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An Extractive Affair

How one Australian mining company's tax dealings are costing the world's poorest country millions



Photo: ActionAid Malawi

1. Executive summary

What has happened?

Malawi, the poorest country in the world,¹ has lost out on US\$43 million in revenue over the last six years, from a single company – the Australian mining company Paladin. The money has been lost through a combination of harmful tax incentives from the Malawian government, and tax planning using treaty shopping by Paladin.

This money could have paid for

- **431,000 annual HIV/AIDS treatments;**² or
- **17,000 annual nurses salaries;**³ or
- **8,500 annual doctors' salaries;**⁴ or
- **39,000 annual teachers salaries.**⁵

What has happened is not illegal – on the contrary, the combination of tax breaks and tax planning that has resulted in this loss of crucial funds is a result of Malawian and international laws, treaties and agreements. People around the world are outraged that companies get away with paying less tax while the rest of us contribute our fair share. This report shows how governments and international tax rules allow this to happen.

Why is this a problem?

Tax matters. Tax pays for public services such as education, health care and social services, crucial for women, who often end up as the unpaid providers in the absence of decent public services. It also pays for infrastructure to provide clean water, functioning roads and communication systems, all of which are essential for a country to develop and for business to operate.

For most countries, tax revenue is also the most important, sustainable and predictable source of public finance. For the poorest countries especially, tax revenue is key to ensure they have the funds needed to fund their development without being reliant on foreign aid.

Ensuring that enough tax revenue is raised to fund essential services and infrastructure projects should therefore be a key priority for all countries. Yet,

developing countries lose billions of US dollars in potential tax revenue each year by giving international companies harmful tax breaks, while some international companies engage in tax planning to pay less tax in developing countries. The global network of tax treaties facilitates this. The compound effects of harmful tax breaks and corporate tax planning is devastating for the finances of developing countries.

In our previous reports, 'Calling Time – Why SABMiller should stop dodging taxes in Africa'⁶ and 'Sweet Nothings – the human costs of a British sugar giant avoiding taxes in southern Africa,'⁷ ActionAid has already shown the development effects of tax dodging by multinational companies in countries such as Ghana and Zambia. Together with those reports, the findings in this report demonstrate that this is a systematic problem in poor countries, and these are not isolated cases – rather, it is business as usual. The solutions to the problems that tax dodging by multinational companies cause must therefore be addressed on a systematic rather than a case-by-case basis.

How does this affect Malawi?

Malawi is the world's poorest country.⁸ Average life expectancy is just 55 years.⁹ Around 10% of Malawi's people are living with HIV/AIDS, yet there are only 4% as many nurses per person as in the Netherlands, and 3% as many as in Australia.¹⁰ This is a country where more funds for public services are desperately needed. With tax being the most important and predictable source of income for poor countries to fund their development, ensuring that multinationals operating in their country pay their fair share of taxes should be a priority for all developing country governments.

Yet this report will reveal how Malawi has lost out on US\$43 million over six years from a single company.

How could this happen?

So how could Paladin get away with doing this? In short, because the Malawian government and the international tax system let them. Before starting up operations in Malawi, Paladin managed to negotiate a

tax break which saw them lower some tax rates in Malawi and exempt them from paying some taxes altogether.

This included a lowering of the so-called 'royalty rate' that Paladin pays for the right to extract uranium. Royalties can be thought of as a one off payment for the natural resources being removed from the country rather than as a tax on economic activity. This rate was lowered from the normal 5% of sales to 1.5% of sales for the first three years and then 3% in all subsequent years.¹¹ So far, this tax break - which was negotiated in secret without public scrutiny - has cost Malawi US\$15.635 million.

This tax break was, however, not enough for Paladin, who found other ways to lower their tax contributions in Malawi. Normally companies have to pay a so-called withholding tax when they pay e.g. interest payments or management fees from Malawi to another country. Until 2014, however, Malawi did have a tax treaty with the Netherlands which meant that companies did not have to pay the 15% withholding tax normally applicable to interest payments and management fees transferred abroad.¹²

So Paladin set up another subsidiary in the Netherlands, which had no employees. The Dutch company received a total of US\$183.5 million between 2009 and 2014 in interest payments and management fees,¹³ money which was then sent on to Australia without being taxed in the Netherlands. One of the reasons the payments were so large was that the Malawian subsidiary was financed with a very large loan (80% of its total capital) from an intra-company loan which in turn required it to make very large interest payments.

By routing its loan from Malawi to Australia via the Netherlands, Paladin lowered its withholding taxes in Malawi by more than US\$27.5 million over six years. Between the lowered royalty rates and the avoided withholding taxes, Paladin lowered its tax contributions to Malawi by more than US\$43 million.

What should happen now?

This is clearly not how things should work. The Malawi government therefore needs to make sure that it doesn't hand out tax breaks that prevent it from raising the revenues it needs to fund public services and development plans.

One way of doing this is to ensure that any tax incentives are subject to parliamentary and public

scrutiny before being signed; but also to continuously monitor whether any tax incentives given are actually beneficial to the Malawian people. Malawi should also review its network of tax treaties to ensure that companies cannot do what Paladin did and shift money around the globe to pay less tax in Malawi. The process of negotiating tax treaties should be subject to public scrutiny before signature. The Malawi government should also publish the details of all new and existing mining agreements.

The responsibility for this does however go beyond Malawi. Rich countries need to review their tax treaties and agree to the removal of provisions which prevent poorer countries from applying rates of withholding tax which are set out in their domestic law. They also need to review their domestic tax law and treaties to identify, then reform, any laws which have harmful effects on the ability of developing countries to raise revenue.

Paladin and other multinational companies operating in poor countries should avoid asking for discretionary tax breaks when negotiating future mining deals with governments. They should also stop shifting payments and profits around the globe thereby reducing their taxes in developing countries.

What this case also crucially shows is that despite the reform agenda mandated by the G8 and G20, the international tax system is still not working for poor countries. More work is therefore needed beyond the BEPS process hosted by the Organisation for Economic Co-operation and Development (OECD) which will be concluded later in 2015.

A broader debate which looks also at the problems that affect the ability of poor countries to tax multinationals properly, including excessive tax incentives and harmful tax competition, needs to take place, hosted by a well-resourced and authoritative intergovernmental tax body at the UN.

If the world's poorest countries - such as Malawi - are to fund their development they must be able to make multinational companies operating in their countries pay their fair share of tax. That will require countries themselves not handing out harmful tax and royalty exemptions, but also a fundamental rethink of how the international tax system works to avoid a situation where multinationals can minimise their tax contributions in developing countries.

2. Introduction

Malawi is one of the world's poorest countries. It raises the equivalent of 18.8% of its GDP in taxes.¹⁴ This is a reasonable level for a low income country, but not so good when compared to for example, developed countries like Denmark which raises 48%, the Netherlands which raises 38.6%¹⁵ and the UK, which raises 35.2%¹⁶ Meanwhile, the OECD average is 34.8%¹⁷ and the EU average 35.7%.¹⁸

Mining activities have become more important to the Malawian economy. Coal, lime and decorative stones such as rubies and sapphires are among the things being mined. In recent years, uranium mining has gotten underway, and exploration of oil and gas mining has begun, with the Malawian government in 2015 negotiating terms on several new extractives agreements. Mineral resources are by their nature limited, and Malawi needs to ensure that it maximises the benefits it gets for its people from the resources it has. Once they have been sold off they can't be replaced.

Unfortunately it seems that this is not necessarily the case. When granting the Australian company Paladin a licence to mine uranium in 2007, Malawi also granted the company large tax incentives to invest which reduce the amount of revenue Malawi will be able to collect from Paladin's uranium extraction in Malawi.

Paladin itself has also reduced the tax paid in Malawi by lending money to itself, and then routing interest payments (and management fee payments) from Malawi to Australia via the Netherlands. In total, ActionAid estimates that Malawi has lost more than US\$43million in tax revenue between 2009 and 2014.

This briefing will detail exactly how even though Paladin has not broken the law, Malawi has lost out via Paladin's tax affairs. It looks at what the development effects of this are in Malawi and provide recommendations for what can be done about this problem.

PALADIN COMPANY STRUCTURE

Paladin Energy Ltd is an Australian uranium production company. It operates primarily in Australia but also has three mining projects in Africa: one in Malawi, one in Niger and one in Namibia. Paladin is listed on the Australian Securities Exchange, Toronto Stock Exchange and Namibian Stock Exchange.¹⁹ Paladin sells uranium to electrical utilities for use in nuclear power reactors.

The company also owns a number of companies in Canada as well as having subsidiaries in the Netherlands, Switzerland, Mauritius and the British Virgin Islands.²⁰ Those jurisdictions are all known for being used by international companies for tax planning purposes.

PALADIN OPERATIONS IN MALAWI

In 2007, the company's Malawian subsidiary Paladin Africa Ltd signed a Development Agreement with Malawi that allowed Paladin to mine uranium in

Kayelekera in northern Malawi. The deal followed years of feasibility and environmental impact studies and included a Mining Licence (ML 152) covering 5,550 hectares, which was granted for a period of 15 years.²¹ Paladin has an 85% stake in the project and the Malawi state has a 15% stake.

The project is the first one of its scale in the mining industry in Malawi, and operated from 2009 to 2014. Paladin has not yet reported a profit in Malawi²² – which would be expected for this kind of high capital investment project. However, an event on the other side of the world - the 2011 earthquake and tsunami, and the ensuing Fukushima nuclear disaster in Japan²³ - means the project has suffered a major setback. Following the disaster, global demand for uranium plummeted, and so did uranium prices. As a result, in early 2014, operations in the uranium mine were suspended and the mine was put under 'care & maintenance.'²⁴ It is unclear if or when the mine will reopen.



Photo: ActionAid Malawi

Malawi's funding gaps and vulnerability became even more pronounced in early 2015 as floods hit the country, displacing around 200,000 people and reportedly killing more than 176 people. With more tax revenue, Malawi would have been better prepared to deal with the floods. This is an unrepaired road which was destroyed during the floods.

3. The best deal for the people of Malawi?

This section explains the various ways that Malawi has lost out on revenue from Paladin, since the mine started operating in 2009.

INCENTIVES AND TAX BREAKS

Before Paladin started mining in Malawi, the government agreed to give it a set of generous tax breaks. The deal was given to Paladin alone and not to other companies, meaning that it was a discretionary rather than a statutory tax break.²⁵ The details of the deal between Malawi and Paladin were first made public in a letter from Paladin to the Australian Stock Exchange in 2007.²⁶

The deal involved both taxes and royalties. The latter (in this context) are payments made to a country for the right to extract its natural resources; royalties can be thought of as a one off payment for the natural resources being removed from the country rather than as a tax on economic activity.

The lowered rates were as follows:²⁷

Table 1 – Tax breaks given to Paladin in Malawi

Incentive	Normal rate in Malawi	Paladin's rate
Royalty rate reduction	5%	1.5% in first three years, then 3% for the remaining years
Resource Rent Tax exemption	10%	0%
Import Value Added Tax (VAT) exemption	17.5%	0%
Corporate Income Tax reduction	30%	27.0%

The tax breaks are subject to a 'stability clause' of 10 years, which means that the Malawi government has forfeited the right to change any of the terms of the tax deal for those 10 years. The deal also allows for immediate 100% capital write off for tax purposes. Paladin was also allowed to capitalise with a very high proportion of debt to equity (thin capitalisation). This is a tax incentive because it facilitates shifting of funds around the world – as explained below.²⁸

Mining royalty rates

Mineral royalties are levied as a fixed percentage of the value of a company's sales of a particular commodity. They are important both in volume and principle, as they represent the value a country gets from selling its natural assets. Royalties provide a relatively steady stream of income and are easy to implement even for countries with limited tax collection capacity. Raising the royalty rate for a particular commodity or for the mining sector as a whole also means it can be a targeted tax towards the mining sector, rather than an increase in corporate income tax, for example, which would affect all businesses.

In many African countries, royalties represent a significant source of earnings for governments from the mining sector. In Ghana for example, royalties account for about 44% of government revenues from the mining sector.²⁹ Royalty rates vary across countries and commodities. The average royalty rate across commodities in the mining sector in Africa is in the region of 3.5%.³⁰

The normal 5% royalty rate in Malawi is applicable to uranium and precious metal extraction while other metals and minerals are subject to different rates.³¹ As seen above, the royalty rate in the tax deal between Paladin and Malawi was 1.5% for the first three years, and then 3% in subsequent years. The table below calculates the lost tax revenue for Malawi as a result of the lowered royalty rate.

Table 2 – revenue lost due to royalty rate exemptions

Fiscal Year	Sales	If 5% royalty rate had been applied	The 1.5% royalty rate actually applied for 2009-2012/ 3% for 2012-2014	Revenue hypothetically lost
1 July 2009 – 30 June 2010	US\$68.5m ³²	US\$3.425m	US\$1.0275m	US\$2.3975m
1 July 2010 – 30 June 2011	US\$100.3m	US\$5.015m	US\$1.5045m	US\$3.5105m
1 July 2011 – 30 June 2012	US\$126.6m	US\$6.33m	US\$1.899m	US\$4.431m
1 July 2012 – 30 June 2013	US\$143.0m ³³	US\$7.150m	US\$4.290m	US\$2.86m
1 July 2013 – 30 June 2014	US\$121.8m ³⁴	US\$6.090m	US\$3.654m	US\$2.436m
TOTAL	US\$295.4m	US\$28.01m	US\$12.375m	US\$15.635m

The US\$15.635m represents the revenue hypothetically lost in the first five years of the mine's operation.

Resource Rent Tax Exemption

If a mining company's rate of return exceeds 20%, an additional 10% tax is levied in addition to the 30% headline corporate income tax that Malawi registered companies pay, in accordance with the Malawi Income Tax Act.³⁵ As Paladin has not yet reported any profit in Malawi, this exemption has not meant any loss of tax revenue for Malawi.

Import VAT exemption

This exemption on import VAT is not included in our calculation, as import figures are not publicly available. Its exclusion from our calculations of total tax losses in Malawi makes them conservative.

Lowered Corporate Income Tax

As Paladin has not reported any profit in Malawi, the lowered corporate income tax rate has not meant any loss of taxation income for Malawi.

Stability Clause

The tax deal between Malawi and Paladin includes a 10-year stability clause. This means that Malawi is legally obliged not to change the terms of the agreement for that 10-year period. This type of stability is usually given to investors to assure them that the fiscal environment will not change during a fixed period and thus provide some level of predictability regarding costs and profit levels. They provide a further investment incentive, but may also further lock in unfair deals. Some governments, such as Zambia's, have recently broken these clauses in existing agreements.

4. How Paladin lowers its tax contributions in Malawi

Many multinational companies shift money around the world between their various subsidiaries, in ways that facilitate their tax arrangements. This is not an illegal or even unusual practice – on the contrary, in our complex modern world, it has become business as usual. Companies may seek out loopholes in the law, perhaps making the most of mismatches between different countries’ tax law.

The tax rules of many developed countries favour the payment of tax by multinational companies in the countries where the companies are headquartered (the ‘residence’ countries), rather than where they do business (the ‘source’ countries). Developing countries have responded to this by taxing certain ways of shifting money out of their countries before it leaves. These taxes are known as withholding taxes. Withholding taxes may be levied on many types of cross border payments – for example, interest payments, management fees, dividends, royalties on intellectual property and rent. The network of tax treaties between countries often governs how high withholding taxes can be, and in many cases minimises their impact or eliminates them altogether.

Returning to the example we focus on in this report: Paladin has shifted significant sums of money in this way out of Malawi and back to its home country Australia – sending it via the Netherlands. Furthermore, while some tax may have been paid in Australia, Paladin has not paid the withholding tax on this money in Malawi that would be expected under Malawian law.

Paladin has done this in two ways:

Interest rate payments

Paladin Africa Ltd is financed by a very high proportion of debt (80%) as compared with equity (20%) – that is, it is thinly capitalised. The loans are from other Paladin companies. Having lots of intra-group debt like this can be a sophisticated way of moving money between

different parts of a large corporation. The Reserve Bank of Malawi does not normally approve foreign ownership of companies whose debt equity ratio is in excess of 2:1 (i.e. 66.6% debt and 33.3% equity).³⁶

Thin capitalisation and large debt means a company is likely to make a lot of interest payments, which in turn are often tax deductible. Intra-company loans are therefore often used to lower a group’s overall tax bill.

As we saw above, Paladin Africa Ltd was allowed to be very thinly capitalised. Its loans are mainly from a sister company in the Netherlands called Paladin Netherlands BV. This company has no employees. The Dutch company in turn has loans from Paladin Energy Ltd – its Australian parent company – which are the same size as the amount of money it has lent to the Malawian subsidiary.³⁷ This means in practice that Paladin Energy Ltd in Australia has given a loan to Paladin Africa Ltd in Malawi but has routed it through a Dutch subsidiary. Between 2009 and 2014 Paladin Africa Ltd made interest payments of over \$48 million on these loans.

Normally, intra-company interest payments out of Malawi would incur a 15% withholding tax.³⁸ One effect of Paladin sending interest payments from Malawi to Australia via the Netherlands is that it has lowered their tax bill in Malawi. Malawi had a tax treaty with the Netherlands during the 2009-2014 period which exempted interest payments from withholding tax in Malawi.³⁹ As Malawi did not have a tax treaty with Australia, the interest payments would have incurred a 15% withholding tax if the money was transferred straight from Malawi to Australia.⁴⁰ This kind of routing of funds, taking advantage of existing bilateral agreements in a complex fashion, is known as treaty shopping.

The table below sets out how much tax revenue Malawi missed out on as a result of the interest payments being routed via the Netherlands rather than being paid straight to Australia.⁴¹ The information regarding the interest payments on loans comes from Paladin Netherland BV’s annual accounts.

Table 3 – Withholding taxes lost on interest payments

Year	Interest payments on loans (in million US dollars) ⁴²	15% withholding tax if applied (in million US dollars)
2014 ⁴³	5.65	0.8475
2013	12.81	1.9215
2012	11.81	1.7715
2011	8.19	1.2285
2010	5.48	0.822
2009	5.01	0.7515
TOTAL	48.95	7.3425

Management fee payments

Multinational companies often make payments between their subsidiaries for services one subsidiary has provided to another, known as management fees. These services may go beyond management

however. For example, in the case of the mining industry they may include technical and scientific support and expertise.

Paladin not only routed interest payments via the Netherlands, it also routed management fee payments via its Dutch sister company. The management fees represented more than a fifth of the company's annual sales revenue.

Between 2009 and 2014, Paladin Africa Ltd paid management fees of US\$134.55m to Paladin Netherlands BV – a company which, as we saw above, has no staff.⁴⁴ Paladin Netherlands BV in turn paid an almost identical sum of money as management fees back to the parent company in Australia – Paladin Energy Ltd.⁴⁵

Normally, an intra-company management fee payment out of Malawi would, as for interest payments, incur a 15% withholding tax in Malawi.⁴⁶ However, withholding tax on management fees is not paid between Malawi and the Netherlands, meaning the routing of the management fees via the Netherlands also facilitated this tax reduction in Malawi.⁴⁷

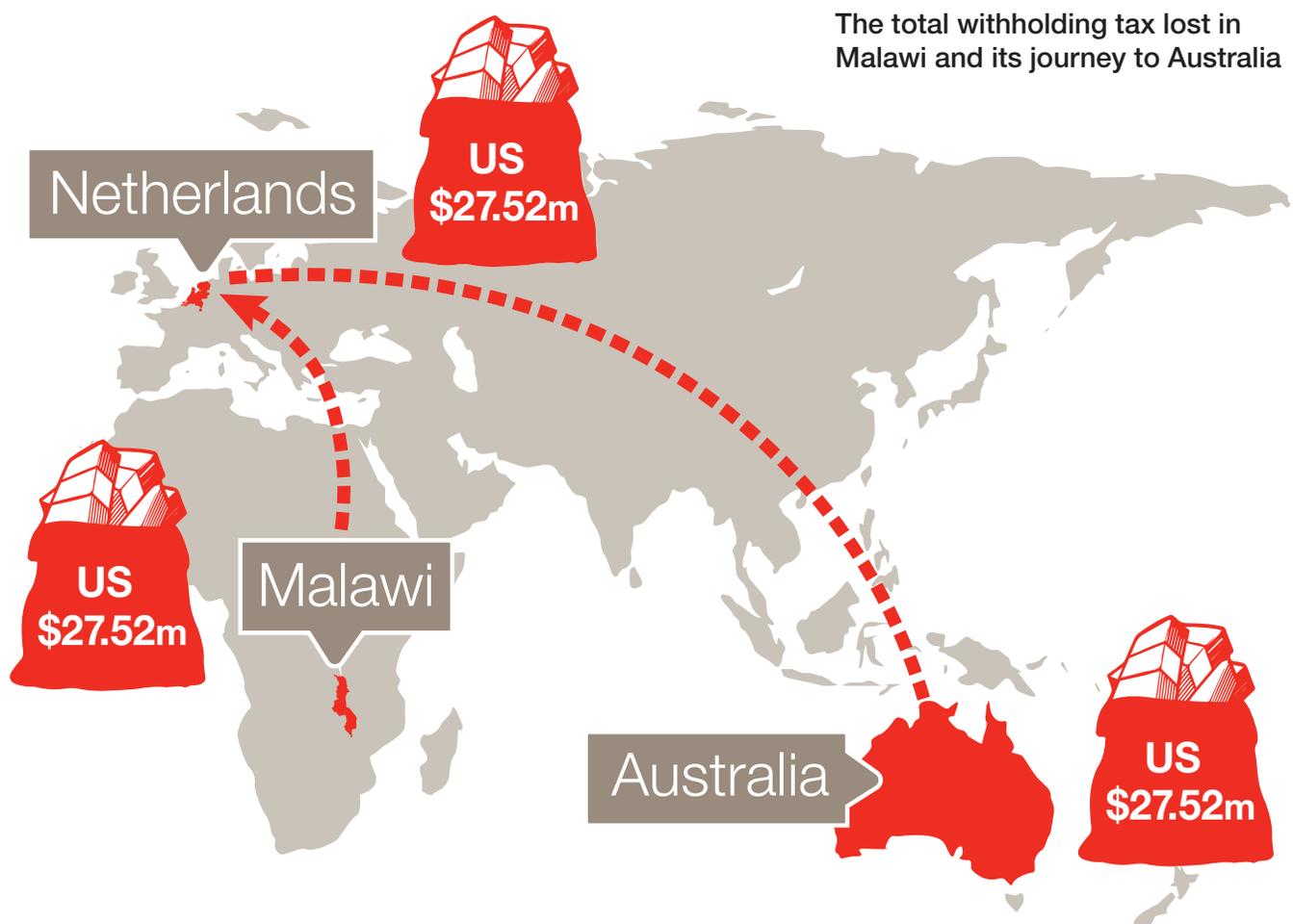


Table 4 – Withholding taxes lost on management fee payments

Year	Management services (in US\$ millions)	15% withholding tax if applied (in US\$ millions)
2014 ⁴⁸	10.85	1.6275
2013	24.05	3.6075
2012	29.71	4.4565
2011	22.10	3.315
2010	26.36	3.954
2009	21.48	3.222
TOTAL	134.55	20.1825

According to Paladin's own figures, their total withholding taxes paid to the government of Malawi (on money being transferred to anywhere in the world) in the fiscal year to June 2014 were US\$0.84m, and US\$1.64m in the fiscal year to June 2013.⁴⁹ It is impossible to tell what transfers this tax relates to, because Paladin's accounts in several key jurisdictions (eg Mauritius, Switzerland, BVI) are not published. However, the sum is much less than the amount that would have been expected under Malawian law if the payments from Paladin Africa Ltd. had been made directly to Australia.

Total tax losses to Malawi

ActionAid has outlined above some of the tax revenues lost by the Malawi government due to harmful tax incentives granted to Paladin, and due to tax planning by Paladin itself. Our calculations show that Malawi has lost out on US\$43.16m of tax revenue over a six year period – as outlined in Table 5 right:

Table 5 – Total tax losses to Malawi

Source	Tax revenue lost (in million US dollars)
Royalty revenue lost	15.635
Interest payment withholding tax lost	7.3425
Management fee withholding tax lost	20.1825
TOTAL	43.16

The Malawi - Netherlands tax treaty was cancelled in 2014, and a new treaty was signed in April 2015.

5. What the lost tax revenue could have done for Malawi

ActionAid has outlined above some of the tax revenues lost by the Malawi government due to harmful tax incentives granted to Paladin, and due to shifting of funds by Paladin itself. Our conservative estimate is that Malawian has lost out on US\$43.16million⁵⁰ over a six year period.

While that is a relatively small sum compared to Paladin's overall global turnover and compared to eg the budget of a wealthy developed country, in Malawi that money could have paid for essential public services that currently lack sufficient funding. It is worth remembering when looking at these numbers that this is the effect on public services of the revenue lost from just one company.

Take for example the health sector. According to UNAIDS, 10.3% of Malawi's population between 15-49 years old is living with HIV.⁵¹ Meanwhile, around 170,000 children in Malawi are living with HIV/AIDS. The Malawi government is reporting a massive HIV/AIDS funding gap.⁵² First line AIDS/HIV treatment costs around \$100 a year,⁵³ meaning that the money lost through Paladin's tax affairs could have paid for more than 431,000 annual HIV/AIDS treatments. In Malawi, there are only 0.3 nurses and midwives per

1,000 inhabitants.⁵⁴ This can be compared to the Netherlands, where the ratio is 8.4 nurses and midwives per 1,000 inhabitants, and Australia where the ratio is 10.6 nurses and midwives per 1000 inhabitants. Malawi is in desperate need of more nurses but cannot afford it. The total tax revenue lost through the tax deal with Paladin and Paladin's tax planning according to ActionAid's conservative estimate could have paid for more than the annual salary of 17,000 nurses in Malawi.⁵⁵

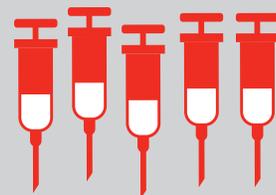
Meanwhile, the density of doctors in Malawi, according to the World Health Organisation's latest available data, is 0.019 doctors per 1,000 inhabitants – or roughly 300 doctors for a population of over 16 million - in 2009.⁵⁶ The money lost in tax revenues could have paid for more than 8,500 annual doctors' salaries in Malawi.⁵⁷

Half of all Malawians never graduate from primary school. Non-payment of teachers' salaries is a recurring problem. UNESCO report that Malawi has one of the world's most dramatic teacher shortages. There are 130 children per class, on average, in first grade.⁵⁸ Yet the tax revenue lost by Malawi via Paladin's tax affairs could have paid for 39,000 annual teachers salaries.⁵⁹

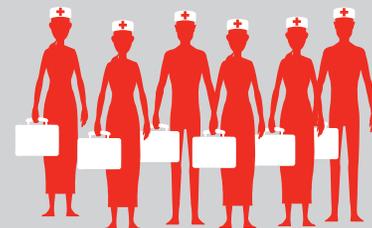
PALADIN - JUST ONE COMPANY - CUT ITS TAX BILL BY US\$43.16 MILLION IN MALAWI.

IN ONE YEAR, THIS COULD HAVE PAID FOR ONE OF THE FOLLOWING:

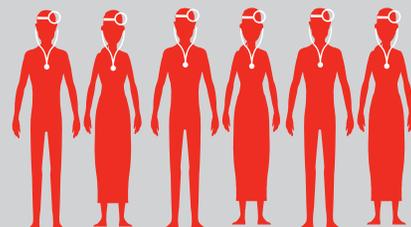
431,000
HIV/AIDS treatments



17,000
nurses in Malawi



8,500
doctors in Malawi



39,000
teachers in Malawi



Conclusions

Malawi has lost more than US\$43 million in tax revenue through harmful tax breaks granted to Australian mining company Paladin and through Paladin's tax avoidance in Malawi. While Paladin has not broken the law by avoiding this tax in Malawi, this tax revenue could have paid for 431,000 annual HIV/AIDS treatments; or 17,000 annual nurse salaries; or 8,500 annual doctors' salaries; or as many as 39,000 annual teachers salaries.

Malawi is currently negotiating with various companies regarding the right to explore for oil and gas in and around Lake Malawi, as well as exploring various mining projects with a number of primarily Australian and Canadian companies. It cannot afford to repeat previous mistakes and must ensure it makes the most of its limited natural resources to maximise the revenues it gets from them in order to fund its National Development Plan. This means ensuring that it doesn't give large-scale harmful incentives to multinational companies exploring oil and gas or any other natural resource in Malawi. In particular, it should ensure it gets decent royalty rates for the one-off selling of its precious natural resources.

Malawi must also do its utmost to ensure that companies pay taxes in Malawi even if they shift funds out of the country. This means ensuring that its own network of tax treaties minimises opportunities for companies to shift profits out of Malawi without paying withholding taxes. This should be taken into consideration when negotiating tax treaties, including in the ongoing negotiations with the UK. Likewise, developed countries need to review their tax treaties, and also conduct analyses of the effects of their tax

rules on developing countries, ie so called 'spillover analyses'.

Malawi must, however, also ensure that the proceeds from the mining industry are spent in a progressive manner in Malawi and benefit the broader population, including women through investments in gender responsive public services.

Meanwhile, companies operating in the mining industry in developing countries, including Paladin where it operates in Africa, need to refrain from requesting the type of incentives that cost developing countries desperately needed revenues, and refrain from treaty shopping that deprives poor countries of revenue.

This case also shows that the current wave of international tax reforms – including the G20 mandated and OECD led process on Base Erosion and Profit Shifting (the so-called 'BEPS process') – is unlikely to fundamentally solve the problems that prevent developing countries such as Malawi from collecting the tax that it needs. The BEPS process will tackle neither tax incentives nor the balance between taxing rights between source and residence countries – the two issues highlighted by this case.

More work is needed in order for poorer countries to be able to raise the tax revenues they need. Such work should take place at local, national, regional and global level. At the global level, such discussions will require the involvement of developing countries from the start as equal negotiating partners to ensure that any actions taken are in their interest.

Recommendations

ActionAid recommendations to the Malawian government

On tax incentives for multinational companies

- To ensure that any tax incentives are subject to parliamentary and public scrutiny before being signed, and that they are made publicly available immediately upon signature.
- To end harmful discretionary tax incentives.
- Not to reduce royalty rates as a tax incentive to multinational companies.
- Not to allow for capitalisation to be thinner than the government's guideline.
- To ensure that future incentives negotiated with international companies, particularly in the extractives sector, are subject to rigorous studies regarding their potential costs and benefits; that such studies are made public; and that the cost/benefit analysis is periodically updated and that such updates inform tax incentives policies.
- To measure and publicly disclose revenue foregone through all tax incentives to multinational companies annually.
- To consider following Zambia's example and removing stability clauses that are not in Malawi's interests.

On tax treaties

- To follow up the updating of the Malawi - Netherlands treaty by further reviewing its network of tax treaties to ensure that they do not encourage profit shifting and treaty shopping.
- Develop a policy framework to guide tax treaty negotiations, as Uganda is in the process of doing.
- To ensure that any future tax treaties being negotiated from 2015 onwards do not lower or exempt withholding taxes for financial flows such as interest payments, dividends and

management fees/professional services.

- The process of negotiating tax treaties should be transparent and the text of the treaty should be subject to public scrutiny before signature and before ratification.

On other revenue related measures

- Publish the details of all new and existing mining agreements.
- To ensure that a percentage of the revenue earned by the government from mining activities are made available to the relevant local government and earmarked for community development and gender responsive public services.

Recommendations to the Dutch government:

- To not allow deductions or exemptions from Dutch tax for income which have not been taxed at source in developing countries.
- Not to block source countries in the developing world from imposing withholding taxes which are in line with their domestic legislation when negotiating tax treaties.
- To continue its review of tax treaties with developing countries and commit to ending the practice of enticing businesses to use the Netherlands as a transit point for corporate profits.
- To conduct a comprehensive impact assessment, under the auspices of the Minister for Trade and Development, on the possible revenue impacts of tax treaties on the developing-country treaty partners before finalising negotiations. This impact assessment should be provided in full to the negotiating partner, and to parliamentarians required to ratify the revised treaty.

Recommendations to the Australian

government:

- Conduct a spillover analysis of the effects of its tax system on developing countries.

General recommendations to governments in the developed world:

- To review tax treaties and agree to the removal of provisions which prevent source countries from applying rates of withholding tax which are set out in their domestic law.
- To conduct a spillover analysis of existing and planned domestic tax rules to identify and reform any laws which have harmful effects on the ability of developing countries to raise revenue.
- Support an intergovernmental tax body at the

UN with a broad mandate and adequate resources to facilitate international tax co-operation around all the issues raised in this report.

Recommendations to Paladin

- To publish its financial accounts in Malawi, Mauritius, Switzerland and the British Virgin Islands.
- To ensure it aligns the location of the distribution of profits with economic value creation, including reconsidering routing payments from Malawi to Australia via the Netherlands.
- Not to ask for discretionary tax breaks when negotiating future mining deals with governments.

- Malawi had the lowest GDP per capita in the world in 2013, which is the most recent year that the World Bank's World Development Indicators covered when this report went to print. <http://data.worldbank.org/indicator/NY.GDP.PCAP.CD>
- Based on front line HIV/AIDS treatment costing US\$100 per year: <http://www.unaids.org/en/resources/presscentre/pressreleaseandstatementarchive/2012/july/20120706praficatreatment>
- Calculation assumes an annual salary of US\$2,500. See e.g. <http://www.theguardian.com/world/2007/aug/19/1>
- Calculation assumes an annual salary of approximately US\$5,000. See table 14 <http://www.medcol.mw/commhealth/publications/national%20research/Income%20and%20expenditure%20study%20report-FINAL-May11-3cb.pdf>
- Calculation assumes an annual salary of approximately US\$1,100. See e.g. <http://malawivoice.com/2012/07/14/teachers-bemoan-poor-salaries-lack-of-promotion-20467/>
- http://www.actionaid.org.uk/sites/default/files/doc_lib/calling_time_on_tax_avoidance.pdf
- http://www.actionaid.org.uk/sites/default/files/doc_lib/sweet_nothings.pdf
- See <http://data.worldbank.org/indicator/NY.GDP.PCAP.CD>
- See <http://data.worldbank.org/country/malawi> (Retrieved May 2015)
- See e.g. <http://data.worldbank.org/indicator/SH.MED.NUMW.P3>
- Source: Development Agreement between the Government of Malawi and Paladin (Africa) Ltd
- See <http://www.kpmg.com/Africa/en/KPMG-in-Africa/Documents/2014%20Fiscal%20Guides/Fiscal%20Guide%20Malawi.pdf>
- See Paladin Netherlands BV financial accounts 2009 to 2014
- See <http://www.heritage.org/index/explore?view=by-variables> (retrieved May 2015)
- See http://www.oecd-ilibrary.org/taxation/total-tax-revenue_20758510-table2;jsessionid=6n455pghf0fgt.x-oecd-live-03 (retrieved May 2015)
- See <http://www.heritage.org/index/explore?view=by-variables> (retrieved March 2015)
- See http://www.oecd-ilibrary.org/taxation/total-tax-revenue_20758510-table2;jsessionid=6n455pghf0fgt.x-oecd-live-03 (retrieved March 2015)
- See http://bookshop.europa.eu/is-bin/INTERSHOP.enfinity/WFS/EU-Bookshop-Site/en_GB/-/EUR/ViewPublication-Start?PublicationKey=KSDU13001 (retrieved March 2015)
- See <http://www.paladinenergy.com.au/default.aspx?MenuID=131>. Retrieved February 2015.
- See 2014 Paladin Energy Annual Report, p. 161
- Information retrieved from 'Project update – Kayelekera mine' <http://www.paladinenergy.com.au/default.aspx?MenuID=108>, February 2015.
- See <http://www.paladinenergy.com.au/default.aspx?MenuID=247> 'Paladin Energy Ltd response to Afrodad report' p. 6 (retrieved May 2015)
- See <http://www.world-nuclear.org/info/Safety-and-Security/Safety-of-Plants/Fukushima-Accident/> (retrieved April 2015)
- See <http://www.paladinenergy.com.au/default.aspx?MenuID=29> (Retrieved March 2015)
- A statutory tax break is a tax break available to all companies that fulfil a certain criteria, for example all companies in a particular sector or all companies adhering to certain standards. A discretionary tax break is given to a particular company on an individual basis and is not available to its competitors.
- See http://media.corporate-ir.net/media_files/irol/17/176316/2007/2_23kaye.pdf (retrieved February 2015)
- Source: Development Agreement between the Government of Malawi and Paladin (Africa) Ltd
- Source: Development Agreement between the Government of Malawi and Paladin (Africa) Ltd
- Africa Development Briefing: "Royalty Rates in African Mining Revisited: Evidence from Gold Mining" See http://www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/AEB%20VOL%203%20Issue%206%20avril%202012%20Bis_AEB%20VOL%203%20Issue%206%20avril%202012%20bis_01.pdf (Retrieved April 2015)
- See http://www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/AEB%20VOL%203%20Issue%206%20avril%202012%20Bis_AEB%20VOL%203%20Issue%206%20avril%202012%20bis_01.pdf (Retrieved April 2015)
- See <http://faolex.fao.org/docs/pdf/mlw121543.pdf>
- For the financial years between 2009 and 2012, see <http://www.paladinenergy.com.au/default.aspx?MenuID=247#265> (retrieved February 2015)
- 2013 Annual Report and Financial Statements, p. 131
- 2014 Annual Report and Financial statements, p. 117
- See <http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-highlight-malawi-2013.pdf> (Retrieved February 2015)
- http://www.pwc.co.za/en/assets/pdf/tax-summaries/malawi_2014.pdf
- See Paladin Netherlands BV accounts 2009-2014
- <http://www.kpmg.com/Africa/en/KPMG-in-Africa/Documents/2014%20Fiscal%20Guides/Fiscal%20Guide%20Malawi.pdf> (Retrieved March 2015)
- Malawi - Netherlands Double Taxation Treaty, signed in Blantyre/Lusaka on 7 and 18 June 1969. This treaty was cancelled in 2014 and replaced in 2015.
- See <http://www.kpmg.com/Africa/en/KPMG-in-Africa/Documents/2014%20Fiscal%20Guides/Fiscal%20Guide%20Malawi.pdf> (Retrieved March 2015)
- See Paladin Netherlands BV accounts 2009-2014
- See Paladin Netherlands BV accounts 2009-2014
- '2014' refers to the Malawian fiscal year 1 July 2013 -30 June 2014. Similarly, the other year references refer to the financial year that ended in June in the referenced year.
- See Paladin Netherlands BV annual accounts 2009-2014
- See Paladin Netherlands BV accounts 2009-2014
- <http://www.kpmg.com/Africa/en/KPMG-in-Africa/Documents/2014%20Fiscal%20Guides/Fiscal%20Guide%20Malawi.pdf> (Retrieved March 2015)
- See <http://taxsummaries.pwc.com/uk/taxsummaries/wvts.nsf/ID/Malawi-Corporate-Withholding-taxes> (Retrieved May 2015)
- '2014' refers to the fiscal year 1 July 2013 -30 June 2014. Similarly, the other year references refer to the fiscal year that ended in June in the referenced year.
- See Paladin Sustainability Report 2014, p.44
- This number is arrived at by adding up the lost tax revenue (US\$27.525m) with the lost royalty figures (US\$15.635m)
- http://www.unicef.org/infobycountry/malawi_statistics.html#116 (Retrieved March 2015)
- <http://www.theguardian.com/journalismcompetition/malawi-hiv-treatment-funding-gap> (Retrieved March 2015)
- <http://www.unaids.org/en/resources/presscentre/pressreleaseandstatementarchive/2012/july/20120706praficatreatment> (Retrieved March 2015)
- <http://data.worldbank.org/indicator/SH.MED.NUMW.P3> (Retrieved March 2015)
- Calculation assumes an annual salary of US\$2,500. See e.g. <http://www.theguardian.com/world/2007/aug/19/1> (Retrieved May 2015)
- <http://apps.who.int/gho/data/node.main.A1444>
- Calculation assumes an annual salary of approximately US\$5,000. See table 14 <http://www.medcol.mw/commhealth/publications/national%20research/Income%20and%20expenditure%20study%20report-FINAL-May11-3cb.pdf>
- See e.g. http://www.unicef.org/infobycountry/malawi_statistics.html; and http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/ED/GMR/pdf/Malawi_Factsheet.pdf; and <http://www.nytimes.com/2014/11/20/world/africa/malawi-students-demand-teachers-be-paid-so-classes-can-resume.html>
- Calculation assumes an annual salary of approximately US\$1,100. See e.g. <http://malawivoice.com/2012/07/14/teachers-bemoan-poor-salaries-lack-of-promotion-20467/> (Retrieved May 2015)

Cover image: This is Fagness. She is 33 years old and has seven children. She works as a peasant farmer and lives in the Kayelekera region next to Paladin's uranium mine. Like so many in Malawi, she lives in poverty and she and her family lack so many of the services that could be paid for if multinationals paid their fair share of taxes in the world's poorest country.

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