



OECD GUIDELINES
FOR MULTINATIONAL
ENTERPRISES

NATIONAL CONTACT POINT
FOR RESPONSIBLE BUSINESS
CONDUCT THE NETHERLANDS

Final Statement

FNV, ITF, PSI, IndustriALL Global Union vs. Chevron Netherlands BV et al.

Date: 24 March 2022

Notification to the Netherlands National Contact Point by FNV, ITF, PSI, IndustriALL Global Union concerning an alleged violation of the OECD Guidelines for Multinational Enterprises by Chevron Netherlands BV et al. (8 October 2018).

As noted in the Procedural Guidance to the OECD Guidelines for Multinational Enterprises, following conclusion of a specific instance and after consultation with the parties involved, the NCP will make the results of the procedures publicly available.

As one party was unwilling to participate in the procedures, the NCP is issuing the following statement. This statement describes the issues raised, the reasons why the NCP decided that the issues raised merited further examination, and the procedures initiated by the NCP to assist the parties. This statement also identifies recommendations made by the NCP to the enterprises on the implementation of the Guidelines, and includes the reasons why agreement could not be reached.

As specific instances are not legal cases and NCPs are not judicial bodies, NCPs cannot directly order compensation nor compel parties to participate in a conciliation or mediation process.

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1. Executive Summary

On 8 October 2018, the FNV, ITF, PSI and IndustriALL Global Union, supported by Friends of the Earth, notified the Dutch National Contact Point of a specific instance regarding an alleged violation of the OECD Guidelines for Multinational Enterprises (hereinafter: the Guidelines) by Chevron Netherlands BV and 13 other affiliated entities, all based in the Netherlands (hereinafter: Chevron et al.). The notification concerns alleged breaches of the chapters Disclosure, para 1-3, and Taxation, para 1 and 2.

The Dutch NCP coordinated this notification with the NCPs of the United States and Argentina, which agreed to act in a supportive capacity with the Dutch NCP taking the lead.

The Dutch NCP concluded that this notification merited further consideration, based on the following considerations:

- the Dutch NCP is the right entity to assess the alleged violation by the companies concerned;
- the notifying parties have a legitimate interest in the issues raised in the notification;
- Chevron et al. are multinational enterprises within the meaning of the Guidelines;
- the issues raised by the notifying parties are material and *prima vista* substantiated;
- there is a link between Chevron et al.'s activities and the issues raised in the specific instance;
- the consideration of this specific instance may contribute to the Guidelines' objectives and effectiveness.

The decision that this notification merited further consideration was based on an initial assessment of the information submitted and did not represent a conclusion as to whether Chevron et al. observed the Guidelines, nor as to whether the statements made by the notifying parties are accurate. The NCP published the initial assessment on 22 June 2021.

Following the conclusion that this notification merits further consideration, the NCP offered its good offices to the parties on 12 May 2020 to address the concerns raised by the notifying parties and seek a resolution through dialogue, in accordance with the Dutch NCP Specific Instance Procedure for handling notifications. The good offices were accepted by the notifying parties on 22 May 2020. The enterprise informed the NCP on 22 February 2021 that it would not accept the good offices and it wished to withdraw from further participation in the procedure.

Subsequently, the NCP conducted an independent further examination. The further examination resulted in this final statement.

The NCP makes the following assessment regarding the issues raised in the specific instance:

With regard to the paragraphs of the Disclosure Chapter: Considering the absence of information that on the basis of the Disclosure chapter and the commentary may be expected to be freely and publicly available, it is the NCP's assessment that none of the 14 corporate entities of Chevron et al. seem to observe paragraphs 1-3 of the Disclosure chapter.

With regard to paragraph 1 of the Taxation chapter: Given the (absence of) information available, the NCP is unable to confirm that Chevron et al. have any economic activities in the Netherlands. Instead, the NCP assumes that these 14 corporate entities are administered merely by trust companies and therefore their sole function is to operate as letterbox companies for the purpose of tax planning. It is the NCP's assessment that Chevron et al. have failed to demonstrate, either through freely and publicly available information or by providing answers to the NCP's questions, that the 14 corporate entities at stake comply with the spirit of the law.

With regard to paragraph 2 of the Taxation chapter: The 'Chevron's approach to tax' document explains how the risk management systems are implemented. It is not made explicit whether this policy applies to all subsidiaries and, if so, how it is implemented at subsidiary level. As result of the lack of information and cooperation of Chevron et al., the NCP is unable to establish whether Chevron et al. comply with paragraph 2 of the Taxation chapter.

Additionally, following the company's withdrawal of participation in the procedure, it is the NCP's assessment that, regarding the issues raised under the Disclosure chapter, Chevron et al. have not acted as could have been expected from them under step six of the due diligence process, as elaborated in the OECD Due Diligence Guidance for Responsible Business Conduct, i.e. to "*Provide for or cooperate in remediation when appropriate*", based on Chapter II General Policies, para A.10 of the Guidelines.

The NCP recommends to Chevron et al. that:

- they align their conduct with paragraphs 1-3 of the Disclosure chapter, i.e. they increase their transparency on material company information and policies, including economic activities and related tax payments per entity, per country;
- they cooperate with any legitimate remediation mechanisms including non-judicial state-based mechanisms such as the NCP procedure with a view to addressing and resolving the issues raised by impacted stakeholders and rights holders;
- they adapt their tax policy and related conduct where necessary in accordance with the latest developments and increasing worldwide consensus on responsible tax behaviour;
- they follow the best practice example of other multinational enterprises by e.g. publishing a Country-by-Country-Report of its tax payments.

Furthermore, taking into account the numerous policy developments at the national and the international level regarding the issues raised in this specific instance (see the findings at general level in section 6), the NCP considers it desirable that further guidance will be provided by the OECD on the meaning and application of the Disclosure and Taxation chapters, to better assist proper interpretation and implementation. The development of an (OECD) Tax Governance Code, addressing the ethics of responsible tax behaviour of enterprises, would be considered beneficial as well.

With the publication of the final statement on 24 March 2022 the NCP procedure is concluded. The NCP will follow-up on this specific instance by conducting an evaluation of the implementation of the recommendations one year after publication of the final statement.

2. Substance of the submission and the enterprise's response

On 8 October 2018, the FNV, ITF, PSI and IndustriALL Global Union, supported by Friends of the Earth, notified the Dutch National Contact Point of a specific instance regarding an alleged violation of the Guidelines by Chevron et al.

The notification concerns the alleged lack of disclosure of expected enterprise information (Chapter III, para 1, 2 and 3) and the non-compliance with the spirit of the Dutch tax law (chapter XI, para 1 and 2) by 14 Netherlands based entities of Chevron Corporation, which has its headquarters in the US. According to the notifying parties, Chevron has at least 34 subsidiaries in the Netherlands, out of which 14 subsidiaries are addressed in the underlying complaint. Allegedly, these 14 subsidiaries are typically finance or holding companies with no employees, no physical presence and no business other than transactions with related parties. The notifying parties claim that most of these 14 subsidiaries are connected to a Netherlands based trust company. Allegedly, some of the entities do not file any annual reports or verifiable public-access information at all regarding their functions, operations, ownership or tax situation. The notifying parties conclude that Chevron et al. are letterbox companies designed to avoid taxes in other jurisdictions. The notifying parties therefore argue that these entities are not acting in line with the spirit of the Dutch tax law, as the law is intended to facilitate companies with real economic activities in the Netherlands.

The notifying parties expect the following from Chevron et al.:

- Disclosure by each subsidiary of its purpose and function within Chevron's corporate hierarchy;
- Ongoing written commitment to ensure regular, timely, and complete disclosure;
- Increased transparency of financial transactions entered into by Chevron et al., particularly in the case of intra-group transactions (transactions entered into between two subsidiaries of Chevron), as well as a clarification regarding the economic purpose of such transactions and the specific contractual terms governing the intra-group relations;
- Termination by Chevron et al.'s practices primarily designed for the facilitation of tax avoidance by Chevron;
- Adoption by the named Dutch subsidiaries of disclosure, taxation, and tax risk management systems and policies that prioritize fair payment of taxes in the countries where profits are due, and enable greater transparency into their operations including financial operations.

The enterprise's response with regard to issues raised in the submission reads:

"Chevron contributes to the public finances of host countries by paying what we owe, in full and on time. We agree that it is important that enterprises contribute to the public finances of host countries by making timely payment of their tax liabilities. Chevron works hard to abide by all tax laws in the jurisdictions where we operate.

We believe businesses should comply with the tax laws and regulations in all countries in which they operate. This includes providing to the relevant authorities the information necessary for the correct determination of taxes to be assessed in connection with our operations and compliance with the comprehensive standards of the OECD on tax disclosure, including Country-by-Country reporting, as adopted by the countries in which we operate. Our approach to tax matches our efforts globally to conduct our business legally, responsibly and with integrity."

3. Initial assessment by the NCP

The NCP concluded the notification merited further consideration. The full text of the initial assessment including the reasons why the NCP decided it merited further consideration can be found on the NCP's website.

Subsequently, the NCP has offered its good offices to the parties. The NCP has asked both parties whether they are willing to engage in a mediation process, with the aim of agreeing how the issues raised can be successfully addressed. The NCP believed both parties could bring valuable perspectives to the dialogue that may contribute to the Guidelines' objectives and effectiveness, and both parties could benefit from such a dialogue.

4. The proceedings of the NCP

After receipt of the submission, the NCP, in accordance with its procedure, held separate meetings with the parties involved. In order to be well informed on the current state of affairs concerning the issues raised it consulted several parties on tax avoidance and tax disclosure. Since the submission refers to impact made in Argentina, Nigeria and Venezuela, the NCP of Argentina was asked to act as supportive NCP, to which it agreed. (There is no NCP in Nigeria nor Venezuela). Since the parent company of Chevron et al. is based in the US, the US NCP was asked to act as supportive NCP, to which it agreed.

The NCP drafted the Initial Assessment in which it found the issues raised merited further consideration, with that accepting the submission and offering its good offices. In line with the NCP procedure both parties were given the opportunity to comment on the draft Initial Assessment. In this phase of the procedure Chevron et al. claimed that the NCP breached confidentiality and they claimed that some NCP members had a conflict of interests. The NCP responded to these concerns and extended an invitation for a further discussion. The enterprise declined the invitation and rejected further participation in the procedure, and with that also the offer of good offices. (See for further details section 5.) The notifying parties had accepted the good offices.

As the good offices were not accepted and therefore no dialogue was going to take place, the NCP initiated the examination of the issues raised in order to draft the final statement. In this phase, Chevron et al. also declined to answer questions the NCP posed. The purpose of these questions was to give the opportunity to the enterprise to demonstrate how it observes the Guidelines, e.g. where the information which is expected under the Disclosure chapter can be found, and how it is safeguarding the compliance with both the letter and the spirit of the tax laws in the countries of operation.

The draft final statement was sent to the notifying parties for comments and factual corrections. As the enterprise had denied the opportunity to answer questions posed by the NCP, the enterprise was given the opportunity only for factual corrections. With the publication of the final statement it concluded the Specific Instance Procedure.

Below is a chronological overview of what the NCP has done since receiving the submission.

Date	Action that occurred
	Initial Assessment phase
8 Oct 2018	Receipt of the specific instance
16 October 2018	Confirmation of receipt sent to notifying parties
16 October 2018	Notification of the submission including the submission sent to enterprise
5 December 2018	Informative meeting between NCP and OECD taxation experts
28 January 2019	Meeting between NCP and notifying parties
26 March 2019	NCP consults Ministry of Foreign Affairs tax expert
3 April 2019	Meeting between NCP and enterprise
17-30 April 2020	Coordination with NCP of Argentina
1-6 May 2020	Coordination with US NCP
14 May 2019	Written response of enterprise received by NCP
3 June 2019	Meeting between NCP and Ministry of Finance (Netherlands) on tax avoidance policy developments
13 February 2020	NCP consults OECD RBC secretariat for latest update on tax avoidance developments at OECD level
25 March 2020	NCP consults Ministry of Finance (Netherlands) on latest tax avoidance policy developments
12 May 2020	Draft initial assessment shared with parties for comments and good offices offered
22 May 2020	Notifying parties responded to draft IA and accepted the offer of good offices
8 June 2020	Enterprise responded with comments and questions, including alleging confidentiality and conflicts of interests issues at the part of the NCP
23 September 2020	NCP consults independent tax expert on international tax developments
30 November 2020	NCP responded to comments and questions of enterprise and offered a video meeting to discuss remaining issues further
5 February 2021	NCP received letter from notifying party about the delay in the procedure
15 February 2021	NCP talks to notifying party FNV about the delay in procedure

22 February 2021	Enterprise responded that the NCP failed to address the issues and communicated that it withdraws from any further cooperation in the procedure
26 March 2021	NCP sent second draft IA to parties for factual corrections
8 April 2021	The notifying parties responded with no corrections
16 April 2021	The enterprise responded with factual corrections
22 June 2021	NCP published the initial assessment on its website
	Further examination phase
26 July 2021	NCP asked enterprise to respond to questions
13 August 2021	Enterprise declined the opportunity to respond
September 2021	NCP conducted fact finding
23 December 2021	Draft final statement shared with notifying party for comments, with enterprise for factual corrections
7 February 2022	NCP received responses from both parties
1 March 2022	Second draft final statement shared with notifying party for factual corrections
10 March 2022	NCP received response from notifying party
18 March 2022	NCP sent final statement to the NCPs of US and Argentina
24 March 2022	Publication of final statement and closure of specific instance procedure

The NCP regrets it has not been able to meet the indicative timelines due, among others, to a combination of workload issues, the complexity of the case and unforeseen challenges as regards the staffing of the NCP.

5. Parties' responses to the offer of good offices

In response to the NCP's offer of good offices, the notifying parties accepted the offer, the enterprise did not.

During the Initial assessment procedure, the company expressed the following concerns in writing.

First, Chevron et al. expressed concern that the NCP, by publishing its final IA on its website, triggers "confidentiality obligations on the parties, as well as the Dutch NCP." In response, the NCP has clarified to the enterprise that, in principle, the NCP indeed places its final IA on its website, which is what many NCPs do. With regard to this case, the NCP has drawn attention to the fact that it does not have any access to confidential tax information on Chevron et al. or any other multinational corporation in the Netherlands that could or would be involved in the text to be published.

Also, the text referred to in the IA is a text from the notifying party and it is, as the NCP understands, based on public sources. The NCP is therefore of the opinion that by publishing the IA no confidentiality obligations are violated.

Second, Chevron et al. expressed concern regarding the NCP's involvement in the case, including alleged (potential) conflicts of interest among some involved NCP representatives with regard to the case because of their background. The NCP has clarified to the company that the independent members of the Dutch NCP are appointed by the Minister for Foreign Trade and Development Cooperation. In the Decree to establish the NCP (Instellingsbesluit) of July 1, 2014, Art 3.4, it is stated: *"After consultation with the other Ministers concerned and with representatives of enterprises and civil society organizations, the members are appointed on the basis of their expertise in the area of the OECD Guidelines for Multinational Enterprises, their mediation skills and their societal knowledge and experience"*. Furthermore, according to Art. 3.5: *"The members bring in their knowledge and experience in their personal capacity and do not act as a representative of any specific interest group"*.

Because of their diverse backgrounds, the members together provide for the necessary balance in decision making, which is also guaranteed by the fact that decision making by the NCP is based on consensus between all members.

In addition, the NCP draws attention to its standing procedure within its internal working methods being that, at the moment of submission of a notification, the NCP appoints two NCP members who will handle the notification and prepare it for decision making by the full NCP. The possibility of a *perception* of conflict of interest is one of the factors to be taken into account in the decision which NCP members will handle the notification. If an *actual* conflict of interest exists, the NCP member involved will recuse him- or herself from both handling the notification and from the decision making. In this specific instance, there was no actual conflict of interest of any of the NCP members in relation to the case and/or the parties involved. However, to prevent a possible *perception* of a conflict of interest, the NCP decided at the very beginning of the proceedings that one of its members would not be participating in the handling of the notification and preparing it for decision making by the full NCP.

According to the NCP, its mandate, composition and working methods are constructed in such a way that there was no risk of a real or potential conflict of interest in this case on which the NCP should have taken any further action.

The NCP concluded its response to the concerns raised with an invitation for a video meeting. Unfortunately, Chevron et al. did not take up this invitation and, instead, persisted with its claims and denied any further participation in the procedure. (As already mentioned in the previous section, the company also declined to answer questions in the examination phase.)

As the NCP's good offices were only accepted by the notifying parties, the NCP, in accordance with its procedure, initiated the examination of the issues raised in preparation of a final statement.

6. Relevant provisions

Provisions of the Guidelines referred to by the notifying parties in the specific instance and which have, allegedly not been observed by Chevron et al.:

Chapter III. Disclosure, paragraphs 1, 2 and 3

1. *Enterprises should ensure that timely and accurate information is disclosed on all material matters regarding their activities, structure, financial situation, performance, ownership and governance. This information should be disclosed for the enterprise as a whole, and, where appropriate, along business lines and geographic areas. Disclosure policies of enterprises should be tailored to the nature, size and location of the enterprise, with due regard taken of costs, business confidentiality and other competitive concerns."*
2. *Disclosure policies of enterprises should include, but not be limited to, material information on: "a) the financial and operating results of the enterprise; b) enterprise objectives; c) major share ownership and voting rights, including the structure of a group of enterprises and intra-group relations, as well as control enhancing mechanisms; d) remuneration policy for members of the board and key executives, and information about board members, including qualifications, the selection process, other enterprise directorships and whether each board member is regarded as independent by the board; e) related party transactions; f) foreseeable risk factors; g) issues regarding workers and other stakeholders; h) governance structures and policies, in particular, the content of any corporate governance code or policy and its implementation process."*
3. *Enterprises are encouraged to communicate additional information that could include: a) value statements or statements of business conduct intended for public disclosure including, depending on its relevance for the enterprise's activities, information on the enterprise's policies relating to matters covered by the Guidelines; b) policies and other codes of conduct to which the enterprise subscribes, their date of adoption and the countries and entities to which such statements apply; c) its performance in relation to these statements and codes; d) information on internal audit, risk management and legal compliance systems; e) information on relationships with workers and other stakeholders.*

Chapter XI. Taxation, paragraphs 1 and 2

1. *It is important that enterprises contribute to the public finances of host countries by making timely payment of their tax liabilities. In particular, enterprises should comply with both the letter and spirit of the tax laws and regulations of the countries in which they operate. Complying with the spirit of the law means discerning and following the intention of the legislature. It does not require an enterprise to make payment in excess of the amount legally required pursuant to such an interpretation. Tax compliance includes such measures as providing to the relevant authorities timely information that is relevant or required by law for purposes of the correct determination of taxes to be assessed in connection with their operations and conforming transfer pricing practices to the arm's length principle.*
2. *Enterprises should treat tax governance and tax compliance as important elements of their oversight and broader risk management systems. In particular, corporate boards should adopt tax risk management strategies to ensure that the financial, regulatory and reputational risks associated with taxation are fully identified and evaluated.*

7. Examinations and conclusions

For the purpose of the examination the NCP has studied the information provided by the parties and has gathered additional information on two levels: 1) on a general level, to understand what the current developments are concerning taxation disclosure and countering tax avoidance, and 2) on specific instance level, i.e. with respect to the issues raised in relation to Chevron et al.

Findings on the general level

The NCP consulted tax experts within the Ministry of Foreign Affairs, the Ministry of Finance, the OECD Taxation department as well as a professor of international tax law of the University of Amsterdam. Through these consultations and by following relevant developments the NCP has become acquainted with numerous developments on national as well as international level, governmental and non-governmental, with regard to countering tax avoidance as well as public transparency on tax behaviour.

Regarding the developments in this area the NCP notes that there is an increasing consensus amongst governments worldwide for the need to counter tax avoidance as well as advancing public transparency on tax policies and payments. For example, the OECD, the EU, the UN as well the G20 have developed or are developing tax regulation to counter tax avoidance. The Dutch government has, besides aligning its policies with the aforementioned organizations' new standards, adopted regulation to counter so-called 'shell companies'. The UK and Australia already have initiated public tax transparency and the US introduced the Disclosure of Tax Havens and Offshoring Act. On 28 September 2021, the EU Council has adopted a Directive on public Country-by-Country-Reporting which will be applicable for multinationals with over 750 million revenue. On October 7, 2021, 136 countries agreed to sign a treaty for a global minimum tax rate for a specific group of large corporations which would require companies to pay taxes in the countries where they do business. Later that month the G20 approved it.

Furthermore, companies and multi-stakeholder initiatives in which companies participate increasingly call for public tax transparency to foster responsible tax behaviour, underlining a company's role in creating a just society. An increasing number of multinational enterprises are initiating voluntary publications of Country-by-Country-Reports on tax payments. Also, the Global Reporting Initiative has added the topic 'tax' to their set of reporting standards in 2020, which are widely and voluntarily used by a large number of companies worldwide. The B-team, a group of business and civil society leaders, has introduced 'Responsible Tax Principles' in 2018. Investors increasingly require responsible tax behaviour; the Dutch Association of Investors for Sustainable Development (VBDO) has been applying the Tax Transparency Benchmark for over 6 years now. The Dutch employers' organization (VNO-NCW) supports the Ministry of Finance's initiative to develop a Tax Governance Code in order to increase ethical behaviour.

Taking the myriad developments into account, it is clear to the NCP that the issues of taxation and disclosure are very relevant with regard to responsible business conduct by multinational enterprises. It is unfortunate, therefore, that the parties were unable to explore jointly in a dialogue the responsibilities of multinational companies located in the Netherlands in relation to disclosure and taxation.

Findings on the specific instance level

In para 28 of the Disclosure chapter's commentary it is stated:

"The purpose of this chapter is to encourage improved understanding of the operations of multinational enterprises. Clear and complete information on enterprises is important to a variety of users ranging from shareholders and the financial community to other constituencies such as workers, local communities, special interest groups, governments and society at large. To improve public understanding of enterprises and their interaction with society and the environment, enterprises should be transparent in their operations and responsive to the public's increasingly sophisticated demands for information".

This commentary indicates that company information should be accessible to stakeholders, i.e. easily found without financial barriers or available upon request. The NCP asked the company questions related to the issues raised in the notification. The company repeated its earlier statement that it denies further cooperation in the NCP procedure; it refused to provide a response and did not supply any relevant documentation, other than a link to a document concerning its tax policy. Subsequently, the NCP decided to conduct its own fact finding by examining the available company information from public sources, i.e. the internet and publicly available annual reports of the years 2017-2020. In view of the Disclosure chapter's purpose as explained in the commentary, the NCP limited itself to desk-based research of publicly available information and did not access public sources which provide company information in exchange for a payment.

Findings on the issues raised about Disclosure:

None of the 14 corporate entities reviewed by the NCP have their own website or publish a free and publicly available annual report. Chevron Corporation provides information via its website chevron.com and its corporate group annual report. Out of these 14 corporate entities the following 3 entities are mentioned on the Chevron Corporation website:

- Chevron Netherlands B.V.'s nature of activities in the Netherlands is described as well as its address is mentioned.
- Chevron B.V.'s address is mentioned, it is the same as Chevron Netherlands B.V.'s address.
- Chevron Netherlands Finance B.V. is mentioned in the 2020 annual report of another subsidiary, concerning a loan one subsidiary provided to the other.

None of the 14 corporate entities are mentioned in the corporate group annual reports of the years 2017-2020. There is no mention of activities in the Netherlands. The company reports financially at the level of continents only, not countries. Activities in the other countries mentioned in the notification (Argentina, Venezuela, Nigeria) are described.

Chevron et al. does not provide freely and publicly the annual reports of the 14 corporate entities. Annual reports of the subsidiaries can be accessed via other commercial channels which sell company information. Websites which collect company information state that all 14 corporate entities are financial holdings. Chevron Netherlands B.V. is stated to have more than 20 employees.

Considering the absence of information that according to the Disclosure chapter is expected to be freely and publicly available, it is the NCP's assessment that none of the 14 corporate entities of Chevron et al. seem to observe paragraphs 1-3 of the Disclosure chapter.

Findings on the issues raised about Taxation:

In the 2020 corporate group annual report, tax payments (income tax and other than on income) are disclosed on a regional level per continent only.

The only information the company provides concerning tax planning/strategy/policy is through the document 'Chevron's approach to tax' which was provided by Chevron et al. to the NCP, and which is also publicly accessible at chevron.com. In this document, dated 25 June 2021, it is stated that the company pays tax there where activities are conducted and revenues are generated, that it complies with local legislation and that a risk management system is in place.

Neither the chevron.com website nor the annual report provides a description of activities in the Netherlands in any given year and related tax payments.

The NCP concludes that it is not clear whether the 14 corporate entities had any economic activities in the Netherlands in the years 2017-2020 and whether and how much tax has been paid to the Dutch tax authorities. Referring to paragraph 3a of the Disclosure chapter (see above) the enterprises did not communicate information statements related to matters covered by the Taxation chapter.

Given the (absence of) information available, the NCP is unable to confirm that Chevron et al. have any economic activities in the Netherlands. Instead, the NCP assumes that these 14 corporate entities are administered merely by trust companies and therefore their sole function is to operate as letterbox companies for the purpose of tax planning. It is the NCP's assessment that Chevron et al. have failed to demonstrate, either through freely and publicly available information or by providing answers to the NCP's questions, that the 14 corporate entities at stake comply with the spirit of the law (Chapter XI, para 1). The NCP notes that it does not have the authority nor capacity to access and interpret detailed information on the tax payments of corporate entities in the Netherlands or elsewhere.

The 'Chevron's approach to tax' document explains how the risk management systems are implemented: *"Chevron has strong internal controls in accordance with relevant accounting and reporting standards. Consistent with Chevron's risk management policies and practices, we ensure governance and oversight of tax matters through internal review and approval procedures by appropriate members of Chevron's tax leadership team, led by the Vice President and Chief Tax Counsel, with oversight by Chevron's internal audit function, and ultimate oversight by the Audit Committee of our Board of Directors."* It is not made explicit whether this policy applies to all subsidiaries and, if so, how it is implemented at subsidiary level. The NCP would also like to note, that this policy document was published in June, 2021 and, as far as the NCP has been able to investigate, there is no indication it had a predecessor. As result of the lack of information and cooperation of Chevron et al., the NCP is unable to establish whether Chevron et al. comply with Chapter XI, paragraph 2.

Cooperation in the NCP Procedure

Unfortunately, after having cooperated in the initial stage of the procedure, Chevron et al. have declined the offer of the NCP's good offices to facilitate a dialogue to assist the parties in dealing with the issues through non-adversarial means such as conciliation or mediation. Furthermore, Chevron et al. have, unfortunately, also declined to provide substantive answers to the NCP in the examination phase, to demonstrate their observance with the Guidelines.

The NCP would like to draw the attention to the risk-based due diligence that enterprises are expected to carry out according to Chapter II General Policies, para A.10 *“Enterprises should carry out risk-based due diligence, for example by incorporating it into their enterprise risk management systems, to identify, prevent and mitigate actual and potential adverse impacts as described in paragraphs 11 and 12, and account for how these impacts are addressed. The nature and extent of due diligence depend on the circumstances of a particular situation.”* As part of that due diligence enterprises are expected to cooperate with legitimate grievance mechanisms such as the NCP. In the [OECD Due Diligence for Responsible Business Conduct Guidance](#) it is explained that due diligence consists of six steps. Step six reads: *“[Enterprises should] provide for or cooperate in remediation when appropriate”*. Further elaboration in section 6.2 on this reads: *“When appropriate, provide for or cooperate with legitimate remediation mechanisms through which impacted stakeholders and rightsholders can raise complaints and seek to have them addressed with the enterprise. Referral of an alleged impact to a legitimate remediation mechanism may be particularly helpful in situations where there are disagreements on whether the enterprise caused or contributed to adverse impacts, or on the nature and extent of remediation to be provided.”* This para is followed by an explicit reference to cooperation with the NCP: *“[Enterprises should] cooperate in good faith with judicial or non-judicial mechanisms. For example if a specific instance is submitted to an NCP or through initiatives that provide other types of grievance mechanisms involving the conduct of the enterprise.”* Following the enterprise’s withdrawal of participation in the procedure, it is the NCP’s assessment that, regarding the issues raised under the Disclosure chapter, Chevron et al. have not acted as could have been expected from them under step six of the due diligence process as described in the OECD Due Diligence Guidance for Responsible Business Conduct, i.e. to *“Provide for or cooperate in remediation when appropriate”*, based on Chapter II General Policies, para A.10 of the Guidelines.

Furthermore, as outlined in the Guidelines’ Commentary on the Procedural Guidance for NCPs, paragraph 21, the effectiveness of the specific instance procedure depends on good faith behaviour of all parties involved in the procedures. Good faith behaviour in this context means responding in a timely fashion and genuinely engaging in the procedures with a view to finding a solution to the issues raised in accordance with the Guidelines. The lack of responsiveness and cooperation in the NCP procedures by Chevron et al. therefore means they have not acted as could have been expected from them under paragraph 21 of the Commentary on the Procedural Guidance.

Overall

Taking into account the absence of information from Chevron et al. on their operations in the Netherlands and their alignment with the Guidelines, the lack of cooperation, the examination by the NCP and the information provided by the notifying party, it is the assessment of the NCP that Chevron et al. have not demonstrated that they are operating in a manner that can be considered to be consistent with the Guidelines.

8. Recommendations

To support observance of the Guidelines going forward, the NCP makes the following recommendations:

The NCP recommends to Chevron et al. to align their conduct with the Guidelines and international developments. More specifically, based on the OECD Guidelines and the worldwide movement concerning responsible tax behaviour and public tax transparency, it recommends to Chevron et al., that:

- they align their conduct with paragraphs 1-3 of the Disclosure chapter, i.e. they increase their transparency on material company information and policies, including economic activities and related tax payments per entity, per country.
- they cooperate with any legitimate remediation mechanisms including non-judicial state-based mechanisms such as the NCP procedure with a view to addressing and resolving the issues raised by impacted stakeholders and rights holders.
- they adapt their tax policy and related conduct where necessary in accordance with the latest developments and increasing worldwide consensus on responsible tax behaviour.
- they follow the best practice example of other multinational enterprises by e.g. publishing a Country-by-Country-Report of its tax payments;

Furthermore, taking into account the numerous policy developments at the national and the international level regarding the issues raised in this specific instance (see the findings at general level in section 6), the NCP considers it desirable that further guidance will be provided by the OECD on the meaning and application of the Disclosure and Taxation chapters, to better assist proper interpretation and implementation. The development of an (OECD) Tax Governance Code, addressing the ethics of responsible tax behaviour of enterprises, would be considered beneficial as well.

9. Follow Up

As an important part of the NCP's non-judicial role, follow up on agreements and recommendations supports the effectiveness of the specific instance process. In particular, follow up can further the Guidelines' effectiveness by encouraging parties to remain engaged with the issues and companies to implement the recommendations and agreements adopted in accordance with the Guidelines.

The NCP will follow up the specific instance one year after the date of publication of the underlying final statement. The NCP will follow up with the parties in writing in order to evaluate the recommendations made. The outcomes of the follow-up proceedings will be shared via a publication on the NCP's website.

With this Final Statement, the NCP closes the specific instance procedure.

The role of National Contact Points (NCPs) is to further the effectiveness of the OECD Guidelines. The Dutch government has chosen to establish an independent NCP, which is responsible for its own procedures and decisions, in accordance with the Procedural Guidance section of the Guidelines. In line with this, the Dutch NCP consists of four independent members, supported by four advisory government officials from the most relevant ministries. The NCP Secretariat is hosted by the Ministry of Foreign Affairs. The Minister for Foreign Trade and Development Cooperation is politically responsible for the functioning of the Dutch NCP. More information on the OECD Guidelines and the NCP can be found on the [NCP Website](#)

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