
The West African Giveaway:

Use & Abuse of Corporate Tax Incentives in ECOWAS

July 2015



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ActionAid International (AAI) is a non-partisan, non-religious development organization. ActionAid seeks to facilitate processes that eradicate poverty and ensure social justice through anti-poverty projects, local institutional capability building and public policy influencing. The organisation is primarily concerned with the promotion and defence of economic, social, cultural, civil and political human rights and supports projects and programmes that promote the interests of poor and marginalized people.

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About TJN-A

Tax Justice Network-Africa (TJN-A) is a Pan-African initiative established in 2007 and a member of the Global Alliance for Tax Justice. It is a network of 29 members in 16 African countries. Through its Nairobi Secretariat, TJN-A collaborates closely with these member organizations in tax justice activities at the national and regional level. TJN-A seeks to promote socially just and progressive taxation systems in Africa, advocating for pro-poor tax policies and the strengthening of tax systems to promote domestic resource mobilization.

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Summary

This report examines corporate tax incentives and their impact in the Economic Community of West African States (ECOWAS), with a focus on four countries: Nigeria, Ghana, Cote d'Ivoire and Senegal.

The report finds that:

- I. Corporate tax incentives – reductions in tax offered by governments presumably to attract investment - significantly reduce domestic revenue collection and are not necessary to attract foreign direct investment (FDI).
- II. Due to the lack of reliable and complete data it is not possible to accurately calculate how much the 15 ECOWAS states are losing through the granting of corporate tax incentives. However, our research shows that three countries alone – Ghana, Nigeria and Senegal – are losing up to \$5.8 billion a year. If the rest of ECOWAS lost revenues at similar percentages of their GDP, total revenue losses among the 15 ECOWAS states would amount to \$9.6 billion a year.
- III. These potential revenues lost could be used for spending on public services such as health and education, thus supporting sustainable development and creating favourable conditions to attract better investment.
- IV. Despite serious questions about the effectiveness of corporate tax incentives in achieving economic objectives and the losses to national budgets, they remain a commonly used policy tool in ECOWAS member states.
- V. Corporate tax incentives are often managed by multiple, uncoordinated entities in each country and are granted arbitrarily, rather than according to cost-benefit analysis.
- VI. Despite years of granting generous incentives to investors, the objectives of increased job creation and employment have not been realised in most ECOWAS countries. Foreign direct investment to West Africa¹ has increased but not in the sectors that create the most jobs, such as manufacturing. Neither is such investment the result of corporate tax incentives but rather the existence of natural resources, namely oil and gas.
- VII. Only limited regulation exists to coordinate tax policy on the ECOWAS level, and this regulation contains loopholes.
- VIII. The use of corporate tax incentives is causing a competitive race to the bottom among countries in West Africa which is detrimental to national revenue bases and regional integration.

1. Anyanwu, C. & Yameogo, D. (2015), 'What drives foreign direct investments into West Africa? An empirical investigation' the African Development Bank Group, JEL Classification: F21, F23, O19. Found that between 2007 and 2013, FDI projects in West Africa grew at a compound annual growth rate (CAGR) of 27.7%, the strongest growth in the African continent.

Key recommendations

National:

- I. Eliminate corporate income tax holidays
- II. Publicly review all corporate tax incentives, assessing tax expenditure (the amount of tax foregone from incentives); ensuring incentives are well targeted and commensurate with the benefits expected to citizens.
- III. Ensure that all phases of new incentives require parliamentary approval, and also that any new incentive offered is grounded in legislation which makes it available to all qualifying investors, foreign or domestic. This would effectively mean an end to discretionary corporate tax incentives.
- IV. Publish a costing and justification for each incentive offered, followed by monitoring of conditions and a tally of costs and benefits, so the public can see the impact of corporate tax incentives as part of the annual budget.
- V. Refrain from entering into stability clauses (which lock in corporate tax incentives long term) when negotiating new corporate tax incentives and investment agreements.
- VI. Ensure that corporate tax incentives are audited to check that the investment for which an incentive is offered has actually been carried out.
- VII. Incentives regimes must be rationalised by bringing them all under the control of a single entity with effective and resourced oversight mechanisms to ensure accountability and transparency of public spending.

Regional

- I. Regional framework for corporate tax incentives in ECOWAS should be agreed on and implemented
- II. ECOWAS states should develop better mechanisms to provide oversight of corporate tax incentives offered in the region and to promote forms of tax harmonisation where these are appropriate.

2. These recommendations have been borrowed directly from "Give us a break: How big companies are getting tax-free deals", ActionAid, 2013. This was with the intention to emphasise the need to redouble efforts to quickly and effectively address the severe problem of corporate tax incentives.

Abbreviations

ECOWAS	Economic Community of West African States
FDI	Foreign Direct Investment
IMF	International Monetary Fund
OECD	Organisation for Economic Cooperation and Development
VAT	Value Added Tax
UEMOA	l'Union Économique et Monétaire Ouest-Africaine
GDP	Gross Domestic Product
DGID	Direction Generale des Impots et des Domaines

Introduction

Taxes are the most stable and reliable source of domestic revenue available to countries. With tax revenue governments can pay for essential public services such as health, education, infrastructure, security and a functioning legal system. Tax revenue also pays the salaries of doctors, nurses and teachers, the workers that build roads and the judges and lawyers who operate the justice system.

Without adequate domestic resources countries are dependent on external financing such as expensive loans or conditional development aid. As a result, countries are either not in control of how that money is spent or increasingly unable to repay interest on loans, creating spirals of dependency.

Therefore, raising domestic revenue through tax is crucial. However, many governments are giving away their taxing rights in the form of corporate tax incentives to multinational companies, and others, in order to attract investment in their countries. This is causing large losses in national budgets and a damaging and competitive race to the bottom between neighbouring countries.

To illustrate the impact of corporate tax incentives, this report considers Nigeria, Ghana, Senegal and Cote d'Ivoire, four states of ECOWAS - a group of 15 West African countries with a common mission to promote economic integration across the region. These countries are important markets and destinations for investments, and also influential in the region.



In order to advance the political influence of people living in poverty to hold governments and corporates accountable, Activistas talk to a market stall holder as part of the Tax Justice Campaign being run by ActionAid and the Nigerian Activista Network, in a market in Abuja, Nigeria in October, 2013.

PHOTO: KATE HOLT/ ACTIONAID

1. Corporate tax incentives and their problems

Corporate tax incentives are fiscal provisions offered to investors. They include reduced corporate tax rates or full ‘holidays’, whereby companies pay no taxes for certain time periods. These incentives permit companies to pay less tax on their profits than normal, or to benefit from reduced or no tax on services such as water, electricity or land. Corporate tax incentives are used by governments in the belief that they will help attract foreign direct investment (FDI) into their countries.

Since most countries in West Africa have a weak investment climate due partly to political and macroeconomic instabilities, governments appear to regard corporate tax incentives as necessary to attract capital that would otherwise not come. Revenue losses from the granting of these incentives are sometimes rationalised – if they are rationalised at all - by arguing that the capital inflows and jobs created will ultimately deliver a larger return on investment. As a result, governments in the region have in the past two decades promoted their countries as investment destinations and offered an assortment of corporate tax incentives to most foreign companies.

But the key questions are whether the costs of corporate tax incentives are worth it - i.e., whether their costs are outweighed by the gains from increased investment – whether they serve corporate or public interests, and whether they facilitate corruption. In recent years, even important pro-market institutions such as the International Monetary Fund (IMF), the Organisation for Economic Cooperation and Development (OECD) and World Bank – which previously championed low tax rates and incentives for companies in developing countries - have been calling for reductions in the use of corporate tax incentives. The problems with their use include not only loss of tax revenue, but also that they can give undue advantage to already established big firms and multinationals at the expense of smaller and domestic industries, and can promote corruption (notably by enabling special treatment to be given to specific companies).

Lack of transparency is also often a key problem with corporate tax incentives. They are often unaccounted for in the national budget and not made public, reducing the accountability of governments to their citizens. The negative impacts of corporate tax incentives are rarely debated in public while parliamentary approval, which is normally required by law for granting corporate tax incentives, is bypassed in many countries. A senate committee in Nigeria recently tried to examine corporate tax incentives in the country, but their findings and recommendations, as well as measures being taken by the government to improve the tax incentive system, were not published, nor is it clear whether any findings were acted upon.

West African countries raise an average of only 10-15% of their GDPs in taxes, compared to 25-30% for the southern Africa group of countries. Since governments in the region continue to struggle for resources, some of them have turned their attention to value added tax (VAT) to compensate for revenue losses from incentives. Thus VAT rates are relatively high in West Africa. A directive by l’Union Économique et Monétaire Ouest-Africaine (UEMOA), the Francophone countries in ECOWAS which jointly use the CFA currency, dictates a band of between 15 and 20% VAT for the French West African region, Ghana levies 17.5% VAT while only Nigeria has managed to keep its VAT at 5%, because labour unions opposed government attempts in 2007 to raise the rate from 5 to 10%. VAT compensates for losses from other taxable income and can be collected relatively simply. But the problem is that increases in the price of goods and services disproportionately hurt the poorest. Thus governments are indirectly taxing citizens to compensate for the lack of tax revenue from companies. One of the primary objectives of the UEMOA VAT directive (1998) was to compensate countries for revenue losses incurred by reducing import tariff rates for firms.

2. Do corporate tax incentives promote increased investment and employment?

Foreign investment can under certain circumstances accelerate broad economic growth and development by transferring technology, creating jobs and boosting local economies. The apparent assumption in granting most corporate tax incentives is that lower tax burdens give investors higher rates of return and thus provide additional resources to re-invest in the country. However, there is actually scant evidence that corporate tax incentives increase investment. A report by the African Department of the IMF, focusing on corporate tax incentives in East Africa, notes that ‘investment incentives – particularly corporate tax incentives – are not an important factor in attracting foreign investment’.ⁱ

Rather, a large body of literature shows that more important factors in attracting FDI are good quality infrastructure, low administrative costs of setting up and running businesses, political stability and predictable macro-economic policy. Transparency, simplicity, stability and certainty in the application of the tax law and in tax administration are also critical factors. The presence of corporate tax incentives is rarely cited by businesses as a key factor in deciding to invest in a country.ⁱⁱ Côte d’Ivoire, for example, gives as much as 50% tax exemption to firms locating outside Abidjan, yet firms continue to cluster around Abidjan because of the size and buying power of its markets.

Corporate income tax holidays are a particularly ineffective way of promoting investment as they attract mainly ‘footloose’ firms that are not tied to a specific location and continuously change their identity for the purpose of benefitting from tax holidays available only to first-time investors. The presence of incentives can be important for these companies’ decisions to invest. However, such investments are seldom likely to promote local job creation, technology and skills transfer.

Clearly, governments do need to provide a tax environment that is attractive to investors, alongside other policies noted above. The key is to strike a balance between attracting foreign investment through providing a competitive tax environment and managing to collect sufficient taxes. Granting corporate tax incentives in the pursuit of foreign investment should not be seen as an alternative to promoting public investment in education, health, infrastructure or good governance, which is essential for creating a good business environment. Strengthening environmental and labour standards and creating stability, predictability and transparency are superior approaches for attracting foreign investment and serve citizens, policymakers and investors better.

In West Africa, corporate tax incentives are being widely applied by governments in light of little actual knowledge of how or whether foreign investment will respond. Our understanding is that no governments in the region have evaluated the extent to which corporate tax incentives are actually promoting the primary goal of attracting foreign investment. In addition, in most countries there is little capacity for public institutions to calculate the costs and monitor the actual impacts of incentives offered. Our research confirms that many incentives in the ECOWAS region are obsolete, unclear, not targeted and poorly managed by weak institutions with little oversight and bad coordination.

Employment creation is another motivation for West African governments to promote corporate tax incentives. However, their widespread provision and the lack of targeting to specific sectors has meant that the sectors receiving the most incentives are not necessarily those that create the most jobs, nor those that

add the most value to the economy. The manufacturing sector, which has the highest potential to create both high- and low-skilled jobs, receives a very low share of investment in West Africa (and elsewhere in Africa), both from domestic and foreign sources. The skewed investment in favour of natural resource extraction and away from manufacturing is a key reason why job creation has been very limited.

Most of West Africa is doing poorly in terms of creating jobs. Senegal, for example, has failed to increase employment in the free trade zones, although it continues to increase corporate tax incentives for firms operating there. In Nigeria, employment among firms receiving incentives (pioneer status companies) stood at about 7,000 as of 2013 – a paltry figure in a country with 30 million youths seeking employment. One of the provisions of Nigeria’s export processing zones is the abolition of the expatriate quota in employment, permitting foreign firms to employ an unlimited number of foreign workers; this also sets back any goal to promote local employment. In addition, while over 80% of foreign direct investment in Nigeria is in oil, this is an enclave sector with high capital investment that employs less than 2% of the workforce.

In Cote d’Ivoire, the recent political turmoil led to the closure of several firms and migration of others from the country, and the government response was to increase incentives to the remaining companies. Despite offering 50% tax exemptions to any firm willing to invest in regions outside of Abidjan, unemployment rates remain very high throughout the country and youth unemployment continues to threaten social cohesion.

3. Corporate tax incentives in ECOWAS

West African states offer formal corporate tax incentives, but also off-the-books or discretionary incentives in special deals with companies. The most prevalent incentives are tax holidays. Our research finds that as many as 46% of 40 firms in Ghana, Nigeria and Cote D’Ivoire surveyed for this research receive tax holidays: 10% of the firms have complete exemptions from company income tax while another 10% pay reduced corporate income tax. A sizable proportion of firms receive export tax support or subsidies to encourage export-led growth. Some 15% of firms indicated receiving discretionary incentives by tax officials: these off-the-books incentives are particularly harmful as they are the most distortionary and non-transparent. While this sample is fairly small, we believe it provides an indication of the wider problem. In order to have a complete understanding of the extent of the problem, it is essential that the governments in the region increase the transparency around corporate tax incentives.

Competition in offering corporate tax incentives is particularly rampant in free trade zones, special economic zones, and export processing zones, which provide a wide array of fiscal incentives and non-monetary concessions to investors and which are likely to result in excessive losses of potential tax revenues. For most West African countries, the proliferation of these zones is intended to compensate for weak infrastructure and to inspire firms to invest in these countries even when the supporting environment is absent.

It is difficult to measure how beneficial the free zones are for employment, but gains are likely to be small given that labour tends to be unskilled and on temporary contracts, while companies have weak linkages to other sectors. Not only has diversification and technology transfer rarely happened, but governments’ approach is an opportunistic ‘take-all’ one, with no sectoral specialisation that could promote economies of scale. Substantial foreign direct investment has only rarely resulted from these free trade zones; when it has, it has tended to involve foreign firms simply purchasing existing firms and employing unskilled, low-paid workers.ⁱⁱⁱ

4. Granting and monitoring corporate tax incentives

As noted above, there is a multiplicity of public institutions granting incentives in the ECOWAS region and these agencies act with little coordination within or between countries. In extreme cases, exemptions are given to a firm simply with a signature by a top government official. The personal interests of officials sometimes supersede legal protocol, allowing them to treat business associates to incentives and opens possibilities for personal gain from the transaction. Access to corporate tax incentives by firms often does not depend on what they produce or on any special qualifications – in many countries their connection to policy-makers is enough. The research also finds that, more often than not, firms do not actually have to negotiate or ask for incentives; rather governments tend to offer them without a specific request. In our survey, 50% of companies surveyed said their incentives had actually been granted by the tax revenue authority, the body that is meant to collect tax revenues.

Nearly all countries have multiple agencies working in investment promotion, often with overlapping mandates and relationships with firms. Both Investment Promotion Agencies and Free Zone Authorities have responsibilities for promoting investment, the first across all sectors and areas, the second within designated export processing zones. However with little interface and collaboration between the two agencies, a firm can be granted incentives from both, without the knowledge of the other. In nearly all countries, the revenue authority and Investment Promotion Agency are respectively departments of the Ministry of Finance and Ministry of Trade and Investment. Consequently, giving incentives and monitoring finances are managed by two government agencies that work separately. In none of the countries examined is there a single entity in charge of providing or coordinating corporate tax incentives.

Once granted, a major challenge is in monitoring these incentives. Often, the legal systems for corporate tax incentives are very weak in regulating them to ensure they achieve specific objectives. Firms are expected to report to the body granting the incentives which is supposed to monitor the adherence of the firm to the conditions of the incentives. But many firms do not have strong corporate governance structures and do not keep proper books.

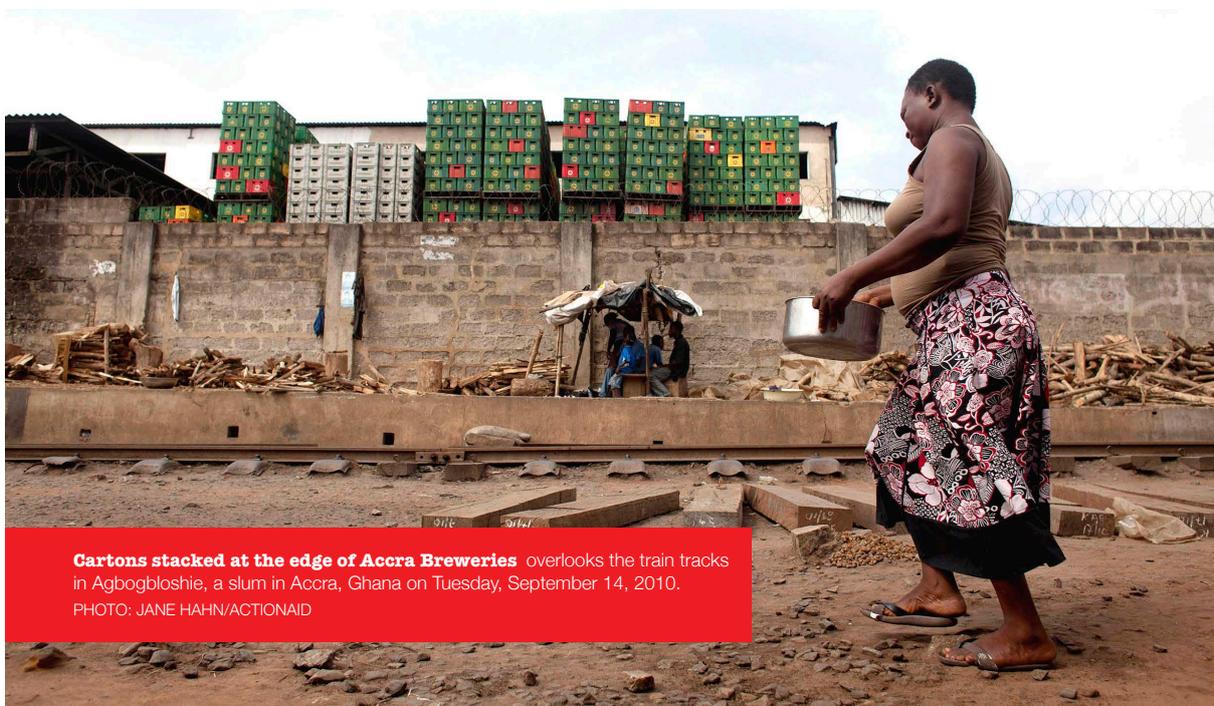
It is also extremely difficult to terminate incentives once they have been granted. Normally, when firms have started receiving incentives, they use all instruments available to hold on to them, creating incentives for bribing officials. If a firm is not entitled to an incentive, but is able to get a willing tax official to grant it to them, that official may receive a slice of the cake. From the companies surveyed, while as many as 86% stated they receive corporate tax incentives, only 59% indicated that the incentives were the same as when they started. This implies that firms migrate from one incentive to the other.

Another big challenge in the corporate tax incentives system in West Africa is the existence of stabilisation clauses. As many as 62% of the 40 firms interviewed for this report indicated they had stabilisation clauses in their contracts. Such clauses freeze tax rates for the investor for the duration of the project, meaning that future changes in legislation, such as increasing taxes, do not apply. Although stabilisation clauses can be useful in assuring the investor of a stable economic environment, they tend to be a bad deal for governments, especially in mining operations which can last decades during which it is likely that governments will need to review tax rates.

Currently, tax systems in the countries surveyed are handled manually, and accurate and accessible data is rare. Most of the countries do not have robust databases or tax revenue management systems that could hold defaulting agents to account. Companies respond to uncoordinated and badly monitored systems with tax avoidance measures by which they can shift taxable income out of the reach of the state. Moving from manual to online systems would help to increase transparency and reduce corruption and tax avoidance and evasion. Obtaining online tax clearance certificates would force firms to notify all incentives received, giving issuing institutions the opportunity for consolidating a database of recipients of corporate tax incentives and help combat abuse.

5. Quantifying losses

It is hard to give precise figures for revenue losses from corporate tax incentives since many governments provide no data and independent analyses have not been done. However, some figures are available for some countries, and the following is based on information from the government and the IMF. The data shows that Ghana is likely losing up to \$2.27 billion a year, Nigeria around \$2.9 billion and Senegal (in 2009 at least) up to \$638.7 million. If the rest of ECOWAS lost revenues at similar percentages of their GDP, total revenue losses among the 15 ECOWAS states would amount to \$9.6 billion a year.³



Cartons stacked at the edge of Accra Breweries overlooks the train tracks in Agbogbloshie, a slum in Accra, Ghana on Tuesday, September 14, 2010.
PHOTO: JANE HAHN/ACTIONAID

3. This estimate is based on a broad calculation, as follows. The combined GDP of the ECOWAS states was \$745 billion in 2014 (IMF, World Economic Outlook database 2014, <http://www.imf.org/>). The GDP of ECOWAS states minus Nigeria, Ghana and Senegal – the three countries for which revenue loss figures are available – was \$99.8 billion. The revenue loss as a percentage of GDP averages 3.83% cent for Nigeria (0.5%), Ghana (6%) and Senegal (4.99%). If this 3.83% of GDP revenue loss were replicated across the ECOWAS states minus Nigeria, Ghana and Senegal, losses would amount to \$3.8 billion. Combined with losses from the 3 countries of \$5.8 billion, the total is \$9.6 billion.

Ghana

The IMF stated in an April 2015 report that discretionary tax treatments, in the form of exemptions, special regimes and tax holidays may amount to ‘perhaps 6 per cent of GDP’.^{iv} This would amount to around GC 6,806 million or \$2.27 billion.⁴ These corporate tax incentives compare to a 2014 budget allocation to health of GC 2,289 and to education of GC 5,816^v - thus they amount to three times the allocation to health or more than the education budget.

Ghanaian government budget figures on tax expenditure

Government figures give lower revenue losses from corporate tax incentives, but these cover mainly import duty exemptions, and not corporate tax holidays. According to the Ghana Revenue Authority, such corporate tax incentives ranged from 1.8 per cent to 5.31 per cent of GDP during 2008-13.^{vi} Government figures reported in its annual budget show annual revenue losses ranging from \$299 million to \$1.23 billion during 2011-13, with the average being \$693 million.

Table 1: Ghana’s revenue losses from corporate tax incentives

2011	2012	2013	2014	Average for 2011-14
GC 659.3 million (\$413 million) ⁵	GC 2,355 million (\$1.23 billion) ⁶	GC 1,848 million (\$830 million) ⁷	GC 897 million (\$299 million) ⁸	GC 1,440 (\$693 million)

Nigeria

According to IMF figures, Nigeria is losing 0.5 per cent of its GDP in corporate income tax incentives given to companies with Pioneer status alone; this would amount to around \$2.6 billion a year.⁹

- The IMF states that Ghana’s GDP was GC 113,436 million in 2014 (IMF, *Ghana: Request for a Three-year Arrangement under the Extended Credit Facility*, April 2015, Table 1, <http://www.imf.org/external/pubs/ft/scr/2015/cr15103.pdf>) then equivalent to \$37.8 billion. Six per cent of this is around GC 6,806 million or \$2.27 billion. These figures would seem to cover all exemptions, including corporate tax holidays, unlike the government figures cited above which exclude these and which cover mainly import duty exemptions.
- Republic of Ghana, *The Budget Statement and Economic Policy*, November 2011, Appendix 5, http://www.mofep.gov.gh/sites/default/files/budget/2012_budget.pdf. The source is the 2012 Budget Statement, delivered in November 2011 for the 2012 financial year. The government did not give a percentage of GDP estimate for tax expenditure, but gave projection for 2011 of GC 659.3 million. This is equivalent to \$413 million at exchange rates then prevailing.
- Republic of Ghana, *The Budget Statement and Economic Policy*, November 2012, para 207, http://www.mofep.gov.gh/sites/default/files/budget/2013_Budget_Statement.pdf. The source is 2013 Budget Statement, delivered in November 2012 for the 2013 financial year; the government said its tax expenditure amounted to 3.28 per cent of GDP. The same source gives GDP as GC 71.8 billion at the end of 2012, 3.28 per cent of which is GC 2,355 million, which is the equivalent of \$1.23 billion at exchange rates prevailing in December 2012
- Republic of Ghana, *The Budget Statement and Economic Policy*, November 2013, para 981, http://www.mofep.gov.gh/sites/default/files/news/2014_Budget_Statement.pdf. The source is the 2014 Budget Statement delivered in November 2013 for the 2014 financial year; the government said that tax expenditure amounted to 2.1 per cent of GDP. A specific figure for Ghana’s GDP was not given in the same source, but other figures make clear that the government’s GDP estimate was around GC 88 billion of which 2.1 per cent is GC 1,848 million. Converted to US dollars at the exchange rate prevailing in November 2013 gives \$830 million.
- Republic of Ghana, *The Budget Statement and Economic Policy*, November 2014, para 75, http://www.mofep.gov.gh/sites/default/files/budget/Budget-Statement-2015_0.pdf. USD \$ equivalent calculated according to exchange rate prevailing in mid-2014.
- Pioneer status provides a three-five year CIT tax holiday (usually renewable), and covers 71 products and industries. According to the IMF, ‘Exemptions seem to be provided liberally, with the CIT law providing discretion to the Federal Executive Council to override tax laws and provide exemptions’. The IMF estimates that curtailing these exemptions could raise CIT by more than 0.5 percent of GDP. (IMF, *Nigeria: Selected Issues Paper*, March 2015, para 52, <http://www.imf.org/external/pubs/ft/scr/2015/cr1585.pdf>). Given that GDP in 2013 was \$521.8 billion (IMF, *Article IV Consultation*, March 2015, p.88, <http://www.imf.org/external/pubs/ft/scr/2015/cr1584.pdf>), this would mean \$2.6 billion.

According to government figures, Nigeria is further losing around \$327 million a year (average of the two years 2012 and 2013, as in box below) on import duty exemptions. This \$2.9 billion loss (i.e., the losses from both CIT and import duties), is equivalent to (Naira) ₦577 billion at May 2015 exchange rates; this is more than double the 2014 Federal government budget allocation to health and more than the budget to education.¹⁰

Import duty exemptions

The Nigerian government provides figures on its budget website for corporate tax incentives, which mainly comprise import duty exemptions, although others are given entitled ‘exemptions’ and ‘waivers’; it is unclear what these are. For January-May 2014, the government lists ₦25,815 million (\$130 million) of incentives provided.¹¹ Figures for the previous complete years are:

Table 2: Nigerian import duty incentives, according to the government (Naira thousand)

Sector	2013	2012
Agriculture	1,227	1,377
Aviation	2,454	1,580
Gas	18,492	18,138
Health	1,238	5,928
Mining	595	12
Power	4,403	3,052
Water	457	96
Others	22,680	24,281
TOTAL	51,546 (\$318.8m)	54,464 (\$335.2m)

Some of the health waivers are positive, going to, for example, the national malaria control programme and to NGOs. Not all of these exemptions are to private companies; some government departments also receive them.¹² However, the largest single private sector recipient of incentives has been the British/Dutch oil company Shell, which received import duty exemptions worth ₦24.0 billion (\$148 million) in the three years 2011-13.¹³ Another oil company, Total, has received ₦6.99 billion (\$43 million) in the same three years.¹⁴

Senegal

A 2011 government report states that tax expenditures amounted to 4.99 per cent of GDP in 2009.^{vii} Senegal's GDP in 2009 was \$12.8 billion, according to the IMF^{viii} - thus corporate tax incentives would amount to \$638.7 million. However, these exemptions were likely the result of temporary reductions in VAT and other exemptions introduced in the 2007/08 food/oil price crisis - the IMF estimated these at 4.5 per cent of GDP.^{ix}

10. '2014 Fiscal year', p.10, <http://www.budgetoffice.gov.ng/pdfs/2014/Understanding%20Budget%202014.pdf>

11. 'Waivers Granted Jan to May 2014', <http://www.budgetoffice.gov.ng/pdfs/2014/jan-may-waivers.pdf>

12. i.e., some government departments have been given larger exemptions. In 2013, for example, the Federal Ministry of Information received corporate tax incentives worth N20 billion.

13. N8,531m in 2013 ('2013 Waivers Granted', http://www.budgetoffice.gov.ng/pdfs/2013%20Waivers%20Granted_new%203.pdf), N7,765m in 2012, ('2012 Waivers Granted', http://www.budgetoffice.gov.ng/pdfs/2012%20Waivers%20Granted_new.pdf), and N7,748m in 2011 ('2011 Waivers Granted', <http://www.budgetoffice.gov.ng/pdfs/2011%20Waivers%20Granted..pdf>)

14. N5,568m in 2013 ('2013 Waivers Granted', http://www.budgetoffice.gov.ng/pdfs/2013%20Waivers%20Granted_new%203.pdf), N718m in 2012 ('2012 Waivers Granted', http://www.budgetoffice.gov.ng/pdfs/2012%20Waivers%20Granted_new.pdf), and N703m in 2011 ('2011 Waivers Granted', <http://www.budgetoffice.gov.ng/pdfs/2011%20Waivers%20Granted..pdf>)

Figures from Senegal's tax and customs office (DGID: Direction Generale des Impots et des Domaines) stated in 2012 that tax expenditures amounted to 5 per cent of GDP in 2008 (CFA 296 billion) and 3.7 per cent in 2009 (CFA 223 billion).^x This would amount to \$474 million in 2009 (using the IMF's figure for GDP noted above).



ActionAid volunteer facilitator Hawa Jalloh conducts an Ebola awareness session with an ActionAid loudspeaker in the village of Mbundorbo, near Bo, in Sierra Leone during the Ebola outbreak in 2014. If more corporates paid a fair amount of tax in the countries they operate in, people would have better access to the healthcare treatment they need. Access to adequate services would give the world's poorest people an opportunity to climb out of poverty.

PHOTO: TOMMY TRENCHARD/ACTIONAID

6. Regional administration of corporate tax incentives, and the loopholes

The Francophone countries in ECOWAS are grouped under the l'**Union Économique et Monétaire Ouest-Africaine** (UEMOA), which includes Benin, Burkina Faso, Cote d'Ivoire, Guinea-Bissau, Mali, Niger, Senegal and Togo. By the mid-2000s, this group had become largely a homogenous bloc, adopting common policies such as a common currency (the CFA), an external tariff and some tax policies. In early 2000, a process began to promote a monetary zone for the Anglophone countries in the region, called the West African Monetary Zone (WAMZ) **which** includes The Gambia, Ghana, Guinea, Liberia, Nigeria and Sierra Leone. It is foreseen that the two blocs will eventually be unified in an ECOWAS Currency Union, but this is some way off.

Although ECOWAS promotes many common policies, a Common Regional Tax Policy is still at an early stage; the ECOWAS Secretariat has initiated work on this with preliminary political agreements leading to

beginning technical work. As of September 2014, background papers outlining potential provisions of the policy were completed, but the actual policy is yet to be drafted. However, the Francophone UEMOA group of countries already has a regional tax policy which has been described as one of the most advanced globally, going further even than the European Union in some aspects.¹⁵ The common framework provides for coordinated tax rates and tax bases for major taxes through regional directives, and mandates the convergence of the tax revenue-to-GDP ratio to at least 17%. In addition, the agreement promotes tax and tariff policies that, over time, will shift revenues away from trade taxes (which are seen as distorting the regional market) to domestic sources.

However, it is hard to determine whether UEMOA's harmonised tax system has contributed to reducing the use of corporate tax incentives. UEMOA does not have a regional directive for corporate tax incentives. There are a few minor provisions for items that can be exempted from VAT, holdings to be exempted from portfolio income tax and a list of exemptions applicable to corporate income tax. Article 8 of the UEMOA regional tax directive states that countries cannot provide tax reductions except as outlined in Article 9; however, country specific investment codes and other national laws are recognised and permitted in Article 8, creating a loophole through which member countries can and do set their own national incentives policies, thus compromising the regional tax directive. This has been called the 'Achilles' heel' of tax coordination in the UEMOA.^{xi} Thus even though UEMOA countries are inclined to have a supranational body to coordinate tax policies, countries still promote national policies to protect selected domestic interests. In recent years, UEMOA member states have in fact pushed for more flexibility in defining and setting national tax bases and rates.

Although efforts to harmonise investment codes in West Africa have been underway for over a decade, they have not produced concrete results. National investment codes are regularly crafted by policymakers with the aim of providing maximum benefits to potential investors, and attracting the most investors. Further, with little data available on the tax base across all countries and weak coordination and communication across member states, the region still experiences unabated tax competition with consequent damaging effects.

7. Recommendations

Regional tax competition is encouraging countries to give away much more than necessary to attract investment. Despite the negative impact of incentives and efforts to harmonise tax systems, ECOWAS countries continue to try to retain as much power over investment incentives as possible, allowing harmful tax competition between countries to continue. Further granting of incentives will only continue to weaken the revenue base of the West African countries and reduce potential investment in key public services. It is in the interest of ECOWAS countries to abolish unproductive corporate tax incentives.

15. See M. Mansour and G. Grégoire-Rota, 'Tax Coordination, Tax Competition, and Revenue Mobilization in the West African Economic and Monetary Union', *IMF Working Paper No 163*, July 2013

Governments in ECOWAS should:

- I. Eliminate corporate income tax holidays
- II. Publicly review all corporate tax incentives, assessing tax expenditure (the amount of tax foregone from incentives); ensuring incentives are well targeted and commensurate with the benefits expected to citizens.
- III. Ensure that all phases of new incentives require parliamentary approval, and also that any new incentive offered is grounded in legislation which makes it available to all qualifying investors, foreign or domestic. This would effectively mean an end to discretionary corporate tax incentives.
- IV. Publish a costing and justification for each incentive offered, followed by monitoring of conditions and a tally of costs and benefits, so the public can see the impact of corporate tax incentives as part of the annual budget.
- V. Refrain from entering into stability clauses (which lock in corporate tax incentives long term) when negotiating new corporate tax incentives and investment agreements.
- VI. Ensure that corporate tax incentives are audited to check that the investment for which an incentive is offered has actually been carried out.
- VII. Move from manual to online tax systems to improve transparency and reduce corruption, and tax avoidance and tax evasion.
- VIII. Develop better mechanisms to provide oversight of corporate tax incentives offered in the region and promote improved tax harmonisation measures where these are appropriate
- IX. Incentives regimes must be rationalised by bringing them all under the control of a single entity with effective and resourced oversight mechanisms to ensure accountability and transparency of public spending.

References

- i. IMF, *Kenya, Uganda and United Republic of Tanzania: Selected Issues*, 1 December 2006, p.11
- ii. S. James, 'Tax and Non-corporate tax incentives and Investment: Evidence and Policy Implications', Investment Climate Advisory Services, World Bank 2013; United Nations Industrial Development Organization, *Africa Investor Report 2011: Towards Evidence-Based Investment Promotion Strategies*, 2011
- iii. F. Bost, 'Are Economic Free Zones Good for Development?' West African Challenges No 4, Sahel and West Africa Club Secretariat of the OECD, November 2011.
- iv. IMF, *Ghana: Request for a Three-year Arrangement under the Extended Credit Facility*, April 2015, p.16, <http://www.imf.org/external/pubs/ft/scr/2015/cr15103.pdf> (The report cites a 2011 OECD report, *Analysis of Tax Expenditures in Ghana*, but whose web link (<http://www.uscib.org/index.asp?documentID=3183>) does not work)
- v. *Budget Statement for the Financial Year 2014*, November 2013, pp.161, 133, http://www.mofep.gov.gh/sites/default/files/budget/2014_Budget_Statement_0.pdf
- vi. presentation by Eric Mensah, GRA, undated, http://www.un.org/esa/ffd/wp-content/uploads/2015/04/2015TIBP_Presentation-Mensah.pdf
- vii. Ministère de L'Economie et de Finance, *Rapport de l'étude sur les dépenses fiscale de l'année 2009*, 2011, cited in Anne-Marie Geourjon and Gregoire Rota-Graziosi, *The Illusion of Tax Expenditures in Africa*, undated, p.5, http://www.ferdi.fr/sites/www.ferdi.fr/files/publication/fichiers/br96_geourjon_rota_eng_0.pdf
- viii. IMF, *Senegal: Staff Report for the 2012 Article IV Consultation*, November 2012, p.12, <http://www.imf.org/external/pubs/ft/scr/2012/cr12337.pdf>
- ix. IMF, *Senegal: First Review under the Policy Support Instrument*, June 2011, p.11, <http://www.imf.org/external/pubs/ft/scr/2011/cr11139.pdf>
- x. Ismaïlla Diallo and Wilson Pritchard, 'The Political Economy of Tax Expenditure Monitoring in Senegal', December 2012, <http://www.ictd.ac/sites/default/files/Files/Diallo-The%20political%20economy%20of%20tax%20expenditure%20monitoring%20in%20Senegal-2.pdf>
- xi. M. Mansour and G. Grégoire-Rota, 'Tax Coordination, Tax Competition, and Revenue Mobilization in the West African Economic and Monetary Union', *IMF Working Paper No 163*, July 2013

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