Brief: Big Tobacco, Big Avoidance

What role do British American Tobacco's secretive UK subsidiaries play in facilitating tax avoidance?

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Introduction

In November 2021, the Tax Justice Network published a report that outlined how countries were losing a total of $483 billion in tax a year due to global tax abuse committed by both multinational corporations and wealthy individuals. The report pointed out that this was enough to fully vaccinate the global population against Covid-19 more than three times over. Of the $483 billion lost a year, $312 billion – or nearly two thirds – was found to be due to cross-border corporate tax abuse by multinational corporations.

Such extreme figures illustrate why there is increasing concern about multinational tax avoidance and evasion.[1] Tax avoidance refers to situations where companies or individuals structure their activities to legally reduce their tax liabilities, whereas tax evasion is the illegal non-payment of taxes due. There is often a fine line between the two.

The November 2021 Tax Justice report also noted that 'The UK and its dependent territories (the 'UK spider's web') are responsible for a third of the corporate tax losses. The "axis of tax avoidance" (UK spider's web, Netherlands, Luxembourg and Switzerland) are together responsible for half'. [2]

Belatedly the UK government has argued it is trying to address the problem. In October 2021, Her Majesty's Revenue and Customs (HMRC) received an extra £292m over three years to tackle tax avoidance and evasion.[3] In its enquiries, HMRC might want to examine the activities of the UK's largest tobacco companies.

In early 2021 the Tobacco Control Research Group at the University of Bath published a report, written by the Dutch Investigative Desk, on tax avoidance by the big four transnational tobacco companies.[4] This report concluded that tobacco's big four – British American Tobacco (BAT), Imperial Brands, Japan Tobacco, and Philip Morris International – made extensive use of the entire range of common tax avoidance methods.[5]

During that research, a series of companies that caught the attention of the researchers were three British-based subsidiaries of BAT: Weston (2009); the Weston Investment Company;

and Precis (1814). These unknown and secretive subsidiaries seem to sit at the heart of BAT's complex money movements.

They seem very illustrative of the complicated corporate structures that have been adopted by transnational tobacco companies to reduce the taxation they pay on the vast profits they are able to earn from selling their deadly tobacco products.

It is therefore the intention of this report to highlight the activities of these subsidiaries and to reveal the complicated nature of corporate structures, as well as to highlight that several UK subsidiaries seem to be facilitating BAT's low tax payments in the UK, the country where the group is based. These types of structures are one issue we believe HMRC should be interested in during its latest tax avoidance investigation.

A web of subsidiaries

The parent company of Precis (1814) is Weston Investment Company Limited, whose parent is Weston (2009). In turn, BAT (2009) Limited is the immediate parent of Weston (2009), whose immediate parent is BAT (2012). BAT plc is the immediate parent company of BAT (2012) (see Figure 1 below).

Weston (2009) limited was incorporated in 2009, whereas the Weston Investment Company (WIC), has operated for nearly 100 years. WIC stated in its 2020 Annual Report that 'The Company's principal activity is the holding of investments in companies operating in the tobacco industry as members of the British American Tobacco p.l.c. group of companies'.[6]

Despite their central role within the BAT Group, Precis (1814), Weston Investment Company, and Weston (2009) have no employees, and it appears they just are shell vehicles to make investments and move money.

Only very limited information on these subsidiaries is available in the public domain which makes it difficult to gain a full picture. The Weston (2009) accounts for 2019 even stated: 'As a wholly owned subsidiary the Company has taken advantage of the exemption under FRS101 from disclosing transactions with other subsidiary undertakings of the British American Tobacco p.l.c Group'.[7]

The original Investigative Desk report, which was published in 2021, did find that the Weston subsidiaries 'have a complex web of internal loans outstanding to group companies in various countries, denoted in various currencies. Millions of interest payments are channelled through the subsidiaries.'

Such a convoluted corporate structure, with inter-group transactions taking place on which there is limited information available, makes it difficult to try to see whether these subsidiary companies are being compliant with all relevant tax laws across the globe or if/how their structures serve to minimise tax liabilities.

Indeed, it is a complicated corporate structure that would take a forensic accountant to unpick and even they would be challenged given the limited information available. What we do know is that these unknown and secretive subsidiaries play a central role in BAT's hierarchical tree, which features subsidiaries in 119 countries around the world.

We can also see that this corporate structure is one that continues to change and evolve given that new subsidiaries have been created and the interaction between subsidiaries has changed. We cannot say why these changes happened, but it would seem likely that it would be to respond to changing international tax rules and hence about continuing to minimise tax payments.

Importance of the subsidiaries

There are various mechanisms by which the structure around Weston (2009) may be assisting BAT to avoid tax in the UK. Indeed, the Investigative Desk also concluded in their investigation that 'Most tax entries on the annual report consist of only foreign tax' and that "Connections with low tax jurisdictions exist.'

Similarly, with WIC, we can see that between 2010-2015 it was clear that all the booked tax was foreign tax.

Between 2016-2019, the clear majority of the booked tax stemmed from foreign tax. They did however, transfer group tax relief of about £10 to £15 million yearly to other subsidiaries in the group.

Big Tobacco, big money movement

The money moving through the accounts is significant:

- According to Weston (2009)'s accounts in 2020, 'The profit for the financial year attributable to Weston (2009) Limited shareholders after deduction of all charges and the provision of taxation amounted to £5,407,648'. According to WIC's 2020 Annual Report, 'The profit for the financial year attributable to Weston Investment Company Limited shareholder after deduction of all charges and the provision of tax amounted to £906,984,000'.

- Research carried out by the Investigative Desk found that billions of dividends are channelled through these two Weston companies. For WIC, between 2016-2019, £876 million dividends were received 'mostly from BAT International (Holdings) BV, in the Netherlands'. The dividends paid went to the parent company Weston (2009) Limited, which in turn paid dividends to BAT (2009) Limited. Amounts varied between £1 and £7 billion annually. In 2020, for example, Weston (2009) paid dividends amounting to £5,548,000,000.[8] In the same year, WIC paid dividends amounting to £978 million.

Connections with tax havens

WIC holds a central position in the subsidiary tree of BAT. It has many investments all over the world, including in tax havens, comprising multiple registrations on the British Virgin Islands, Panama, and some older ones on the Bahamas, with connections to Switzerland, Luxembourg, and Guernsey.

One illustrative example of this is Precis (1814) Limited, which is a subsidiary registered at Globe House, 4 Temple Place, London, WC2R 2PG; the same address as Weston (2009). It is a direct subsidiary of WIC and was incorporated in 1999.

In the years 2010-2019 it had investments in Guernsey, Jersey, Switzerland, and Ukraine. It received some dividends from these countries. Previously it had held a subsidiary in the Netherlands (BAT International (Holdings) BV), but that was sold in 2010 to its parent company, WIC Limited.[9]

Apart from the direct investments, it holds financial assets in and liabilities to other BAT group companies. Financial liabilities consisted of interest payable and redeemable preference shares issued to the parent Weston. Preference shares were issued in South African rand, and were worth £339 million in 2019. Preference shares were also issued in Russian rubles, and were redeemable in 2017 for an amount of £120 million. These preference shares were issued repeatedly over the year.

The financial assets consist of interest receivable. The amounts vary between £25 and £60 million annually. The amounts owed by group companies consist of interest payments to be made in South African rand and Russian rubles.

It thus seems Precis (1814) had loans outstanding to South Africa and Russia, over which it received interest (at LIBOR). Subsequently it issued preference shares to Weston (2009) in the same currency, on which it paid interest, based on the six month MosPrime (in case of the Russian denominated preference shares), and based on the six month ZAR JIBAR. One conclusion could be that this subsidiary could be functioning as a ‘middleman’ between subsidiaries in production companies, and the two Weston subsidiaries.

It is also notable that there are two counterpart BAT subsidiaries in the Netherlands, Precis (1789) BV and Precis (1790) BV. The similar naming would seem to be more than just a coincidence but the purpose of these, their activities, and any significance associated with the numbers/years is unclear, as it is impossible to track their activities as annual reports of the Dutch subsidiaries are not available.

The importance of internal group activities

BAT Industries plc, British American Tobacco (2009) Limited, and Weston 2009 Limited pay significant interest payments on intra-group debt. These payments result in losses which can be offset against tax liabilities and crucially then transferred to other subsidiaries in the UK group thereby lowering the tax liability of that company (so called ‘group relief surrendered for nil consideration’).[10]

For instance, the Weston Investment subsidiaries have various internal loans, both on the assets and liabilities side of the balance sheet (ie they have both taken out loans and issued loans). The loans vary per year, are denominated in various currencies, and usually have time to maturity of about two to three years. Multiple subsidiaries are involved.

For example, for WIC, under the entries ‘interest payable’ and ‘interest receivable’, an amount of £69 million is booked under ‘redeemable preference shares issued to Weston (2009) limited’ and ‘preference dividend income in respect of redeemable preference shares issued by Precis (1814) limited.’ It thus seems this subsidiary merely channels income from Precis (1814) Limited preference shares to Weston (2009) Limited.

Financial assets held by Weston Investment Company include ‘amounts owed by group undertakings’

2013-2015	£17,957 million denominated in USD based on USD LIBOR
2013-2018	The company invested almost £2 million to become a member of the newly incorporated Dutch co-op: British American Tobacco Financial Holdings Coöperatie WA. It provided the Co-op with a five year loan denominated in Russian rubles, interest rate based on MOSPRIME
2014-2018	Redeemable preference shares of £338.6 million, denominated in South African rand, interest based on JIBAR, issued by Precis (1814) Limited
2016-2019	A loan of £120 million denominated in Chilean pesos
2016-2019	Allowance for aged receivables of £16.9 million denominated in Hong Kong dollars
2017-2023	£443 million in Brazilian real
2019-2022	£109 million in Indonesian rupiah
2019	A loan of £700 million denominated in pound sterling, at LIBOR

Financial liabilities

2010-2015	The Weston Investment Company Limited borrowed in euros, a loan of £5.5 billion, at EURIBOR
2013-2016	A loan of £1 billion to Weston Investment Company denominated in pound sterling at GPB LIBOR
2015-2018	Loan of £389 million denominated in euros at EURIBOR. According to the annual report ‘the loan has been designed as a fair value hedge of the exchange portion of the fair value risk of the investment in British American Tobacco International (Holdings) B.V.’
2015-2019	£346 million preference shares issued to Weston (2009) limited, in Brazilian real

Conclusion

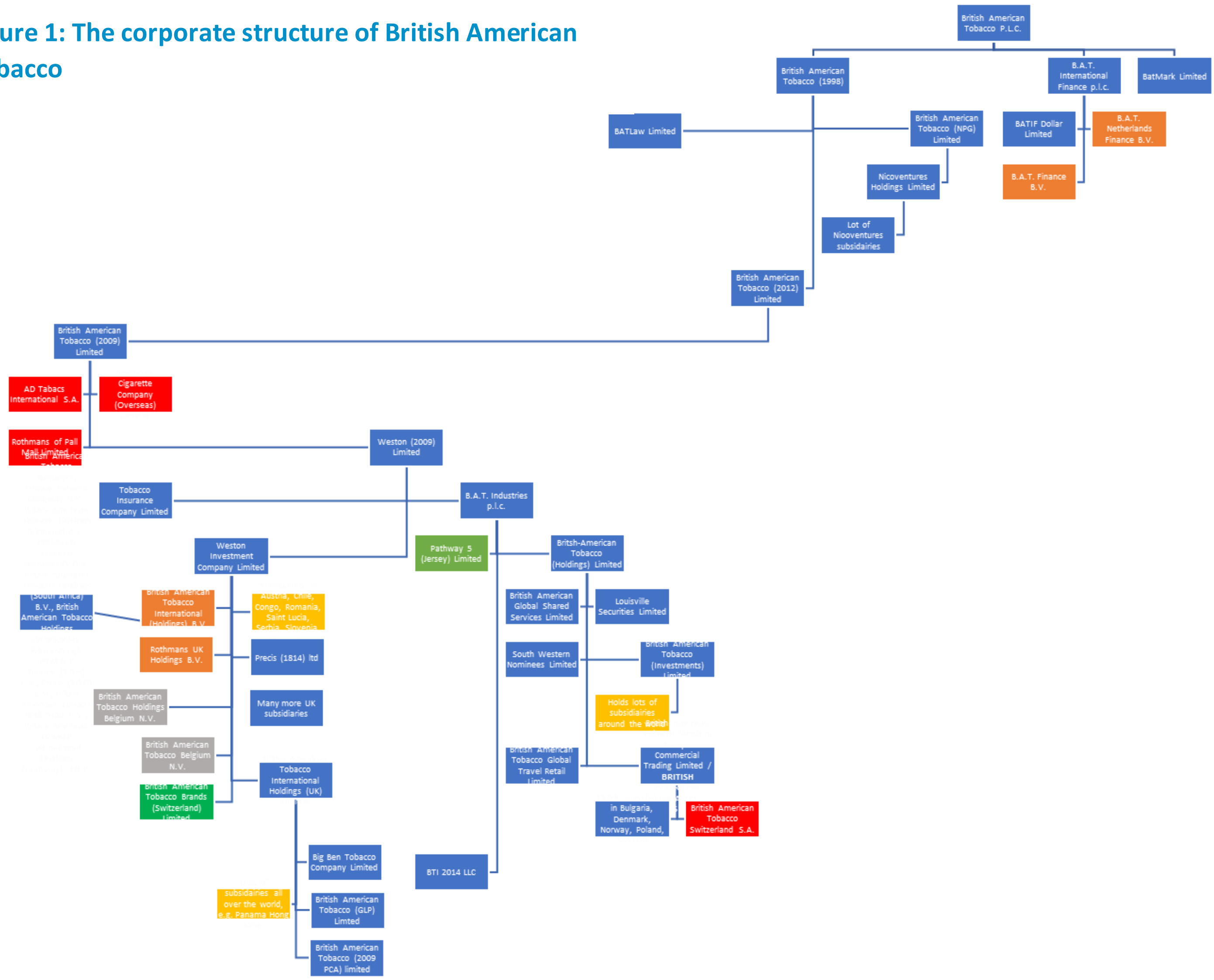
Transnational companies often have complicated corporate structures due to the international nature of their businesses. However, BAT’s complex, convoluted structure, seems unnecessarily complicated, especially since it has multiple subsidiaries based in the UK, where the overall group is located. The Weston companies, without any employees, clearly help to funnel funds to/from other markets, and it seems likely that they play a key role in minimising the UK tax liabilities of the overall group.

Indeed, it is noteworthy that BAT has paid virtually no meaningful amounts of profit-based taxation in the UK since 2010, despite selling significant quantities of tobacco in the UK market and being the place where the group is both listed and headquartered.

Tax authorities need to investigate the use and abuse of such convoluted corporate structures, and hence better hold companies to account so that they pay appropriate levels of taxation on their profits. This is particularly true of companies in the tobacco sector who generate massive profits by selling deadly products.

This briefing is based on research by Manon Dillen for The Investigative Desk.

Figure 1: The corporate structure of British American Tobacco



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