Unfair Trade: How Dutch Rose Growers Avoid Paying Taxes in Kenya

By Romy van der Burgh and Linda van der Pol

A wide tarmac road winds around the freshwater Lake Naivasha, about a hundred kilometers away from the capital city of Nairobi. A stream of heavy traffic manoeuvres from one side of the road to the other in order to avoid the large potholes – sometimes half a meter deep. Drivers of *matatus* (minibuses) often prefer the dirt tracks on either side of the road, where the chance of a tyre blowout is less likely. Occasionally, individuals are spotted putting their lives at risk pushing a wheelbarrow with stones onto the road to seal a pothole.

The condition of Moi South Lake Road stands in contrast with the well-paved roads that branch from it and lead into fenced compounds manned by armed guards. The flag of Dutch professional football club, Feyenoord, flutters behind one of those gates. The flower farms that are nestled in between Moi South Lake Road and Lake Naivasha are mostly owned by Dutch farmers and appear to be in perfect condition.

In the Netherlands, rose cultivation has decreased spectacularly in recent decades. Between 2000 and 2019, the area under rose cultivation in the Netherlands dropped from 932 hectares to 200 hectares. Many Dutch growers moved their companies to African countries such as Kenya and Ethiopia. Labour, energy, water and land prices are lower in Eastern Africa than the Netherlands and the Eastern Africa climate is favourable for rose cultivation. Roses thrive in sunlight and warmth. The cut flower has since become the largest export product in Kenya and the sector offers work to 500,000 Kenyans. However, the flower industry in Kenya has faced criticism in recent years due to poor working conditions, the large-scale use of toxic pesticides, and the negative impact on the environment, including the pollution of Lake Naivasha.

In light of these past controversies, a new one arises: Flower companies are avoiding their tax liability in Kenya, the Dutch investigative journalism platform *Investico* revealed. A search through registrations and annual reports show us how flower companies are evading local taxes through export companies in the Netherlands and trusts located in tax havens such as the Cayman and British Virgin Islands, Liechtenstein and Jersey. Others sell their revenue to sister companies in Dubai for an artificially low price, which means that profits do not fall at the Kenyan farm, but at a foreign entity where the profit tax is also much lower than in Kenya.

Of the 32 companies we investigated, of which at least 13 have Dutch origins, 45 per cent can be linked to tax havens. Almost all Dutch growers who went to Kenya transferred part of their business to a Dutch company. Companies that set up an international group of several companies can transfer and settle profits and losses within that group. This way they can ensure that the profit is as low as possible in the country with the highest tax rate. Because Kenya has a high profit tax, this model is attractive for companies that operate there. The Netherlands has tax treaties with many other countries. This makes it easier to channel money through the Netherlands to a tax haven than from Kenya.

While the growers are avoiding paying tax in a country like Kenya, where 36 per cent of the population lives in poverty, they still call their business “fair trade”. In fact, more than half of all the companies that we investigated have a Fairtrade certificate. Fairtrade, a premium label that stands for fair trade between the West and African countries, presents a blind spot for tax avoidance. “Fair trade – that is an oxymoron,” says Alvin Mosioma, director of Tax Justice Network Africa. “There is nothing fair about this trade. Not to the workers who cut the flowers, nor to the government.”

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In a small hall at Oserian Primary School in Naivasha, parents scramble to get hold of plastic chairs with “Oserian Church” written on the back of the chairs. They have been borrowed from a nearby church and placed in neat rows. During this ceremony, the ten best performing students of the national exam from last year are being honoured: one of them may even join the top five hundred students in the country and soon journalists will swarm around him for soundbites. But first the school principal opens the proceedings with a prayer and in one breath he thanks God and the Oserian flower company for the brilliance of the students.

Oserian is a huge company with Dutch roots: it was founded in 1969 by ex-marine Hans Zwager and is now one of the largest exporters of roses and cut flowers in Africa. A million roses are processed every day. A portion is transported by air to Schiphol to be traded at the auction in Aalsmeer (Netherlands); the rest is delivered directly to European supermarkets such as Sainsbury’s. More than four thousand employees work at the nursery, and hundreds at the rest of Oserian’s estate.

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Oserian is the banner of the Kenyan flower industry. It puts a lot of effort into conserving wildlife and on its grounds are schools, a hospital and houses for the staff. Founder Hans Zwager was decorated by recently deceased former president Daniel Arap Moi for his pioneering work in the Kenyan horticulture industry and for socially responsible entrepreneurship.

From the Moi South Lake Road there is a view of a palace with white spiers that protrude above the tree line. It once belonged to the colonial British family Delamère and is now occupied by the Zwager family.

"Oh, you disappear in life there," says Fredrick, 46, a former employee of Oserian, as he digs into a plate of fish. Cafe Hollywood, located a few kilometres from the flower nursery, is full in the evening. The space is heated by charcoal mounds on which freshly caught tilapias are baked. "Oserian provides all facilities. When I was on vacation, I didn't know where to look, as if there were no more worlds outside the company."

For nearly twenty years, Fredrick ensured that the rose buds were fertilized. He now works for himself: he repairs and rents out bicycles. Fredrick initially worked for the flower company for 12,000 Kenya shillings (around 110 euros) a month, but people with that salary were slowly being phased out, he says. New employees earn half that amount. This figure is confirmed the next morning when we chance upon a new rose cutter at Oserian and give her a lift. She confesses that she only gets 59 euros for a month's work. A third employee, whom we speak to when we deviate from the route during a tightly guided tour of the sorting center, speaks of the same amount – which is roughly equal to the minimum wage for unskilled personnel in Kenya. However, Mary Kinyua, the administrative director of Oserian, claims that the average salary of an Oserian worker is 167 euros.

In 2017, Oserian split the company on paper in two. Some activities, such as the packing of roses, were transferred to a new company. That company is evading the sector CAO (Collective Labour Agreement) that requires a salary of 10,000 shillings (91 euros). In practice, there appears to be little difference in employees from one or the other company. In the pale-green greenhouses, which extend as far as you can see, employees of both companies interact. Both groups do not come close to the living wage calculated by Hivos in Naivasha, which is 2.852 euros per year. Nevertheless, Fairtrade currently agrees with both the minimum wage and the sector CAO.

Dutch flower farmers moved to Africa because of the prosperity that was promised. But in Kenya that landscape has since changed considerably; flower cultivation is also in decline there. "My sixteen hectares in the Netherlands yields more than the seventy in Kenya," says flower farmer Arie van den Berg, who is farming both in the Netherlands and in Kenya. Dutch roses in Europe are still available for a few euros every Valentine's Day at the florist, but African roses are sold at Lidl (a European supermarket chain) for a dumping price of 1.99 euros per bunch. Sometimes auction prices are so low that it is more beneficial to destroy a load of roses than having to pay for the flight costs to send it to the auction in the Dutch Westland that revolves around horticulture.

Competition is increasing worldwide and African countries are trying to outdo each other: Ethiopia has begun to compete by offering so-called tax holidays – and there is no question of a minimum wage at all. Another problem is the tax, which is high in Kenya for foreign entrepreneurs: the corporation tax is 37.5 per cent. In a market where every cent counts, some companies do everything they can to get out of that tax burden.

A few years ago, in 2012, Oserian FC and Karuturi Sports football teams, sponsored and named after two competing rose nurseries, competed against each other in the Premier League, the highest football division in Kenya. The "derby of Naivasha" was a crowd puller. Barely two years after this high point, fortunes took a dramatic turn and the players of Karuturi Sports had to hang up their boots in 2014. The Karuturi site has since been abandoned. The vacant greenhouses stretch hundreds of meters. The iron structures occupy one's view for as far as the eye can see, interrupted only by the occasional individual plucking a stray rose from the wild growing plants in the abandoned greenhouses.

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Five years after the bankruptcy, a former employee still lives in a hut at the entrance of the company premises – hoping that he will be paid the three-month wages that he is owed, plus his accrued pension. “In the last months before the nursery closed, the working conditions were terrible. There was no longer any protection against the pesticides and the face masks we had on were not even really suitable for dust, let alone poison,” he says.

But the closure of Karuturi was not due to its pesticide use. The company was found guilty of evading more than 18 million euros in taxes. Although Karuturi and the tax authorities came to a settlement of 4 million euros, it turned out to be enough to bankrupt the company. Roses were systematically exported at an extremely low price to their own company in Dubai, from where they were further distributed throughout the market. The Kenyan branch turned into a loss, while the branch turned green figures in the Emirates. But Karuturi paid no tax on this profit: the United Arab Emirates have no income, profit, or dividend taxes and no import duties on transit goods. While 37.5 per cent tax is charged in Kenya, tax in Dubai is 0 per cent.

Dubai is a new tax haven. Free zones, where the official language is English and foreign entrepreneurs may be the full owners of a company, are advancing. Three Dutch nurseries in Kenya have already found a home in the Emirates, according to various annual reports from the Dutch Chamber of Commerce, including the large Oserian, which opened a logistics center, Airflo FZE (Free Zone Enterprise), at Dubai airport.

In addition to low taxes, Dubai offers far-reaching confidentiality to business owners: annual reports are not mandatory and requesting them is impossible. That is why we cannot verify whether Oserian applies the same rulebook as Karuturi. Karuturi was ultimately unsuccessful because it had to disclose more information as a listed company in India. The Dutch companies do not have to disclose financial records to the public because they are not registered on the stock exchange.

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We track the offshore trade and walk of Dutch companies for the first time via the FlowerCompanies.com database, founded by a Dutch entrepreneur. Out of 21 African companies, the country of establishment does not state Kenya or Ethiopia, but the Cayman Islands, a sunny place, but without a single mega farm.

“No idea why this is, how crazy. This is a bug in the website,” the founder says when we have him on the line. After a few hours, the addresses were removed from the website, but we discovered through other means that the majority of those companies do indeed have branches in tax havens such as the Cayman Islands. It is more difficult to prove that they pay little or no tax in Kenya.

By law, all Kenyan residents have the right to request data from government agencies and private companies. Because we are not Kenyan residents, a tax law student in Nairobi helped us to view annual reports of Dutch growers in Kenya. During his first visit to the Kenya Chamber of Commerce, he was summoned to communicate his choices via the internet. During his second visit, he was only given an empty file. During his third visit, he finally got the Oserian file. He paid more than six euros for inspecting it.

Taking photos is not allowed at the Chamber of Commerce and security cameras dissuade visitors from doing so. Our “informant” is reluctant to use a hidden camera. Calling the Netherlands, he browses through the book, which contains an independent Deloitte audit, in which Oserian’s revenue for 2013 is estimated at 2.7 million euros. Below the line, only 3,910 euros of profit remains on their own financial statements, of which Oserian paid just under 1,041 euros to the tax authorities.

We wrote, in accordance with the law, a letter to the Kenya Chamber of Commerce, asking for copies of the file – but the papers that the Kenyan student saw a few days before suddenly got “lost”. The company also refuses to transfer any information about its finances.

The Zwager family, owner of Oserian, built a whole web of companies around the nursery that together cover the entire chain, from breeding to sales and distribution. A company in the Netherlands is concerned with “sales and marketing of cut flowers”. The Dutch company of Peter Zwager generated a gross turnover of 47 million euros in 2010. Most employees, according to the LinkedIn reference, simply work from Kenya. That cannot be otherwise, because there are no workplaces in Amsterdam: the company was transferred to Align trust office.

The ultimate stakeholder in all these “Dutch” companies is Mavuno Group Holding Company Establishment, a trust in tax haven Liechtenstein, which is again managed by a trust office. No country in Europe charges as little tax as Liechtenstein, and above all, it is not open to public scrutiny. The only two shareholders that we identify are a company at the same address in the principality, and one near the picturesque harbour of Road Town, the capital of the British Virgin Islands, which in turn owns a whole range of companies, including a Florida real estate company.

Other branches of Oserian also end up vanishing in the smoke of vague shareholders and directors on tropical islands where neither annual reports nor ultimate owners are made public. We identify New Zealand, the Bahamas and Jersey.

“We do not sell anything in Liechtenstein, we do not trade there, we certainly do not get a tax advantage there – it is just a trust,” explains administrative director Mary Kinyua. “The owner of Oserian, Peter Zwager, puts his assets in.” When asked why Oserian in Kenya only makes about 2,000 euros in profit, she has no answer.

“This is super signing. It is very clear that we are trying to evade taxes here,” says Vincent Kiezebrink of the Research Foundation for Multinational Enterprises (SOMO) when we present the drawn-up corporate structure of Oserian. “It looks like she can try to get the most out of it,” he chuckles. “All tax ports come by. You don’t need so many havens to evade tax. Many large companies nowadays invest in their public image: they no longer settle in the Bahamas but in lesser known tax havens such as Ireland or Cyprus, because they still claim to levy about 15 per cent tax. I do not see that consciousness here. It would not surprise me if this company thinks: ‘The closer to zero, the better.’”

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A world full of crafty lawyers and accountants unfolds around emigrating farmers who show them around in Kenya and, where necessary, help them with agricultural land and tax constructions. The fulcrum in this is the law firm Raffman Dhanji Elms & Virdee based in Nairobi. On its website, the law firm states: “The Firm has been heavily involved in advising the flower and horticultural industries over the last decade in particular with foreign investment into this country and the methods to acquire land and the corporate structures required. This has led to joint ventures between Kenyan and overseas investors and the protecting and balancing of the respective interests.”

Controversial city lawyer Guy Spencer Elms was one of the three names given to us. He was once infamously associated with a multitude of corruption scandals in Kenya. Nonetheless, he has never been convicted and maintains in his defence of a plot by a criminal cartel to always paint his image in a bad light. Guy Spencer Elms says he arranges the tax planning of various Dutch nurseries himself, and he also helps farmers with agricultural land transactions. When we present him with the offshore constructions, he says: “People immediately think of something bad like hearing about a trust in Liechtenstein or the British Virgin Islands, but often it is just a way of’ estate planning. Trusts are not necessarily a bad thing “.

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“Tax is Life!” reads the slogan celebrating 100 years of income tax in Kenya. The luxurious Safari Park Hotel in Nairobi is the location of the tax conference organised by the University of Nairobi. Joan, a student, takes a credit note from her bag, and points to the 16 per cent VAT. “This is why I think tax is so important. Taxes can pull Kenya out of the mud,” she says.

Students speak of tax obligations in glowing terms; they see it as the future. Where that change must take place is something that everyone agrees with: the government. Tax guru Attiya Waris, a professor of tax law, points out the loopholes in tax collection throughout Africa. According to the OECD, Africa misses 46 billion euros in tax revenues every year from evasive multinationals. The United Nations estimates that amount to be 92 billion euros. Waris did research for a long time on flower companies in the country. “Kenya transfers its land to foreign companies, but the profit they make falls elsewhere. It is not a win-win situation,” she says.

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The Dutch company Berg Roses received 1.8 million in income tax with retroactive effect. The company was accused by the Kenyan tax authorities of conspiring with its parent company in the Netherlands. The Kenyan branch would sell most of its flowers for extremely low prices to the parent company in the Netherlands so that the profit is not realised in Kenya, but in the Netherlands.

The lawsuit is still ongoing because Van den Berg challenged the matter. “We ensure that we make fifty percent profit in Kenya and fifty percent in the Netherlands. We think that is fair. If we lose this case, it will be the death blow for our company.” Van den Berg knows of companies that channel the profit away to offshore trusts and, according to him, we never hear about it.

“Not only in the sector, but also in government is it only in terms of profit, not what is good for the country,” says tax expert Waris at the end of the celebration. She pulls her colourful scarf a little tighter around her shoulders and continues in a whisper when a duo of armed guards walk past. It should be a moral obligation to pay taxes in a country whose land, water and people you use, she says.

But monitoring the flower industry often leaves much to be desired because business and the political elite are intertwined – a euphemism for corruption. That became clear, for example, in the Paradise Papers – leaked files from the law firm Appleby – which show that Sally Jemngetich Kosgei, the former Head of Civil Service, and owner of a flower nursery in Kenya, bought a luxurious apartment in London through an offshore company based in Mauritius. Kosgei told the International Consortium of Investigative Journalists (ICIJ) that she bought the apartment with her personal funds.

Fair trade organisations do not see tax ethics as their responsibility. The cover page of a recent issue of *Fairtrade International* is adorned with a photo of the Waridi Limited nursery, which is almost entirely in the hands of a company in the Virgin Islands. Almost all Dutch nurseries in Kenya are in possession of the Fair Trade quality mark, which stands for good conditions.

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"Oserian sells 14 per cent of its production as a Fair Trade rose," says Tara Scally, the spokesperson for Fair Trade Netherlands. Part of the proceeds from Fair Trade roses, which are often more expensive, are returned to a pot that employees of the farm can dispose of themselves: for example, they invest it in education or in the salary of a doctor.

Fairtrade's focus is on the position of farmers and workers, says Scally. Tax constructions are not part of this. Moreover, tax research requires a lot of specialist knowledge and financial resources, she adds. She fears that companies will no longer participate in the programme if they are required to disclose what is in their books. "The consequence may be that workers lose part of their income. We would rather not see that."

A ridiculous line of reasoning, counters Alvin Mosioma, founder and director of Tax Justice Network Africa. "Wear a Fair Trade label while not paying your taxes? That is an oxymoron." Mosioma regards Fair Trade as a marketing gimmick:

"People don't buy a rose with blood on it. Social responsibility is part of the brand of these companies. They build hospitals, schools. That gives the consumer who buys such a rose a good feeling – the idea that they are making a contribution to the development of such a country. Nothing is further from the truth. These people work under very precarious conditions for a minimum wage. It is rather paternalistic: you give them jobs, and a school. But you also buy people around with it. They are happy with such an investment. 'Look,' they say to the government, 'this company takes care of us, the government does not do that'. No, that's because the government has no money for that, and also because the same companies are engaged in aggressive tax evasion."

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