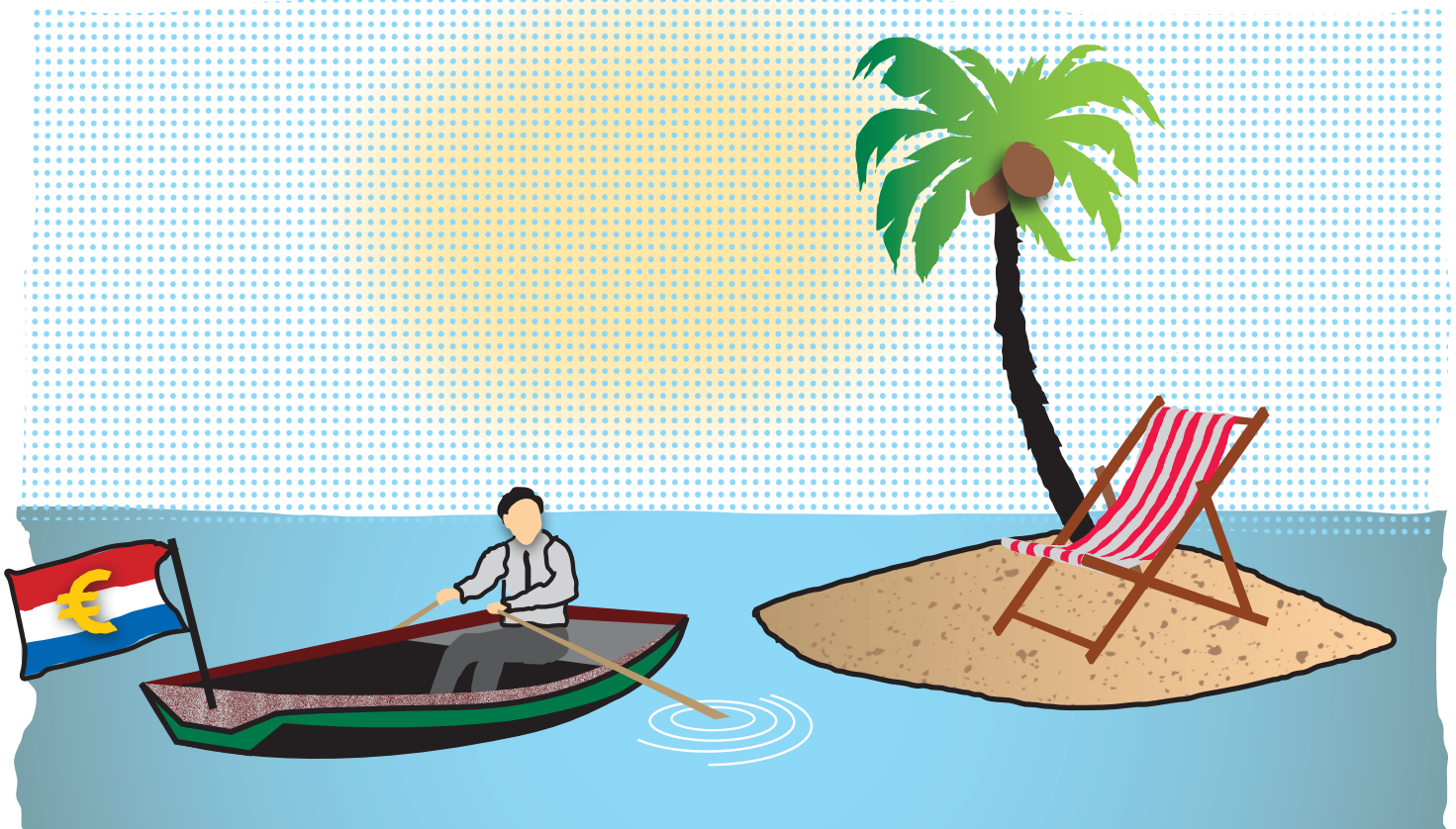




Cover for what?

Atradius Dutch State Business' support
for transactions via tax havens



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SUMMARY

This report demonstrates how financial transactions supported by the state-backed export credit agency of the Netherlands - Atradius Dutch State Business (Atradius DSB) - regularly involve parties registered in tax havens. These types of transactions allow multi-national enterprises (MNEs) to adopt aggressive tax avoidance positions that undermine the ability of countries (including the Netherlands) to collect tax effectively, corroding their tax sovereignty. The report unravels the complex structures employed by these MNEs operating in tax havens in order to drastically reduce their tax liability and to conceal the involvement of shadowy third parties. The report shows that there is a lack of effective measures in place to exclude parties involved in tax evasion and money laundering from obtaining support from Export Credit Agencies (ECAs). It also makes recommendations for increasing transparency and (self)-regulation of ECAs so that their activities are more aligned with international efforts to counter money laundering and tax evasion.

1

INTRODUCTION

Both ENDS recognises that the connection between international financing and the fight against poverty is vital for the promotion of sustainability for all. Both ENDS works with local partners in developing countries and initiates and actively participates in policy dialogues on trade and investment issues. We monitor the activities of big financial institutions, such as the World Bank Group and the IMF and, as part of our international capital flows programme, we also scrutinise and highlight the activities of export credit agencies (ECAs). On several occasions we have documented cases where transactions supported by ECAs have had a negative impact on environmental, social and human rights issues¹.

Both ENDS is an active member of the Tax Justice Network (TJN) that has successfully campaigned for transparency in international finance and has managed to trigger debates at the highest policy levels on fair taxation policies. Research conducted by TJN members has shown how tax evasion or avoidance is linked to weaknesses in current tax policy frameworks². A significant part of TJN's research has focused on the disruptive role that tax havens play in international trade. This report focuses on the connection between transactions supported by ECAs and tax havens. While the need for greater transparency in international taxation policies has been recognised and adopted at international level – including by the Organisation for Economic Cooperation and Development (OECD) – the role of

ECAs in this respect, the work of which is overseen by the same OECD, remains shrouded in secrecy.

METHODOLOGY

This project came about as part of a collaboration between Both ENDS and the Faculty of Law at Utrecht University. Our interest in this subject was born out of concern about the lack of transparency and accountability in the way that public sector finance institutions secure finance for private sector projects. This research into the connection between publicly backed export credits in the Netherlands and the use of tax havens highlights a potential for abuse and a lack of policy instruments to duly govern the use of public ECAs. This report concentrates on the example of the Dutch state-backed ECA - Atradius DSB. It shows how some MNEs that it works with use artificial tax structures at the expense of revenues of the governments in the countries where the activities are carried out and of the Dutch state. To build up an accurate view of transactions supported by Atradius DSB that make use of tax havens, we traced the range of companies (the Dutch exporting company, the debtor, the company acting as a guarantor on behalf of the debtor company and the financier) involved in a number of export transactions. We collected public information from chambers of commerce and corporate annual reports and by accessing company databases. This allowed us to trace each financial entity and its subsidiaries around the globe and construct maps of their corporate

ownership and company structures.

Using this information, we were then able to show how some MNEs adopt aggressive tax avoidance positions to reduce their tax liabilities by creating artificial structures that bypass weak national laws. By successfully tracking all the parties involved in these transactions, we show that these complicated corporate structures often include third parties whose involvement is often hidden from Atradius DSB. Atradius DSB does not require applicants to publicly disclose the ultimate beneficiaries of the companies involved in the deals for which they are seeking support. Also it does not disclose what other information it requires to satisfy its due diligence obligations (in order to avoid unwittingly supporting money laundering and tax evasion). In this context companies are able to use secretive legal structures to hide potentially illegal activities.

To complement the data generated from company records, we conducted interviews with representatives from the Dutch Ministry of Finance, the OECD and officials from institutions located in tax havens. Atradius DSB declined to take part in this research.

ACKNOWLEDGMENTS

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2

EXPORT CREDIT AGENCIES – WHY THE CONCERN?

Export credit agencies (ECAs) are public or private institutions which act on behalf of governments and provide insurance and guarantee services to domestic exporters doing business abroad. Typically, export credit insurance covers the risk of exporting capital goods, such as machinery and ships, or for construction works that form part of infrastructure projects. As insurers, ECAs guarantee that the exporting company will be paid in the event of unforeseen political and economic circumstances or by currency fluctuations that might prevent full or timely payment by their business partners.

State-backed ECAs often work under the mandate of a finance ministry. In some cases they are government agencies and in other cases quasi-governmental organisations. The companies they serve are required to pay premiums and/or interest rates for this support. The minimum levels of premiums and interest rates are regularly renegotiated within the Organisation for Economic Cooperation and Development (OECD), which sets parameters under which member states operate their ECAs. These rates are below the actual market rates and determine the maximum level of subsidies. With the state taking on certain risks in order to boost exports, private banks are more open to assist with financing projects which otherwise might not have been feasible.

Until recently ECAs belonging to OECD countries used to be the major force in transactions featuring export

credit insurance, but in the last decade ECAs from emerging economies (China, India and Brazil) have begun to offer serious competition. Between 2006 and 2010 China provided about \$203 billion³ in medium and long-term export credit financing, around 4 times the amount provided by the Export-Import Bank of the United States in the same period. At present the ECA supported transactions from OECD countries are estimated to constitute slightly over a third of the government supported export credits at a global level⁴.

ECAs are typically not subject to information disclosure requirements and there is little public awareness about their (significant) role in the global economy. This report looks into the due diligence of the Dutch ECA Atradius Dutch State Business (Atradius DSB), in relation to its responsibility to contribute to the prevention of public support for transactions involving potential tax evasion and/or money laundering. It explores Atradius DSB's operations, reviewing examples of transactions that it has supported that are structured via tax havens. By highlighting the distortions that these tax havens may engender, this report argues that ECAs like Atradius DSB should no longer support transactions that are structured via such secrecy jurisdictions.

While this report concentrates on transactions supported by Atradius DSB, it does not explore the extent to which similar practices exist among other ECAs, although similar cases

¹ See for example Both ENDS' reports:
- 'Export Credit Debt. How ECA support to corporations indebts the world's poor.' http://www.bothends.org/uploaded_files/document/Briefing_paper_Export_Credit_Debt.pdf
- 'Review of dredging activities for entry channel and harbour basin of Promar S.A. shipyard, Suape, Brazil' http://www.bothends.org/uploaded_files/document/130222_Report_Suape.pdf

² See: <http://www.tackletaxhavens.com/>

³ Stephen Ezell, "Understanding the Importance of Export Credit Financing to U.S. Competitiveness," p.7; The Information Technology & Innovation Foundation. Retrieved from <http://www.itif.org/files/2011-export-credit-financing.pdf>

⁴ Source: Export-Import Bank of the United States: http://www.exim.gov/about/library/reports/competitivenessreports/upload/2011_Competitiveness_Report-1.pdf

do occur. For example, the US Ex-Im Bank provided US\$ 3 billion for the PNG LNG project in Papua New Guinea, a project that is registered in the Bahamas⁵. The Sakhalin-2 LNG project on the Russian Island of Sakhalin received support from JBIC, the Japanese ECA. This project is operated by the Sakhalin Energy Investment Company, Ltd., which is legally registered in Bermuda⁶. It has been reported that several transactions of the UK's ECA - UK Export Finance, also known as ECGD - have been routed through tax havens, in particular exports of aircraft⁷. There are, at present no international obligations, for ECAs to perform adequate due diligence on such transactions or to specifically report on the cover provided in such cases.

TAX HAVENS AND INTERNATIONAL TAXATION CONCERNS

The days of mobsters flying over to Caribbean islands to deposit the spoils of crime are long gone and more sophisticated methods of laundering funds are now the norm. Yet, despite these changes, the same principles still apply. Various financial service providers deposit funds in tax havens⁸. The relaxation of capital controls in the beginning of the 1970s and the development of communication technology that allows instantaneous transactions have led to a huge growth in the volume of funds passing through tax havens.

Tax havens act as receptacles for capital from much of the world's organised crime. Revenues from outright tax evasion, the proceeds of corruption, the funding of terrorist groups, profits from corporate crime, the sex trade, the drugs trade or illegal arms trafficking, all find a refuge in tax havens. Their role in the international economy also allows multi-national enterprises (MNEs) to massively reduce their tax liabilities. This results in governments losing

substantial income, limiting their options for public sector investment in health, education and general public welfare.

Civil society groups have been campaigning on this issue for many years. More recently many governments, which have been affected by dwindling budgets following the sustained financial crises, have joined forces to put the issue of tax havens firmly at the top of the international political agenda. Prominent world leaders and politicians have joined the chorus of NGOs and citizens criticising their continued use. Following a request from the G-20 Finance Ministers, the OECD launched an Action Plan on Base Erosion and Profit Shifting (BEPS) in July 2013⁹. This plan seeks to close the gaps that are exploited by MNEs who avoid taxation in their home countries by pushing activities abroad to low or no tax jurisdictions. While this action plan proposes several concrete steps that need to be taken, it does not specifically address the role that ECAs play.

There is no consensus on the exact definition of what constitutes a tax haven. Indeed, there has been a proliferation in competing criteria and types of classification. However, most definitions include the following elements:

- Jurisdictions that charge minimal or no taxes
- Jurisdictions that offer - or are perceived to offer - opportunities to evade/avoid tax laws in other jurisdictions
- Jurisdictions where high levels of secrecy are enshrined in domestic law, preventing the disclosure of financial information from banks and other financial entities (e.g., trusts, foundations)

Considering the differing views on the definition of tax havens, this report

uses the criteria developed by the OECD¹⁰.

- 1) No or only nominal tax imposed
- 2) Legislation or procedures that prevent effective exchange of information with other governments
- 3) Lack of transparency
- 4) No substantial activities required

The portfolio of Atradius DSB includes a number of jurisdictions that meet these criteria: the British Virgin Islands, Luxembourg, Liechtenstein, the Cayman Islands, Jersey and Cyprus. All of these jurisdictions' financial service sectors display features of the OECD's criteria that qualify them as tax havens.

INTERNATIONAL FRAMEWORKS GOVERNING ECAS

The Arrangement on Officially Supported Export Credits is a 'gentlemen's agreement' between the ECAs of most OECD governments; referred to as 'the Participants'¹¹. The Arrangement was first negotiated in 1978, and since then has been frequently modified and updated¹². It defines the most generous export credit terms and conditions that may be supported by Participants. Its stated purpose is to create a level playing field that sets limits on the terms and conditions of officially supported export credits (e.g. minimum interest rates, risk fees and maximum repayment terms) and the provision of tied aid. Though the Arrangement is not a legally binding agreement, it is recognised as the guiding framework for export credits in the World Trade Organisation's (WTO) Agreement on Subsidies and Countervailing Measures¹³. Within the EU the Arrangement is incorporated in a legally binding EU Regulation on the application of guidelines for officially supported export credits¹⁴.

The OECD member governments have adopted other non-binding agreements that address

environmental, social and other public interest issues related to the operations of ECAs¹⁵. The Recommendation of the [OECD] Council on Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence (the "Common Approaches") has been developed to harmonise the measures that ECAs should take to address the potential environmental and social impacts of some transactions for which official export credit support is requested. Bribery issues are covered in an OECD Recommendation on Bribery and Officially Supported Export Credits, adopted in 2006. In 2008 a set of Principles and Guidelines to promote sustainable lending practices in the provision of official export credits to low-income countries was adopted by the OECD Working Party on export credits and credit guaranties (ECG). Until today however, the subject of taxation in the context of due diligence requirements of ECAs has not been addressed.

Financial institutions are legally required to report suspicious transactions to their national Fiscal Intelligence Units under anti-money laundering and anti-terrorist financing legislation. However it is not very clear whether this mandatory reporting obligation also applies to ECAs. Usually they commit to the voluntary principles of the Berne Union – the leading international umbrella organisation for public and private sector providers of export credit and investment insurance – to support international efforts to combat corruption and money laundering¹⁶. However there is very little public evidence of ECAs actively screening transactions to avoid them potentially supporting tax evasion and money laundering.

Since 2002 the Dutch ECA, Atradius DSB, has published some very limited summary information on transactions it has supported¹⁷. Per transaction Atradius DSB publishes the figure of the maximum compensation together with a one line description of the debtor, the exporter, the guarantor (of the debtor company), the financier and the country in which it runs the credit risk. The overview shows that several of Atradius' transactions have featured companies registered in countries that qualify as tax havens. In such cases this is either the debtor company or the company acting as a guarantor on behalf of the debtor company. In some of these cases it seemed possible that artificial tax structures could have been used to adopt aggressive tax avoidance positions, thereby diverting tax revenues away from governments. In effect, the Netherlands government might have been providing support to tax avoidance in these transactions structured via tax havens.

The 2013 OECD Action Plan on Base Erosion and Profit Shifting (BEPS)¹⁸ strongly criticises MNEs for using tax havens to adopt aggressive tax positions. It is expected that this action plan "will largely be completed in a two-year period." However, it does not contain any explicit provisions that relate to transactions supported by publicly mandated ECAs. Although the OECD appears to be getting serious about tackling the issue of tax havens, it has not yet called on public ECAs to discontinue support for transactions that run via tax havens.

⁵ See: <http://pacificenvironment.org/article.php?id=3189>

⁶ See: http://bermudafirm.com/sakhalin-energy-investment-company-td.24921.company#top_info

⁷ Private Eye, 23 August 2013.

⁸ In 2012 for example, HSBC Mexico was found guilty by the US Department of Justice of assisting money laundering activities through HSBC Mexico's U.S. dollar accounts registered in the Cayman Island; see: <http://www.justice.gov/opa/documents/hsbc/dpa-attachment-a.pdf> (p12)

⁹ See: <http://www.oecd.org/ctp/beps.htm>

¹⁰ See: OECD report 'Harmful Tax Competition: An Emerging Global Issue', 1998, p.22; <http://www.oecd.org/tax/transparency/44430243.pdf>

¹¹ The Participants are: Australia, Canada, the European Union, Japan, Korea (Republic of), New Zealand, Norway, Switzerland and the United States, see: <http://www.oecd.org/trade/exportcredits/theexportcreditsarrangementtext.htm>

¹² The version of January 2013 was reviewed and updated in October 2013, <http://www.oecd.org/tad/xcred/theexportcreditsarrangementtext.htm>

¹³ See: http://www.wto.org/english/tratop_e/scm_e/scm_e.htm

¹⁴ See: <http://register.consilium.europa.eu/pdf/en/11/pe00/pe00046.en11.pdf>

¹⁵ <http://www.oecd.org/tad/xcred/goodgovernanceandexportcredits.htm>

¹⁶ Guiding Principles and Value Statement Berne Union, see: <http://www.berneunion.org/about-the-berne-union/our-principles/>

¹⁷ This information is published in the Dutch language only. See: <http://www.atradiusdutchstatebusiness.nl/publicaties/afgegevenpolissen/index.html>

¹⁸ See: <http://www.oecd.org/ctp/BEPSActionPlan.pdf>

3

ATRADIUS DSB – THE DUTCH STATE-BACKED ECA

Atradius Dutch State Business NV (Atradius DSB) is the state-backed ECA for the Netherlands. The Dutch state acts as the insurer for the policies that Atradius DSB issues, whilst Atradius DSB itself undertakes the role of the implementing agency – working directly under the mandate of the Ministry of Finance. Atradius DSB is a subsidiary of the Atradius Group, a private credit insurance company also involved in debt collection and business information. The remit of Atradius DSB is to offer Dutch exporters and investors a range of guarantee and insurance products to support them in doing business abroad. The involvement of Atradius DSB can often make the difference for exporting companies seeking to obtain structured finance from large banks¹⁹.

KEY STATISTICS²⁰

YEAR	2010	2011	2012
Premium income	€33 million	€55 million	€57 million
Claims paid	€79 million	€19 million	€57 million
Recoveries	€131 million	€89 million	€96 million
Applications received	194	228	232
Promises and notices of cover issued	103	133	92
Insurance policies issued	64	106	100
Nominal risk exposure under promises and notices of cover issued ²¹	€3.8 billion	€5.6 billion	€11.6 billion
Nominal risk exposure under insurance policies issued	€1.8 billion	€2.6 billion	€5.0 billion
Aggregate nominal risk exposure	€5.6 billion	€8.2 billion	€16.6 billion
Aggregate of exposure of published transactions ²²	€0.692 billion	€1.487 billion	€1.727 billion

Between 2011 and 2012, Atradius DSB's nominal risk exposure from insurance policies issued rose from €2.6 to €5 billion. However, this substantial rise in exposure was not reflected in an increase in the number of policies issued - 100 in 2012 compared to 106 in 2011 - but rather due to an increase in the size of the individual transactions. During 2012 Atradius DSB received 232 applications for insurance cover. In addition to the insurance policies issued in 2012, it issued promises of cover for 92 transactions with a total value of €11.6 billion. Thus, the total exposure that Atradius DSB underwrote in 2012 more than doubled to €16.6 billion, compared to €8.2 billion the year before.

The increased willingness of the Dutch state to underwrite export transactions comes at the same time that it has been slashing its official development assistance (ODA): a 6.4% reduction in 2011²³ and a further 6.6% in 2012²⁴. In 2009 Dutch ODA was reported to amount to more than €4.6 billion, while in 2012 it stood at €4.3 billion. Meanwhile, the focus of the ODA budget has shifted away from aid towards promoting trade and private sector involvement in poverty alleviation efforts. The increase in the volume of ECA risk exposure emphasises that substantial public support is being given to Dutch companies to help them expand their international reach.

In order to comply with rules related to unfair government subsidies laid down in World Trade Organisation (WTO) and OECD agreements, state-backed export credit agencies must break even²⁵. Subsequently, the revenues that Atradius DSB gathers in terms of premiums and recoveries must exceed claim payments and its operational costs. In 2012 Atradius DSB collected €57 million from premiums and €96 million from recoveries while paying out

€57 million in claims. To ascertain whether Atradius DSB has broken even over any given time period, the organisation employs an accrual accounting method that incorporates existing exposures and operating costs. According to the company's figures, the accrual based accounting method gives a total return of €226 million over the period 1999-2012²⁶.

TAX HAVENS IN ATRADIUS DSB'S PUBLISHED PORTFOLIO

Between 2002 and 2012 Atradius DSB underwrote 22 transactions of which the risk was run on a financial entity registered in a tax haven. These transactions accounted for an overall exposure of €650 million, which equals some 4% of Atradius DSB's overall published export credit insurance portfolio. In addition Atradius DSB also reported several other transactions that involve a debtor or guarantor registered in a tax haven, while the risk was run in a different jurisdiction.

The regular recurrence of such transactions, their potential for money laundering, tax avoidance and/or evasion, coupled with a lack of transparency and accountability, are major causes for concern. Due to the lack of transparency in tax haven jurisdictions, combined with opaque due diligence procedures at Atradius DSB, it is difficult to exclude the possibility that its support for such transactions is actually facilitating tax evasion, money laundering, corruption²⁷ or other criminality.

¹⁹ In many cases large Dutch banks such as Rabobank, ABN AMRO and ING are involved, but transactions financed by other non-Dutch financial institutions also regularly occur.

²⁰ Annual review 2012, p.2; see: http://www.atradiusdutchstatebusiness.nl/Images/dsben/Annual%20Review%202012%20spread_tcm1009-159337.pdf

²¹ The promise of cover is a guarantee to the applicant of eligibility for an export credit insurance policy when a proposed transaction is effectuated.

²² These figures were calculated by Both ENDS, by adding together all maximum insured amounts provided per insurance policy published by Atradius for the main Export Credit Facility (EKV). The very substantial difference with the overall turn-over of Atradius DSB suggests that only a small part of the insured transactions is actually publicly disclosed.

²³ Source: OECD: <http://www.oecd.org/newsroom/developmentaidto-developingcountriesfallsbecauseofglobalrecession.htm>

²⁴ Source: OECD: <http://www.oecd.org/newsroom/aidtopoorcountries-slipsfurtherasgovernmentstightenbudgets.htm>

²⁵ In order to prevent unlimited 'state-aid' the WTO Agreement on Subsidies and Countervailing Measures prohibits governments from subsidising exporters. http://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm8_e.htm#subsidies

²⁶ See: Atradius DSB's annual review for 2012: http://www.atradiusdutchstatebusiness.nl/Images/dsben/Annual%20Review%202012%20spread_tcm1009-159337.pdf

²⁷ According to a recent report by Transparency International, the Netherlands was one of the countries that did little or nothing to hold companies and business people to account for bribing foreign governments. They expressed specific concern about whether the Dutch law enforcement authorities are equipped to initiate proceedings against "mailbox companies", that is, companies registered in the Netherlands but carrying out their activities from abroad. http://files.transparency.org/content/download/683/2931/file/2013_ExportingCorruption_OECDProgressReport_EN.pdf

4 CASE STUDIES

This report presents three case studies to illustrate the mechanisms employed by some companies taking part in transactions supported by Atradius DSB while concealing the involvement of third parties located in tax havens and the use of 'shell companies'. These case studies reveal serious flaws in Atradius DSB's due diligence procedures and a general lack of appropriate policies and effective instruments to prevent export credit support for transactions that potentially involve tax evasion and/or money laundering.

The case studies were selected from the summary disclosures of insurance policies issued by Atradius DSB between 2002 and 2012 (described above). Atradius DSB publishes the figure involved together with a one line description about the debtor, the exporter, the guarantor (of the debtor company), the financier and the country in which it runs the credit risk. We selected case studies that featured financial entities registered in tax havens while a very limited physical or economic presence in these jurisdictions fails to justify their registration there.

4.1

ATRADIUS DSB PROVIDED COVER FOR A COMPANY FACING ALLEGATIONS OF TAX EVASION

In 2011 Atradius DSB underwrote a transaction in which 6 different Dutch exporters²⁸ sold machinery to be used in the development of the port of Taman in Russia. When completed, the port will service Russia's first LPG (liquefied petroleum gas) terminal, which will have an annual output of 9.5 million tons of liquefied natural gas. The terminal will be the first of its kind in Russia with access to the Black Sea, where the deep, ice-free waters allow year round access for larger ships. The development of the terminal is thought to be of great strategic importance to the Russian gas export market and has been taking place over a number of years. Local residents have made numerous complaints about the environmental and human rights impacts of the project and the American NGO Crude Accountability has documented breaches of local environmental laws and even beatings received by local activists who are challenging the legality of the project²⁹.

The expansion of the port at Taman was partly facilitated by the International Finance Corporation (IFC), the private sector arm of the World Bank Group. The transaction information released by Atradius DSB,



The port expansion in Taman. Source: <http://www.tamanneftegas.ru/img/mart2008/1.jpg>

mentions ZAO Tamanneftegas as the company in charge of the construction of the LPG Terminal. According to IFC documents ZAO Tamanneftegas is 100% owned by Malmros Continental Property Company B.V.³⁰, a company incorporated in the Netherlands. This company is a letterbox company, registered at an address in the Dutch town of Noordwijk. Infracris Holland B.V., the company that serves as one of the guarantors in the transaction is registered at the same address. The other guarantors mentioned are Russian Estonian Rail Services AS and ZAO Tamanneftegas. Magenda Investments Limited, a company incorporated in Cyprus, is the actual debtor for the Dutch export transactions. The web of companies involved in this transaction all have significant connections to the address in Noordwijk, suggesting that Atradius DSB actually provides cover for exports to companies operating abroad that actually also have a legal registration in the Netherlands. The registration of the debtor company in a tax haven such as Cyprus seems to be sufficient to satisfy Atradius DSB's requirement for the transaction, targeting a Russian project, to qualify as an export.



Location of Taman Port. source: <http://www.tamanneftegas.ru>

The close relationship between ZAO Tamanneftegas and Magenda Investments Limited gives rise to particular concern. Both ENDS has obtained evidence that ZAO Tamanneftegas faces court proceedings in Russia for over-stating losses on a loan from Magenda Investments Limited. This, which would amount to a form of tax evasion, occurred prior to them receiving support from Atradius DSB. Atradius DSB's obligations of due diligence should rule out the possibility of it providing export credit insurance to transactions involving companies being investigated for tax evasion. In written correspondence with Both ENDS, the Dutch Ministry of Finance has acknowledged that Atradius DSB was not aware of the situation, despite having conducted due diligence on the companies involved and consulting other external sources. Atradius DSB claims it has a policy of not underwriting transactions involving buyers that have been involved in criminal activity or unlawful acts,

so as to protect its own reputation. Nevertheless in this case its due diligence procedures failed to identify that a company that it maintains a business relationship with faces such legal issues.

The Dutch Ministry of Finance explained to us, that no policies have yet been formulated to address tax evasion in the context of ECA support for export transactions. The responsibility for providing information for the risk assessment of a transaction remains with the applicant, the debtor, the guarantor(s) and/or the financier of the transaction. However, this case provides evidence that the current system, putting the onus of due diligence firmly with the applicant, is not sufficient to prevent the involvement of companies that are under investigation for criminal offences, such as tax evasion.

28 These companies are: 1) Verhoef Aluminium, 2) Scheepsbouwindustrie B.V., 3) Bronswerk Heat Transfer BV, 4) Mampaey Offshore Industries, 5) Kanon Loading Equipment, 6) Houttuin B.V. From Atradius DSB document available at: http://www.atradiusdutchstatebusiness.nl/Images/EKVpolissen_2011_tcm1008-141084.pdf

29 See: <http://crudeaccountability.org/campaigns/taman/>

30 IFC document available at: <http://ifcext.ifc.org/ifcext/spiwebsite1.nsf/ProjectDisplay/SPI23870>

4.2

ATRADIUS DSB PROVIDED COVER FOR DUTCH COMPANIES REGISTERED ABROAD

In May 2007 Atradius DSB underwrote the construction and sale of a large crane vessel (the *Oleg Strashnov*) worth about €500 million to Seaway Heavy Lifting Shipping Limited, a company incorporated in Cyprus. The *Oleg Strashnov* is one of the largest of its kind, used in off-shore projects. The vessel's crane is capable of heavy lifting operations and the vessel itself can move at a comparatively high speed of 14 knots (26 km per hour).

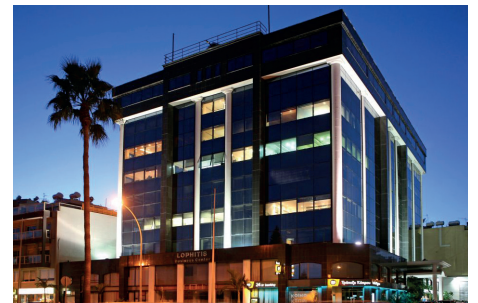
The Seaway Heavy Lifting (SHL) Shipping Limited is a holding company registered in Cyprus. However, the company seems to have a minimal presence there, operating from a small office on the first floor of a business centre in the city of Limassol. It has a mainly Dutch board of directors³¹, who also oversee its Netherlands based subsidiaries. Many companies within the shipping industry have chosen to incorporate themselves in Cyprus, to take advantage of the tax regime: foreign owned shipping companies face a 0% tax on profits from the operation or management of vessels registered under the Cypriot flag or shares in a ship owning company³².

Logic dictates that Atradius DSB should not provide cover for Dutch companies posing as foreign entities abroad. In correspondence the Ministry of Finance wrote "that according to our information the debtor Seaway Heavy Lifting Ltd was not a subsidiary of a Dutch holding called Seaway Heavy Lifting Holding BV at the time we approved cover for this transaction"³³.



The *Oleg Strashnov*. source: <http://www.fotocommunity.de>

However, Both ENDS has obtained documents that prove the connection between the two companies at the time of the transaction. The company listed by Atradius DSB as having purchased the vessel is Seaway Heavy Lifting Shipping Limited (incorporated in Cyprus). It is a subsidiary of the holding company - Seaway Heavy Lifting Holding Limited (also incorporated in Cyprus). Documents publicly declared to the American Securities and Exchange Commission (SEC) by one of the parent companies of Seaway Heavy Lifting (Subsea 7 S.A)³⁴ show that the holding company includes subsidiaries which are registered at the same address in Zoetermeer (Netherlands) as the headquarters of the Dutch operation of Seaway Heavy Lifting.



The *Lophitis Business Centre*, Limassol, Cyprus. Source: <http://www.lophitis.com>



Seaway Heavy Lifting offices, Zoetermeer, The Netherlands. Source: Google Earth

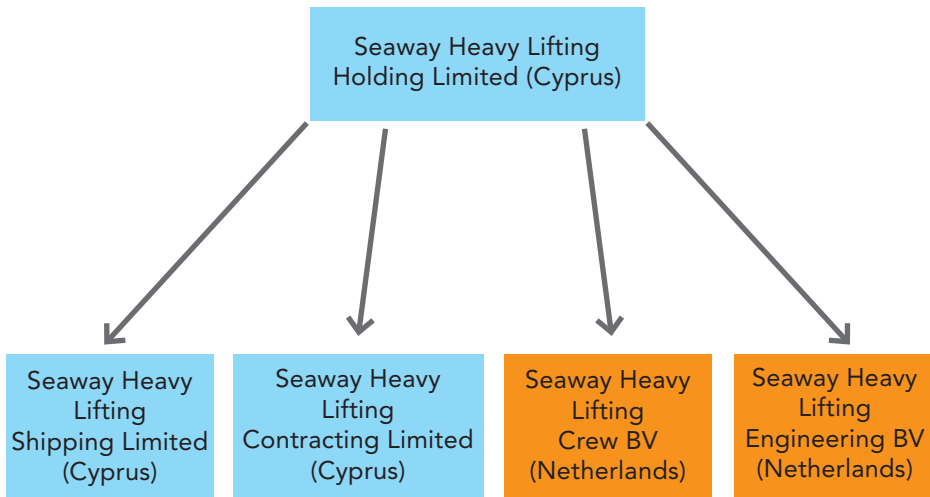


Fig 1: Corporate structure of Seaway Heavy Lifting Holding Limited.

Source: US Securities and Exchange Commission.

The significance of Seaway Heavy Lifting's presence in the Netherlands is further illustrated in a report on its website that it was nominated for "Best Employer of the Netherlands Award 2013" in the category less than 1.000 employees³⁵.

The same set of papers, deposited at the U.S. Securities and Exchange Commission by the company Subsea 7 Inc. - which, along with Acergy S.A. in Luxemburg, jointly controls Seaway Heavy Lifting - show that Subsea 7 Inc. is registered at Ugland House in the Cayman Islands. A report to the U.S. Finance Committee by the Government Accountability Office³⁶ shows that this building is currently the subject of much controversy. Presently there are 18,857 companies registered at this address. America's President Barack Obama has remarked that Ugland House is "the biggest tax scam on record"³⁷.

Given Seaway Heavy Lifting's significant presence in the Netherlands, one wonders whether this transaction actually qualifies as an export at all and whether it should be eligible to be underwritten by a publicly mandated ECA. The transaction rather looks like one between two Dutch companies, with the purchasing company being



Ugland House, George Town (Cayman Islands)
<http://futile-democracy.wordpress.com/tag/business/>

registered in Cyprus to escape tax payable within the Netherlands and take advantage of zero level tax levied on foreign owned ships in Cyprus. Moreover, foreign shipping companies are not taxed in the Netherlands on income, profits and gains from the operation of ships travelling to and from Dutch harbours.

Thus, despite the connections to the Netherlands outlined here, Seaway Heavy Lifting is able to present itself as a Cypriot company in order to make handsome savings on tax, the ultimate loser being the Dutch tax-payer. The company's corporate structure also allows it to circumvent the principle that no ECA support should be available to business transactions between two domestic companies.

³¹ See: Seaway Heavy Lifting's website <http://www.seawayheavylifting.com.cy/management>

³² See: <http://www.mondaq.com/x/246038/Marine+Shipping/Cyprus+Shipping+Industry+Business+As+Usual+Why+Despite+Recent+Events+Cyprus+Remains+An+International+Maritime+And+Major+Ship+Management+Centre>

³³ Letter of Dutch Ministry of Finance to Both ENDS, 16 August 2013, BFB 2013-11210M

³⁴ Documents published by the US Securities and Exchange Commission regarding Seaway Heavy Lifting, see: <http://www.sec.gov/Archives/edgar/data/898685/000119312511052829/dex44.htm>

³⁵ See: <http://www.seawayheavylifting.com.cy/shl-as-employer>

³⁶ See: <http://www.gao.gov/highlights/d08778high.pdf>

³⁷ See: New York Times: <http://www.nytimes.com/2009/10/04/business/global/04cayman.html?adxnnl=1&adxnnlx=1379258581-0tF72MFwTCMUCVEIWQahXA&r=1&>

4.3

ATRADIUS DSB PROVIDED COVER FOR BENEFICIAL OWNERS IN TAX HAVENS

In 2011 and 2012 Atradius DSB issued four insurance policies for four seemingly distinct transactions for the export of three fast crew supplier boats and one dredger. All four boats were made at Damen Shipyards in Gorinchem and were sold to four different shell companies incorporated in Cyprus³⁸.

On paper, these companies appear as separate entities yet all the transactions were guaranteed by Ulricus Management Ltd., a company registered in the British Virgin Islands (BVI). Ulricus Management Ltd. is a shell company located in a residential building in Road Town (BVI) that houses dozens of other companies. There is no requirement in the BVI that the activities of non-resident companies have any economic substance within its jurisdiction. Information about the corporate structure of Ulricus Management Limited shows that this company owns several subsidiaries that are registered in Cyprus.

While Damen Shipyards exported the four ships to four different companies, each of these ships are operated by the same Cyprus-based company, EDT Ship Management. The four different debtor companies also all share the same postal address, described as c/o EDT Ship Management. This is also the same address for all the Cyprus-based companies of Ulricus Management Limited. This suggests that the guarantor as well as the four debtors all act as shell companies for EDT Ship Management. The Dutch Ministry of Finance states that this is not a

problem as long as it is clear on which party the credit risk is run, and that this risk is considered acceptable. As the risk for all these four transactions is registered as located in BVI, it appears that Atradius DSB considered the tax haven based guarantor to be a sufficiently reliable business partner. EDT Ship Management has confirmed to Both ENDS that they were never contacted by Atradius DSB as part of its due diligence procedures.

While identifying EDT Ship Management as the principal controller of the ships, it emerged that this company is wholly owned

by Santol S.A., a Liberian company. Liberia ranks highly on the financial secrecy index of Tax Justice Network³⁹. It is not clear whether Atradius DSB was aware of this Liberian company being the ultimate beneficial owner of the 4 ships, or whether the various layers of business relations behind these four separate transactions triggered extra due diligence procedures. Finally, one can question why a Dutch exporter should have been eligible for state support in doing business with four clients all apparently acting as shell companies for the same ultimate beneficial owner, who was not disclosed at the time.



Damen fast crew supply boat operated by EDT Ship Management, owned by Kardemex Trading Ltd. Source: www.offshoreenergytoday.com



Road Town: this town alone has 80 trust companies that register thousands of shell companies operating from the British Virgin Islands. Source: <http://www.bvitalktourism.com>

5 CONCLUSION

The Dutch Ministry of Finance is responsible for the policies implemented by Atradius DSB. Yet this very same ministry is also responsible for the efforts of the Dutch government to prevent money laundering, as well as its tax department, the Netherlands Tax and Customs Administration. Yet, in promoting Dutch exports and investments abroad, Atradius DSB seems to pay little or no attention to the need to avoid giving public support to activities that may involve money laundering or tax evasion. Rather than ensuring that private companies contribute their fair share by paying taxes Atradius DSB may actually help some companies to drastically reduce their tax liabilities.

When providing official export credit support, the objective of promoting exports seems to supersede all other policy objectives. The single-minded pursuit of this objective might well mean that the Dutch export credit facility is actually undermining the efforts of the Dutch Ministry of Finance in the battle against money laundering and its tax collection efforts. These last two duties clearly serve wider public sector interests. The export credit facility, which aims to promote the business interests of Dutch private companies, seems to lack the policy instruments required to avoid it from undermining those public duties of the Ministry of Finance.

The three case studies presented in this report suggest that Atradius DSB operates with scant regard for the true nature of the transactions it underwrites. In each of these cases

private Dutch exporting companies may well have benefited, but the specific constructions for administering these transactions may well have resulted in negative tax effects for the Dutch government. By structuring the sale of capital goods through shell companies in tax havens the actual transfer of these goods is detached from the transfer of their payments. The Netherlands also has lenient policies that facilitate foreign companies to register shell companies in the Netherlands and this seems to be part of problem, as the difference between a Dutch and a non-Dutch company is not always obvious. The due diligence procedures of Atradius DSB seem to accept, at face value, the administrative structures presented by its clients. It is questionable whether this allows Atradius DSB to obtain a full picture of the real beneficial owners behind the main actors involved in such transactions. Thus, there is always the possibility that the transactions supported by the Dutch ECA could be money laundering activities.

Under domestic and international law, the Dutch government has the responsibility to prevent activities that potentially allow for money laundering and/or tax evasion. The involvement of shadowy actors, located in tax havens, in transactions that have obtained an export credit insurance policy and the seeming ignorance of Atradius DSB about these actors' involvement is alarming and points to serious weaknesses in Atradius DSB's due diligence procedures. These may in effect undermine the Netherlands' tax sovereignty and contribute to the erosion of its tax base.

³⁸ Elemena Shipping Limited, Kardemex Trading Limited, Felitex Shipping Limited, Mahita Sea Shipping Limited (all incorporated in Cyprus)

³⁹ See: <http://www.secrecyjurisdictions.com/PDF/Liberia.pdf>

POLICY RECOMMENDATIONS

The issues touched upon in this report have a scope that essentially is international in nature. Effectively addressing the serious issues raised in this report requires both national and international action. The following recommendations should be considered to ensure appropriate action on these issues, sooner rather than later.

FOR ATRADIUS DSB AND OTHER ECAS

1 ■ All ECAs - including Atradius DSB - need to explore options to **exclude transactions structured via tax havens** from obtaining government supported export credit cover.

2 ■ All ECAs - including Atradius DSB - require **more robust due diligence procedures** for all transactions that are structured via tax havens.

3 ■ All ECAs - including Atradius DSB - should require companies involved in transactions for which they provide cover to **apply country-by-country reporting** on the taxes they pay.

4 ■ All ECAs - including Atradius DSB - need to **publicly disclose the beneficial ownership** of all companies involved in transactions for which they provide cover (in particular the exporter, debtor, guarantor, financier).

5 ■ The legal requirement of ECAs to report suspicious transactions to financial intelligence units needs to be enhanced by **elaborating indicators for ECAs to apply in identifying money laundering or tax evasion** in transactions they are considering supporting.

FOR THE OECD

6 ■ The OECD should ensure that the **Action Plan on [Tax] Base Erosion and Profit Shifting is operationalised by its Export Credit Group (ECG)** and the ECAs of member countries.

FOR THE EUROPEAN COMMISSION

7 ■ The European Commission should ensure that the **Anti-Money Laundering Directive is operationalised in the Regulation on Officially Supported Export Credits** and its reporting requirements.

8 ■ The European Commission should include a **provision for the activities of ECAs in the upcoming revised Fourth Anti-Money Laundering Directive**.





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