TOXIC TAX DEALS

WHEN BASF'S TAX STRUCTURE IS MORE ABOUT STYLE THAN SUBSTANCE

CREDITS

A STUDY COMMISSIONED BY THE GREENS/EFA GROUP IN THE EUROPEAN PARLIAMENT

AUTHOR : Marc Auerbach

THE GREENS / EFA GROUP WOULD LIKE TO THANK SOL PICCIOTTO, FRANCIS WEIZIG AND MARKUS MEINZER FOR THEIR USEFUL COMMENTS ON THE REPORT.

GRAPHICS AND DESIGN : Capucine Simon
capucine.simon01@gmail.com
http://capucinesmn.tumblr.com

WWW.GREENS-EFA.EU
@GREENSEP
WWW.FACEBOOK.COM/GREENSEFA/

The Greens | EFA
in the European Parliament

TABLE OF CONTENTS

I. EXECUTIVE SUMMARY

This report presents original research into BASF's use of aggressive tax planning strategies that exploit mismatches in national tax systems and take advantage of loopholes and incentives available in certain European states, including **Belgium, Malta, the Netherlands and Switzerland. The report estimates that BASF used these tax planning strategies to avoid €923 million in tax over the 5-year period from FY2010 to FY2014.**

While tech companies like Google and Apple may steal the headlines by engineering spectacularly low effective tax rates for major European subsidiaries, this report presents evidence that industrial companies like BASF may also go to great lengths to shift profits and avoid taxes, even if the results are not as apparent.

Key findings concerning the tax planning strategies used by BASF are summarized below. Unless otherwise noted, the estimates for tax avoided are for the five-year period from FY2010 through FY2014. The report presents evidence that BASF:

- Used a network of Dutch holding companies to avoid German income tax on foreign-source dividends.
  Estimated tax avoided: ***€73.3 million***
- Exploited the Netherlands' overly generous participation exemption to avoid tax on income generated by an intra-Group "hybrid loan."
  Estimated tax avoided, 2013-2015: ***€177.9 million***
- Exploited the Dutch "Innovation Box" to obtain a preferential 5% tax rate on an undisclosed amount of intellectual property income.
  Estimated tax avoided: ***Unknown***
- Exploited Dutch rules which allow deductions for unrealized capital losses to avoid tax on income derived largely from sales to related companies in the Netherlands and Germany.
  Estimated tax avoided: ***€72.1 million***
- Used intra-group trading activities to:
  - Shift profits to Dutch subsidiaries with low-tax branches in Puerto Rico and Switzerland.
    Estimated tax avoided: ***€375.6 million***
  - Avoid French income tax.
    Estimated tax avoided: ***€37.7 million***
  - Shift profits to a low-tax Swiss subsidiary.
    Estimated tax avoided: ***€46.9 million***
- Used Belgium's notional interest deduction to avoid tax on earnings derived largely from transactions with BASF subsidiaries around the world.
  Estimated tax avoided: ***€202.0 million***
- Used Belgium's excess profits deduction to avoid tax from 2005 to 2014.
  Estimated tax avoided: ***€46 million***
- Used a €5 billion Maltese finance company that likely qualifies for a 6/7 tax refund applicable to subsidiaries with predominantly foreign income.
  Estimated tax avoided: ***Unknown***

The fundamental lesson that emerges from this research is that fulfilling the European Commission's goal of ensuring that multinationals pay tax where they generate value and profits will require a radical overhaul of the principles and mechanisms which govern the international tax system. **It is necessary to finally reject the two reigning fictions of international tax: that multinationals are collections of independent entities rather than highly integrated and interdependent organizations**; and that taxable profits can and should be allocated to their subsidiaries by determining an arm's length (or market) price for transactions between related entities.

In contrast to the present system premised on these fictions, the report calls for policy changes, including:

- **Mandatory public Country-by-Country-Reporting (CbCR) of key financial data** – to enable users of financial statements to assess whether taxes paid by multinationals in each country are in alignment with their substantive economic activities.
- **A Common Consolidated Corporate Tax Base (CCCTB)** – a single set of rules for determining taxable income, combined with an objective and efficient set of "keys" for allocating profits to the various jurisdictions in which multinationals operate, based on their substantive activities in those jurisdictions.
- **A minimum corporate income tax throughout the European Union** – to prevent a destructive race-to-the-bottom on rates once other avenues of aggressive tax competition are closed through the adoption of a CCCTB.

Without these changes, the multinationals and their tax consultants, together with states which choose to engage in destructive tax competition, will continue to get around efforts to clamp down on profit shifting and tax avoidance.

II. INTRODUCTION

This report presents original research concerning BASF's use of aggressive tax planning strategies to shift profits to low-tax subsidiaries and reduce the company's overall effective tax rate. **It details how BASF exploits opportunities that arise from aggressive tax competition by European states, including Belgium, the Netherlands, Malta and Switzerland.**

This research lends support to arguments made by a diverse group of experts that aligning tax with substantive economic activity requires a fundamental shift away from the broken paradigm that currently governs international tax in both the OECD and the EU.[1] This paradigm is based on the twin fictions thatsubsidiaries of the same corporate group are independent entities and that profit shifting by multinationals can be prevented by requiring intra-company transactions to be priced using an "arm's length" standard. In practice, the application of this paradigm has generated endless opportunities for profit shifting by multinationals, while making it difficult for Member States to challenge abuses, except in the most egregious cases.[2]

This report should encourage greater public discussion of aggressive tax planning by industrial companies, which have been largely overlooked in recent debates focusing on spectacular tax avoidance by technology giants like Google and Apple. Despite the challenges posed by the physical nature of their assets and activities, industrial companies like BASF also engage in aggressive tax planning, which deprives governments of needed revenues and distorts competition. [3]

The report presents circumstantial evidence that BASF uses intra-Group trading activities to shift profits to low-tax subsidiaries – a finding that has broader implications because a significant share of trade in developed economies occurs within multinational enterprises.[4] **This research thus points specifically to the potential for industrial companies with extended supply chains to shift profits through intra-group transactions.** Multinationals may engineer intra-group transactions so that affiliates in relatively high-tax countries can be treated for tax purposes as performing low-value-adding functions, such as routine production, stripped-risk distribution or even contract R&D. Meanwhile, substantial income is allocated to low-tax affiliates providing finance or business services or licensing intellectual property rights.[5] The objective is to shift tax-deductible expenses to relatively high-tax subsidiaries while moving profits torelatively low-tax subsidiaries, thus reducing the company's overall tax bill.

The purpose of this report is not to shame BASF but to illustrate the mismatches and gaps in European and national tax laws which practically guarantee that multinationals will adopt aggressive tax avoidance strategies. The scope of the report is necessarily limited to a subset of potential tax planning strategies used by BASF. This is due in part to the fact that many key subsidiaries are not required to make their annual accounts public. It is due also to the difficulty of extracting and analysing relevant information from available public filings, which are not designed to inform the public about corporate tax planning.

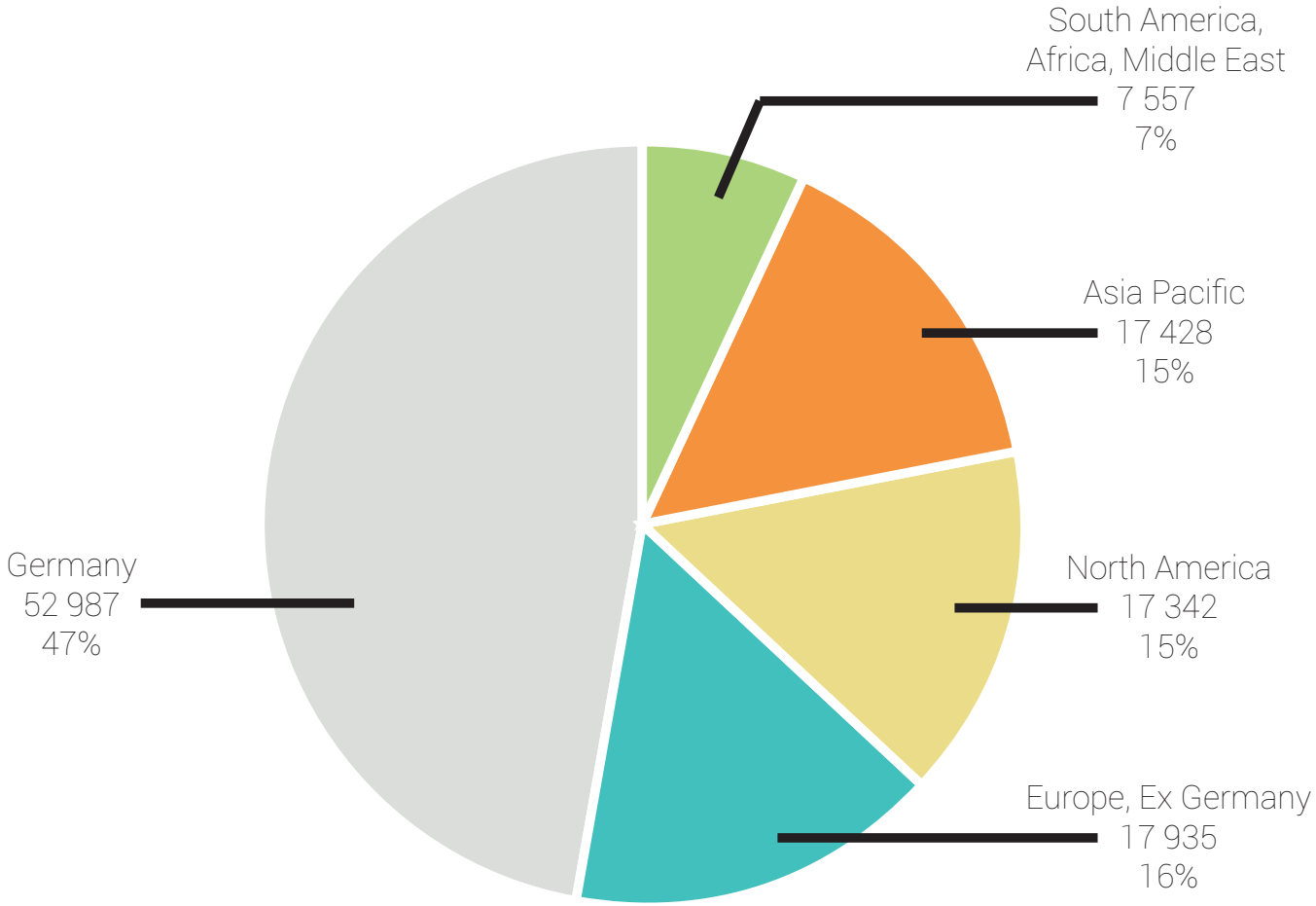
A note on the challenges of quantifying BASF's tax avoidance

The figures for potential tax avoidance presented in the report must be understood as estimates only, calculated on the basis of the researcher's interpretation of company filings and certain assumptions upon which it is necessary to rely due to information gaps in the filings.
In the aggregate, the estimated tax avoidance identified in the course of this research is clearly significant. But, given the limitations of BASF's financial disclosures and the complexity of its corporate structure, it was not possible to investigate the full extent of the company's tax planning activities or to provide a quantitative estimate of overall tax avoidance. Where possible, the report provides estimates of the tax avoidance achieved by BASF through particular subsidiaries, structures and transactions. These estimates are based on the researcher's best effort to understand the tax consequences of arrangements which are only partially disclosed in public filings.
In some cases, constructing the estimates required making certain assumptions in order to fill in the gaps in information provided by public filings. It is regrettable that required public disclosures do not provide a full picture of the tax position of multinationals. But until they do, efforts to analyse and quantify tax avoidance will necessarily involve a certain amount of speculation. Thus, the interpretations and figures presented in this report remain open to correction.

III. OVERVIEW OF BASF

BASF is the largest chemical company in the world, with €70.4 billion in sales, 112,000 employees, production sites in over 80 countries and more than 570 distinct business entities.[6] The company was founded in Germany in 1865 and almost half of all BASF employees work in Germany today – 39,000 of them in Ludwigshafen, where BASF has its headquarters, major production and research facilities and an intermodal transport terminal.[7]

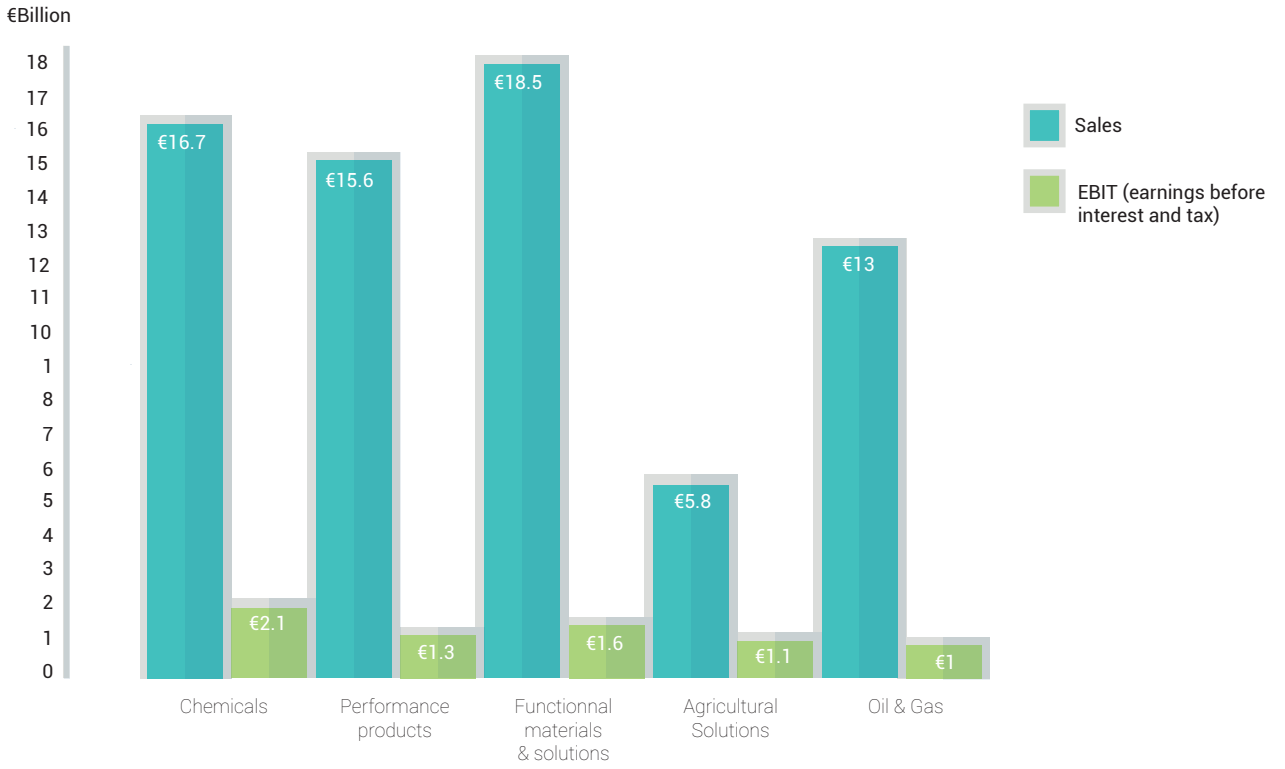
GRAPH 1: BASF EMPLOYEES BY REGION (FY 2015)



3.1. Lines of business

BASF sells basic chemicals, paints and coatings for plastics, and supplies chemicals to manufacturers in diverse sectors, including nutrition and health, pharmaceuticals and construction materials. The company's products and technologies end up in just about every type of good imaginable – from turbines, solar panels and cars to food, shampoo, paper goods and LCD displays. BASF's Crop Protection division, specializing in pesticides, recorded €5.8 billion in sales last year, making BASF one of the "Big 6" global agribusinesses.[8] And BASF is even in the oil and gas business, with exploration and production operations in Europe, North Africa, Russia, South America and the Middle East, and a joint venture with Gazprom, a Russian company, to transport gas in Europe.

GRAPH 2: BASF INTO 5 SEGMENTS



BASF Group companies are organized into five key segments: Chemicals, Performance Products, Functional Materials & Solutions, Agricultural Solutions and Oil & Gas.

1. Chemicals (Sales: €16.7 billion; EBIT: €2.1 billion) Solvents, plasticizers and high volume monomers to glues and electronic chemicals as well as raw materials for detergents, plastics, textile fibers, paints and coatings, crop protection and medicines.

2. Performance Products (2015 Sales: €15.6 billion; EBIT: €1.3 billion) Vitamins and other food additives, as well as ingredients for pharmaceuticals, personal care and cosmetics, as well as hygiene and household products, fuels and lubricants, adhesives and coatings, and plastics. Products with industrial applications in the paper industry, in oil, gas and ore extraction, and in water treatment.

3. Functional Materials & Solutions (2015 sales: €18.5 billion; EBIT: €1.6 billion) Services and products for specific sectors, especially the automotive, electrical, chemical and construction industries, as well as for household applications. Products include catalysts, battery materials, engineering plastics, polyurethane systems, automotive and industrial coatings and concrete admixtures as well as construction systems like tile adhesives and decorative paints.

4. Agricultural Solutions (2015 sales: €5.8 billion; EBIT: €1.1 billion) Products in the areas of chemical and biological crop protection, seed treatment and water management as well as solutions for nutrient supply and plant stress.

5. Oil & Gas (2015 sales: €13 billion; EBIT: €1 billion) Exploration and production in oil and gas-rich regions in Europe, North Africa, Russia, South America and the Middle East. Transport of natural gas in Europe, with joint venture partner Gazprom.

3.2. Corporate structure

BASF SE, a publicly traded company domiciled in Germany, is the ultimate parent company of the BASF Group. BASF SE is both the largest operating company in the Group and the direct or indirect owner of BASF's interests in 251 fully consolidated subsidiaries, 32 partially consolidated subsidiaries, 7 joint ventures and more than 200 associated business entities.[9] BASF SE publishes an annual report for the BASF Group and also issues separate financial statements for itself.

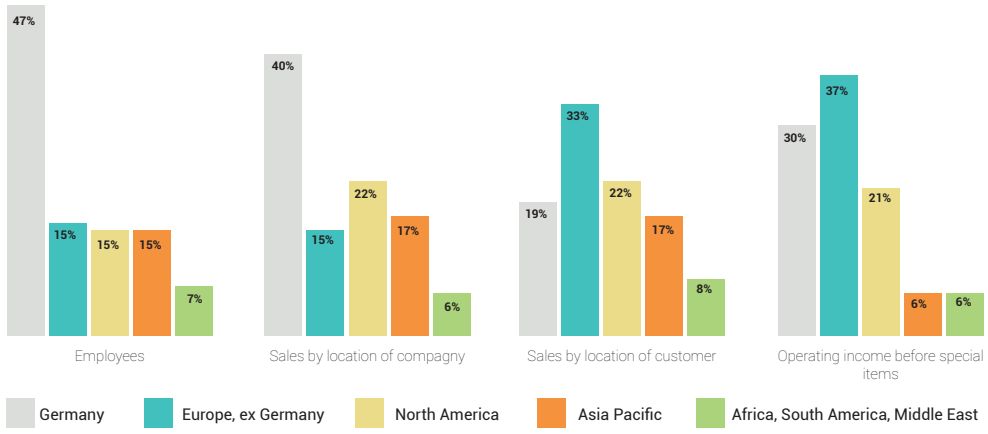
3.3.Tax geography: Key subsidiaries located in tax-friendly jurisdictions

Every BASF company is ultimately owned by BASF SE in Germany, where the Group has an enormous administrative apparatus.[10] 47% of BASF employees work in Germany, which only has 27% of the Group's physical assets.[11] This disparity is likely due to the fact that a large share of the German workforce is engaged in managerial, administrative and scientific work. But despite the managerial and administrative capacities available in Germany, BASF has formed a number of foreign subsidiaries to handle functions which can be used to manipulate the allocation of profits to the Group's hundreds of subsidiaries. These functions include:

- Ownership of major foreign subsidiaries and investments.
- Ownership of some BASF intellectual property, including certain patents and trademarks.
- Provision of finance and business services to BASF Group companies.
- Trading activities.

These subsidiaries are generally located in jurisdictions which offer preferential tax rates or special tax exemptions for multinational corporations, including Belgium, Malta, the Netherlands and Switzerland. This research uncovered compelling circumstantial evidence that BASF uses them, at least in part, for profit shifting and tax avoidance.

GRAPH 3: BASF EMPLOYEES, SALES AND INCOME BY REGION (% FY 2015)



3.4. Lobbying against tax reform

BASF has been a vocal opponent of OECD and European Commission efforts to combat profit shifting and tax avoidance. In particular, the company has formally opposed reforms that would require greater public transparency by multinationals. BASF opposed the European Commission's proposal to mandate public disclosure of the Country-by-Country Reports of key tax-related facts. The company testified in 2016 in the German Bundestag against requiring public disclosure, claiming that such information would not be useful to the general public. And BASF has also opposed efforts to require that secret tax rulings and advance pricing agreements concluded between individual member states and multinationals be exchanged multilaterally with other national tax administrations. For a fuller discussion of BASF lobbying on tax issues, see Annex I (p. 51).

Throughout this report the terms "BASF Group", "BASF" or just "Group" are used to refer to the multinational enterprise as a whole. "BASF SE" is used to refer specifically to the German parent company.

IV. BASF IN THE NETHERLANDS: LOOKS CAN BE DECEIVING

On paper, it looks as if BASF has a massive presence in the Netherlands, encompassing 29 distinct business entities with assets of more than €13 billion. But looks can be deceiving. Most of BASF's "Dutch" assets are accounted for by at least 70 subsidiaries spread across 29 foreign countries, from Azerbaijan to the United States (as of FY2014). BASF owns these subsidiaries through six high-level Dutch holding companies (Table 1).

Table 1 - BASF, High-level Dutch holding companies (FY2014)

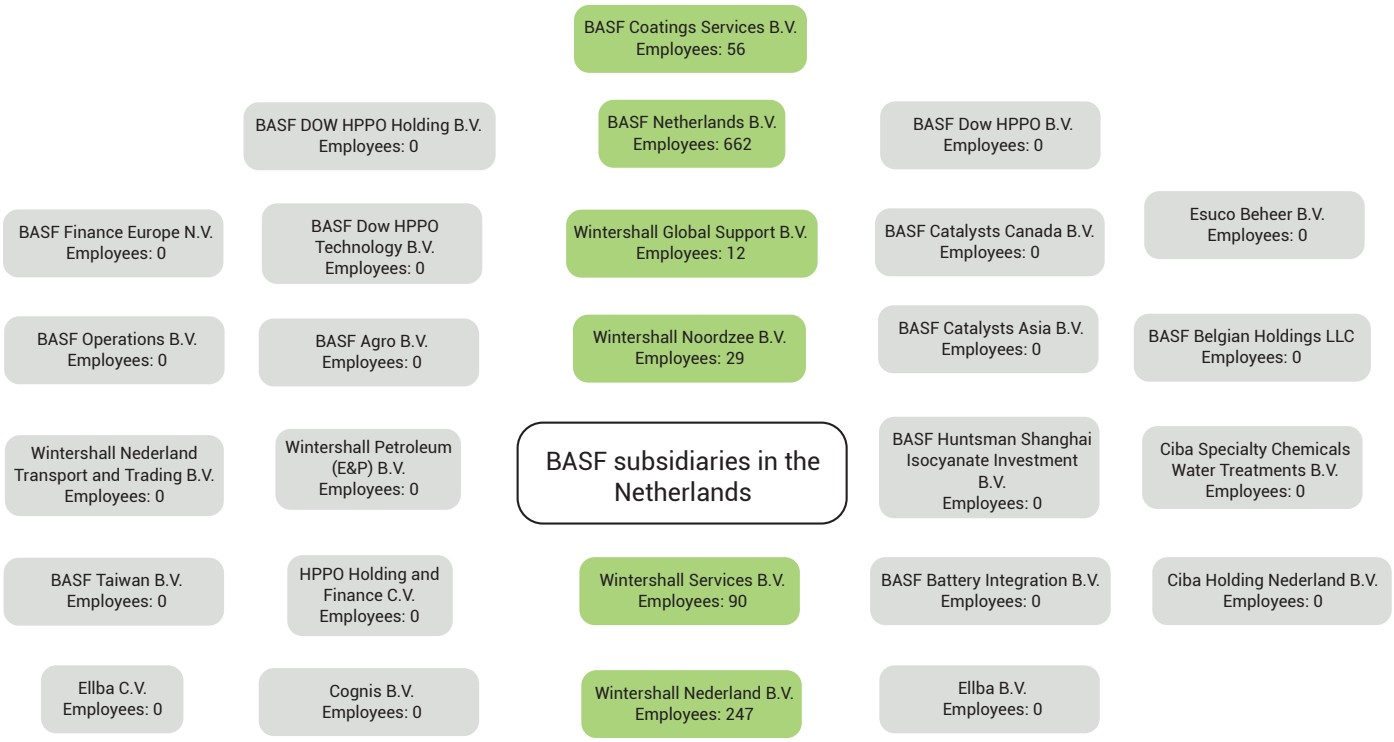
Subsidiary	Assets (€millions)	Known subsidiaries, branches and offices (direct and indirect)
BASF Nederland B.V.	€ 10,627.93	56
Wintershall Nederland B.V.	€ 943.42	6
Cognis B.V	€ 846.36	8
BASF Catalysts Canada B.V.	€ 367.84	1
BASF Catalysts Asia B.V.	€ 315.44	4
BASF Huntsman Shanghai Isocyanate Investment B.V.	€ 115.05	1
TOTAL	**€ 13,256.04**	**70***

** This research identified 70 known direct and indirect subsidiaries. The total is less than the sum of individual counts due to several cases where two of the holding companies share ownership of a lower-level subsidiary.*

This section of the report presents evidence that BASF uses its largest Dutch holding company, BASF Nederland BV, to facilitate tax avoidance:

- BASF's strategic decision to own major foreign subsidiaries through BASF Nederland BV allows it to avoid German income tax on foreign-source dividends.
- A large share of BASF Nederland BV's dividend income comes from low-tax foreign subsidiaries. Some of these subsidiaries earn a considerable portion of their revenues through transactions that could be used to strip profits out of higher-tax BASF subsidiaries.
- BASF Nederland BV has used tax loopholes and incentives to achieve a near-zero tax rate on its Dutch operating and finance income (i.e. non-dividend income).
- BASF Nederland BV's operating income may include profits stripped out of higher-tax subsidiaries in Germany, or elsewhere, via intra-Group sales and licensing.

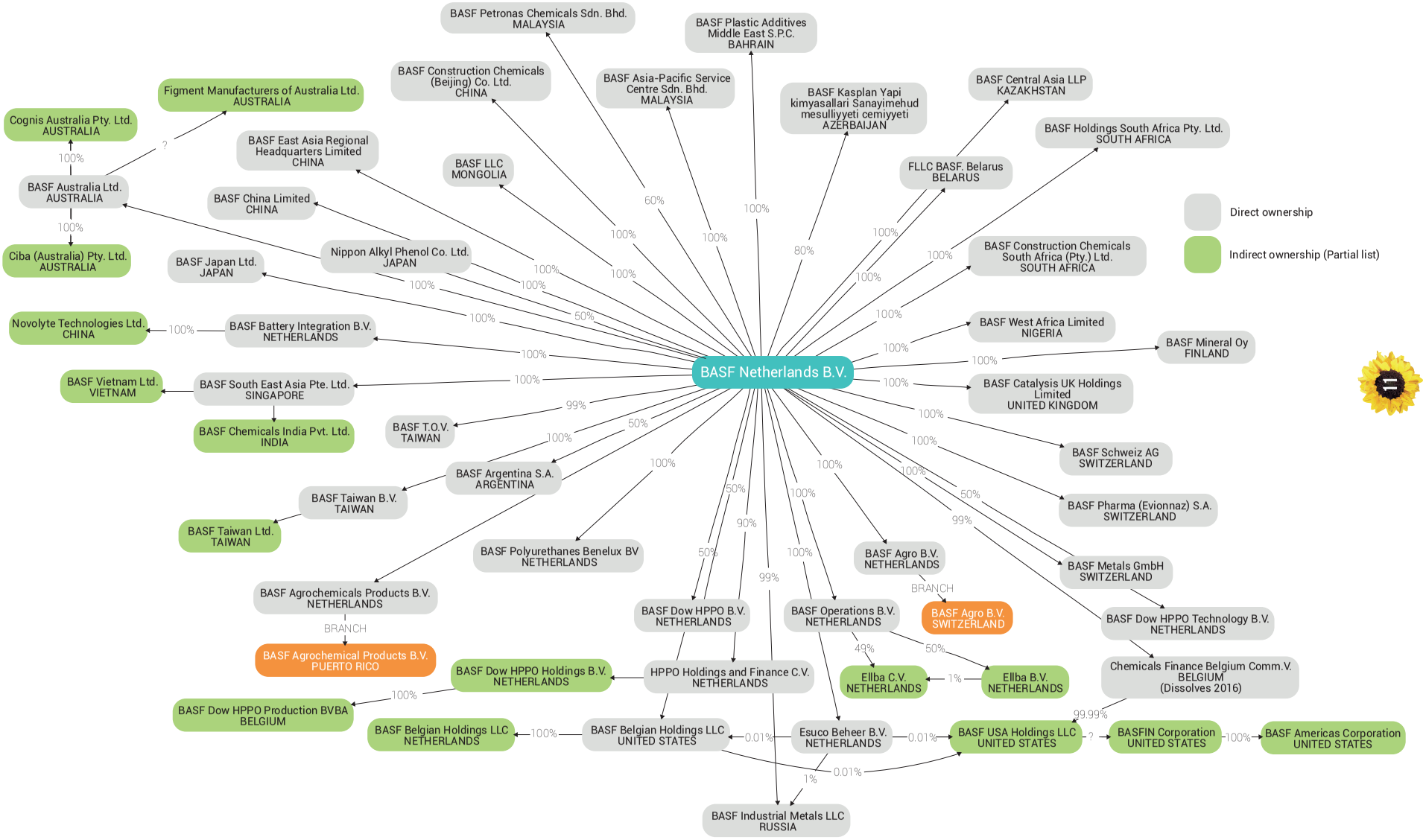
GRAPH 4: BASF SUBSIDIARIES IN THE NETHERLANDS



4.1. BASF Nederland BV: Tax advantages of a Dutch holding company

BASF Nederland BV is a holding company with 37 subsidiaries and (at least) 19 indirectly-owned subsidiaries, partnerships and permanent establishments spread across 16 foreign countries, including the United States, Japan, China, Vietnam, South Africa, Nigeria, Russia and India (as of FY 2014, see Fig. ___). It is also an operating company, with 5 factories and 662 employees in the Netherlands.

GRAPH 5: BASF NEDERLAND BV, SUBSIDIARIES AND ASSOCIATED ENTITIES (FY2014)



Background: The "overly generous" Dutch participation exemption

BASF benefits in a number of ways from using a Dutch holding company to receive dividends from non-German operations, rather than repatriating those earnings to BASF SE in Germany.

In principle, dividends are paid out of after-tax income. In order to prevent companies from being taxed twice on the same income, national tax systems typically grant a participation exemption to all or most dividend income received by companies from their own subsidiaries.

The participation exemption is a logical and necessary feature of modern tax systems, but it can be abused in cases where the dividend-paying subsidiary is located in a low- or no-tax jurisdiction and the dividend-receiving parent company is located in a jurisdiction which does not have strong anti-abuse laws.

A recent working paper prepared for the European Commission concluded that the Dutch apply their 100% participation exemption "too generously" because it is available even in cases where the subsidiary is tax-resident in a tax haven, or where the subsidiary was already able to obtain a deduction for the dividend payment.[12] This means that the Dutch participation exemption can be abused to achieve double non-taxation on dividends from subsidiaries located in low- or no tax jurisdictions.

Avoiding German income tax on dividends

BASF made the decision to own many foreign subsidiaries through holding companies domiciled in the Netherlands, rather than Germany, where the company is headquartered.

The consequence is that dividends repatriated go to the Netherlands, where they are 100% tax-exempt, rather than to Germany (where they would only be 95% tax-exempt). Dividends paid to BASF Nederland BV by Dutch subsidiaries with earnings from foreign permanent establishments are also tax-exempt.

Over the five-year period from FY2010 through FY2014, BASF Nederland BV booked €5.55 billion in net income but paid just €1.97 million in income tax, for an overall effective tax rate of 0.035%.[13]

In Germany, however, dividends from foreign subsidiaries are entitled to a 95% participation exemption. Over the five years covered by this report, BASF's statutory income tax in Germany varied from 29% to 30%, including federal income tax, the municipal-level trade tax and the solidarity tax. As a result, if foreign dividends had been paid to BASF SE or other German subsidiaries over this period, they would have been taxed at an effective rate of between 1.45% and 1.5%.

By directing €5.99 billion in dividends to BASF Nederland BV in the Netherlands over the five-year period from FY2010 through FY2014, the BASF Group avoided an estimated €73.3 million in German income tax (Table 3). During this period, BASF Nederland BV passed along just €958.1 million in dividends to BASF SE, in Germany.

AVOIDING GERMAN INCOME TAX ON FOREIGN-SOURCE DIVIDENDS
ESTIMATED 5-YEAR TAX AVOIDANCE, FY2010 – FY2014: €73.3 MILLION

Table 3 - BASF Nederland BV: Estimated German income tax avoided on foreign dividends. FY2010-FY2014 (Euros x 1,000).

	2014	2013	2012	2011	2010	TOTAL
Dividends received	€659,653	€399,554	€2,968,524	€642,768	€1,321,075	**€5,991,574**
Dividends paid by BASF Nederland BV to BASF SE	–	€900,000	€6,000	€201	€51,900	**€958,101**
German tax rate on dividends*	1.50%	1.45%	1.45%	1.45%	1.45%	–
German tax avoided (paid)	€9,895	€(7,256)	€42,957	€9,317	€18,403	**€73,315**

** Based on application of the 95% participation exemption and the statutory income tax rate (2014: 30%; 2010-2013: 29%).*

BOX 1 WHY MULTINATIONALS LOVE DUTCH SPECIAL PURPOSE ENTITIES

The Netherlands is a popular place for multinationals to establish special purpose entities, including holding companies, commonly used in aggressive tax planning. Features of the Dutch tax system which make it attractive to multinationals include: [15]

- A 100% tax exemption on dividend income and capital gains related to subsidiary holdings.
- A large and favourable tax treaty network that reduces withholding tax on dividends paid to and from Dutch holding companies.
- The presence of high-quality consultancy and administrative services, which allow multinationals to maintain special purpose companies without dedicated staff or offices.
- The absence of withholding tax on outgoing interest and royalty payments, which makes the Netherlands a tax-efficient location from which to recycle foreign earnings to larger multinational groups.
- The willingness of Dutch authorities to grant secret tax rulings that provide legal certainty for aggressive tax planning schemes.
- A "patent box" regime that can reduce taxes on foreign-source intellectual property income to 5%.
- The ability to deduct capital losses when they become likely, as opposed to when they have actually been realized through a sale of the asset in question.
- The authorities' acceptance of hybrid loans which facilitate double non-taxation by treating foreign-source interest payments as tax-exempt dividends.

4.2 €1.8 billion in tax-exempt dividends from low-tax subsidiaries

As discussed above, Dutch tax law does not require that dividend payments which benefit from the 100% participation exemption have been appropriately taxed in the source country. This makes Dutch holding companies attractive places for multinationals to route income from low-tax foreign subsidiaries. Over the five-year period from FY2010 through FY2014, five low-tax subsidiaries in Malaysia, the Netherlands (operating from branches in Puerto Rico and Switzerland),Singapore and Switzerland sent €1.8 billion in dividends to BASF Nederland BV (Table 4).

Table 4- *Dividends paid to BASF Nederland by low-tax subsidiaries [16]; FY2010-FY2014, Euros x 1,000*

Subsidiary	Country	Dividends paid	Tax rate**
BASF Agro BV	Netherlands (Swiss branch)	€ 827,168	6.2%
BASF Agrochemical Products BV	Netherlands (Puerto Rican branch)	€ 591,932	2.1%
BASF South East Asia Pte Ltd	Singapore	€ 345,374	11.4%
BASF Metals GmbH*	Switzerland	€ 41,901	8% to 10%**
BASF Asia-Pacific Service Centre*	Malaysia	€ 2,962	<1% [17]
TOTAL		**€ 1,809,337**	

** Excludes any dividends paid in FY2010, due to non-disclosure by BASF Nederland BV. Tax rate estimated based on Key Financial Information obtained from the Companies Commission of Malaysia for FY2014 (0%) and FY2015 (0.15%).*
*** This is an estimate of the likely maximum tax rate, in accordance with tax incentives available Malaysia.*

These low-tax subsidiaries derive a significant portion of their revenues from transactions with BASF Group companies, including European subsidiaries (Table 5). This could allow BASF to strip profits out of higher-taxed subsidiaries through strategies which exploit flaws in international tax rules, especially transfer pricing rules concerning the allocation of income among subsidiaries of a multinational group which trade with each other.

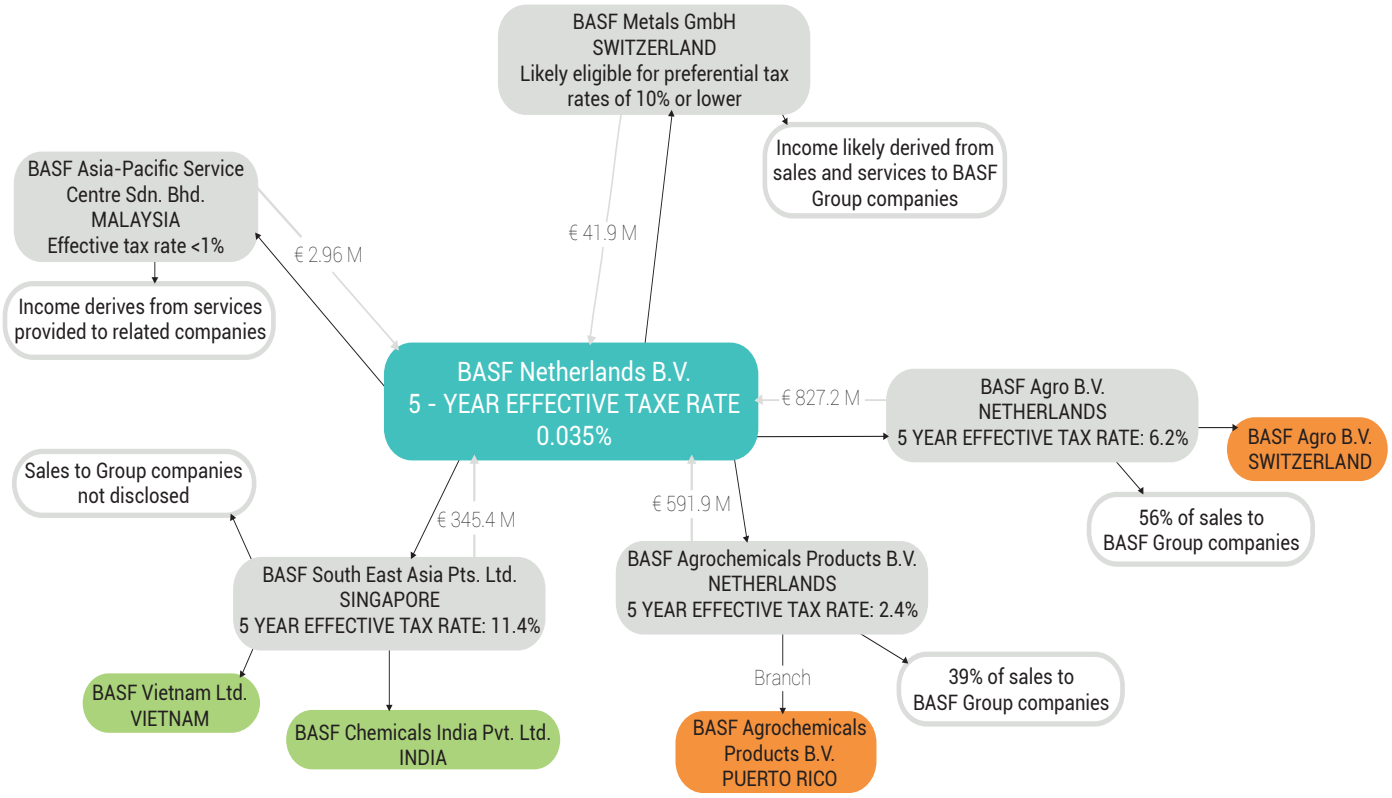
Transfer pricing rules generally require multinationals to treat their subsidiaries as if they were independent entities, dealing at "arm's length" with each other. In theory, this prevents companies from shifting profits to low-tax subsidiaries by manipulating prices. But "arm's length" transfer pricing rules are notoriously difficult to enforce.[18] And this encourages multinationals to minimize taxes by structuring their operations so that subsidiaries in high-tax countries are treated as fulfilling low-added-value functions, and therefore entitled to only modest profits, while large revenue flows (often in the form of royalties, management fees, or interest on loans) are directed to low-taxed subsidiaries.

Table 5 summarizes the evidence that the low-tax subsidiaries identified above derive a significant portion of their income from transactions with other BASF Group companies, which could facilitate profit shifting. More specific information concerning evidence of potential profit shifting involving two of these subsidiaries, BASF Agro BV and BASF Agrochemical Products BV, is presented later in the report (see p. 30).

Table 5- *Low-tax subsidiaries, evidence for large-scale intra-company transactions; FY2010-FY2014, Euros x 1,000*

Subsidiary	Net sales to BASF Group companies	Sales to group companies as % of total Sales	% of sales to Group companies attributed to Europe
BASF Agro BV (Netherlands/Switzerland)	€ 6,318,744	92.9%	56%
BASF Agrochemical Products BV (Netherlands/Puerto Rico)	€ 2,199,996	97.9%	39%
BASF South East Asia Pte Ltd (Singapore)	€ 18,202,400	44.0%	Not Disclosed
Evidence concerning subsidiaries which do not publish their financial statements			
BASF Asia-Pacific Service Centre (Malaysia)	Financial statements describe this subsidiary as a "Functional and corporate services provider to its related companies." [19]		
BASF Metals GmbH (Switzerland)	This company is responsible for trading in metals commodities and hedging price risks in the metal markets to ensure that "BASF sites and end users are supplied regularly and consistently with metals."[20] It is likely that BASF Metals GmbH derives a portion of its income from intra-company sales and/or commissions from other BASF Group companies.		

Sources: For BASF Agro, BASF Agrochemical Products BV and BASF South East Asia Pte Ltd., Analysis of subsidiary financial statements for FY2010 through FY2014. Currencies translated using x-rates.com for 31 December of the financial year.



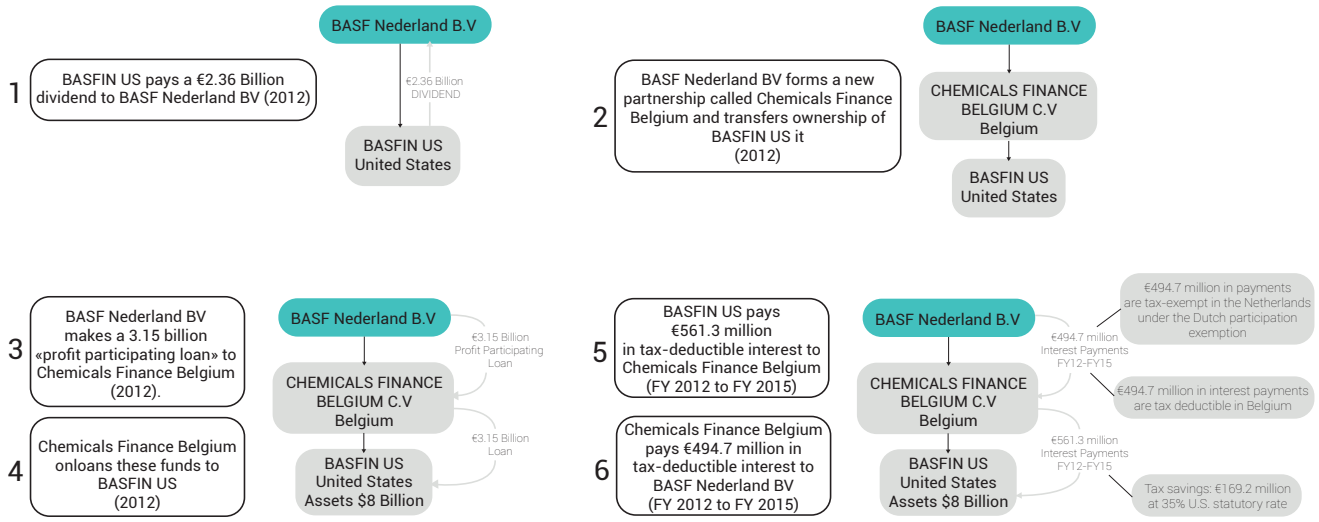
From FY2010 to FY2014, BASF Nederland BV received €1.8 Bullion in tax-exempt dividends from low-tax subsidiaries. Some of these subsidiaries earn significant income from other BASF companies, which could facilitate profit shifting and tax avoidance.

4.3 Using a "hybrid loan" to avoid tax

Multinationals sometimes use a financial instrument known as a hybrid loan to capitalize subsidiaries – and avoid tax. The "overly generous" Dutch participation exemption allows companies to structure hybrid loans so that the income they generate is not taxable. The hybrid is treated as a loan in the jurisdiction of the borrower/subsidiary and consequently payments on the loan are considered tax-deductible interest.

But in the Netherlands, the hybrid is treated as an equity investment and the income received by the Dutch parent/lender is treated as a dividend equivalent and qualifies for the 100% participation exemption. Dutch tax law allows for this outcome in cases where the Dutch parent company has an ownership interest in the borrower and the hybrid has the characteristics of a profit participating loan, i.e. where repayment is subject to the performance of the borrower. [21]

GRAPH 6: MECHANICS OF THE HYBRID LOAN EXECUTED VIA CHEMICALS FINANCE BELGIUM



From FY2013 through FY2015, BASF Nederland BV reported about a 500 million Euros in payments and foreign exchange gains on a €3.15 billion profit participating loan it had issued to another BASF subsidiary, Chemicals Finance Belgium CV (CFB) in Belgium. In Belgium, CFB deducted payments on the hybrid from its taxable income. In the Netherlands, the payments received from CFB qualified for the participation exemption, which means the underlying income escaped tax in both jurisdictions. But it is even a little more complicated.

A €3 BILLION HYBRID LOAN TO ACHIEVE DOUBLE NON-TAXATION ESTIMATED TAX AVOIDED OVER THREE YEARS, FY 2013 TO FY 2015: €169.2 MILLION

CFB used the loan from BASF Nederland BV to fund a loan to BASFIN, a BASF subsidiary in the United States. This enabled BASF to funnel €561.3 million in tax-deductible interest from the United States to Belgium, most of which was passed along to the Netherlands. **Ultimately, the arrangement likely generated a large tax savings for BASF in the United States, where the company would have avoided an estimated €177.9 million in tax, based on the U.S. statutory tax rate of 35%, and taking into account the small amount of tax paid on the interest income left in Belgium** (see Box 2 for a more detailed description of the hybrid loan). However, it is impossible to fully understand the hybrid loan arrangement from public filings because BASF's U.S. subsidiaries are not required to disclose their annual accounts.

BOX2 DETAILS OF THE HYBRID LOAN FROM BASF NEDERLAND BV TO CHEMICALS FINANCE BELGIUM

At the end of 2012, BASF Nederland BV transferred its US$8 billion stake in the BASF Group's U.S. operations to a new Belgian subsidiary it formed, a partnership called Chemicals Finance Belgium CV (CFB). Just prior to this, BASF Nederland BV had received a €2.36 billion dividend from its U.S. subsidiary, BASFIN Corp,[22] which it promptly recycled into a €3.15 billion loan to BASFIN. But BASF Nederland BV funded that loan indirectly, through a profit participating loan to Chemicals Finance Belgium CV, which then on-loaned the funds to the U.S. entity.[23]

By loaning BASFIN's own cash back to it through Belgium, it appears that BASF Nederland BV converted a massive U.S. asset into a debt that was then used to manufacture tax deductions for both the U.S. and Belgian subsidiaries involved in the transaction. And when the payments from CFB in Belgium arrived at BASF Nederland BV they were exempt from tax under the Dutch participation exemption.

The Anti-Tax Avoidance Directive (ATAD), once implemented by all Member States, would prohibit the abuse of hybrid financial instruments for tax avoidance, when the financial instrument involves subsidiaries within the EU. This would likely rule out the use of the structure described here. But it would not prevent European-based multinationals from using hybrids to strip profits out of non-EU subsidiaries. Such cases should be covered by the ATAD2 proposal, dealing with hybrid mismatches between EU and non-EU countries.

4.4 Masking artificial structures and transactions

If BASF chooses to establish holding companies in the Netherlands and is able to reduce its taxes by doing so, what is wrong with that? Certainly, if BASF Nederland BV or its subsidiaries exploit illegal preferential tax schemes or systematically misallocate profits to low-tax subsidiaries, that would constitute tax avoidance or even evasion. But what about the holding company structure itself?

The guiding principle of the European Commission's work on corporate tax reform is that companies should pay tax where they generate value and profits. This raises a critical question concerning BASF Nederland BV. Does it play a meaningful role in overseeing the activities of its subsidiaries, or is that work actually performed by BASF personnel in Germany (or elsewhere)?

This question cannot be answered definitively on the basis of public filings. **But BASF Nederland BV discloses that it only has 11 "key management" personnel, which does not seem enough to actively manage five production sites in the Netherlands, sales and administrative offices and a globe-spanning network of subsidiaries.**[24] It seems doubtful, then, that BASF Nederland BV plays a substantial role in managing its subsidiaries.

If it is the case that BASF Nederland BV is a partly artificial structure designed for tax avoidance, European jurisprudence would likely prevent the German tax administration from challenging the arrangement using the country's controlled foreign company (CFC) or general anti-avoidance (GAAR) rules. In the 2006 Cadbury Schweppes decision, the European Court of Justice ruled that member states may only restrict the freedom of establishment in cases where the arrangements in question are wholly artificial, are aimed at circumventing the law of the member state and do not go beyond what is required to do so.[25] Thus, BASF can protect itself from the application of German anti-avoidance rules simply by combining artificial structures and substantive activities in one subsidiary.

4.5 Loopholes and incentives to avoid tax on Dutch operating and finance income

BASF Nederland BV is not just a holding company. It is also an operating company, with 662 employees at eight locations in the Netherlands, including five manufacturing sites.[26] Most of the company's non-dividend income during the five-year period from FY2010 to FY2014 came from sales to undisclosed BASF subsidiaries in the Netherlands and Germany, and from interest and foreign exchange gains on loans and deposits with Group companies.[27] **Even after excluding tax-exempt dividend income, BASF Nederland BV achieved an effective tax rate of 0.31% over the 5-year period from FY2010 to FY 2014 (Table 6).** This suggests that BASF Nederland BV's sales to Group companies in Germany and elsewhere effectively stripped profits out of those countries and shifted them to a Dutch subsidiary with a near-zero tax rate.

***Table 6** - BASF Nederland BV, Tax overview; FY2010 – FY2014 (Euros x 1,000)*

Pre-tax income	Net operating and finance income	Income tax	Overall effective tax rate	Effective tax rate, excluding income from subsidiaries
€ 5,550,488	€ 629,333	€ 1,969	0.035%	0.31%

BASF Nederland BV's low tax rate on operating and finance income is partly explained by the impact of the hybrid loan arrangement discussed above (p. 23). But the company also benefitted from other loopholes and incentives available to Dutch operating companies, including the "innovation box" and deductions for unrealized capital losses.

The Dutch Innovation Box

A disclosure in BASF Nederland BV's FY2014 financial statements indicates that the company has benefited from the Dutch "Innovation Box" regime. Under this regime, qualifying intellectual property income, including capital gains, is entitled to a preferential tax rate of 5%, as compared with the Dutch statutory rate of 25%.[28] The company's filings do not indicate how much tax BASF may have avoided, as there is no obligation on the State or the company to even disclose whether they benefit from a patent box.

SHIFTING PROFITS AND AVOIDING TAX WITH THE DUTCH "INNOVATION BOX" TAX SAVINGS FOR BASF NEDERLAND BV AND OTHER BASF SUBSIDIARIES: UNKNOWN

Patent or innovation boxes are a type of preferential tax regime, specific to the European Union and multiplying among Member States. Currently, 12 countries grant or are preparing to grant patent boxes or equivalent schemes, which could facilitate tax avoidance rather than genuinely encouraging the promotion of R&D in these countries. Indeed, the allocation of intellectual property rights is key for tax matters but unfortunately is not always linked to where real economic activity takes place.

In November 2014, the European Commission criticized patent boxes as ineffective and costly: "patent boxes introduce a preferential rate for income from innovations that are already protected by Intellectual Property (IP) Rights." The Commission added that "Tax incentives for income generated by R&D, mostly patent boxes, can result in large decreases in tax revenue for all governments, including those engaging in such a policy." The OECD Base Erosion and Profit Shifting Action Plan also expressed concerns about patent boxes as a tool for tax avoidance. Finally, even the IMF has recommended that Europe rationalize its tax incentives, especially those related to intellectual property, but which do not seem to foster R&D.

All patent box regimes in Europe were declared contrary to EU law in 2014. Subsequently, Member States committed to a reform, known as the "modified nexus approach," which was validated at the OECD level. This approach requires a more direct link between the tax benefits granted by patent boxes and underlying research and development activities. Member States were required to have a modified nexus approach ready by 1st of July 2016.

The Dutch government formally issued a proposal for amendments to the innovation box on 20th September 2016, as part of the 2017 budget process.[28] The government's proposal retains the 5% tax rate on qualifying income[30] and considers that innovation boxes should be excluded from any future minimum effective tax rate legislation in the European Union. It is not possible to say how BASF would be impacted by these reforms.

Deductions for unrealized capital losses

The Netherlands allows companies to deduct from taxable income an unrealized capital loss due to an "impairment" in the book value of its assets, as opposed to an actual loss realized upon the sale of the assets.[31] During the four-year period from FY 2011 to FY2014, BASF Nederland BV took €288.5 million in tax deductions for capital losses attributed to impairments of its subsidiaries.[32] This allowed the company to avoid an estimated €72.1 million in tax, based on the statutory 25% corporate income tax.[33]

UNREALIZED CAPITAL LOSSES TO OFFSET OPERATING INCOME ESTIMATED TAX AVOIDED BY BASF NEDERLAND BV, FY 2011 TO FY2014: €72.1 MILLION

V. BASF'S CROP PROTECTION DIVISION: RED FLAGS FOR PROFIT SHIFTING

This section tells the tale of three BASF subsidiaries in the company's Crop Protection division, two of which are subsidiaries of the Dutch holding company, BASF Nederland BV. **These companies trade heavily with other BASF subsidiaries and their financial statements provide circumstantial evidence that intra-Group transactions are being used to shift profits to low-tax jurisdictions.** Existing transfer pricing rules are supposed to prevent the misallocation of profits through intra-group trading. The findings presented in this section suggest that those rules do not fulfil their purpose.

Two of the subsidiaries profiled here are domiciled in the Netherlands, but operate from foreign branches – one in Puerto Rico and the other in Switzerland. Both of these entities reported high profits and low taxes over the 5-year period from FY2010 to FY2014, thanks to preferential tax rates in Puerto Rico and Switzerland. The third subsidiary, which operates three-factories in France, had a high effective tax rate but reported almost no profits and paid hardly any tax over the 5-year period, despite recording more than €2.2 billion in sales. This contrast raises questions about the misallocation of profits.

BOX3 AN AMERICAN TAX EXPERT COMMENTS ON THE FAILURE OF TRANSFER PRICING RULES AND THE INDEPENDENT ENTITY PRINCIPLE

The members of large multinational groups of corporations are not separate economic actors. The point of vertical integration is not to have to pay arm's-length prices for some goods and services. It is a fool's errand to try to divine arm's-length prices for intragroup transactions, particularly for valuable intellectual property (IP) that is never licensed to outsiders.

Financial accounting ignores affiliates and treats the corporate group as a single entity. But the federal income tax law treats affiliates as separate economic actors, giving multinationals free rein to determine where their profits should be taxed, or more likely, not taxed.

Multinationals report vast profits in tax havens like the Cayman Islands, Luxembourg, Switzerland and Ireland. Economists have documented massive shifts of multinational corporations' profits to tax havens, in amounts wildly out of proportion to any economic activity taking place there. Some income is not taxed anywhere. Americans call it "nowhere income." Europeans call it "white income."

The Guardian and Bloomberg have published extensive, well-researched stories–complete with pictures laymen can understand–describing the process by which multinationals succeed in minimizing taxes in countries in which they do business.

Suppose a U.S. multinational wants to sell high-margin Chinese-made products to German customers. The multinational puts its IP in a tax haven, and requires its Chinese manufacturing affiliate to pay royalties. It converts its German distributor to a stripped-risk intermediary called a commissionaire to limit what would otherwise be sales margins taxable in Germany. Those profits are booked to a principal company in a European haven as compensation for assuming inventory risk. No profits are taxed in the United States, and little in Germany.

Lee Sheppard, "Transfer Pricing as Tax Avoidance" Forbes (25 June 2010). http://www.forbes.com/2010/06/24/tax-finance-multinational-economics-opinions-columnists-lee-sheppard.html

5.1 Background: Switzerland's preferential tax regime for multinationals

The EU concluded a bilateral agreement with Switzerland in 2014, requiring the latter to eliminate preferential federal and cantonal tax regimes for companies which conduct business primarily outside of Switzerland, or whose main activity is the holding or financing of foreign assets.[34] **In some cantons, the tax incentives – which have not yet been eliminated – typically reduce the effective tax rate to between 5% and 8%.**[35]

The European Commission had determined in 2007 that the preferential tax regimes violate the state aid provisions of the 1972 Swiss-EU Free Trade Agreement.[36] The Commission noted in its decision that the regimes provide low tax rates to subsidiaries responsible for management and coordination and trading activities, including intra-group financing, intellectual property licensing and re-invoicing – all of which can be "detached from the production and sales functions" performed elsewhere.[37]

5.2 BASF Agro BV: Dutch subsidiary uses Swiss branch for low taxes

While the EU was engaged in protracted negotiations with Switzerland over the elimination of the preferential tax regimes, BASF continued to allocate billions of Euros in revenues to Swiss entities which appear to benefit from them. One of these subsidiaries is BASF Agro BV, a trading and intellectual property holding company in BASF's Crop Protection division.

BASF Agro BV is a Dutch company, but it operates entirely from a branch office in Zurich, Switzerland, where it has formally secured a preferential 7% tax rate. The company's effective tax rate is even lower.[38] Over the five-year period from FY2010 to FY2014, BASF Agro BV recorded €6.3 billion in sales to BASF Group companies, sent €838.8 million in dividends to BASF Nederland BV, declared profits of €962.8 million and paid only €63.8 million in income tax – for an effective tax rate of just 6.2% (Table 7 below).[39]

It is not clear exactly what BASF Agro BV did over the five years from FY2010 to FY2014 to justify the revenues allocated to it by BASF. And there is circumstantial evidence that the company owes its excellent financial performance in part to profit shifting:

- **BASF Agro BV's profits appear disproportionate to its sales, assets and staff, which suggests that the income allocated to it by BASF may not be justified by real economic activity.**

Over the five-year period from FY2010 to FY2014, BASF Agro BV achieved a profit margin (the ratio of profits to sales) of 14.2% – twice that of the BASF Group as a whole. This is a striking result for a subsidiary that neither processes the goods it distributes nor engages in external marketing, and whose only physical assets are office furniture.[40] BASF Agro BV averaged €4.9 million in profit for each of its 39 (on average) employees during this period, compared with just €46.5 thousand for the BASF Group.[41] These disproportionalities suggest – but do not prove – that BASF Agro BV's profits are artificially inflated.

- **BASF Agro BV's major trading partners appear to be other BASF Group companies, which would provide ample opportunity to shift profits from higher tax jurisdictions.**

The vast majority (93%) of BASF Agro BV's turnover from FY2010 to FY2014 came from sales to BASF companies. Europe, with €3.8 billion in purchases, was BASF Agro BV's biggest market, followed by Mid and South America (€1.24 billion), North America (€1.21 billion) and the Asia Pacific region (€456.9 million).[42] And there is evidence that BASF Group companies also act as suppliers to BASF Agro BV (see p. 33). The fact that low-tax, high-profit BASF Agro BV appears to earn its revenues by acting as an intermediary in intra-group trade is consistent with – but does not prove – profit shifting.

- **There is evidence that BASF transfers intellectual property to BASF Agro BV in order to shift profits and avoid tax.**

BASF Agro BV owns, and continues to acquire, patents on some of the Crop Protection division's key products.[43] And there is evidence that BASF transfers intellectual property to BASF Agro BV specifically for tax planning purposes. A managing director of BASF Agro BV states in his LinkedIn profile that one of his responsibilities is to "Manage transfer of intellectual property (IP) rights of early R&D candidates to CH [Switzerland] to ensure BASF's future profits after tax are maximized..."[44]

The international tax experts in the BEPS Monitoring Group note that, "tax avoidance planning often involves the transfer of partially developed intangibles to a low or zero-taxed associated enterprise" that has little or no "capability to either conduct or even oversee the completion of the intangible project."[45] By transferring intellectual property while it is still (purportedly) in the early stages of development – i.e., not worth very much – the "arm's length" price to the R&D subsidiary in a higher-tax jurisdiction can be minimized. Where the acquiring company has no research capacity of its own, further development of the IP can be contracted out to the R&D subsidiary.

By arranging for BASF Agro BV to sublicense intellectual property to BASF Group companies with higher tax rates, BASF could shift income from these higher-taxed subsidiaries to the low-tax BASF Agro BV. For example, BASF Agri-Production SAS, in France, likely pays BASF Agro BV for the right to manufacture Fipronil,[46] to which BASF Agro BV owns the intellectual property rights.[47]
BASF may also take advantage of generous Swiss rules for amortizing intellectual property to rapidly convert the cost of acquiring IP into tax-deductible expenses. From FY2010

to FY2014, BASF Agro BV took €364.4 million in deductions related the amortization of concessions, licenses and intellectual property rights.

The European Commission determined long ago that the preferential Swiss tax regime violates the Swiss-EU Free Trade Agreement. It is therefore appropriate to treat the tax benefits obtained by BASF from these regimes as tax avoidance.

PROFIT SHIFTING TO A LOW-TAX SWISS/DUTCH TRADING COMPANY
ESTIMATE OF 5-YEAR TAX AVOIDANCE, FY2010 THROUGH FY2014: €208.3MILLION

BASF Agro BV's financial statements do not reveal the identity of its related company customers or their home country, which makes it impossible to determine the tax rates that would have been imposed on income which may have been shifted from elsewhere. Tax avoidance is estimated here by applying an income tax rate of 26.5% to the company's pre-tax income – the average of BASF's overall effective tax rate and the statutory rate in Germany over the period from FY2010 to FY2014. This yields an estimate of €208.3 million in tax avoided over the 5-year period, after subtracting tax paid by BASF Agro BV in Switzerland.

5.3 BASF Agri-Production SAS: Exporting French profits?

BASF Agri-Production SAS is a manufacturing subsidiary in France, where the statutory rate of tax is 33.33%. The company operates three pesticide factories and employs 500 workers. But despite sales of €2.25 billion over the 5-year period from FY2010 to FY2014, BASF Agri-Production SAS booked just €9.2 million in profits – a profit margin of just 0.41%.

The French company's poor financial performance is especially striking when it is contrasted with the 14.2% profit margin achieved by BASF Agro BV and the 39.3% profit margin achieved by BASF Agrochemical Products BV, a low-tax manufacturing subsidiary in BASF's Crop Division (see below and Table 7). Looking at profits per employee, the contrast between these subsidiaries is also dramatic. BASF Agri-Production SAS earned an average annual profit of just €3.8 thousand per employee, compared to €1.1 million for BASF Agrochemical Products BV and €4.8 million for BASF Agro BV.[48]

There is circumstantial evidence that these poor results are facilitated by profit shifting via the company's high volume of transactions with other BASF subsidiaries. BASF Agri-Production SAS purchased almost half of its inputs from low-taxed BASF Agro BV and sold its products primarily to BASF Group companies.[49] In FY2014, 96.8% of sales (€475.6 million) went to BASF Agro BV and BASF SE.[50] Although the lack of detail in financial statements makes it impossible to confirm profit shifting or to pinpoint specific mechanisms, these intra-group trading activities would have provided ample opportunity to shift profits out of France in order to avoid having them taxed at the statutory rate of 33.33%.

USING INTRA-GROUP TRADE TO SHIFT PROFITS OUT OF FRANCE
ESTIMATED 5-YEAR TAX AVOIDANCE, FY2010-FY2014: €37.7 MILLION

If tax-motivated profit shifting accounts for the consistently poor financial results at BASF Agri-Production SAS, how much tax did BASF avoid? Tax avoidance is estimated here by allocating additional profits to the company based on the conservative hypothesis that, in the absence of profit shifting, the company's operating margin (net profit as a percentage of sales revenues) would match that of the BASF Group as a whole. A tax rate of 27.1% is then applied to the income – equal to the French statutory rate of 33.33% minus the 6.2% effective tax rate of BASF Agro BV. This methodology is based on the assumption that income stripped from BASF Agri-Production France SAS was shifted to BASF Agro BV, from whom the French company purchased about half of all inputs. This methodology yields an estimate of €37.7 million in tax avoidance over the 5-year period from FY2010 to FY2014.

Table 7 - Key Crop Protection Division Subsidiaries, Profit Shifting Indicators; FY2010 through FY2014

	High-Tax/Low-Profit	Low-Tax/High-Profit	
Subsidiary	BASF Agri-Production SAS	BASF Agrochemical Products BV	BASF Agro BV
Effective tax rate	39.4%	2.4%	6.2%
Location	France	Dutch company with operations in Puerto Rico	Dutch company with operations in Switzerland
Activity	Manufacturer	Manufacturer	Trading Intermediary
Employees (avg)	500	122	39
Sales to group companies (%)	Most	96.8%	92.9%
Sales	€2,248.7 million	€1,724.5 million	€6,798.6 million
Profit	€9.2 million	€678.5 million	€962.8 million
Income tax	€6.0 million	€16.5 million	€63.8 million
Average annual profit per employee	€ 0.004 million	€1.1 million	€4.9 million
Net profit margin	0.41%	39.3%	14.2%

5.4 BASF Agrochemical Products BV: Puerto Rican incentives provide a 2.4% tax rate

In some ways, the Dutch/Puerto Rican subsidiary, BASF Agrochemical Products BV, and the French subsidiary, BASF Agri-Production SAS, are very similar. They both manufacture pesticides for BASF's Crop Protection division and do business primarily with other BASF Group companies. But when it comes to profits and taxes, the two companies couldn't be more different. Whereas BASF Agri-Production SAS in France faces relatively high tax rates and reports very little profit, BASF Agrochemical Products BV in Puerto Rico faces very low tax rates and reports high profits, a red flag for profit shifting.

BASF Agrochemical Products BV is a Dutch company, but it operates entirely from a branch in Puerto Rico, where it has a factory. The company reported €1.72 billion in sales over the five-year period from FY2010 to FY2014, booked €678.5 million in profits and, thanks to Puerto Rican tax incentives it paid just €16.5 million in tax – for an effective tax rate of 2.4%.[51] During this period, BASF Agrochemical Products BV sent €571.1 million in dividends to its immediate parent company in the Netherlands, BASF Nederland BV.

SHIFTING PROFITS TO A LOW-TAX DUTCH/PUERTO RICAN SUBSIDIARY ESTIMATED 5-YEAR TAX AVOIDANCE, FY2010-FY2014: €167.3 MILLION

For BASF Agrochemical Products BV, potential tax avoidance is estimated by applying a tax rate of 26.5% to net income reported by BASF Agrochemical Products BV and subtracting taxes actually paid from the result. This methodology yields an estimate of €163.3 million in tax avoidance over the 5-year period.

BOX4 BASF AVOIDS TAX WHILE PUERTO RICANS SUFFER FROM DEBT CRISIS

BASF Agrochemical Products BV secured its 2.4% effective tax rate through incentives granted by the Puerto Rican government. Puerto Rico, meanwhile, is facing a debt crisis so severe that the United States recently put an unelected seven-member board in charge of finances on the island, which remains a semi-colonial U.S. territory.[52]

Mired in economic recession for more than ten years, and disadvantaged in many ways by the island's semi-colonial status, Puerto Rico's government agencies issued a massive amount of debt to deal with the worsening economic situation. When the credit rating agencies finally started downgrading the island's $70 billion public debt in 2012, hedge fund investors swooped in to buy Puerto Rican debt up at bargain prices. Then the hedge funds demanded austerity measures to ensure the government prioritized debt repayment.

As journalist David Dayen writes, the Puerto Rican government has "cut back on health care and public transportation services, fired 30,000 public-sector workers, closed 100 schools, increased the sales tax by more than 50 percent, and even forced community credit unions to take IOUs in exchange for cash.[53]" Almost half the population now lives in poverty, according to official statistics.

VI. BASF'S OTHER SWISS TRADING COMPANIES

In addition to BASF Agro BV, the BASF Group has three companies in Switzerland which serve as trading and financial intermediaries in the Group's supply chain. **These subsidiaries are well-placed to take advantage of the preferential Swiss tax regimes that Switzerland has agreed to eliminate by 2019 under pressure from the EU.** In fact, they are all registered in Zug, which The Financial Times calls "one of the most aggressive tax-cutters among Switzerland's 26 cantons..."[54]

The subsidiaries include:

- **BASF Intertrade AG,** which manages chemicals trading and reported €220.9 million in profits over the five-year period from FY 2010 to FY 2014.[55]
- **Wintershall Oil AG**, which manages energy trading and reported €130.6 million in profits over the five-year period from FY 2010 to FY 2014.[56]
- **BASF Metals GmbH**, which manages metals trading and reported €25.1 million in profits over the five-year period from FY 2010 to FY 2014.[57]

These companies are not required by Swiss law to make their annual accounts public. However, financial statements for BASF Intertrade AG are available through the Accounting and Corporate Regulatory Authority of Singapore, where the company has a branch. These documents reveal that BASF Intertrade AG paid just €25 million in income tax on €245.9 million in pre-tax income over the five-year period from FY2010 to FY2014 – an overall effective tax rate of 10.2%.[58] That is consistent with widely reported estimates that trading subsidiaries in Zug typically obtain an effective tax rate of between 8% and 11% under the preferential tax regimes available to multinationals.[59]

Figure 1, below, is a Swiss corporate lawyer's illustration of the trading company structure used by multinationals to take advantage of the preferential Swiss tax regimes. If it is challenging to understand this diagram, don't be too concerned. Just keep in mind that, in all cases, the objective is to shift profits to the low-tax Swiss trading company.

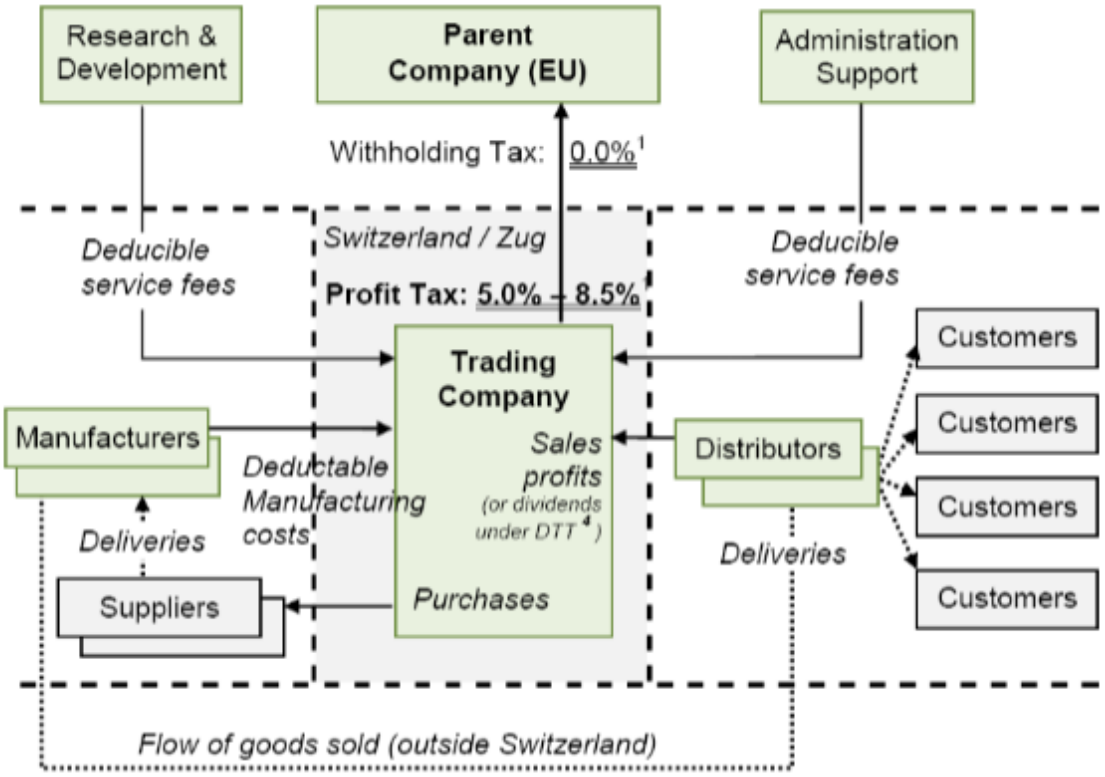


Figure 1 *- Michael Hartmann, Switzerland as Jurisdiction of Choice for International Trading and Tax Effective Supply Chain Management (TESCM)*

SHIFTING PROFITS TO A LOW-TAX SWISS TRADING SUBSIDIARY ESTIMATED TAX AVOIDANCE, FY 2010-FY 2014: ` MORE THAN € 46.9 MILLION

Tax avoidance by BASF Intertrade AG is estimated by calculating the difference between the tax actually paid by BASF Intertrade AG in Switzerland over the five-year period and what BASF would have paid if the profits had been taxed at the statutory rate in Germany. This methodology is based on the assumption that BASF Intertrade AG's functions would have been assigned to Germany, where BASF has a large administrative apparatus, in the absence of tax planning opportunities in Switzerland or elsewhere. This methodology yields an estimated five-year tax avoidance of €46.9 million (Table 8).

Table 8 - *Estimated tax avoided by use of Swiss trading subsidiary BASF Intertrade AG; FY 2010 – FY 2014 (Millions of Euros)* [60]

Company	After-tax income (reported)	Pre-tax income (est.)	Swiss tax paid (10.2%)	Tax at German rate	Tax avoided
BASF Intertrade AG*	€ 220.9	€ 245.9	€ 25.0	€ 71.9	€ 46.9

BOX5 SWISS COUNTER-REFORMS WILL REPLACE OLD LOOPHOLES WITH NEW LOOPHOLES

After years of negotiations with the EU, Switzerland finally agreed to eliminate the preferential regimes that appear to have benefited the four Swiss trading companies discussed in this report. But what comes next may be just as bad. The Swiss parliament approved Corporate Tax Reform III (CTRIII) in June 2016. CTR III implements the EU-Swiss agreement to eliminate the preferential tax regimes.[61] **But when the preferential regimes are phased out in 2019, CTR III replaces them with a comprehensive set of aggressive tax incentives that will seek to maintain Switzerland's status as a European tax haven, while complying with stricter OECD and EU standards.**

The new incentives in CTR III include a Notional Interest Deduction, a "super deduction" for research and development expenses, and a patent box. The legislation also includes capital step-up rules which experts say will allow beneficiaries of the old incentives to obtain equivalent tax relief for up to 10 years. These capital step-up provisions will also provide tax benefits to companies relocating to Switzerland.[62]

In addition to the new incentives in CTR III, some Swiss cantons have simply decreased their corporate income tax rates to levels that will provide companies with overall effective tax rates (cantonal and federal combined) as low as 12%.

VII. BELGIUM: PROFIT SHIFTING WITH GENEROUS LOOPHOLES

Two BASF subsidiaries in Belgium have exploited generous loopholes that can be used to facilitate large-scale profit shifting and tax avoidance.

7.1 The Notional Interest Deduction

Belgium's Notional Interest Deduction (NID) allows companies to take large deductions, even when "no payment occurs or interest expense is booked.[63] " Specifically, the NID allows a Belgian company to take an annual deduction for the notional ("hypothetical" would be a more accurate term) interest expense it would have incurred if it had been capitalized by its parent company with debt.[64] The NID was originally conceived as a replacement for the coordination center regime, a preferential tax scheme for multinationals that was deemed illegal state aid by the European Commission in 2003 and later phased out by Belgium.

BASF Belgium Coordination Center CV (BCC) is a Belgian subsidiary responsible for BASF Group treasury functions (cash-pooling, hedging of exchange rate risk, etc.), certain intra-Group sales in Belgium and Luxembourg and EU-level government relations. Almost all of BCC's revenues are derived from the services it provides to other BASF Group companies.

BASF BELGIUM COORDINATION CENTER,
NOTIONAL INTEREST DEDUCTION
ESTIMATED TAX AVOIDED OVER 5 YEARS, FY2010 THROUGH FY2014:
€202 MILLION

From FY2010 through FY2014, BCC reported taking €594.4 million in notional interest deductions on €618.1 million in net income and the company paid only €7.4 million in taxes.[65] Thus, the NID helped BASF to achieve an overall effective tax rate of just 1.29%, saving the company an estimated €202.6 million in taxes, as compared with Belgium's statutory rate of 33.99%. Because BCC's untaxed income derived primarily from expenses which would have been tax deductible for other BASF Group companies this is a classic example of profit shifting to achieve double non-taxation.

The annual "notional interest" deduction BCC can take on its €15.39 billion in equity should enable it to more or less avoid paying income tax indefinitely.

7.2 The Excess Profits deduction

BASF Antwerpen NV is an operating company with major production facilities in Belgium. It is also a holding company for Belgian and foreign subsidiaries in China, Egypt, the Netherlands and – formerly – Malta.[66] **From 2005 to 2012, Belgian tax authorities granted BASF Antwerpen NV four tax rulings permitting it to use the "excess profits" loophole, which this year was deemed illegal state aid by the European Commission.**[67] The Commission found that companies using this deduction were able to reduce their tax base by more than 50 percent.[68]

The excess profits deduction originated in a 2004 law that allows Belgian subsidiaries of multinationals to deduct income corresponding to so-called "excess payments" from foreign related companies. In other words, if the Belgian subsidiary of a multinational received more than an arm's-length price in a transaction with a foreign subsidiary of the same multinational, the excess profits loophole would allow the recipient company to exclude the "excess" portion of the payment from its taxable income.[69] The Belgian authorities, however, took no responsibility for ensuring that the excluded income was taxed in the source country. The loophole was therefore easily exploited by multinationals to strip profits from higher-tax subsidiaries and achieve double non-taxation.

BASF ANTWERPEN, EXCESS PROFITS SCHEME
ESTIMATED TAX AVOIDED SINCE 2005: AT LEAST €46 MILLION

The amount of "excess profits" that BASF Antwerpen NV deducted is not disclosed in financial statements and the company has refused to tell reporters how much tax it was able to avoid.[70] But the Company has disputed news reports saying that it will have to pay €200 million in back taxes as a result of the Commission's ruling.[71] The €46 million estimate for tax avoidance reported here is based on BASF Antwerpen NV's disclosure that it set aside €46 million in 2015 for the purpose of paying the tax liability it anticipates as a result of the Commission's ruling.[72]

The Belgian government has appealed the European Commission's determination that the excess profits loophole is illegal. In August 2016, the European Court of Justice ordered Belgium to collect €700 million in back

taxes while the appeal proceeds..[73] BASF has joined another lawsuit filed by a number of companies seeking to block implementation of the Commission's decision.[74] That case has yet to conclude.

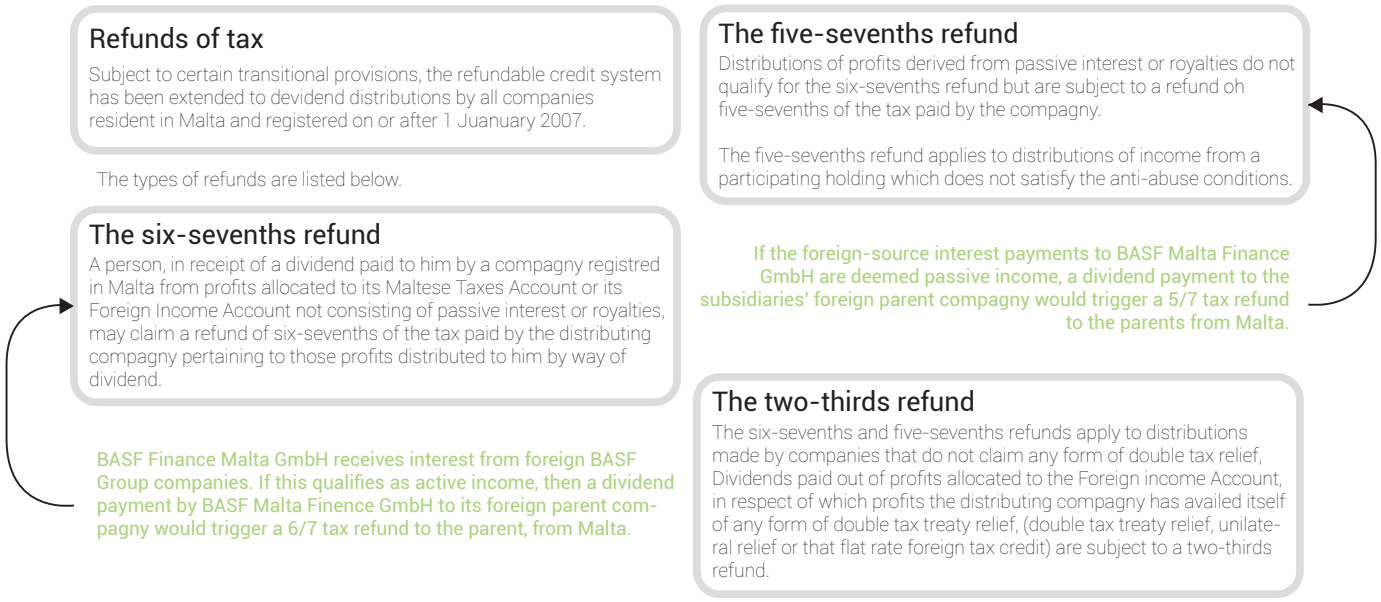
The Belgium government is presently considering a broad tax reform that would eliminate the Notional Interest and Excess Profits loopholes but also reduce the corporate income tax rate to 20% by 2020.[75] Thus, Belgium appears to be moving away from tax competition based on generous exemptions and deductions to tax competition based on low rates.

Overview of the BASF site in Antwerp, Belgium - Credit: BASF

VIII. BRANCHING OUT IN MALTA: BASF'S €5 BILLION GROUP FINANCE COMPANY

In a 2006 filing with the U.S. Securities and Exchange Commission, BASF disclosed the existence of a new Maltese subsidiary with €5.07 billion in assets. At the end of 2011, BASF apparently transferred these assets[76] to a new German subsidiary, BASF Finance Malta GmbH.[77] This "German" company is managed entirely from a rented office at the Mayfair Business Centre in St. Julian's, Malta – and therefore eligible for Malta's preferential tax regime.[78] BASF Finance Malta GmbH's assets consist entirely of loans to undisclosed BASF Group companies. **This implies that the company's income consists of tax-deductible interest payments from BASF subsidiaries, which could facilitate profit shifting from higher-tax jurisdictions.**[79]

GRAPH 7: EY TAX CONSULTANTS EXPLAIN MALTA'S TAX REFUND SYSTEM



Source: "Doing Business in Malta," EY (2015), p. 17. http://www.ey.com/Publication/vwLUAssets/EY-doing-business-in-malta-new/$FILE/EY-doing-business-in-malta-new.pdf

As an EU member, Malta provides multinationals with all the benefits of access to the EU Parent-Subsidiary directive, but also offers a tax refund system that allows multinationals to achieve tax rates of between 0% and 10% on foreign-source income.[80] The specifics of the preferential regime are complex and they have changed somewhat since 2010. Currently, Malta provides a refund of up to 6/7 of tax paid on foreign-source income, when that income is distributed to a foreign parent company as a dividend.

SHIFTING PROFITS TO MALA WITH INTRA-GROUP INTEREST PAYMENTS TAX AVOIDANCE: CANNOT BE ESTIMATED FROM PUBLIC FILINGS

It is not possible to estimate how much tax BASF Finance Malta GmbH avoided because the company only publishes abbreviated balance sheets with minimal financial information.

BOX6 ABOUT BASF MALTA FINANCE GMBH

There are few details in the public record regarding BASF Finance Malta GmbH's purpose or activities. Given the timing of its predecessor company's formation and the amount of assets involved, it is possible that the subsidiary was established to finance one, or both, of the major acquisitions BASF completed in early 2006: Degussa Construction Chemicals (for €2.7 billion) and Engelhard Metals (for US$ 5.1 billion).[81] One of the company's two managing directors is an accountant and business executive, who worked for Degussa prior to joining BASF Finance Malta.[82] The other managing director is Guido Hennissen, whose LinkedIn profile identifies him as a BASF tax manager and a director of BASF Antwerpen NV in Belgium.[83]

IX. CONCLUSION AND POLICY PROPOSALS

This report builds on a wealth of recent reporting and research into aggressive tax avoidance by multinational enterprises. The material presented here reinforces four overall conclusions which emerge from this growing body of work.

01

We need greater transparency and public Country-by-Country Reporting (CbCR)

This research into BASF's tax planning strategies has uncovered apparent disproportionalities between the substantive activities of certain BASF subsidiaries and the profits allocated to those subsidiaries. While such disproportionalities are red flags for tax avoidance, current financial reporting standards do not provide sufficient information to determine with certainty whether they result from artificial arrangements designed to shift profits to low-tax jurisdictions.

The European Commission's proposal to mandate public Country-by-Country Reporting (CbCR) would go a long way to solve this problem by requiring large multinationals to publicly disclose country-level data on the nature of their economic activities, the number of people employed, turnover, intra-group sales, profits and taxes for every EU country in which the company is active and for countries designated as tax havens.[84]

The Commission's proposal marks a significant advance in the effort to require greater transparency, but it should go a step further by requiring disclosure for all countries in which multinationals operate. This is especially important for developing countries where under-resourced tax administrations face an uphill struggle to identify and counter aggressive tax avoidance.

02

Multinationals should not be allowed to protect artificial structures and transactions by combining them with substantive activities.

This research into BASF's tax planning strategies reveals how easy it is for multinationals to protect artificial arrangements designed to facilitate tax avoidance by hiding them within structures and transactions related to substantive economic activities. Anti-abuse rules must be strengthened in order to realize the Commission's objective of ensuring that taxes align with real economic activity.

03

We need broad-based reforms to prevent states from replacing prohibited loopholes with "compliant" loopholes, and to prevent a race to the bottom on statutory corporate income tax rates.

As legal action, legislation and political pressure have forced states to modify or eliminate specific tax loopholes, some states are simply creating new loopholes they believe are compliant with emerging OECD and EU standards. There has likewise been a return to tax competition through simply lowering statutory corporate income tax rates. Ultimately, only broad-based reforms, combined with a minimum corporate income tax rate across the EU, can put a lid on aggressive tax competition and ensure that corporate income tax aligns with substantive economic activities.

04 We need to move away from the twin fictions of arms-length pricing (ALP) and the separate entity principle and move towards unitary taxation and a Common Consolidated Corporate Tax Base (CCCTB).

This report points to the most fundamental obstacle to the European Commission's goal of ensuring that multinationals pay tax where they make their profits: the opportunity for companies to benefit from a single European market while exploiting mismatches between the tax systems of member states.

In order to align taxation with real economic activity it is necessary to adopt a Common Consolidated Corporate Tax Base (CCTB). A CCCTB would establish a single set of rules that companies operating within the EU would use to calculate their taxable profits (the "common" in CCCTB) and a formula for allocating those taxable profits to member states based on their real economic activities (the "consolidated" in CCCTB).[85] To be effective and fair the CCCTB must be robust enough to prevent multinationals from shifting profits out of the EU and should also ensure that EU-based multinationals will not be able to shift profits out of non-EU countries to non-EU tax havens.

The Commission has proposed moving toward a CCCTB, but has unfortunately decided upon a phased approach in which the common tax base would be adopted first, followed by consolidation, if and when agreement can be reached. A common tax base would be a major step forward but without a transparent and objective method for allocating taxable profits among the subsidiaries of multinational corporations, the impact on tax avoidance will be limited.

The CCCTB implies moving away from tax rules based on the twin fictions that subsidiaries of the same multinational are "independent" entities from an economic point of view, and that profits and tax liability can be properly allocated to related subsidiaries by identifying an arms-length price for intra-company transactions. In developing alternative methods for profit allocation, the Commission can draw on the experience of federal states with unitary tax systems, including the United States, Canada and Switzerland. European experts have proposed a system that would allocate taxable profits to subsidiaries based on a limited number of "allocation keys," including, for example, the subsidiary's share of customers, employees and production facilities.[86] The question is not whether the move to full consolidation is necessary or feasible, but rather whether there is the political will to do so.

X. ANNEX I. BASF LOBBIES AGAINST REFORMS

BASF has been an increasingly outspoken opponent of proposals to reform the international tax system. In particular, the company has actively engaged the OECD Base Erosion and Profit Shifting project. It is also lobbying the United States Congress on tax issues.

10.1 United States

Since 2010, BASF has spent an average of $2.2 million per year lobbying the United States Congress.[87] The company recently disclosed in mandatory reports that one of the issues it is lobbying on this year is, "Legislative proposals on international tax reform, including interest deductibility, inversions and earnings stripping, BEPS and country reporting requirements."[88]

10.2 Germany/Europe

OECD BEPS Action 13 would require multinationals to provide relevant tax administrations with a country-by-country report showing revenues, pre-tax profits and tax paid and accrued for each jurisdiction in which the company does business. The European Commission is considering going further to require public disclosure of country-by-country reports. BASF testified recently in the German Bundestag against requiring public disclosure. The company's representative claimed that such information would not be useful to the general public.[89]

10.3 OECD

BASF opposed mandatory disclosure of secret tax rulings to all relevant jurisdictions

OECD BEPS Action 13 would require multinationals to disclose the tax rulings and advance pricing agreements (APA) they have obtained to all relevant national tax administrations. Tax rulings and APAs are commonly used by tax administrations in jurisdictions such as the Netherlands, Belgium, Luxembourg and Switzerland to provide legal certainty to multinationals using aggressive tax planning strategies. In a 2013 comment directed to the OECD Base Erosion and Profit Shifting Initiative, BASF argued that these documents should not be released to countries which are not directly involved in relevant transactions because, "...the APAs or rulings are very individual agreements that cannot be generalized and easily applied elsewhere."[90]

BASF opposed a clamp down on "commissionaire" arrangements used in profit shifting

OECD BEPS Action 7 makes modest reforms to the rules that currently allow multinationals to use so-called "commissionaire" arrangements to book sales revenues in tax haven subsidiaries rather than the countries in which sales are actually made.[91] BASF opposed Action 7, saying that it would lead to "additional administrative burdens for enterprises like registration, bookkeeping or filing of tax returns obligations and to additional costs connected with these obligations."[92]

BASF opposed efforts to tighten rules on profit shifting via intellectual property

The OECD BEPS Project issued a white paper in 2013 asserting the principle that income from intangibles such as patents, know-how and licenses should be attributed to the entities whose substantive activities confer value on the intangible.[93] BASF opposed the effort on the grounds that it is, "often impossible to identify a specific entity as performing 'control' over specific functions or risks."[94] The BEPS Monitoring Group argued that the principles outlined in the paper marked a step forward, but did not go far enough to prevent aggressive tax planning using intangibles.[95]

XI. ANNEX II. KEY SOURCES

Notes on methods and sources

Periodization: In the body of the report most references to financial results and estimates of tax avoided refer to the five-year period from FY2010 to FY2014. This is because FY2015 financial statements are not yet available for all the relevant entities. Where possible, a five-year period is used to minimize the distortions introduced by discrete events.
Currency translation: Where necessary, foreign currencies are translated into Euros using the exchange rates provided by x-rates.com for 31 December of the financial year. In some cases, minor discrepancies may be introduced because the BASF subsidiary in question translates currencies according to the (undisclosed) dates of individual transactions or simply uses a different rate.

Source documents: Most of the financial information used to construct this report comes from annual reports and financial statements issued by BASF companies. In some cases, the documents obtained from online sources are behind a paywall and there is no permanent URL available. All underlying documents will be made available upon request. A list of key sources, including links to company registers and websites, is provided in Annex II.

In many cases, the company filings which form the basis for this report are available online from official sources. However, it can be a challenge to access these documents because each jurisdiction has its own system for making them available to the public. This annex is intended to help researchers, journalists and policy-makers access the most relevant filings and provide general guidance on accessing company filings in the key jurisdictions mentioned in the report.

11.1 BASF Group annual reports and associated spreadsheets

2010 http://www.bericht.basf.com/2010/en/servicepages/filelibrary/files/collection.php
2011 http://www.bericht.basf.com/2011/en/servicepages/filelibrary/files/collection.php
2012 http://www.bericht.basf.com/2012/en/servicepages/filelibrary/files/collection.php
2013 http://www.bericht.basf.com/2013/en/servicepages/filelibrary/files/collection.php
2014 http://www.bericht.basf.com/2014/en/servicepages/filelibrary/files/collection.php
2015 http://www.bericht.basf.com/2015/en/servicepages/filelibrary/files/collection.php

11.2 Company filings for key subsidiaries

Belgium

Financial statements available, free.
BASF Antwerpen N.V. (No. 0404.754.472)
http://kbopub.economie.fgov.be/kbopub/toonondernemingps.html?ondernemingsnummer=404754472
BASF Belgium Coordination Center C.V. (No. 0862.390.376)
http://kbopub.economie.fgov.be/kbopub/toonondernemingps.html?ondernemingsnummer=862390376
Chemicals Finance Belgium C.V. (No. 0849.848.672)
http://kbopub.economie.fgov.be/kbopub/toonondernemingps.html?ondernemingsnummer=849848672

France

Financial statements available for purchase.
BASF Agri-Production S.A.S. (No. 343979092)
https://www.infogreffe.fr/societes/entreprise-societe/343979092-basf-agri-production-sas-690101B017420000.html?typeProduitOnglet=EXTRAIT&afficherretour=true&tab=entrep

Germany

Financial statements available, free.
BASF Finance Malta GmbH (HRB 62563)
Search at https://www.unternehmensregister.de
Abbreviated balance sheets only.
BASF SE (HRB 6000)
Search at https://www.unternehmensregister.de

Malaysia

Limited financial data available for purchase.
BASF Asia-Pacific Service Centre Sdn. Bhd. (672906-W)
Search at https://www.ssm-einfo.my/
BASF Petronas Chemicals Sdn. Bhd. (451307-K)
Search at https://www.ssm-einfo.my/

Malta

No financial statements.
BASF Finance Malta GmbH, branch (OC 538)
http://rocsupport.mfsa.com.mt/pages/SearchCompanyInformation.aspx
Abbreviated balance sheets available through the German company register.

Netherlands

Financial statements available for purchase.
BASF Agro B.V. ((9113314)
https://www.kvk.nl/orderstraat/product-kiezen/?kvknummer=091133140000
BASF Agrochemical Products B.V. (9113315)
https://www.kvk.nl/orderstraat/product-kiezen/?kvknummer=091133150000
BASF Belgian Holdings LLC (56972679)
https://www.kvk.nl/orderstraat/product-kiezen/?kvknummer=569726790000
BASF Nederland B.V. (9022883)
https://www.kvk.nl/orderstraat/product-kiezen/?kvknummer=090228830000

Puerto Rico

Financial statements available, free.
BASF Agrochemical Products B.V., branch (11431)
https://prcorpfiling.f1hst.com/CorpInfo/CorporationInfo.aspx?c=11431-112

Singapore

Financial statements available for purchase.
BASF Intertrade AG, branch (T03FC6403A)
https://www.tis.bizfile.gov.sg/ngbtisinternet/faces/oracle/webcenter/portalapp/pages/productlisting/ishopProductListing.jspx?EntityNo=T03FC6403A
BASF South East Asia Pte. Ltd. (197801536N)
https://www.tis.bizfile.gov.sg/ngbtisinternet/faces/oracle/webcenter/portalapp/pages/productlisting/ishopProductListing.jspx?_afrWindowId=null&_afrLoop=43003213039575&EntityNo=197801536N

Switzerland
No financial statements.
BASF Agro B.V., branch (CHE-100.827.649)
http://zh.powernet.ch/webservices/net/HRG/HRG.asmx/
getHRGHTML?chnr=02090013506&amt=020&toBeModified=0&validOnly=0&lang=1&sort=0
BASF Intertrade AG (CHE-107.451.373)
http://www.hrazg.ch/webservices/inet/HRG/HRG.asmx/
getHRGHTML?chnr=17030181810&amt=170&toBeModified=0&validOnly=0&lang=1&sort=0
Financial statements available for purchase through Singapore Accounting and Corporate Regulatory Authority of Singapore.
BASF Metals GmbH (CHE-102.997.162)
http://www.hrazg.ch/webservices/inet/HRG/HRG.asmx/
getHRGHTML?chnr=17030094489&amt=170&toBeModified=0&validOnly=0&lang=1&sort=0
BASF Schweiz AG (CHE-114.849.350)
http://bs.powernet.ch/webservices/inet/HRG/HRG.asmx/
getHRGHTML?chnr=27040024890&amt=270&toBeModified=0&validOnly=0&lang=1&sort=0
Wintershall Oil AG (CHE-103.006.181)
http://www.hrazg.ch/webservices/inet/HRG/HRG.asmx/
getHRGHTML?chnr=17030102921&amt=170&toBeModified=0&validOnly=0&lang=1&sort=0

11.3 Guide to company filings in key jurisdictions mentioned in the report

Belgium
The Belgian company registry may be searched at: https://kbopub.economie.fgov.be/kbopub/zoeknaamfonetischform.html. At each company page in the registry, a link is provided to the National Bank of Belgium (NBB) Central Balance Sheet Office page where financial statements may be downloaded for free. It is also possible to search for financial statements directly at: https://cri.nbb.be/bc9/web/companyfile?execution=e1s1.

Switzerland
The Swiss company registry is organized on a cantonal basis. Easymonitoring is a third party website that makes it easy to search for Swiss companies, regardless of the canton in which they are registered: https://www.easymonitoring.ch/index.aspx. Company pages on the Easymonitoring site aggregate company filings from the Swiss commercial register and provide a link to the company's official page. Swiss subsidiaries are not required to publish financial statements.

The Netherlands
Financial statements and other official filings are available for purchase through the Dutch Chamber of Commerce at: https://www.kvk.nl/.

France
Financial statements and other company filings are available for purchase through the French commercial register at: https://www.infogreffe.fr/societes/.

Germany
Financial statements are available free through the German company register at: https://www.unternehmensregister.de. Other types of filings are available for purchase.

Malaysia

Financial statements may be purchased through the Companies Commission of Malaysia at: https://www.ssm-einfo.my/.

Malta

It is possible to verify the existence of active companies by searching the Malta Financial Services Authority registry of companies at: http://rocsupport.mfsa.com.mt/pages/SearchCompanyInformation.aspx. Company filings cannot be accessed online.

Puerto Rico

Financial statements and other company filings are available free through the Puerto Rico company registry at: https://prcorpfiling.f1hst.com/.

Singapore

Financial statements and other company filings may be purchased through the Accounting and Corporate Regulatory Authority of Singapore at: https://www.bizfile.gov.sg/.

REFERENCES

1. BEPS Monitoring Group, Comments on BEPS Action 10: The Use of Profit Splits in the Context of Global Value Chains (ND). https://bepsmonitoringgroup.files.wordpress.com/2015/02/ap10-profit- split.pdf; See also, Edward Kleinbard, "The Lessons of Stateless Income," 65 Tax Law review 99 (2011), pp. 147-152. http://ssrn.com/abstract=1791783; Lee A. Sheppard, "Is Transfer Pricing Worth Salvaging?" Tax Notes (30 July 2012). http://www.taxjustice.net/cms/upload/pdf/Sheppard_1208_Transfer_Pricing.pdf; M. P. Devereux and J.Vella «Are we heading towards a corporate tax system fit for the 21st century?" Oxford University Centre for Business Taxation, Working Paper 14/2014 (2014); S. Picciotto "Taxing Multinational Enterprises as Unitary Firms", International Centre for Tax and Development, Working Paper 53 (2016). http://www.taxjustice.net/cms/upload/pdf/Sheppard_1208_Transfer_Pricing.pdf

2. Ibid

3. For some examples, see: United States Senate Permanent Subcommittee on Investigations. Caterpillar's Offshore Strategy (Majority Staff Report) (2014). http://www.hsgac.senate.gov/download/report-caterpillars- offshore-tax-strategy-april- 1-2014; European Commission, State aid SA. 38375 (2014/NN) (ex 2014/CP) – Luxembourg Alleged aid to FFT (11 June 2014). http://ec.europa.eu/competition/state_aid/cases/253203/253203_1590108_107_2.pdf

4. OECD, Measuring Globalisation: OECD Economic Globalisation Indicators 2010 (2010), pp. 182-184 http://www.keepeek.com/Digital-Asset-Management/oecd/industry-and-services/measuring-globalisation-oecd-economic-globalisation-indicators-2010_9789264084360- en#.V-wRciQi_ZQ#page183

5. "Transfer Pricing," Tax Justice Network (ND). http://www.taxjustice.net/topics/corporate-tax/transfer- pricing/

6. BASF Group, BASF Report 2015 and associated data files, available from http://www.bericht.basf.com/2015/en/servicepages/filelibrary/files/collection.php; BASF, "Ludwigshafen site 2015 in figures," (Accessd 8 July 2016). https://www.basf.com/documents/corp/en/about-us/publications/reports/2016/LU-in- Zahlen-2015_Infoblatt_A4_EN.pdf; BASF in Antwerp Report 2015 (Accessed 8 July 2016), p.. 5. https://www.basf.com/documents/corp/en/about-us/publications/reports/2016/BASF_in_Antwerp_Report_2015.pdf ; OECD, Comments received on Public Discussion draft BEPS Action 4: Interest Deductions and Other Financial Payments Part 1 (11 February 2015) p. 93 https://www.oecd.org/tax/aggressive/public-comments- action-4- interest-deductions- other-financial- payments-part1.pdf; BASF SE, Financial statements for FY2014

7. BASF, "About Us: History" (Accessed 15 June 2016). https://www.basf.com/en/company/about-us/history/1865-1901.html; BASF, "BASF Headquarters," (Accessed 15 June 2016). https://www.basf.com/en/company/career/why-join- basf/basf-at- a-glance/basf- headquarters.html; BASF, "BASF in Ludwigshafen Report 2013" (Accessed 15 June 2016), p.9 https://www.basf.com/documents/corp/en/about-us/publications/reports/2014/BASF_Report_2013.pdf

8. BASF "About BASF's Crop Protection division" (Accessed 8 July 2016). https://www.basf.com/us/en/company/news-and- media/news-releases/2016/04/P- US-16- 034.html; Sara Knight, "Who owns our food system?" Pesticide Action Network (April 21, 2016).http://www.panna.org/blog/who-owns-our-food- system

9. BASF in Antwerp Report 2015 (Accessed 8 July 2016), p. 5. https://www.basf.com/documents/corp/en/about-us/publications/reports/2016/BASF_in_Antwerp_Report_2015.pdf; BASF SE, Financial statements for FY2014,

10. BASF, "BASF Headquarters," (Accessed 15 June 2016). https://www.basf.com/en/company/career/why-join-basf/basf-at- a-glance/basf-headquarters.html; BASF "BASF in Ludwigshafen Report 2013" (Accessed 15 June 2016), p.9. https://www.basf.com/documents/corp/en/about-us/publications/reports/2014/BASF_Report_2013.pdf; BASF, "Ludwigshafen site 2014 in figures," (Accessed 15 June 2016). https://www.basf.com/documents/corp/en/about-us/publications/reports/2015/BASF_Ludwigshafe_site_2014_in_figures.pdf

11. BASF Group 2015 Report and associated Excel files, available at: http://www.bericht.basf.com/2015/en/servicepages/filelibrary/files/collection.php

12. European Commission Taxation Papers, Study on Structures of Aggressive Tax Planning and Indicators, Working Paper N. 61 – 2015, p. 122. https://ec.europa.eu/taxation_customs/sites/taxation/files/docs/body/taxation_paper_61.pdf

13. BASF Nederland BV Financial statements for FY2010 through FY2014.

14. BASF Nederland BV Financial statements for FY2010 through FY2014.

15. For an in-depth discussion of this issue, see: Francis Weyzig, Taxation and Development: Effects of Dutch tax policy on taxation of multinationals in developing countries (2013), p. 125. https://francisweyzig.files.wordpress.com/2014/02/taxation_and_development1.pdf

16. For FY 2011 through FY2014, see BASF Nederland BV Financial statements; For FY2010, see individual financial statements for BASF Agro BV, BASF Agrochemical Products Products BV and BASF South East Asia Pte Ltd. Where necessary, national currencies are translated to Euros using historical rates as of 31 December, obtained from x-rates.com.

17. The subsidiary's effective tax rate in FY2015 was 0.15% (FY2014: 0%). See: BASF Asia-Pacific Service Centre, Key Financial Information for FY2014-FY2015, obtained from the Companies Commission of Malaysia; Special tax incentives are available to multinationals which make Malaysia a principal hub. See: "Tax relief for MNCs that make Malaysia a principal hub," MIDA (Accessed 27 July 2016). http://www.mida.gov.my/home/pdf/2465/news/; "Tax incentives for Malaysia as a regional hub and for research and Development," ACCA (Accessed 25 July 2016). http://www.accaglobal.com/content/dam/acca/global/PDF-students/2012s/sa_nov2011_RandD3_2.pdf

18. Ibid; Richard Murphy, White Paper on Transfer Pricing Documentation, BEPS Monitoring Group (13 November 2013). https://bepsmonitoringgroup.files.wordpress.com/2013/11/comments-submitted- by-the- beps-monitoring-group-white- paper-transfer- pricing.docxBEPS Monitoring Group, Response to OECD Consultation on Transfer Pricing, https://bepsmonitoringgroup.wordpress.com/2015/02/10/transfer-pricing- risk-recharacterisation- and-special-measures/; Sol Picciotto, Taxing Multinational Enterprises as Unitary Firms, ICTD Working Paper 53, http://www.ictd.ac/publication/2-working- papers/126-taxing- multinational-enterprises- as-unitary- firms

19. BASF Asia Pacific Service Centre Sdn Bnd. Corporate Information and Key Financial Information data obtained from the Companies Commission of Malaysia (9 September 2016).

20. See BASF Group, "BASF Metals GmbH (Accessed 15 July 2016). https://www.basf.com/ch/de/company/about-us/BASF-in- Switzerland/group-companies/BASF- Metals-GmbH.html

21. Gabriel van Gelder and Boudewijn Niels, "Tax Treatment of Hybrid Financial Instruments," Derivatives and Financial Instruments (July/August 2013). https://www.dlapiper.com/~/media/Files/Insights/Publications/2013/07/iDerivatives%20%20Financial%20Instrumentsi%20Tax%20treatme__/Files/Tax_Treatment_of_Hybrid_Finance_Instruments/FileAttachment/Tax_Treatment_of_Hybrid_Finance_Instruments.pdf

22. BASF Nederland BV, Financial statements for FY 2012, p. 42.

23. BASF Nederland BV, Financial statements for FY 2012, pp. 29,42, 49.

24. BASF Nederland BV, Financial statements for FY2014.

25. For a summary of the Cadbury Schweppes decision, see: European Commission Legal Service, C-196/04 –Cadbury Schweppes plc, Cadbury Schweppes Overseas Ltd v Commissioners of Inland Revenue, judgment of 12.9.2006 (November 2006). http://ec.europa.eu/dgs/legal_service/arrets/04c196_en.pdf

26. BASF Nederland BV, Financial statements for FY2014; BASF, "BASF in Nederland: About Us," (Accessed 15 July 2016). https://www.basf.com/nl/nl/company/about-us/BASF- in-Nederland.html

27. BASF Nederland BV, Financial statements for FY2010 through FY2014. These filings indicate that 72% of sales went to related parties during the 5-year period.

28. Kasper van Eck and Kimberly Schreuders, "The Netherlands: The Innovation Box," Bird & Bird (31 January 2011). http://www.twobirds.com/en/news/articles/2012/the-netherlands- the-innovation- box

29. "Tax Flash: The Netherlands maintains innovation box while tightening specific interest deduction limitations and reconsidering dividend tax treatment of cooperatives," Loyens & Loeff (21 September 2016). http://www.loyensloeff.com/en-us/news/publications/flashes/tax- flash-the- netherlands-maintains- innovation-box-while- tightening-specific-interest-deduction- limitations-and- reconsidering-dividend- tax-treatment- of-cooperatives

30. "Dutch government launches consultation on proposed changes to the innovation box," KPMG (23 May 2016). https://www.meijburg.com/news/dutch-government- launches-consultation- on-proposed- changes-to- the-innovation-box

31. "Why Invest in Holland? Corporate Income Tax," Netherlands foreign Investment Agency (2015) p. 15. http://investinholland.com/wp-content/uploads/2015/05/Corporate- Income-Tax.pdf

32. Tax avoided is estimated by multiplying the deductions taken by the statutory Dutch tax rate of 25%.

33. Tax avoided is estimated by multiplying the deductions taken by the statutory Dutch tax rate of 25%.

34. PwC, "Switzerland: an excellent choice – from a tax and business point of view," (Accessed 16 June 2016). http://cn.swisscham.org/sites/default/files/pwc_switzerland-an- excellent-choice_e%20- %20HK.pdf; Joint Statement of the Council of the European Union and the Swiss Federal Council (14 October 2014). http://www.news.admin.ch/NSBSubscriber/message/attachments/36882.pdf

35. Deloitte, "Switzerland Taxation and Investment 2015," (Accessed 16 June 2016), pp. 3-4. http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax- switzerlandguide-2015.pdf

36. European Commission Decision of 13 February 2007 on the incompatibility of certain Swiss company tax regimes with the Agreement between the European Economic Community and the Swiss Confederation of 22 July 1972, C(2007) 411 Final. https://eeas.europa.eu/switzerland/docs/c_2007-411_en.pdf

37. Ibid, p. 10

38. BASF Agro BV reports the 7% statutory rate in its financial statements.

39. BASF Agro BV, Financial statements for FY2010 through FY2014.

40. BASF Agro BV, Financial statements for FY2010 through FY2014.

41. Ibid; BASF Group Annual reports, FY2010 through FY2014.

42. BASF Agro BV, Financial statements for FY2010 through FY2014.

43. BASF Agro BV, Financial statements from FY2010 through FY2014.

44. Oliver Gernsheimer, LinkedIn profile (Accessed 16 June 2016). https://ch.linkedin.com/in/oliver-gernsheimer-2a7b4b19/en (Note: the section quoted here is only available in the PDF download of Mr. Gernsheimer's profile).

45. "Comments on BEPS Action 10: The Use of Profit Splits in the Context of Global Value Chains," BEPS Monitoring Group (2015), p. 17. https://bepsmonitoringgroup.files.wordpress.com/2015/02/ap10-profit- split.pdf

46. BASF Agri-Production SAS, Financial statements for FY2014 (p. 9 of the PDF file) and FY 2013 (p. 13 of the PDF file).

47. BASF Agro BV, Financial statements for FY2014, p. 4.

48. BASF Agri-Production SAS, Financial statements for FY2010 through FY2014.

49. BASF Agri-Production SAS, Financial statements for FY2010 through FY2014. For each of the years under consideration, BASF Agri-Production SAS discloses that its primary activity is the production of pesticides sold to BASF Group companies. In FY2014, FY 2012 and FY 2011, BASF Agri-Production SAS specifically discloses the amount of purchases from BASF Agro BV and these average 48% of all merchandise and primary materials purchased.

50. BASF Agri-Production SAS, Financial statements for FY2014, p. 49.

51. BASF Agrochemical Products BV, Financial statements from FY2010 through FY2014.

52. David Dayen, "How hedge funds deepen Puerto Rico's debt crisis," American Prospect (11 December 2015). http://prospect.org/article/how-hedge- funds-are- pillaging-puerto- rico; Gillian B. White, "Puerto Rico's problems go way beyond its debt," The Atlantic (1 July 2016). http://www.theatlantic.com/business/archive/2016/07/puerto-rico- promesa-debt/489797/

53. David Dayen, "How hedge funds deepen Puerto Rico's debt crisis," American Prospect (11 December 2015). http://prospect.org/article/how-hedge- funds-are- pillaging-puerto- rico

54. Ralph Atkins, "Troubling times for low-tax tradition in Switzerland's Zug," MSNBC, reprinted from the Financial Times. (24 Sep 2015). http://www.cnbc.com/2015/09/24/tax-avoidance- zug-a- canton-in- switzerlands-may- raise-rates.html

55. BASF Intertrade AG, Company Registry of Zug (Accessed 10 July 2016). http://www.hrazg.ch/webservices/inet/HRG/HRG.asmx/getHRGHTML?chnr=17030181810&amt=170&toBeModified=0&validOnly=0&lang=1&sort=0; BASF Intertrade AG, Financial statements for FY 2010 to FY 2014. Accessed through the Singapore Accounting and Corporate Regulatory Authority.

56. Wintershall AG, Company Registry of Zug (Accessed 10 July 2016). http://www.hrazg.ch/webservices/inet/HRG/HRG.asmx/getHRGHTML?chnr=17030102921&amt=170&toBeModified=0&validOnly=0&lang=1&sort=0; Analysis of BASF SE Financial statements for FY 2010 through FY 2014

57. BASF Metals GmbH, Company Registry of Zug (Accessed 10 July 2016). http://www.hrazg.ch/webservices/inet/HRG/HRG.asmx/getHRGHTML?chnr=17030181810&amt=170&toBeModified=0&validOnly=0&lang=1&sort=0; BASF SE Financial statements for FY 2010 through FY 2014.

58. BASF Intertrade AG, Financial statements for FY 2010 to FY 2014. Accessed through the Singapore Accounting and Corporate Regulatory Authority. Currency translation using rates available at x-rates.com for 31 December.

59. Emiko Terazono and Javier Blas, "Swiss ties to trading houses under strain" (26 March 2013). Financial Times http://www.ft.com/cms/s/0/c5c51e18-95f6- 11e2-9ab2- 00144feabdc0.html#ixzz4AvEI9SoJAfter-tax income for BASF Metals GmbH and Wintershall Oil AG is reported in the financial statements of BASFSE. Comprehensive financial information for BASF Intertrade AG is available
60. through the company's financial statements, which can be accessed through the Singapore Accounting and Corporate Regulatory Authority.

61. "Swiss Parliament approves Corporate Tax Reform III," EY (17 June 2016). https://www.eycom.ch/en/Publications/20160630-Swiss- Parliament-approves- Corporate-Tax- Reform-3/download; "Swiss Corporate Tax Reform III: Latest developments" Deloitte (2015). https://www2.deloitte.com/content/dam/Deloitte/ch/Documents/tax/ch-en- tax-international- tax-review- swiss-corporate-tax- reform-iii-032015.pdf; Harun Can and Petra Hess, "Switzerland: The End Of Swiss Tax Privileges For Holdings, Finance Branches, Principal And Mixed Companies" (15 April 2015). Mondaq http://www.mondaq.com/x/388676/Corporate+Tax/The+End+Of+Swiss+Tax+Privileges+For+Holdings+Finance+Branches

62. Ibid

63. "Notional interest deduction," EY (Accessed 23 June 2016). http://www.ey.com/Publication/vwLUAssets/Notional_Intrest_Deduction_2011/$FILE/NID%202011.pdf

64. Belgian tax law spells out the procedure for calculating the NID. See, "Belgium: Corporate – Tax credits and incentives," PWC (Accessed 22 June 2016). http://taxsummaries.pwc.com/uk/taxsummaries/wwts.nsf/ID/Belgium-Corporate-Tax- credits-and- incentives

65. BASF Belgium Coordination Center, Financial statements for FY2014.

66. BASF Antwerpen NV, Financial statements for FY2010 through FY2015.

67. European Commission Decision of 11.1.2016 on the Excess Profit Exemption State Aid Scheme SA.37667 (2015/C) (ex 2015/NN) implemented by Belgium (11 January 2016). http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_37667

68. European Commission, State aid SA.37667 (2015/C) (ex 2015/NN) — Excess profit tax ruling system in Belgium — Article 185§ 2(b) CIR92 — Invitation to submit comments (5.6.2015). http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2015.188.01.0024.01.ENG&toc=OJ:C:2015:188:FULL

69. European Commission Decision of 11.1.2016 on the Excess Profit Exemption State Aid Scheme SA.37667 (2015/C) (ex 2015/NN) implemented by Belgium (11 January 2016). http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_37667

70. Annie-Rose Harrison-Dunn, "BASF joins multinationals challenging Commission's 'illegal' tax ruling" (8 August 2016). http://www.nutraingredients.com/Regulation-Policy/BASF- joins-multinationals- challenging-Commission- s-illegal-tax- ruling

71. "BASF: 'Bedrag dat we moeten terugbetalen is veel lager dan 200 miljoen'" Het Nieuwsblad (12 January 2016). http://www.nieuwsblad.be/cnt/dmf20160112_02062459

72. BASF Antwerpen NV, Financial statements for FY 2015, pp. 29, 40

73. Order of the President of the General Court, Case T-131/16 R, (19 July 2016). http://curia.europa.eu/juris/document/document_print.jsf?doclang=EN&text=&pageIndex=0&part=1&mode=lst&docid=181920&occ=first&dir=&cid=892788

74. Annie-Rose Harrison-Dunn, "Capsugel takes Commission to EU court over 'illegal' tax scheme demands" (5 August 2016). http://www.nutraingredients.com/Regulation-Policy/Capsugel- takes-Commission- to-EU- court-over-illegal-tax- scheme-demands; Annie-Rose Harrison-Dunn, "BASF joins multinationals challenging Commission's'illegal' tax ruling" (8 August 2016). http://www.nutraingredients.com/Regulation-Policy/BASF- joins-multinationals-challenging- Commission-s- illegal-tax- ruling

75. "Belgium may reduce corporate income tax rate to 20% by 2020 in context of broader tax reform," PwC (2 September 2016). http://www.pwc.com/us/en/tax-services/publications/insights/belgium- may-reduce- corporate-income-tax- rate-to- 20-- by-2020.html

76. BASF, U.S. Securities and Exchange Commission Form F-20 (2006), ex. 8.1. (Accessed 16 June 2016), p. 7. https://www.sec.gov/Archives/edgar/data/1024148/000110465907018854/a07-6595_1ex8d1.htm

77. BASF Finance Malta GmbH, Abbreviated balance sheets for FY2010 through FY2014.

78. The address listed in the company's German filings corresponds to the Mayfair Business Centre. The Centre's operator advertises that BASF rents office space there. See: "Mayfair Business Centre," Exalco (Accessed 10 June 2016). http://www.exalcogroup.com/en/mayfair

79. BASF Finance Malta GmbH, abbreviated balance sheets for FY2010 to FY2014.

80. "Financing Companies Efficiently," 3aMalta (Accessed 16 June 2016). http://www.3amalta.com/en/articles/item/121-financing- companies-efficiently.html; "Doing Business in Malta," EY (Accessed 16 June 2016), p. 17. http://www.ey.com/Publication/vwLUAssets/EY-doing- business-in- malta-new/$FILE/EY-doing- business-in- malta-new.pdf; "Doing Business in Malta," PwC (October 2012), pp. 108-111. https://www.pwc.com/mt/en/about-us/doing- business/doing_business_in_malta_2013.pdf

81. BASF, "Portfolio Optimization since 2005" (Accessed 15 June 2016). https://www.basf.com/en/company/investor-relations/basf- at-a- glance/strategy/portfolio-optimization/acquisitions.html

82. LinkedIn profile of Patrick B. Brown (Accessed 15 June 2016). https://mt.linkedin.com/in/patrick-b- brown-86551555

83. LinkedIn profile of Guido Hennissen (Accessed 20 June 2016). https://www.linkedin.com/in/guido-hennissen-327027103

84. European Commission, "Introducing public country-by- county reporting for multinational enterprises" (12 April 2016). http://europa.eu/rapid/press-release_MEMO- 16-1351_en.htm

85. European Commission, "Common Consolidated Corporate Tax Base (CCCTB)," (Accessed 2 October 2016). http://ec.europa.eu/taxation_customs/business/company-tax/common- consolidated-corporate- tax-base-ccctb_en#ccctb; European Commission, "Questions and Answers on the CCCTB re-launch," (17 June 2015). http://europa.eu/rapid/press-release_MEMO- 15-5174_en.htm

86. BEPS Monitoring Group, "Response to OECD White Paper On Transfer Pricing Documentation"(No date). https://www.oecd.org/ctp/transfer-pricing/BEPS- Monitoring-Group.pdf

87. Center for Responsive Politics, BASF profile at Opensecrets.org (Accessed 11 August 2016). http://www.opensecrets.org/lobby/clientsum.php?id=D000043117&year=2016

88. BASF, LD-2 Disclosure Forms for Q1 and Q2 2016, available at: http://soprweb.senate.gov/index.cfm?event=getFilingDetails&filingID=0A3A2F83-6EAB- 4DBA-8903-960186D6CA5D&filingTypeID=51 and http://soprweb.senate.gov/index.cfm?event=getFilingDetails&filingID=CDE8654E-E1C0- 4672-A98E-C31E18482FBF&filingTypeID=60

89. "Steuerhinterziehung trifft Entwicklungsländer stark" Deutscher Bundestag (20 June 2016). https://www.bundestag.de/dokumente/textarchiv/2016/kw25-pa- finanzen/427144; Richard Murphy, "Those who claim country-by- country reporting doesn't provide useful information are not telling the truth" Tax Research UK (22 June 2016). http://www.taxresearch.org.uk/Blog/2016/06/22/those-who- claim-country- by-country- reporting-doesnt-provide- useful-information- are-not- telling-the- truth/

90. BASF Comments on the OECD White paper on Transfer Pricing Documentation (30 September 2013). https://www.oecd.org/ctp/transfer-pricing/BASF.pdf

91. "A commissionnaire arrangement may be loosely defined as an arrangement through which a person sells products in a State in its own name but on behalf of a foreign enterprise that is the owner of these products. Through such an arrangement, a foreign enterprise is able to sell its products in a State without technically having a permanent establishment to which such sales may be attributed for tax purposes and without, therefore, being taxable in that State on the profits derived from such sales. Since the person that concludes the sales does not own the products that it sells, that person cannot be taxed on the profits derived from such sales and may only be taxed on the remuneration that it receives for its services (usually a commission)." See, Preventing the Artificial Avoidance of Permanent Establishment Status ACTION 7: 2015 Final Report, OECD/G20 Base Erosion and Profit Shifting Project (5 October 2015) p. 9 http://www.oecd.org/ctp/preventing-the- artificial-avoidance- of-permanent-establishment-status- action-7- 2015-final- report-9789264241220- en.htm; For a critical, pro-reform, perspective on the weaknesses of the OECD proposal, see: BEPS Monitoring Group, "Comments on BEPS 7: Revised Discussion Draft on Preventing Artificial Avoidance of PE Status" (ND). https://bepsmonitoringgroup.files.wordpress.com/2015/06/ap-7- pe-revised- dd.pdf

92. Comments Received on Public Discussion Draft BEPS Action 7: Prevent the Artificial Avoidance of PE Status (1 January 2015) pp. 78-87. http://www.oecd.org/tax/treaties/public-comments- action-7- prevent-artificial-avoidance-pe- status.pdf

93. Revised Discussion Draft on Transfer Pricing Aspects of Intangibles, OECD (30 July 2013) pp. 13, 20-23. https://www.oecd.org/tax/revised-discussion- draft-intangibles.pdf

94. BASF, Written comments on the OECD Discussion Draft on Transfer Pricing Aspects of Intangibles (ND) https://www.oecd.org/ctp/transfer-pricing/basf- intangibles.pdf

95. BEPS Monitoring Group, "Response to OECD Revised Discussion Draft on Transfer Pricing Aspects of Intangibles" (ND). https://bepsmonitoringgroup.files.wordpress.com/2013/11/bmg-intangibles- response.pdf