take political and policy steps to coordinate better and implement binding legislation to end tax base erosion and profit shifting by large multinationals.
6. Regressive taxation and Troika measures in Greece

6.1. Introduction

Greece, as we have seen in previous chapters, is suffering major revenue losses through corporate tax avoidance. The Netherlands and other EU jurisdictions as well as EU Directives are shown to play a central role in facilitating this type of revenue loss. However, recent public and political debates on the shortcomings of Greece’s fiscal policy raise the question whether Greece’s tax gap is largely self-created.

This chapter provides a brief discussion on Greece’s tax regime from a public interest perspective to put the debate of corporate tax avoidance in Greece in context. It also outlines Troika-imposed fiscal and investment measures that contribute to the further privatisation of the commons, with view to analysing the weaknesses of the crisis measures and offering alternatives. In addition, it takes a look at the devastating social impact of these measures and argues that reform is necessary at Greek, EU level as well as Dutch level to solve the current shortfalls in tax policies that benefit large corporations vis a vis ordinary people.

6.2. Focus of public debate and (imposed) reforms in Greece

The tax system in Greece is generally regressive, i.e. skewed against the poor and favouring the rich, whilst compliance is undermined by large-scale tax evasion of especially richer sections of society. Reporting on tax scandals in Greece has focused in particular on the favouring of certain professions (e.g. lawyers and doctors) and industries (e.g. shipping) over and above others (wage labourers or small and medium-sized businesses) as well as on the use of offshore havens and by wealthy and well-known individuals. Whilst domestic measures are badly needed to tackle tax base erosion as well as damaging fiscal incentives and preferential treatments, there are two issues that require highlighting.

Firstly, large-scale corporate tax avoidance by foreign companies and the role of EU jurisdictions in facilitating these have received less attention in debates on the debt crisis in European peripheries such as Greece.

Secondly, wrong policy choices that harm the public interest have been made under the conditionalities attached to the EU, ECB and IMF (Troika) loans granted to Greece under the European bail-out programmes. These have not only limited democratic decision-making in Greece to protect the public interest in economic and fiscal policies. The recipes proposed for Greece under the Troika-imposed ‘Economic Adjustment Programme’ (EAP) contain shockingly regressive tax reform measures. Conditional policy measures range from privatisation and deregulation to fast track

---

investment and tax measures hitting the poor. Whilst spending cuts and higher taxes in themselves have a contracting effect on the economy and hits workers the hardest for a number of reasons, these measures have a particularly damaging effect if they take place in an already regressive tax regime.

It is in this context that Troika-imposed fiscal ‘adjustment’ or ‘consolidation’ - that is cuts in government spending on the one aide and higher tax rates on the other - and the EU’s response to the crisis in general, have to be assessed.

6.3. Greece’s regressive tax regime and its causes

The domestic tax system in Greece, just like the international tax regime, is skewed against the interests of the poor and middle classes for a variety of reasons. This situation has exacerbated since the country entered the debt crisis. When the crisis first started in 2009, both personal income taxes and Value Added Tax were increased, while corporate tax was reduced from 25 per cent to 20 per cent.226 It should be noted, however, that some progress has been made, with a corporate income tax rate increase from 20 to 26 per cent in 2013 and some progressive tax reform measures.227 The overall reform package, however, is viewed as regressive by many commentators. The statutory rates do not take into account the tax exemptions, for instance. Most of the tax increases in Greece have been shown to affect workers rather than large corporations, with an increase in tax per GDP of personal income taxes from 4.8% of GDP in 2007 to 6.9% of GDP in 2012. At the same time corporate income tax revenues have fallen from 2.6% of GDP to 1.1% of GDP, pointing to corporate tax avoidance and evasion.228 Generally, there has been a large shift in the Greek tax burden from corporate income and import duties to especially personal income tax and excise and consumption taxes.

Greece has a bad track record with regard to collecting taxes due. Although tax rates in Greece are at the top end of the EU range, the ratio of tax revenues to GDP is considerably lower than that of the EU on average. Data shows that whilst the statutory rates in Greece might be above average in the EU, the revenue authorities collect far less direct taxes on personal and corporate income that their European neighbours, while social contributions are also much lower (see Annex 4). Indeed, a recent study by the IMF estimates that in 2011, revenues from taxes amounting to approximately 12-17% of GDP were lost, as a result of a number of factors.229

The IMF study provides an in-depth analysis of the reasons for Greece’s tax gap, reviewing the relevant literature. Large scale tax avoidance and evasion are identified as one of the main reasons.

226 The IMF also talk about so-called ‘strategic spillover’, which occurs when a country reduces its Corporate Income Tax (CIT) rate in response to tax competition from other countries and in hope of slightly increasing the tax revenue base by motivating companies to book more revenue in their jurisdiction. In Greece this has also taken place, with a reduction in the CIT from 25% to 20%, introducing a further 5% strategic spillover as a response to the high amount of base erosion and profit shifting via SPEs. The rate has, however, since then risen back to 25% in 2013 (see also Annex 4).


228 In the EU-28 countries, the personal income tax collection has been steady, while there was a slump in the collection of VAT dropping from 7% to 6% in 2009 at the highest point of the crisis, however recovery took place already in 2010. What hasn’t recovered in the EU-28 countries either Also excise taxes on consumption goods have increased from 2.6% of GDP to 3.6% of GDP while VAT revenue remained stable in terms of GDP despite higher rates.228 Furthermore, the Greek GDP actually fell during the period 2007-2012, and the tax collection measured in Euros is even less than the relative collection (please see Annex xx for tax collection figures in euros

The liberal professions (doctors, engineers, educators, accountants, lawyers) tend to underreport their income, for instance, with income estimated to be potentially 2.5 times higher than reported. This is negatively correlated to the ‘paper trail’ they generate and positively to the political influence they exert.\textsuperscript{230} Tax evasion, i.e. the illegal part of tax dodging, is estimated at € 19.1 billion in 2009 based on figures concerning the shadow economy, equivalent of 27.5 per cent of government spending that year.\textsuperscript{231} It is likely that evasion of VAT contributed to the largest share of this tax gap.\textsuperscript{232} Sectors with a high propensity to use undeclared work include tourism, catering, construction, agriculture, homecare, and commerce.\textsuperscript{233} Greece also has many (often discretionary) exemptions in the tax code that erode the tax base. The shipping industry enjoys many tax subsidies, but similar schemes were once introduced to boost economic development of the agricultural or tourist industries.

Table 11: Identified reasons for Greece’s tax gap

<table>
<thead>
<tr>
<th>Channel</th>
<th>Explanation</th>
<th>Estimated Annual Loss</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tax exemptions</td>
<td>Several exemptions for VAT and PIT. Discretionary investment incentives.</td>
<td>2.5% of GDP in 2011</td>
</tr>
<tr>
<td>Tax avoidance schemes</td>
<td>Status of self-employed versus salaried employees. Presumptive taxation and objective values. Location specific VAT rates.</td>
<td>...</td>
</tr>
<tr>
<td>Non-declaration of taxes</td>
<td>Non-declared labor income and income of liberal professions. Non-filing of VAT. Unrecorded and under recorded transactions.</td>
<td>4%-5% of GDP (Avanidis et al)</td>
</tr>
<tr>
<td>Assessed debt through audits is discounted</td>
<td>No audits of the auditors. No tracking of the originally detected amount, discounts, and finally assessed share of tax liability is collected through audits. Up to 80 percent reduction of interest and penalty charges on undeclared liabilities.</td>
<td>0.1% of GDP (only a small share of tax liability is collected through audits)</td>
</tr>
<tr>
<td>Large share of assessed debt remains unpaid</td>
<td>Insufficient focus of collection effort on new and collectable debts.</td>
<td>5% of GDP</td>
</tr>
<tr>
<td>Administrative delays</td>
<td>Extension of filing/payment deadlines. Many and generous deferred payment arrangements. Lengthy court proceedings.</td>
<td>...</td>
</tr>
</tbody>
</table>

Source: IMF staff estimates.

IMF (June 2013) Country Report No. 13/155, page 21

It is noteworthy that not only the public debate but also the IMF focuses on tax avoidance and evasion by individuals and certain professions rather than by foreign and Greek corporations in general. The role that EU jurisdictions play therein is thus also underreported. This omission ignores the by now internationally recognised problem of tax base erosion and profit-shifting and the public knowledge that tax dodging not only requires financial secrecy jurisdictions such as Luxemburg, Switzerland or


\textsuperscript{232} In another study, VAT collection gap was measured at EUR 9.76 billion, or 4.7% of GDP in 2011 http://ec.europa.eu/taxation_customs/resources/documents/common/publications/studies/vat-gap.pdf

Barbados, but also a willing coalition of conduit jurisdictions such as Ireland and the Netherlands, all offering different fiscal benefits to tailor the needs of tax avoiding corporations. Due to the size of their profits and ample opportunities to shift these out of the country with transfer pricing, internationally operating businesses are by far the biggest potential source of tax base erosion, also for Greece. This is confirmed by a recent report by the Budgetary Affairs Policy Department of the European Parliament, which found that 43 of the world’s largest companies operate in Greece, although only two publicly disclose their revenues and none the income taxes paid in Greece. The IMF only makes one mention of this, in noting that “transfer pricing is commonly used by Greek companies to route profits to low-tax jurisdictions.”

A blind eye being turned towards corporations in the discussion on how to solve the debt crisis, or more importantly at whose cost, might, be changing in Greece, however. German car companies Mercedes-Benz, BMW and Opel are under investigation by Greek tax authorities, for VAT, registration tax and luxury tax evasion. On 28 September 2014, a Greek court ruled on another tax evasion case - in favour of the Greek state - after a long legal battle with the German construction company Hochtief’s failure to pay VAT tax owed to the Eleftherios Venizelos Athens International Airport for over 20 years. The Greek state will now be able to claim 600 million euro in unpaid taxes.

6.4. Troika-imposed ‘fiscal consolidation’

Since the European bail-out programmes, Greece’s fiscal crisis is intimately interlinked with external loan conditionalities imposed on the country by the Troika, which encompasses the European Commission, the European Central Bank and the IMF. Until the time of writing, Greece has had two Economic Adjustment Programmes (EAP). The primary objective of the EAPs, in the words of the IMF, is to: “restore market confidence and lay the foundations for sound medium-term growth through strong and sustained fiscal consolidation and deep structural reforms, while safeguarding financial sector stability and reducing the risk of international systemic spillovers. Greece was to stay in the euro area and an estimated 20-30% per cent competitiveness gap would be addressed through wage adjustment and productivity gains.”

As with the structural adjustment programmes of the 1980s imposed on developing countries, the public loss mechanism structural to debt regimes is the fact that the debt is largely used to pay back banks, in Greece’s case largely European and more specifically German, French, British and Dutch
Indeed, of the total of €237.5 billion and disbursed €214 billion (until December 2013), more than 75 per cent has been channelled back to the financial sector largely of the Eurozone area and, to a smaller extent, of Greece. The Financial Times calculated that the southern periphery countries together have to pay more than €130 billion in 2014 only to meet the interest payments. According to research by Attac Austria, a staggering 77.12% of the Greek EAP funds went directly (via bank recapitalisations) or indirectly (via repaying government debt) to the financial sector.

As such, what sounds like a scientific exploration of abstract economic theory here, is in actual fact a highly political reform programme that favours the interest of elites and corporations over and above ordinary people. The economic crisis and ensuing reform programme has led to enormous human suffering for the people of Greece, details of which are outlined further below.

**Attac investigation shows: EU crisis management policy saves banks, not the general population**

Due to the lack of publicly available information on the exact usage of the enormous Greek bail-out, ATTAC Austria initiated research on loan repayments and found that at least 77% of the loans directly or indirectly flow to the financial sector. “The goal of the political elites is not the rescue of the Greek population but the rescue of the financial sector”, Lisa Mittendrein of ATTAC concludes. “They used hundreds of billions of public money to save banks and other financial players – and especially their owners – from the financial crisis they caused.”

Among those actually rescued is the multi-billion Latsis Group, which also has holdings in the Netherlands and has bought up the controversial Hellinikos former airport site amidst accusation of corruption and below market prices. Latsis owns large parts of the state-rescued Eurobank Ergasias. Speculators benefited as well, with the hedge fund Third Point receiving €500 million with the aid of European public funds during the debt buyback in December 2012.

---

239 At the end of 2010, Greek government bonds held by banks in countries reporting to the BIS totaled USD 54.2 billion, of which 96% was owned by European banks. German banks owned the greatest share (42%), followed by French banks (28%), Italian banks (8%) and British banks (6%). BIS Quarterly Review, June 2011, http://www.bis.org/publ/qtrpdf/r_qa1106.pdf, Table 9E. See also: IMF (June, 2013) Country Report No. 13/156, Greece: Ex Post Evaluation of exceptional access under the 2010 stand-by arrangement, https://www.imf.org/external/pubs/ft/scr/2013/cr13156.pdf, paragraph 12, page 8. The exposure of European banks to Greek government bonds declined sharply between 2010 and 2012, from USD 52.2 billion to USD 2.1 billion (see BIS Quarterly June 2011 and June 2013, respectively). The share of German and French banks (main owners of bonds) declined from 70% of the total to 4%. No formal agreement was actually made between the EU leaders and the banks about holding on to Greek government bonds: In fact, the banks were helped to offload their Greek bonds to the ECB (Securities Market Programme) and via a very favourable debt restructuring programme in 2012.


241 The amount of approx. EUR 50 billion has been allotted to the recapitalization of Greek banks through the Hellenic Financial Stability Fund – a private legal entity – expressly set up in 2010 (www.hfsf.gr).


243 Specifically, the report show that: “EUR 58.2 billion (28.13%) were used to recapitalise Greek banks – instead of restructuring the too big and orbund sector in a sustainable way and letting the banks’ owners pay for their losses.EUR 101.331 billion (48.98%) went to creditors of the Greek state. EUR 55.44 billion of these were used to repay maturing government bonds – instead of letting the creditors bear the risk for which they had received interest payments before. Another EUR 34.6 billion served as incentive to make creditors agree to the so-called "haircut" in March 2012. EUR 11.3 billion were used in a debt buyback in December 2012, when the Greek state bought back almost worthless bonds from its creditors.EUR 43.7 billion (22.46%) went into the national budget or couldn't be definitively attributed. EUR 0.9 billion (0.43%) were used as Greek contribution to the new bail-out fund ESM.”
6.4.1. Troika-imposed fiscal and investment policies

The austerity-led crisis response implemented in Greece since 2010 encompasses measures of market deregulation, especially of the labour market, large-scale privatisations, and fiscal consolidation. Fiscal consolidation here implies cuts in government spending and higher tax rates, whilst it is important to note that taxes will be lowered or exempted under so-called fast-track investment measures (see chapter 3.3).

The main components of these fiscal and investment policies imposed in Greece and the public loss mechanisms inherent to them can be classified into a number of areas, namely:

- Fast-track investment procedure, providing benefits to mega projects with no long-term economic impact assessment with regard to added value to the public interest.
- A regressive tax regime, worsened by fiscal measures imposed by the Troika as well as tax avoidance and evasion opportunities.
- Privatisation and other deregulation measures and the corruption scandals surrounding them.
- Public expenditure cuts, leading to social and economic destitution.
- Anti-social labour market reforms including wage freezes/cuts and flexibilisation leading to job insecurity and worsening of labour conditions.

A number of measures with devastating social impacts are not covered here, such as the as the imminent home foreclosures responsible for increased homelessness in Greece, which are documented elsewhere.

6.4.2. The impact of fiscal consolidation

Between 2010 and 2014, fiscal austerity measures amount to over 30 per cent of GDP of which 54 per cent is derived from expenditure cuts and 46 per cent from increases in revenue. In actual terms, the combined budget cut measures until the end of 2013 added up to €13.5 billion. Tax increases are expected to produce additional receipts equal to 15 per cent of GDP, although only 3 per cent of GDP is expected to come from improving tax compliance.

Not surprisingly, four years into the Programme, the main drawbacks of the Greek taxation system have not been tackled. Namely, (a) its regressive nature – more than 40 per cent of all revenue is derived from indirect taxation; (b) tax avoidance by particular segments of the population, which have been granted preferential treatment, such as ship owners, as well as large corporations (c) tax evasion mainly by corporations with offshore accounts, as well as by the liberal professions. Thus the burden of the increase in taxation has fallen on the salaried and waged labour, while the lower and middle income groups have been hit especially hard. For example, in 2011, wage earners paid on average 35 per cent more income tax than business owners and professionals, while 46% of the income tax proceeds was paid by those in the €30.000 - €50.000 income bracket.

As of 2014, banks will be able to foreclose following the lifting of the moratoria from 2010 (L.3869/2010, as amended by L.4161/2013), which shielded households and small- and medium-sized enterprises from bank foreclosures.


Evgenia Tzortzi, 2014, Unequal distribution of income tax, Kathimerini, 23 February (in Greek).

Furthermore, under the pressure of the terms of the loan having to be met, ad hoc taxes have been imposed, such as a property tax collected by the Public Power corporation (PPC) via electricity bills, which was introduced in 2011 as a temporary measure (until 2013), to be replaced by an augmented real estate tax. However, the Troika has expressed reservations as to how effective such a real estate tax is going to be in terms of revenue collection. It has thus been
worse by the fuel tax hike, which has led to a 40 per cent increase in heating oil prices and to a steep decline in the consumption of heating oil. Some of the side effects include illegal logging for firewood in the countryside and wood-smoke smog appearing over Athens.\textsuperscript{249}

6.5. The impact of austerity in Greece

The impact of these regressive fiscal measures and of corporate tax avoidance in Greece must be viewed in the context of the larger impact of the debt crisis and related austerity regime. The economic consequences of the austerity measures have been dire, as shown in Figure 9 below.

Figure 9: An economy in collapse - selected indicators 2007-2013

![Graph showing economic indicators 2007-2013](image)

Source: Frangakis (2012) updated and extended\textsuperscript{250}

As we can see, over the 6-year period 2007-2013, GDP has shrunk by nearly one-fifth, investment by more than one-half, domestic demand by a quarter - a shortfall not made up by exports - while the public debt has risen by more than two-thirds and unemployment has more than trebled. Further, interest payments by Greece, traditionally amongst the highest in the world in relation to GDP, steadily absorb 5 per cent of GDP.

In terms of public finances, the public debt increased from 125 per cent of GDP in 2009 to 175 per cent in 2013, even though the public deficit fell to 10.5 per cent of GDP in 2013 from 15.7 per cent in 2009. Thus, it may be argued that the austerity measures associated with the bail-out agreements suggested that the property tax paid via the PPC be kept on for longer, even though it is recognized that it is ‘deeply unpopular and sanctioning non-payment by shutting off electricity service has been deemed unconstitutional’, IMF, 2013, Greece: Fourth Review under the Extended Arrangement under the Extended Fund Facility, https://www.imf.org/external/pubs/cat/longres.aspx?sk=40838.0, page 14.

\textsuperscript{249} Karolina Tagaris, 7.2.2013, Greeks forgo winter heating after jump in fuel tax, http://www.reuters.com/article/2013/02/07/us-greece-fuel-idUSBRE9160R220130207

\textsuperscript{250} Marica Frangakis, 2012, Die Staatsschuldenkrise in Griechenland und das europäische Projekt Dynamik und Folgen, Z - Nr. 92 Dezember 2012. Graph inspired by F. Saraceno’s portrayal of the ‘Greek tragedies’, http://www.fsaracon.wordpress.com
have not only amplified the problems of the Greek economy, but they have also prolonged the agony of overcoming them, insofar as the interests of creditors take precedence over those of society.

A number of civil society organisations and bodies have documented the developments in Greece and classified them as human rights violations. Noteworthy examples are TroikaWatch, trade unions and related experts. According to the Legal Opinion commissioned by the Chamber of Labour in Vienna, the fiscal consolidation and structural reforms included in the 2010 and 2012 Economic Adjustment Programmes for Greece are in violation of human rights.

In percentages, the economic and social pain inflicted on the majority of the Greek people read as follows:

- Unemployment increased from 8.3 per cent of the labour force in 2007, to 17.7 per cent in 2011 and to 28 per cent in late 2013.
- Certain groups have been hit especially hard. In particular, in September 2013, the unemployment rate was equal to 28 per cent for women and 58 per cent for the under 25 from 13 per cent and 23 per cent respectively in 2007. A brain drain is taking place, as the emigration of young, qualified persons from Greece is gathering pace. This will have long-term consequences, exacerabting Greece’s position as a peripheral country.
- Long-term unemployment, i.e. for longer than one year, also climbed to 14.4 per cent of the labour force in 2012 from 4.1 per cent in 2007, denoting the mounting pressure on social cohesion, as well as on economic development.
- The enhanced flexibility of the labour market has resulted in a steep increase in individual and firm-level work contracts and in a decline in private sector wages by more than 30 per cent.
- These developments are intensified by the high share of the self-employed in the labour force (31 per cent in 2011 as opposed to 15 per cent in the EU), 47.5 per cent of whom are in the services sector. These are mostly family enterprises, with no employees, the shutting down of which often drives the whole family into unemployment and economic hardship.

As it might have been expected, poverty and inequality have become especially acute. Thus, in 2012, 35 per cent of the population were at risk of poverty or social exclusion, while the rate was higher for children under 15 (38.7 per cent) and for women (35.2 per cent). Income inequality is also high and rising. For example, the income received by the top 20 per cent of the population was 6.6 times larger than that of the bottom 20 per cent in 2012, having increased from 6 per cent in 2005 and exceeding the average ratio of 5.1 per cent in the EU. Furthermore, the cuts in public health and education expenditure are aggravating the social distress experienced by the unemployed, the impoverished, the young who have not yet migrated and the old, who find themselves locked in a dwindling fixed income situation. Research has shown that austerity measures in Greece leave nearly a million people with no access to healthcare, leading to soaring infant mortality, HIV infection and suicide.

251 Website: http://www.troikawatch.net, see in particular the newsletters.
252 See http://www.etui.org/Networks/The-Transnational-Trade-Union-Rights-Experts-Network-TTUR
Overall, Greece is undergoing one of its darkest periods since it gained independence in the 1830s. Indeed, it has been argued that the Greek depression exceeds the Great Depression as experienced by the USA. Commentators following developments in Greece closely, argue that the six-year long depression and the ensuing social and economic devastation are ushering in a new political era. They say what is at stake is not only democracy in Greece, but the legitimacy of European democracy more generally.

6.6. Conclusion

Viewed from a public interest perspective, the domestic tax system in Greece works against the interests of the poor and middle classes; a situation that has been aggravated by the debt crisis. Troika-imposed austerity and reform programmes have also been regressive on ordinary Greek taxpayers. Thus the burden of the increase in taxation has fallen on the salaried and waged labour, while the lower and middle income groups have been hit especially hard. At the same time, reform has benefitted large corporations with investment-friendly measures. Troika-imposed fiscal and investment measures have added to the privatisation of areas of public interest. Regarding tax avoidance, while tax evasion has been recognised to be a huge problem for resource mobilisation, the debate has primarily focused on wealthy individuals and particular segments of the population that were granted preferential treatment. Foreign companies such as Eldorado Gold or others highlighted in this report have been largely excluded in public and policy discussions.

The link between a states’ duty to mobilise maximum resources to realise human rights and its ability to deliver social programmes is increasingly recognised. Illicit flows, including tax evasion, divert resources intended for social development, thereby undermining government efforts to provide basic services and their ability to comply with social needs and human rights obligations. The impact of the crisis and Troika reform measures have left a large part of the population in pressing social circumstances. Rising unemployment and cuts in public expenditure and have left many people impoverished. Reform in fiscal and economic policy is necessary to revert policies that promote public loss and private gain, and put people’s interest first.

---

7. Conclusions

In the context of a deep recession, and with Troika and domestic recipes limited to an economic growth development model based on privatisation and free-market measures, policies in Greece are currently geared towards attracting foreign direct investment at all cost. However, experience from developing countries, which shows striking parallels with Greece’s current domestic and external conditions, indicates that foreign investment in the form of extractive industry projects are far from certain to benefit either local communities or indeed state revenues. This begs the question as to whether Eldorado Gold’s mining plans, hailed the most important project to reassure foreign investors that Greece is open to business, will actually deliver the promised gains.

Fiscal and human rights policy implications

The case of Eldorado Gold in Greece illustrates how the failure to tax corporations - in a context of severe cuts to basic social services that have led to serious violations of social and economic rights - is a human rights issue. This responsibility of this tax gap lies not only with the Greek state, but also with the Netherlands, Luxembourg and the EU, as their fiscal regimes facilitate tax base erosion in Greece. This denies the country and its citizens much needed domestic resources to pay for basic social services.

Tax avoidance is not the only issue at hand; however, the company's operations also raise serious human rights concerns, ranging from police violence and the criminalisation of protest to serious projected environmental destruction. To be sure, mentioned environmental destruction is not a potential risk if procedures aren’t properly conducted, it is an essential part of the entire plan. In particular with the advent of UN ‘Protect, Respect and Remedy’ Framework and related implementation of supply chain due diligence, this case illustrate how not only Greece, but also the Netherlands and Canada are at risk to fail in their duty to protect human rights. To prevent this failure to protect, a number of recommendations are made in XX.

Eldorado Gold in Greece: a human rights case

This report showed that there are serious environmental and human rights controversies related to Eldorado Gold’s activities in Halkidiki. Local residents argue that the planned investment will cause considerable damage to the environment and livelihoods, resulting to more jobs losses in the existing sectors of the local economy than there are created in the mines. Scientific environmental impact reports have supported the concerns of the local community that the planned mining operations and related clearing of forests on mountainous areas will potentially case serious soil erosion as well as water and air pollution. The feasibility of the ore processing technology proposed by Eldorado Gold is contested and the community was not adequately consulted. Local resistance to the Eldorado Gold’s operations has been heavily repressed by the Greek state and met with police brutality and far-reaching criminalisation. The operations of Eldorado Gold in Greece come at a high cost to the environment as well as to local communities. Any meaningful democratic control over decision-making relating to Eldorado Gold’s projects for the actual people involved is absent. An evidence-based assessment on the social and economic contribution and offering a clear view of who exactly would benefit is also missing (Chapter 2).

State subsidy

Research for this report identified a number of ways in which Eldorado Gold - independent from the profit generated from its operational activities - benefits financially from operations in Greece. These
should be scrutinised to enable a general assessment of whether the company will provide an overall economic benefit to Greece. The company has received state support in various forms, ranging from export credit to generous contracts and potential future tax incentives. Yet the Canadian and Greek states providing this public support are, despite international norms on business and human rights and the state duty to protect human rights, failing to take into account the concerns of the affected communities and the scientific evidence projecting serious environmental damage caused by the operations. Neither has anyone produced an in-depth economic impact assessment (Chapter 3). An impact assessment should, for instance, take into account standard tax planning structures of extractive industry companies

**Avoiding tax through the Netherlands**

Eldorado Gold’s tax planning structure involves 12 Dutch subsidiaries that are linked to tax havens, indicating potential tax base erosion in Greece. Together with other tax avoidance opportunities the company has that were not researched for this report, it might well be that that this project represents a financial loss for Greece, even without calculating externalities such as environmental destruction. Hellas Gold SA, the Greek company responsible for the Kassandra mines (Stratoni, Skouries and Olympias projects) is 95 per cent owned by the Dutch Eldorado Gold (Greece) BV, which finances its Greek subsidiary through bonds. The total value of the bonds and bond loans increased from €8 million in 2009 to €176 million in 2013. Related interest payments from Hellas Gold SA to the Netherlands remain virtually untaxed in both Greece and the Netherlands, leading to possible tax revenues losses of almost €1 million in withholding taxes in the years 2009 - 2013. Paying increasing amounts of interest (almost €13 million between 2009 and 2013) to Dutch related entities also implies tax base erosion in Greece, which has led to a potential corporate income tax loss of €1.8 million in 2012 and 2013 alone (Chapter 4). By facilitating tax avoidance of Eldorado, the Netherlands hinders Greece (where the tax is being avoided) to raise maximum available resources to realise the human rights of its citizens (see Chapter 1.2).

**Corporate tax avoidance in Greece**

Looking beyond this individual company case, an analysis of Greek bilateral investment positions shows that shows that the Netherlands, but also Luxemburg and Cyprus, serve as a common tax haven for foreign companies with operations in Greece. All three countries offer generous tax incentives and serve as large financial turntables for MNCs, indicating significant tax base erosion of the volume of taxable transactions between these tax havens and Greece. There are indications that corporate tax avoidance has grown as a result of the financial crisis and related corporate income tax rate increases in European periphery countries in their attempt to raise more domestic revenues to solve the debt crisis. FDI data suggest that the Netherlands is a preferred choice for companies to restructure their investments to avoid paying taxes in these countries.

The total accounts receivable owed to SPEs - established in the Netherlands - by Greece, Italy, Portugal and Spain grew from 178 billion Euros to 304 billion Europe (an increase of 71 per cent) between 2006 and 2011.260 The debts owed by Dutch SPEs to these countries grew from 72 billion Euros to 163 billion Euros in the same period (125 per cent).261 This is in stark contrast to the development of the receivables and debts by Dutch SFIs to Germany, for instance, where the increase in debt was 73 per cent in this period and the increase in receivables, 13 per cent. Data also indicates


Ibid.
that corporations from Greece, Portugal and Spain increasingly structure their investment through the Netherlands and other EU tax havens to avoid tax increases instituted as a result of the financial crisis. A number of large foreign firms that structure their investments in Greece through the Netherlands were identified, but represent only the tip of the iceberg given that these findings at company level will only be partial and do not include Luxemburg or Cyprus (Chapter 5).

**Regressive taxation and Troika measures in Greece**

Tax avoidance of foreign firms in Greece is an issue of economic justice. Greece already had a regressive tax regime, whereby the burden of taxation, especially the recent increase in taxation, has fallen on the salaried and waged labour, the lower and middle income groups being hit especially hard. At the same time, tax incentives and investment measures favour foreign corporate taxpayers. While Greece’s failure to levy taxes due from certain professions and low tax morale are certainly a problem for resource mobilisation, the public debate in Greece and that led by the EU and IMF has primarily focused on wealthy individuals and particular segments of the population that were granted preferential treatment. Tax avoidance by foreign companies such as Eldorado Gold or others highlighted in this report has been largely excluded in public and policy discussions. Incidentally this tax avoidance is facilitated by EU Member States such as the Netherlands and Luxemburg (Chapter 6).

In conclusion, whilst a case is made by the current Greek government and its creditors that foreign direct investment would provide Greece with economically beneficial investment in terms of tax revenue and jobs, there are ample indications that such benefits will not be generated by Eldorado Gold’s open-pit gold and copper mining projects once all externalities and tax issues have been included in the equation. Even if we disregard for a moment, the distribution of potential benefits altogether, it seems that not much good will come from the operations.

### 7.1. Recommendations

An important precondition to close the global accountability gap in the face of negative impacts that occur as a result of business activities is not only to address the responsibility of the ultimate parent and local operating subsidiaries of a multinational group; responsibility should also apply to other important legal entities within the group that fulfil central functions, such as group financing activities and registered head offices which might not carry out daily management but are used by a corporation to enjoy tax benefits and investment protection.

**SOMO, 2013**

The following recommendations do not necessarily reflect the views of the local community in Halkidiki but have been drafted by SOMO on the basis of its research findings. Eldorado Gold’s operations in Greece are highly contested and citizen’s and part political views might range from stopping the operations altogether to trying to regulate them better. These recommendations will be presented to a number of stakeholders for comment, and where relevant these will be included in the final report.

---

Many general recommendations already exist with regard to mining operations and how to bring them in line with human rights. All involved parties, that is Eldorado Gold and the governments of Greece, the Netherlands and Canada, should implement relevant human rights standards and familiarise themselves with the legal framework to ensure they do not act in contradiction to them. MiningWatch Canada is useful reference point, as they have outlined the main standards in this area. With regard to transparency, the civil society network Publish What You Pay and of course the Extractive Industries Transparency Initiative (EITI), a multistakeholder coalition, has set standards that governments and companies should be aware of and follow.

**Eldorado Gold**
- The company should refrain from using aggressive tax planning techniques, which can be defined by intercepting mailbox companies in conduit jurisdictions such as the Netherlands to shift interest income to tax havens such as Barbados.
- The company should provide financial transparency in the form of country-by-country reporting, which includes publishing all its financial accounts of subsidiaries located in Barbados, the Cayman Islands and the British Virgin Islands.
- The company should provide transparency about its planned ore processing technology and adequately respond to claims by experts that flash smelting, the technology approved by the Greek government, is not a viable option in the case of the specific concentrates found in the Halkidiki area, which is high in arsenic.
- The company should respect the opposition to its mining plans by the local community and carry out an extensive local consultation, providing the community with necessary information in a timely manner to assess the planned operations.

**The Netherlands**
- The government should refrain from providing fiscal benefits to Eldorado Gold seeing it has no material base in its jurisdiction and is associated with controversial operations abroad. A material base would include sales, fixed assets or staff who are not solely employed to manage the company’s fiscal affairs.
- Specifically, the government should make publicly available any Advance Pricing Agreement or Advance Tax Ruling Eldorado Gold has or had with the Dutch revenue authority to allow for public scrutiny of its tax effects, i.e. possible double non-taxation of Eldorado Gold’s interest income.
- The government should implement the general anti-abuse rule as proposed by the European Commission in its Action Plan against tax fraud and devise specific measures to tackle tax base erosion in other countries through profit shifting or tax avoidance methods involving interest, royalties, dividends and capital gains. An immediate end to allowing firms to deduct interest payment to tax havens such as Barbados from their profit, would be a good start.

---


265 [https://eiti.org/eiti](https://eiti.org/eiti)

The government should address the expectations it has towards Eldorado Gold’s Dutch subsidiaries in relation to their extraterritorial human rights performance. The Commentary to the UN Guiding Principles makes a number of valuable suggestions, from imposing requirements on locally incorporated (parent) companies to reporting on the human rights performance of the whole enterprise, and to enforcement of criminal sanctions.

The government should provide the opportunity to the people affected by Eldorado Gold’s operations to seek remedy in front of Dutch Courts.

FDI stocks presented in this report indicate the Netherlands as one of the most important source and destination countries for SPE-related investment to and from Greece. To end related tax base erosion in Greece, the government should take coordinated measures together with Greece to analyse these data in more depth so as to identify specific corporate tax avoidance mechanisms and sectors underlying them. These insights should be used to close loopholes in existing tax laws and if there are sufficient legal grounds, to impose fines on companies using these methods to recuperate some of the losses that are currently occurring.

**Canada**

The government should stop extending the diplomatic support it typically provides for its mining companies to Eldorado Gold. Canada’s export credit agency EDC should end its financial support to Eldorado Gold on the basis of the evidence presented to it by Hellenic Mining Watch and in this report.

EDC should make publicly accessible information about the agency’s operations, including its due diligence processes. Specifically, it should disclose information about how it conducts its loan reviews, including its assessments of factors such as a potential client’s capacity to manage environmental and social risks or their compliance with domestic law.

The government should propose and implement a binding law for enhanced due diligence by EDC to ensure that Canada is in compliance with its international human rights obligations.

EDC’s financial support should be made conditional on respect for internationally-agreed norms on the protection of human rights, labour, and the environment.

**Greece**

The government should investigate the incidents of reported police brutality against protesters in Halkidiki.

---

267 As set out in UN Guiding Principle 2, which says that ‘States should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations’, http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

268 An international and cooperative approach to the regulation of cross-border business is already being followed in the context of anti-bribery and anti-money efforts. The OECD and IMF have also called for the implementation of existing due diligence regimes that resemble the human rights due diligence activity promoted by the Guiding Principles on Business and Human Rights, relating to the prevention and detection of these financial crimes, and its extraterritorial dimension. See De Schutter et al., Human Rights Due Diligence: The Role of States, 2012, http://accountabilityroundtable.org/wpcontent/uploads/2012/12/Human-Rights-Due-Diligence-The-Role-of-States.pdf, page 1


270 For instance, the Canadian Ambassador to Greece, Robert Peck, was caught on video trying to persuade Vagelis Lambakis, then mayor of Alexandroupoli, the capital of the region of Thrace, to accept Eldorado’s proposed Perama Hill gold mine in the face of clear opposition from the mayor’s constituency, see DeltaTV, 30.3.2012. Canadian ambassador visits Alexandroupoli’s mayor, https://www.youtube.com/watch?v=AhAT82TrkQ

271 The Bill C-300, the Responsible Mining Act, was narrowly defeated in the House of Commons on 27.10.2010, due to a negative vote by the government.
The government should protect the democratic right to protest and end the criminalisation of the local community resisting Eldorado Gold’s mining operations in Halkidiki.

The government should recognise that some areas are too ecologically or culturally sensitive to mine, and that mining is not the best use of land. People may have made legitimate development choices that do not include and are not compatible with mining. The local community should be given direct and unequivocal decision-making powers with regard to the land they live on and derive economic subsistence from.

The government should carry out a balanced impact assessment of the claimed future economic contribution of Eldorado Gold to Greece’s economy, including the quantification of externalities such as air, water and soil pollution, the loss of local jobs due to environmental destruction and reduction in tourism, potential tax avoidance and evasion by Eldorado Gold, and the cost of fiscal incentives or any other support paid for by public money extended to the company.

In the line with Council of Europe recommendations, the government should implement a rights-based approach in the work of its public administration, including in the formulation of economic policies and budgeting, “to ensure that human rights and equality duties are taken into account in responses to the economic crisis.”

The government should devise a more progressive tax regime and make an end to large-scale tax avoidance and evasion by wealthy individuals and above all, foreign firms. To this aim, it could devise policies suggested by the UN Tax Committee and seek advice from fiscal experts of the IMF.

Immediate concerns are the use of European tax haven jurisdictions such as the Netherlands, Luxemburg and Cyprus by foreign firms; there are also indications that Greek firms also use these jurisdictions to avoid paying tax in Greece. Greece should cooperate with these jurisdictions as well as undertaking its own research to identify companies using these jurisdictions and identifying the aggressive tax planning methods they might be using so as to devise anti-abuse strategies.

The European Union

The greatest uncertainty of international trading companies is the specter of more stringent tax and trading regulation.

KPMG, 2012

The European Union has not been willing or able to effectively tackle tax avoidance by multinational companies so far. In fact the Eldorado tax case shows that EU Directives contribute to the tax system that allows for profit shifting. The Interest and Royalty Directive lowers withholding taxes on interest payments to 0% within the EU, which can be harmful for vulnerable economies like Greece.

---


274 Although the IMF advises regressive fiscal reform measure in Greece, which this report suggest are in violation with economic rights principles, in some cases the IMF has provided insights and concrete recommendations to government, especially in the case of Mongolia recently, on how to protect its tax base.

However, multiple developments in recent years show that the European Union is taking the issues of tax avoidance seriously. From the European Commission’s Action Plan to fight tax abuse to recent state aid investigations into harmful tax rulings, it is clear that tax is high on the political agenda. The member states are, however, often blocking necessary reforms. Tax is still seen as a national matter for the most part, but fighting tax avoidance requires international and structural reform measures and rising critical awareness among local and activist communities.

At the European level therefore, it is necessary that:

- **Financial transparency is increased.** All multinational companies should publicly report a range of financial data for each of the countries they are active in. Companies should be obligated to report on activities, revenues, profit, number of employees, and tax charge for all countries (country-by-country reporting, or CbCR). Regarding the latter, the case of Eldorado Gold shows that it is necessary that companies report not only report on its total tax charge, but that it is split between current and deferred tax, as well as reporting on the actual tax payments. Eldorado Gold’s tax reporting, which is already a good step in the right direction of CbCR, also shows that it is important that a company reports for all countries of incorporation, and not just in the countries it has actual production or presence. For example, Eldorado does not publish such information on its activities in Barbados, the British Virgin or the Cayman Islands.
  - This means that EU policy plans are currently insufficient since CbCR is/ will be solely mandatory for banks, and for mining and logging companies. However requirements for CbCR even differ for these two groups. It is therefore necessary to expand mandatory public CbCR to all multinational companies and ensure that they are all subject to the same extensive reporting requirements (as listed above).
  - Financial transparency could also be enhanced through the Anti-Money Laundering Directive (AMLD) that might include public disclosure of beneficial owners of companies. Individuals that ultimately own or control a company and enjoy its profits can currently remain unknown, which enables tax avoidance and criminal activities. The EU now has a critical opportunity to expand transparency of businesses and other legal entities across the EU.

- **Harmful tax regimes should be ended.** All EU member states should be obliged to implement a general anti-abuse rule into national law (as proposed by the Commission in 2012). This would ensure the mailbox companies and other artificial arrangements that are set up for the sole purpose of tax avoidance and abuse cannot make use of any tax breaks, incentives and treaties. Besides this, the planned review of the Interest and Royalty Directive should include measures to end double non-taxation.
  - Specifically, the EU should fund an analysis of SPE-related FDI stocks in Greece and its counterpart economies and identify underlying tax planning techniques and economic sectors and devise appropriate and binding policy measures to tackle them.

- **Address the collective action problem:** All European Union institutions, and its member states, should commit to ending harmful tax competition at the very least within the EU. The race to the

---


bottom by EU countries continues, in particular by the UK, Luxemburg, Ireland and the Netherlands. As the Parliament noted: “Within the EU the collective action problem concerning tax havens is further complicated by the domestic policies of some Member States which facilitate tax minimisation policies (e.g. the corporate income tax policies of Ireland, Luxemburg and the Netherlands) while the constitutional relationship of the UK with the Crown Dependencies and Overseas Territories also permits the creation of the tax haven/offshore financial centre in those jurisdictions with substantial independence from the UK government (although most citizens of Overseas Territories hold British citizenship, and the UK is responsible for ensuring good governance).”

To address this political stalemate, the Commission should ensure majority voting instead of unanimity on tax matters within the Council.

- **Develop alternative models for corporate taxation:** In order to ensure that there is a minimum tax base to be taxed in every EU country, the implementation of a common tax base in the EU is needed as well as the creation of a minimum corporate income tax rate.  

**Increase democratic decision-making on fiscal matters in all states**

In line with the recommendations of the UN Special Rapporteur on extreme poverty and human rights:

- Decision-making processes regarding tax and public revenues should be based on full transparency and the broadest possible national dialogue, with effective and meaningful participation of civil society and those who will be directly affected by such policies.
- Fiscal policies must be subjected to the scrutiny of the population during design, implementation and evaluation stages, with the various interests transparently identified. This will require capacity-building and fostering fiscal literacy in the population. The population must have access to all relevant information in an accessible and understandable format, and inclusive mechanisms must be put in place to ensure that they are actively engaged in devising the most appropriate policy options.
- Owing to the asymmetries of power, expertise and interests in this debate, specific measures must be taken to ensure equal access and opportunities to participate, particularly for people living in poverty.
- To ensure accountability, fiscal policies (including, for example, tax incentives granted to foreign investors) must be open to judicial oversight, while public officials must be accountable for decisions that endanger the enjoyment of human rights. Accessible mechanisms for complaints and redress must also be put in place.

### 7.2. Further research

Eldorado Gold’s tax planning structure in the Netherlands allows for a number of different tax avoidance practices that can potentially erode Greece’s tax base. The only one scrutinised in this report is the increasing use of Dutch mailbox companies in the financing of the company’s Greek operations. Further research is needed on the potential tax base erosion in Eldorado Gold’s...
operations in other countries, as well as the avoidance of taxation in the home state of Canada. This could include:

- An analysis of other tax planning methods in Greece involving transfer pricing, royalties, dividends and capital gains.
- A similar study with regard to the company’s Turkish and Romanian operations.
- The impact of Eldorado Gold’s tax planning structure on Canadian revenues, in particular the dividend payment structure used by the company.
- For these assessments, however, the company would have to disclose its financial accounts from tax havens it is active in, namely, Barbados and the Cayman and British Virgin Islands.