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- running hard-hitting popular campaigns against the root causes of poverty and human rights violations
- mobilising support and building alliances for political action in support of human rights, especially workers' rights
- raising public awareness of the root causes of poverty, inequality and injustice, and empowering people to take action for change.

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Foreword

McDonald's ubiquitous global brand has rightfully become a symbol of the ills of corporate globalisation. Together with its anti-union stance,¹ the burger giant's practices reflect the substantial downsides associated with the growth of unbridled corporate power, market liberalisation and globalisation. In response, a diverse, grassroots, and global movement has blossomed to demand accountability for its prominent role in the homogenisation of consumer culture; the growth of low-paid, and precarious employment; and environmental degradation.²

In 2014, over 200 McDonald's workers in New York City went on strike for \$15 and a union. Since then, a global movement of McDonald's workers continues to demand living wages, and the voice and dignity that comes with union recognition. McDonald's workers continue to take strike and other bold worker actions in multiple countries, with local communities coming out in support of workers, to loudly question what benefit McDonald's brings them.

In 2015, War on Want together with a coalition of European and US trade unions, launched the Unhappy Meal report, which exposed how McDonald's was avoiding over €1 billion in taxes across the EU.³ The European Commission's years of investigation into the tax scheme concluded that although McDonald's tax ruse was grossly unfair, it did not breach the narrow state aid rules which the EU applies to cases of tax dodging.

Subsequent reports⁴ have further exposed McDonald's widespread use of aggressive tax strategies around the world.

In this report, '*Secrets and Fries*', we expose a circular, paper transaction between McDonald's subsidiaries that could reduce its tax bill by at least \$400 million over ten years. McDonald's Corporation had altered its corporate structure following multiple exposés and scrutiny of its tax affairs at the EU and national levels. We reveal how its latest restructure moved its European headquarters and a number of key assets back to London to take advantage of the UK's highly favourable tax regime. After the restructure, McDonald's UK corporate entities receive billions in annual revenue in the form of royalty payments from McDonald's subsidiaries around the world but pay little tax in the UK. These practices also reduce the amount of tax McDonald's owes in other countries around the world.

Whilst McDonald's passes billions of its global revenue through a company registered in an unassuming office in the fashionable Shoreditch area of London, the corporation invests heavily in promoting its corporate social responsibility initiatives and charitable donations. However, the social impact of its aggressive tax strategy far outstrips any potential benefit from these initiatives.

Strikes and other worker actions in multiple countries over poverty wages,⁵ sexual harassment,⁶ safety⁷ and union recognition, have brought the unfair distribution of wealth

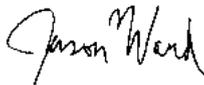
caused by McDonald's business model into sharp focus. McDonald's workers are seeking the dignity and respect that comes from earning living wages, working in safe environments and having their union recognised for collective bargaining. They want a fairer distribution of the wealth they create. Whilst corporate globalisation has posed challenges to worker organisations around the world, McDonald's workers and their global movement are showing how the power of McDonald's and other corporate giants may be effectively challenged.

This report must serve as a wake-up call for McDonald's to start giving back to the communities where it operates by paying living wages, providing safe and equitable workplaces, respecting its workers' right to a union and by paying its fair share of tax. McDonald's executives must heed that call, and public authorities must subject McDonald's business to forceful scrutiny until they do.

Solidarity forever,



Asad Rehman
Executive Director
War on Want



Jason Ward
Principal Analyst
Centre for International Corporate Tax
Accountability & Research (CICTAR)

📍 McDonald's workers on strike for £15/hour, guaranteed hours and a union, London, UK



Glossary

Amortise: An accounting process in which a firm writes off the cost of an intangible asset as a tax expense over its useful life,⁸ the period of time that an asset is expected to be useful to the firm. Similar to the process of “depreciation” for a fixed asset, such as a piece of machinery.

Developmental license: Agreements corporations – including McDonald's – make with large corporate partners to operate the licensors' businesses in geographic areas. McDonald's, for example, grants such licenses to corporate partners to operate all McDonald's locations in countries or regions.

Dividend: A payment made by a corporation to shareholders out of the corporation's funds. A shareholder can be an individual stockholder or a corporate entity with claims to corporate shares.

Franchising: A business arrangement in which a franchisor and its franchisees sign an agreement allowing franchisees to purchase the right to use the franchisor's concept, trade name, know-how, and other industrial or intellectual property in exchange for a series of payments, including ongoing royalty payments. Franchisors also provide ongoing commercial and technical assistance to their franchisees.⁹

Goodwill: A corporate accounting concept that captures as an intangible asset the hard-to-quantify aspects of the value of an enterprise when sold. It reflects the difference between the amount paid for a business and the total net fair value of all its separately identifiable assets minus all identifiable liabilities.

HMRC: Her Majesty's Revenue and Customs, the UK tax authority with responsibility for collecting taxes owed.

Holding company: A company whose main purpose is to hold substantial shares of other companies.

Intangible asset: A non-financial identifiable asset that has no physical substance such as goodwill, brand recognition and intellectual property such as patents, trademarks, and copyrights. In contrast, tangible assets include equipment, buildings and financial assets such as stocks and bonds.

Intellectual property: Creative and scientific works which are protected by a copyright, patent, registered design or trademark. The use of intellectual property may be permitted by a licensing agreement, in which payments for the use of intellectual property are made in the form of royalties – as in the arrangement between a franchisor and its franchisees.

Loan notes: A financial instrument similar to an “I Owe You” (IOU) that is a negotiated contract between the recipient and issuer for a loan that specifies the amount to be lent, the repayment schedule and typically a set of interest payments.

Net fair value: The amount an unrelated buyer would be willing to pay for something in an ‘arms length’ transaction on an open market. In other words, the price that would be paid if the parties were independent and unknown to each other.

Profit shifting: The allocation of income and expenses among related corporations or branches of the same company, often in order to reduce the overall amount of tax a company or corporate group needs to pay.¹⁰

continued



Glossary *continued*

Revenue: A company's sales or income before the deduction of any expenses. Revenue, also called turnover, forms the top line of a company's income statement from which expenses are deducted to arrive at profit or net income.

Royalties / royalty payments: Payments received for the use of, or the right to use, intellectual property, such as a copyright, patent, trademark, design or model, plan, secret formula, or process.¹¹

Subsidiary / parent company: A company controlled by another company, called the parent company. Subsidiaries are parts of the same corporate group as the parent company.

Systemwide sales: A term sometimes used by franchised corporations – including McDonald's – to refer to the value of sales at all the corporations' units, whether operated directly by the company, franchisees or developmental licensees.

Tax avoidance: The arrangement of a taxpayer's affairs intended to reduce their tax liability. Whilst the arrangement could be strictly legal, it is usually in contradiction with the intent or spirit of the law it purports to follow. It often involves contrived transactions that serve no real purpose other than to artificially reduce the amount of tax that someone has to pay.¹²

Tax credit: An allowance of deduction from, or a direct offset against, the amount of tax due – as opposed to a tax deduction which is an offset against income in the determination of taxable income.¹³

Tax deductible expense / Tax deduction: An item which is deducted from revenue to arrive at taxable income.¹⁴

Tax evasion: Illegal arrangements where tax liability is hidden or ignored. Taxpayers evade taxes if they pay less tax than they are legally obligated to pay by hiding income or information from tax authorities.¹⁵

Tax gap: The difference between the amount of tax that should, in theory, be collected by a tax authority and what is actually collected.¹⁶

Tax haven: Also known as 'secrecy jurisdictions', countries or other geographic units that have laws that enable people or companies to escape or undermine tax laws, rules and regulations of other jurisdictions, often using secrecy as the prime tool. These jurisdictions often have low or zero tax rates and are used by multinational corporations to avoid tax which would otherwise be payable in higher tax countries.¹⁷

Tax liability: The amount of tax owed in an accounting period.

Tax loophole: Opportunities available in tax law to minimize a taxpayer's tax liability.

Tax Shelter: A structure or program, especially one which involves holding assets, which reduces tax owed. Off-shore tax shelters are often associated with contrived schemes of questionable legality.

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1. Executive summary

The ‘Secrets and Fries’ report focuses on a circular, paper transaction by McDonald’s, that creates a UK tax shelter. This circular transaction could deprive the UK of at least \$400 million (£295 million) in public funds over ten years.

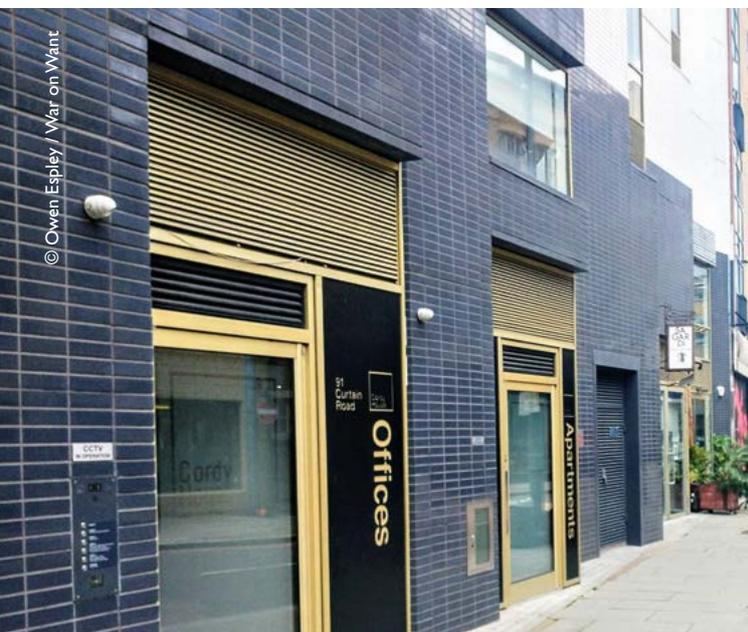
In 2016, a UK-based McDonald’s subsidiary, McD Global Franchising Ltd, purchased intangible assets from a Singapore-registered subsidiary. The payment, made using loan notes, circled the globe through McDonald’s subsidiaries in three continents until it was eventually returned back to McD Global Franchising Ltd. The transaction enabled McD Global Franchising Ltd to claim an expense for issuing the loan notes, but no corresponding taxable income when the loan notes were returned to it as a dividend. The loan notes and the debt they created were cancelled and amortisation could be claimed over at least ten years.

This transaction enables billions in royalties that McD Global Franchising Ltd receives from McDonald’s entities around the world to be shielded from taxation in the UK, depriving UK public funds of at least \$400 million (£295million) in tax revenue from one of the world’s largest multinationals.

These revelations mark a new chapter in the evolution of McDonald’s aggressive tax strategies highlighted by previous reports: The Unhappy Meal; Unhappier Meal; and The Golden Dodges. McDonald’s widespread use of franchising enables it to easily manipulate and move the location of intangible assets, including its intellectual property, for which royalty fees are paid by franchisees. Locating these assets and hence, collecting royalty income, in low tax jurisdictions helps McDonald’s reduce the tax it pays and denies local communities the public funds needed to support public services.

The report calls on Her Majesty’s Revenue and Customs (HMRC), the UK’s tax authority, to rigorously investigate McDonald’s affairs and for policy makers to address the City of London’s role as a tax haven for McDonald’s and other multinationals.

These findings are further evidence that McDonald’s business model drives inequality and demonstrates the need to rebalance economic rulemaking in favour of the workers and the communities in which McDonald’s and other multinational corporations operate. Workers and their communities deserve a fair share of the wealth they produce. It is time for McDonald’s to end its aggressive tax strategies.



2. McDonald's global business

McDonald's franchising model

At its core, McDonald's, the largest restaurant chain in the world, is a franchise business.¹⁸ Globally, 93% of McDonald's nearly 40,000 stores are operated by franchisees. The remaining locations are directly operated by corporate subsidiaries, referred to as 'corporate-operated'. Within the UK, 90% of stores are run by franchisees.

In typical franchising systems, franchisees pay upfront fees as well as ongoing royalties for the right to use the franchisor's concept, trade name, know-how, and other industrial or intellectual property. Franchisees may also receive ongoing commercial and technical assistance.¹⁹ Royalties, sometimes called service fees, are often based on a percentage of sales.

↓ McDonald's, Singapore City, Singapore



McDonald's also routinely controls the real estate for both franchised and corporate-operated stores, with franchisees paying rent to the company in addition to franchise fees. McDonald's even extracts royalty payments from some of its corporate-operated stores, effectively charging its own country-level subsidiaries for the right to operate McDonald's stores.²⁰

McDonald's profitability rests on the significant and stable income franchising provides rather than the direct operation of stores. Of the profits recorded by McDonald's Corporation on its global operations in 2020, \$8.5 billion comes from its franchises compared to \$1.2 billion from company-operated stores.²¹

McDonald's global footprint

McDonald's has a significant economic global footprint. The company is the global fast-food leader, with over 39,000 stores in 120 countries.²² In 2020, it was the most valued company brand in the world, outside of the technology and retail sector.²³ In terms of employment, the fast-food giant is the second largest private employer in the world; more

than two million wear the McDonald's uniform around the globe.²⁴

McDonald's is also one of the largest buyers of agricultural products. McDonald's Europe purchases over €2 billion a year in core product categories such as beef, chicken, and potatoes, making it one of the largest buyers of these agricultural products in Europe.³² The company sources ingredients from over 500,000 European farms,³³ and serves over 30 million chickens in the United Kingdom every year.³⁴

And since the inception of the Happy Meal, McDonald's has become the largest distributor of toys in the world. McDonald's distributes 1.5 billion toys worldwide each year, more than global toy manufacturers Hasbro and Mattel.³⁵

In the UK, McDonald's has 1,334 stores where more than 120,000 people work.^{36, 37} The UK is part of McDonald's International Operated Markets (IOM) segment^a, which includes non-US markets where McDonald's both directly operates and franchises stores. In the UK, McDonald's generates 16% of IOM segment revenues, operates 13% of IOM

McDonald's at a glance

US\$93.3 billion

Global systemwide sales (2020)²⁵

25,516

McDonald's stores outside of US²⁸

93%

Share of McDonald's locations franchised³⁰

US\$4.7 billion

Global profits (2020)²⁶

119

Countries with McDonald's locations²⁹

69 million

Number of customers per day³¹

39,198

Global McDonald's store count (year end 2020)²⁷

a McDonald's divides its business into three segments: the US (It's first and largest segment covering all company owned and franchised stores); the "international operated markets" including Australia, Canada, France, Germany, Italy, Netherlands, Russia, Spain, U.K. and related markets; and the "International Developmental Licensed Markets & Corporate" which includes the developmental licensee and affiliate markets (e.g. China, Japan, Brazil and others) as well as Corporate activities.

McDonald's UK business

1,334

Total stores

120,000

Total workers

INTERNATIONAL OPERATED MARKETS (IOM)

McDonald's segment

16%

% of IOM revenue

13%

% of IOM stores

90%

% stores franchised

\$1.8 billion

Systemwide sales

3.5 million

Customers served per day

segment stores, and has revenues of \$1.8 billion.³⁸ In Europe, only France and Germany have more McDonald's stores.³⁹ 90% of McDonald's UK stores are franchised.⁴⁰

Franchising, intangible assets and tax

Despite McDonald's iconic status as a burger and fries powerhouse, it is formally a global-franchising business structured around the licensing of the McDonald's brand and system to franchisees. In reality, a significant part of the menu price customers pay does not go towards the cost of food products, packaging

and labour; it instead pays for the intellectual property and McDonald's brand. The wholesale cost of fast-food ingredients is not surprising, but the scale of intellectual property value is worth further examination.

Intellectual property and other intangible assets are easily relocated within a global corporate structure, and their domicile can be manipulated to avoid income tax on profits generated from these transactions. Specifically, McDonald's shifts where intangible assets such as intellectual property are domiciled, which moves the profits from the locations where the sales are generated to jurisdictions where the profits are taxed less, or not at all.

Tax implications of intangible assets

Royalty payments and related fees for the use of intellectual property, an intangible asset, are commonly manipulated by multinational corporations to limit their tax obligations where profits are genuinely earned.

Corporations often use intangible assets to minimize tax liability by operating subsidiaries in high-tax jurisdictions, which then make royalty and similar payments to intellectual property-holding companies in low-tax jurisdictions. The royalties are treated as tax-deductible expenses in the high-tax jurisdictions where the sales are made, reducing the company's taxable income in those localities. In the destination low-tax country, these royalties receive preferential tax treatment; they are often taxed at very low rates, or not taxed at all. This is known as "profit-shifting," as profits are shifted from high-tax to low- or no-tax jurisdictions.⁴¹ Many low-tax jurisdictions – including the UK – provide significant tax breaks on investments in intellectual property, and on royalties derived from intellectual property.

3. McDonald's shifting corporate structure

Over the past two decades, McDonald's has altered its corporate structure, particularly in Europe, to take advantage of favourable tax rules and in response to new legislation and public scrutiny of its tax-avoiding manoeuvres.

2008: McDonald's move to Luxembourg and Switzerland

In late 2008 and early 2009, McDonald's announced two moves that significantly

altered its corporate structure across Europe. The first move was to reroute royalties from its operations in European markets – a crucial revenue stream – to its subsidiary, McD Europe Franchising Sàrl, in Luxembourg.⁴² In 2009, the company also moved its European headquarters from the UK to Switzerland, which was home to one of McD Europe Franchising Sàrl's branches.⁴³ This new structure allowed McDonald's to exploit corporate tax loopholes that likely cost European governments over €1 billion in lost tax revenues between 2009 and 2013.⁴⁴



McDonald's, Khaosan Road, Bangkok Thailand

I ♥
KHAOSAN
www.buddygroupthailand.com



Between 2009 and 2013, McD Europe Franchising Sàrl, which employed only 13 people, received approximately €3.7 billion in royalty payments from McDonald's European operations.⁴⁵ As detailed in the *Unhappy Meal* report, this Luxembourg entity only paid a meagre €3.3 million in taxes on this amount on average over the five year period.⁴⁶ Although maintaining a Luxembourg holding company with a Swiss branch is a common structure that multinational companies have used to avoid tax,⁴⁷ the report noted that even taking into account Luxembourg's low tax rate of 5.8% on royalties and intellectual property income, McDonald's effective tax rate during this period was even lower.

By 2013, McD Europe Franchising Sàrl's effective tax rate had fallen to a mere 1.4%.⁴⁸ These low tax rates were the result of a preferential tax deal between McDonald's and Luxembourg.⁴⁹

McD Europe Franchising Sàrl (2009 -2013)

€3,708 million

Revenue

€1,060 million

Estimated taxes saved across Europe

€16 million

Taxes paid in Luxembourg

5.8%

Luxembourg tax rate on royalties and intellectual property income

1.4%

Effective tax rate in 2013

13

Employees

Source: *Unhappy Meal*

2015: Scrutiny of McDonald's European structure intensifies

Following the *Unhappy Meal* report's revelations on 3 December 2015, the European Commission's competition regulators opened a formal state aid investigation into McDonald's specific tax arrangements in Luxembourg.⁵⁰ In its preliminary view, the Commission determined that a 2009 tax ruling, which exempted McD Europe Franchising Sàrl's royalty revenue from corporate taxation, may have constituted illegal state aid and therefore a violation of Europe's competition rules.⁵¹ The Luxembourg tax authorities had agreed to exempt McD Europe Franchising Sàrl from taxation under the Luxembourg-US double taxation treaty, despite the understanding that the US branch of McD Europe Franchising Sàrl did not have a taxable presence in the US.⁵² As a result of the ruling, royalties went effectively untaxed in both Luxembourg and the US.⁵³

In addition to the European Commission's investigation, McDonald's faced increasing pressure over its tax practices from a number of other Europe-wide and national regulatory bodies following the release of the *Unhappy Meal* report. Specifically:

September 2015

Three consumer associations filed a complaint with the Italian tax authorities (*Agenzia Del Entrate*) about the impact of McDonald's corporate tax structure in Luxembourg on Italian public finances and taxpayers.⁵⁴

November 2015

The European parliament interrogated McDonald's representatives about the company's Luxembourg-based tax practices at tax committee hearings.⁵⁵ Similar hearings

in the European parliament in March 2016 also included the grilling of McDonald's representatives over tax matters.⁵⁶

December 2015

Works Council representatives at one of McDonald's French subsidiaries filed a criminal complaint against McDonald's for tax fraud, money laundering, and misuse of corporate assets.⁵⁷

April 2016

French tax authorities reportedly billed McDonald's France €300 million in unpaid taxes on profits funnelled through Luxembourg and Switzerland.⁵⁸

May 2016

French police raided McDonald's headquarters in France after a probe was opened related to the latter complaint filed in December 2015.⁵⁹

June 2016

The US Treasury announced ongoing negotiations with Luxembourg to amend the US-Luxembourg Tax treaty at the heart of the controversy around McDonald's Luxembourg structure.⁶⁰

June 2016

The Luxembourg Ministry of Finance introduced a draft law to outlaw, potentially retroactively, the types of tax arrangements between Luxembourg and the US that McDonald's had exploited.⁶¹

October 2016

McDonald's entity in charge of UK franchising rights registered a £11.5 billion provision covering risks of tax adjustment with the HMRC in an ongoing transfer pricing review initiated in 2011.⁶²

November 2018

Italian newspaper La Repubblica revealed that the Public Prosecutor in Milan was investigating McDonald's corporate structure in Italy, and estimated that the potential loss of tax revenue amounted to €48 million.⁶³

December 2018

Luxembourg passed a law requiring Luxembourg-based companies claiming non-taxation in Luxembourg – on the basis of a tax treaty between Luxembourg and another country – to provide justification that their foreign branch is considered a permanent establishment by the corresponding foreign country.⁶⁴ The change ensures that taxes are paid in at least one jurisdiction.

January 2019

McDonald's France was reportedly negotiating with the French National Financial Prosecutor to settle charges of tax fraud money laundering ("*blanchiment de fraude fiscale*"), and may face a fine amounting to 30% of the company's average annual revenue over the past three years.⁶⁵

April 2019

Several Members of the European parliament released an op-ed published in Liberation (France) calling for action from national governments, including France and Spain, to tackle McDonald's aggressive tax practices.⁶⁶

February/March 2021

French anti-fraud investigators questioned three former McDonald's executives at the behest of the National Financial Prosecutor's office on suspicion that they helped shift profits to Luxembourg in order to cut their French tax liability.⁶⁷

McDonald's developmental licenses make use of tax havens

McDonald's sometimes makes agreements with large corporate partners to take over McDonald's store operations in a country or geographic area. Known as developmental licensing, this business model generates more stable and predictable revenue and cash flow than direct-store operations and also requires less resource-intensive franchisee support from McDonald's corporate headquarters. This allows McDonald's to cut costs, particularly Selling, General and Administrative (SG&A) expenses.

Over the past decade, McDonald's has aggressively refranchised thousands of stores across the globe including all stores in countries including Taiwan, Malaysia, Singapore, Hong Kong, Norway, Denmark, Finland, Sweden and Romania⁷² and has reduced its ownership significantly in China.

McDonald's aggressive refranchising of its business around the world affected its tax practices. McDonald's partnered with an array of corporations that make use of tax havens. A number of McDonald's developmental license business partners have relied on jurisdictions including Guernsey for McDonald's Nordic stores, and the British Virgin Islands and the Cayman Islands for McDonald's Chinese stores.⁷³

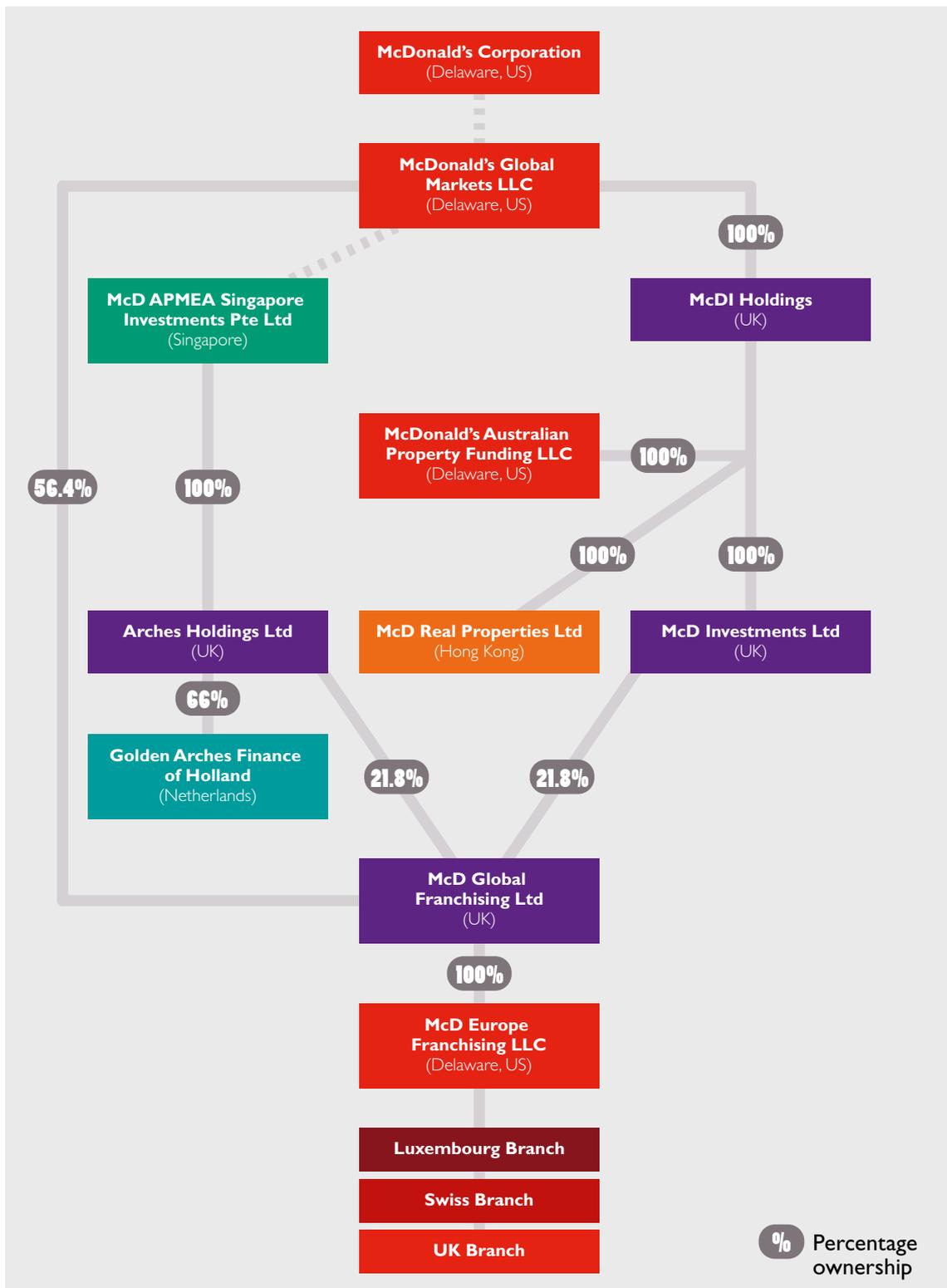
McDonald's itself also uses tax havens which are not disclosed in the list of subsidiaries within McDonald's annual report. This includes entities incorporated in the Cayman Islands and Hong Kong.⁷⁴ Many of these jurisdictions require zero or minimal public financial disclosures, including of taxes owed and paid.

In 2016, in response to the scrutiny of its European corporate structure, McDonald's again made significant changes to its European structure, including changes to its royalty-receiving entity and the relocation of its headquarters. In December 2016, McDonald's transferred the headquarters of McD Europe Franchising Sàrl from Luxembourg to the US state of Delaware, a jurisdiction with very limited disclosure requirements.⁶⁸ McDonald's renamed this entity McD Europe Franchising LLC and interposed a range of subsidiaries in multiple jurisdictions between the renamed entity and its holding subsidiaries.⁶⁹ The effect of this move was to reduce the level of transparency and information available in McDonald's public filings concerning its tax practices.

Also in December 2016, McDonald's relocated its international tax base from Luxembourg to the UK, where it had also incorporated several new entities.⁷⁰ McDonald's indicated that the profits of its new structure would be subject to UK corporate taxes.⁷¹ The decision to relocate to the UK came just months after the UK government announced plans to cut corporate tax rates to 17%, a rate that is much lower than in nearly all other European jurisdictions. The announcement also came just six months after the Brexit referendum; McDonald's was moving a key part of its business to a jurisdiction which was soon to be beyond the reach of European Union regulators who had publicly raised concerns about the corporation's tax practices.

2016 - 2021: McDonald's restructures again

Figure 1. McDonald's structure post 2016

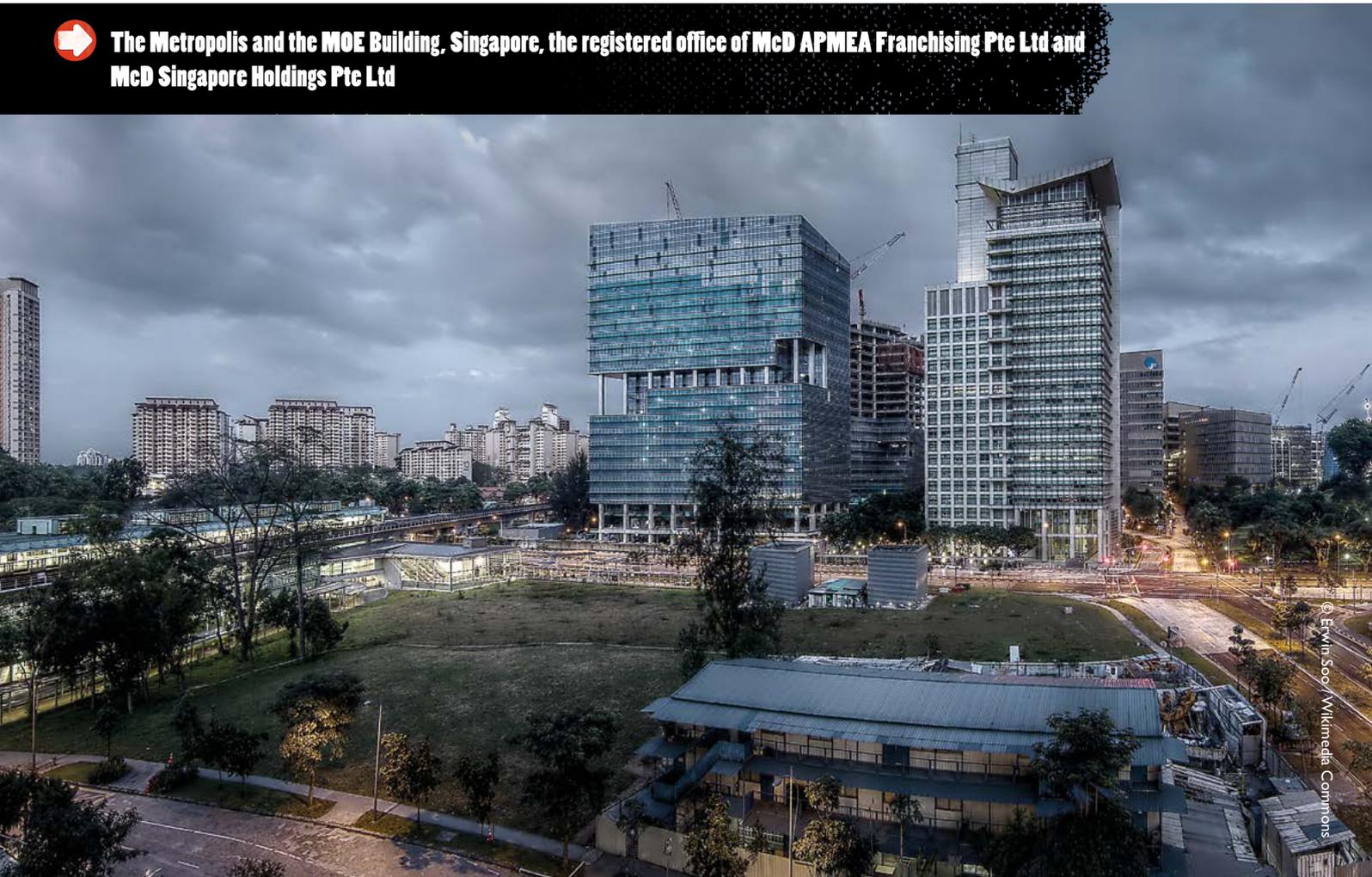


4. McDonald's billion dollar IOU to itself

This chapter looks in detail at a transaction McDonald's conducted in 2016 that generated significant continuing tax savings. McDonald's movement of intellectual property rights through a circular paper transaction enables the fast-food behemoth to shield billions in franchise income received by a UK McDonald's entity from being taxed in the UK. This transaction could translate into tax savings of \$400 million (£295 million) over a decade.

McDonald's circular paper deal appears conceived to create an expense not mirrored by the economic reality, that together with amortisation can shield royalties collected from multiple jurisdictions from being taxed. The frequency with which McDonald's restructures its intellectual property suggests the transaction examined in this chapter is one part of an aggressive tax strategy that allows McDonald's to dodge paying its fair share of taxes to the communities where it operates across the globe.

➔ The Metropolis and the MOE Building, Singapore, the registered office of McD APMEA Franchising Pte Ltd and McD Singapore Holdings Pte Ltd



The questionable circular paper transaction

As discussed above, McDonald's corporate structure – including its decisions about where to domicile its intellectual property – has significant tax impacts given the billions in payments franchises pay to McDonald's corporate entities around the globe. The right to collect the billions in franchise payments can be transferred from one McDonald's entity to another through the sale of intangible assets, namely its intellectual property.

The transaction in question followed McDonald's 2015 restructuring, which it described by saying it “reorganised its business operations from a geographic management model to a globalised management structure to achieve greater efficiency.”⁷⁵ This restructure involved significant changes in how McDonald's franchise income would be collected from around the world.

Until 2016, a subsidiary in Singapore, McD APMEA Franchising Pte Ltd, collected franchising income from McDonald's entities in Asia and other places outside of the United

Figure 2. The questionable circular paper transaction



States. As is commonly the case with multinationals in Singapore, a country widely regarded as a tax haven, McDonald's had negotiated a special low-tax rate on the franchise income earned by this entity.⁷⁶ However, similar to McDonald's Luxembourg-centred corporate structure, the Singapore-centred structure was beginning to face international scrutiny.⁷⁷

In 2016, a new entity, McD Global Franchising Ltd, was created in the UK.⁷⁸ This entity purchased the right to collect franchise income from the Singapore subsidiary, McD APMEA Franchising Pte Ltd. After the sale, McD Global Franchising Ltd would be "a primary franchisor to markets outside of the United States of America."⁷⁹ McDonald's also announced how the intangible franchising rights would be held: "Some of the franchise rights are held directly by the Company and some by their UK domiciled subsidiary undertakings."⁸⁰

McD Global Franchising Ltd (UK) purchased these franchise rights valued at \$3.55 billion between November 2016 and July 2017.⁸¹ Instead of using cash for these transactions, McD Global Franchising Ltd paid for the rights using three loan notes – financial debt instruments similar to an IOU. The total of \$3.55 billion included \$2.05 billion worth of intangible assets and \$1.57 billion for goodwill,^b an accounting device equivalent to the difference between a purchase price of a business and the net fair value of all that business' assets and liabilities.⁸² Even though McD APMEA Franchising Pte Ltd's accounts register a sale of \$3.55 billion, zero tax was paid on the sale in Singapore.⁸³ Singapore's corporate income tax rules have exceptions for income made from selling assets and foreign income that is 'kept offshore' and used to pay dividends.⁸⁴

After McD APMEA Franchising Pte Ltd (Singapore) received the loan notes from McD Global Franchising Ltd in the UK, the Singapore entity passed the loan notes to its parent company, McD Singapore Holdings Pte Ltd as a dividend.⁸⁵ This parent company is a McDonald's subsidiary also located in Singapore. Following receipt of the dividend, McD Singapore Holdings Pte Ltd in turn passed on the loan notes as a dividend to Asia Pacific GA Holdings LLC, a Delaware-registered McDonald's entity. Lastly, the bank notes were passed one more time as a dividend back to McD Global Franchising Ltd (UK).⁸⁶

Passing the loan notes as a dividend between each of these businesses returned it eventually to McD Global Franchising Ltd (UK), the original issuer of the loan notes. However, since an entity cannot owe a loan to itself, the loan notes held by McD Global Franchising Ltd (UK) were cancelled out.

A \$400 million tax shield

The tax implications of this circular paper transaction are significant. McD Global Franchising Ltd (UK) claims the value of issuing the loan notes as an expense. Combined with foreign tax credits, this enabled McD Global Franchising Ltd to reduce its 2018 UK tax bill to zero.⁸⁷

Under the UK's Intangible Fixed Asset (IFA) regime, McD Global Franchising Ltd (UK)'s revenue of \$493 million was sheltered by \$213 million amortisation of intangible fixed assets in 2018.⁸⁸ The amortisation is the writing off on paper of the cost of acquiring McDonald's intellectual property, including the golden arches branding, from other McDonald's entities.⁸⁹

b \$3.55bn includes: intangible assets excluding goodwill \$2,051,000,000; tangible fixed assets, \$1,922,000; current assets, \$745,000; current liabilities -\$12,737,000; deferred tax liability, -\$6,1710,000; and goodwill \$1,9797,220,000.

Grounds for HMRC to investigate

HMRC needs to urgently investigate a number of McDonald's UK entities – including McD Global Franchising Ltd and its related entities – to determine if these entities and the structural arrangements among them run afoul of existing UK tax law. HMRC has the power to challenge any scheme which appears to be specifically designed to avoid UK taxation, and may facilitate tax avoidance in other countries.

This report calls on HMRC to investigate the arrangement on the following grounds. HMRC must investigate the nature and scope of the relevant intangible assets to determine if the deductions are legitimate or not, specifically:

- 1.** According to Section 864 Corporation Tax Act 2009, tax deductions are not permitted if the “main object” or “one of their main objects” is to enable a company to obtain a tax-deductible expense in respect of intangible assets.¹⁰⁰ A primary purpose for completing this circular paper deal in the way it appears to be to create a “tax avoidance arrangement” which may not be permissible under current UK law.
- 2.** According to Section 882 and 884 Corporation Tax Act 2009, tax deductions of goodwill are not permitted if the goodwill relates to a business carried on before April 2002 by a related party.¹⁰¹ The goodwill in question relates to the franchise rights acquired by McD Global Franchising Ltd in 2016 and includes licensing rights and related intangible assets for the Asia Pacific region including specifically Vietnam and Malaysia. McDonald's has been trading in Malaysia since 1982.¹⁰²
- 3.** According to Sections 893 and 894 Corporation Tax Act 2009, Tax deductions are not allowed if the value of the acquired intangible assets comes from any other intangible asset which existed prior to April 2002, was held by a related party, and has not been allowed as a deduction since December 2005.^{c, 103}
- 4.** HMRC must investigate whether the value of the goodwill and intangible assets acquired from an indirect subsidiary in Singapore truly reflect market value, as required under UK law. If values have been overstated, tax deductions should be denied.¹⁰⁴
- 5.** HMRC should also examine whether it's appropriate to amortise (write-off) over 10 or 20 years the cost of acquiring this intellectual property given it has been in existence for a much longer period.
- 6.** HMRC should also examine McD Global Franchising Ltd's other major franchise rights acquisitions along similar lines.

^c The Finance Act 2020 Section 31 changed this but the change applies to acquisitions on or after 1 July 2020

At the UK corporate tax rate of 19% and based on the amortisation claimed as a tax expense in 2018, this amounts to a potential tax saving of at least \$40 million per year or \$400 million (£295 million) over a decade.^d

The 2016 corporate restructure and subsequent circular transaction to purchase intangible fixed assets from Singapore set up a shield for the royalty income which McD Global Franchising Ltd would receive in the UK. The circular paper deal appears conceived to create an expense not mirrored by the economic reality that together with amortisation can shield royalties collected from multiple jurisdictions from being taxed.^e

Other global franchise rights purchases using loan notes

McD Global Franchising Ltd (UK) has also acquired other franchise rights from McDonald's entities around the world. Available information shows some of these transactions also used loan notes which were subsequently cancelled.

Since the initial \$3.55 billion acquisition of franchise rights from Singapore, McD Global Franchising Ltd acquired other global franchise rights in 2017 from another McDonald's entity in Delaware, US, including \$390 million in South African franchise rights, and \$392 million in United Arab Emirates franchise rights.⁹⁰

In late 2019, McD Europe Franchising LLC – the company that had come under EU scrutiny and subsequently was redomiciled from Luxembourg to the state of Delaware, US –

closed its branches in the UK, Luxembourg, and Switzerland in early 2020. In October 2019, McD Global Franchising Ltd (UK) purchased the intellectual property relating to McD Europe Franchising LLC's franchise rights for \$10 billion and in November 2019 it purchased all remaining assets and liabilities for \$2 billion. Both purchases were reportedly made by issuing loan notes. These loan notes were returned to McD Global Franchising Ltd (UK) where they were cancelled.

Moving the ownership of McD Global Franchising

McDonald's uses UK-related entities for a number of its aggressive tax strategies. McD Global Franchising Ltd's immediate parent is MCD Europe Limited, also incorporated in the UK,⁹¹ which was a former subsidiary of McD Europe Holdings Sàrl in Luxembourg. At the beginning of 2018, McD Europe Holdings Sàrl was dissolved and ownership was transferred to McDonald's Global Markets LLC, incorporated in the state of Delaware, US, a jurisdiction widely regarded as a tax haven.⁹²

MCD Europe Limited did not have a single employee, yet received \$4.9 billion dividends in 2018. The company distributed \$2.7 billion in dividends to McDonald's Global Markets LLC (Delaware), and retained after-tax profits of \$2.3 billion.⁹³ Its reported 2018 total UK tax charge was a mere \$767,000.⁹⁴

^d McD Global Franchising Ltd, Annual Report and Financial Statement for the Year Ended 31 December 2018, p.25, Note 12 and p.16, Note 3.12. \$213m of the amortisation expense was tax-deductible. McDonald's is also relying on foreign tax credits to reduce the corporation tax payable. The amortisation relief ensures that profits are sufficiently low that they can be covered entirely or substantially by the foreign tax credits. In reality, the amortisation may be claimed over 20 years for the bulk of the intellectual property. Operating systems, as opposed to core intellectual property, goodwill, and secondary trademarks, are amortised over ten years.

^e The UK's General Anti-Abuse Rule allows HMRC to challenge arrangements where one of their main purposes is to obtain a tax advantage and they cannot reasonably be regarded as a reasonable course of action.

5. Conclusions

 A child plays in a playground made from Happy Meal toys at Ronald McDonald House Charities UK (RMHC UK) in Oxford



For years, McDonald's has engaged in multiple aggressive rounds of corporate restructuring, a strategy that has severely limited its tax obligations in the UK and around the world.

Since McDonald's 2016 restructure, its international corporate structure has made greater use of UK entities, which often have links to jurisdictions such as the state of Delaware (US)⁹⁵ and Hong Kong which lack transparency and are widely regarded as tax havens.

Since it uses low transparency jurisdictions, McDonald's corporate filings fail to provide the kind of transparency necessary to fully assess its tax position. The transactions outlined in this report were pieced together from filings across multiple jurisdictions, but it is currently impossible to build a complete picture of McDonald's tax liabilities and payments using publicly available information. Hence, the degree to which the burger giant exploits tax rules to aggressively minimise tax obligations continues to be shrouded.

Tax plays a vital role in society. It redistributes wealth from corporations and rich individuals to fund vital public services such as social security, healthcare, public transportation and education, and can be used to tackle significant societal problems such as poverty, inequality and the climate crisis.

The Organisation for Economic Co-operation and Development (OECD) has been a primary forum for international negotiations on reform of the outdated international tax system to address multinational tax avoidance. The OECD's guidelines for multinationals require compliance with both the letter and spirit of the law in relation to taxation. While more information is needed to completely determine the legality of McDonald's tax manoeuvres, the aggressiveness of the company's tax strategies contrast with the spirit of tax law in multiple jurisdictions.

The OECD-led proposals to address multinational corporations' aggressive tax strategies have been criticised for favouring larger and richer countries at the expense of the world's poorest countries.⁹⁶ Whilst the public debate has often focused on the specific barriers to taxing remote digital services, this report demonstrates how a customer-facing international food business can also manipulate the location of intangible assets by transferring their domicile to low-tax jurisdictions with few or no transparency requirements.

The ability of McDonald's and other hospitality multinationals to use aggressive tax strategies also severely impacts competition; multinational corporations are more readily able to manipulate their corporate structures to minimise their tax obligations which gives them a competitive advantage over less-resourced domestic competitors. Tax schemes used by McDonald's and other multinationals are inherently unfair, exacerbating existing levels of inequality, and undermining faith in government and other public institutions.

The scale of lost revenue from McDonald's aggressive tax strategy transcends the social impact of its many corporate social responsibility initiatives. Executives make statements about "intentionally living their values to the best of their abilities"⁹⁷ and McDonald's commitment to its workforce and the communities where it operates⁹⁸ whilst approving aggressive tax strategies around the world. These tax strategies deny local communities the funds to support the public services they rely on. Playgrounds made out of recycled toys⁹⁹ cannot make up for a business failing to pay its fair share of tax.

These failures sit alongside McDonald's employment model of poverty wages, job precarity and union avoidance, as further evidence of how this multinational fails to give back to the communities in which it operates.

6. Recommendations

Investigate McDonald's tax affairs

The scale, pervasiveness, and societal impact of McDonald's aggressive tax strategy means tax authorities around the world must investigate the legality of McDonald's tax arrangements – and recover taxes where possible.

As a matter of urgency, this report calls on the UK's tax authority, Her Majesty's Revenue and Customs (HMRC), to investigate whether the transaction outlined

in Chapter 3 constitutes an abuse of the UK tax system.

As well as the need for authorities to investigate McDonald's tax affairs with a view to prosecution, the UK parliament must also investigate McDonald's latest tax scheme, and determine what changes may be required to the UK's Intangible Fixed Asset regime to avoid the kind of abuse that this report brings into the open.

 A Greenpeace activist dressed as Ronald McDonald is arrested after locking himself to the gates of McDonalds' South Auckland distribution centre in protest at McDonald's use of GE soy, New Zealand



Don't let the City of London be a "Singapore-on-Thames"

The City of London – and several UK overseas territories and protectorates – are at the core of many multinational tax avoidance schemes. UK parliament must investigate what legal reforms are needed to stop the UK from becoming the destination of choice for multinational corporations seeking to abuse the UK tax regime, by using the City of London as a tax haven for global profits.¹⁰⁵

The fact that intellectual property rights have been shifted out of Singapore and Luxembourg to the UK – for the apparent continued purpose of tax avoidance – should raise alarms. At a minimum, amendments should be made to the UK's intangible fixed assets regime to make it clear that intangible assets acquired from within the same global corporate structure should not be allowed to generate artificial tax deductions in the UK. Parliament must take action to close loopholes and shut down tax schemes that rob public coffers and restrain economic recovery.

In the long term, policy makers should be looking at how to rebalance economic rulemaking in favour of workers and the communities in which multinational corporations operate, whilst creating a level playing field for smaller business.

International efforts to address multinational tax avoidance should take place within the United Nations to ensure all countries are able to participate on an equal footing.

McDonald's must act

McDonald's must end its aggressive approach to tax and instead pay its fair share. The smokescreen of corporate social responsibility initiatives and charitable donations should be replaced with meaningful financial transparency. It should publish full public country by country reports in compliance with the widely regarded Global Reporting Initiative (GRI) Tax Standard; cease routing billions of dollars in earnings to tax havens; end business relationships with those who do and instead reinvest in the frontline workers that are the heart of its business.

ACTIONS YOU CAN TAKE:

1. Find all the latest news on the campaign and how you can take action here: www.waronwant.org/McTax
2. Support McDonald's workers by following the McStrike here:
 -  Twitter: [@fastfoodrights](https://twitter.com/fastfoodrights)
 -  Facebook www.facebook.com/fastfoodrights
3. Become a member of War on Want: www.waronwant.org/member
4. Affiliate your union branch to War on Want: www.waronwant.org/affiliate



RECOMMENDATIONS

1. **HMRC must investigate** – as a matter of urgency – whether the transaction outlined in Chapter 4 constitutes abuse of the UK tax system. (See “Grounds for HMRC to investigate” in Chapter 4 for more detail).
2. **McDonald’s must end its aggressive tax strategies:**
 - a. Publish full public country by country reports in compliance with the widely regarded Global Reporting Initiative (GRI) Tax Standard.
 - b. Move towards a simplified and transparent global corporate structure, including ceasing to route earnings through tax havens.
 - c. Create a fair process for union recognition and recognise rights of workers.
3. **The UK government must act** to stop the UK from becoming the destination of choice for multinational corporations seeking to use the City of London as a tax haven to avoid tax on global profits. This should be part of a wider programme to rebalance economic rulemaking in favour of workers and the communities in which multinational corporations operate, whilst creating a level playing field for smaller business.
 - a. **Adequately resource HMRC:** Government should set a target to reduce the tax gap to 2%, boosting investment, with a clear plan based on an in-depth analysis of where increasing tax compliance staff, investigations, and other resources could yield the greatest returns on investment.
 - b. **Review tax rules:** Rigorously review tax breaks, including those that impact UK’s intangible asset regime. The review should ensure that the full costs and benefits of all tax rules for all companies – including large multinationals – are properly reported and scrap any rules which cannot be justified by their benefits to the economy, society and the environment.
 - c. **Reform the intangible fixed asset regime:** Reform corporate and tax laws to ensure that intangible assets acquired from within the same global corporate structure are not allowed to generate tax deductions in the UK.
 - d. **Introduce public country by country reporting without delay:** Public country by country reporting would help address the growing complexity of multinationals’ corporate structures and the weakness of current international accounting standards, and a race to the bottom on disclosure created by tax havens. It would require multinationals to publish data about their activities, sales, profits and taxes paid in every country of operation. Making this information publicly available would discourage shifting profits to low-tax, high-secrecy jurisdictions for tax minimisation.
 - e. **Support the establishment of a UN body to re-write global tax rules:** Responsibility for international taxation has been fragmented between international institutions, which have set multiple and sometimes divergent international tax standards. A genuinely global international tax body under the auspices of the UN is needed to ensure that developing countries no longer face disadvantage in international tax standard setting and are able to fully participate as equals.
4. **UK parliament should:**
 - a. Investigate McDonald’s use of the UK’s intellectual property and intangible fixed asset regime.
 - b. Assess what policies are necessary to prevent the City of London and various UK overseas territories and protectorates from continuing to function as tax havens for multinational corporations.

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