

Survival of the Richest

Europe's role in supporting an unjust global tax system 2016



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Acronyms

AML	Anti-Money Laundering Directive
APA	Advance pricing agreement
BEPS	Base erosion and profit shifting
CBCR	Country by country reporting
CCCTB	Common Consolidated Corporate Tax Base
CFC	Controlled foreign company
CRS	Common Reporting Standard
EC	European Commission
EU	European Union
FDI	Foreign direct investments
G20	Group of 20
G77	Group of 77
GAAR	General anti-avoidance rule
ICIJ	International Consortium of Investigative Journalists
IMF	International Monetary Fund
MNC	Multinational corporation
ODA	Official development assistance
OECD	Organisation for Economic Co-operation and Development
R&D	Research and development
SDG	Sustainable Development Goals
SPE	Special purpose entity
TIEA	Tax information exchange agreements
TJN-A	Tax Justice Network Africa
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme
UNDAW	United Nations Committee on the Elimination of Discrimination Against Women

Glossary

Advance Pricing Agreement (APA)

See under 'Tax ruling'.

Anti-Money Laundering Directive (AMLD)

An EU directive regulating issues related to money laundering and terrorist financing, including public access to information about the beneficial owners of companies, trusts and similar legal structures. The 4th Anti-Money Laundering Directive was adopted in May 2015. In July 2016, the European Commission initiated another review of the directive (see below under 'Hidden ownership').

Automatic exchange of information

A system whereby relevant information about the wealth and income of a taxpayer – individual or company – is automatically passed by the country where the funds are held to the taxpayer's country of residence. As a result, the tax authority of a taxpayer's country of residence can check its tax records to verify that the taxpayer has accurately reported their foreign source income and wealth.

Base erosion and profit shifting

This term is used to describe the shifting of taxable income (profits) out of countries where the income was earned, usually to zero- or low-tax countries, which results in 'erosion' of the tax base of the countries affected, and therefore reduces their revenues.

Beneficial ownership

A legal term used to describe anyone who has the benefit of ownership of an asset (for example, bank account, trust, property) and yet nominally does not own the asset because it is registered under another name.

Common Consolidated Corporate Tax Base (CCCTB)

CCCTB is a proposal that was first launched by the European Commission in 2011. It entails a common EU system for calculating the profits of multinational corporations operating in the EU and dividing this profit among the EU member states based on a formula to assess the level of business activity in each country. This is referred to as 'consolidation'. The proposal does not specify which tax rate the member states should apply to the profit, but simply allocates the profit and leaves it to the member state to decide on the tax rate. The proposal was redrafted and relaunched in 2016 (see below under 'Common Consolidated Corporate Tax Base'), but this time the proposal will be negotiated in two steps, and the first step will leave out the key element – the consolidation.

Controlled Foreign Company (CFC) rules

CFC rules allow countries to limit profit shifting by multinational corporations by taxing profits made in other jurisdictions where it 'controls' other corporate structures, unless taxes have already been taxed in the other jurisdictions. There are many different types of CFC rules with different definitions of the jurisdictions and incomes covered.

General Anti-Avoidance Rule (GAAR)

GAAR refers to a broad set of different types of rules aimed at limiting tax avoidance by multinational corporations in cases where abuse of tax rules has been detected. Whereas GAARs can in some cases be used to prevent tax avoidance by allowing tax administrations to deny multinational corporations tax exemptions, they do not address the general problem of the lowering of withholding taxes through tax treaties, nor do they address the general division of taxing rights between nations.

Harmful tax practices

Harmful tax practices are policies that have negative spillover effects on taxation in other countries – for example, by eroding tax bases or distorting investments.

Illicit financial flows

There are several definitions of illicit financial flows. This can refer to unrecorded private financial outflows involving capital that is illegally earned, transferred or utilised. In a broader sense, illicit financial flows can also be used to describe artificial arrangements that have been put in place with the purpose of circumventing the law or its spirit.

LuxLeaks

The LuxLeaks (or Luxembourg Leaks) scandal surfaced in November 2014 when the International Consortium of Investigative Journalists (ICIJ) exposed several hundred secret tax rulings from Luxembourg, which had been leaked. The LuxLeaks dossier documented how hundreds of multinational corporations were using the system in Luxembourg to lower their tax rates, in some cases to less than one per cent.¹

Offshore jurisdictions or centres

Usually known as low-tax jurisdictions specialising in providing corporate and commercial services to corporations and individuals that aim to avoid or evade taxes. The services are primarily offered to non-residents and are often combined with a certain degree of secrecy. 'Offshore' can be used as another word for tax havens or secrecy jurisdictions.

Panama Papers

The Panama Papers scandal broke in April 2016 when the International Consortium of Investigative Journalists (ICIJ) exposed the hidden wealth and financial activities of political leaders, drug traffickers, celebrities and billionaires. The core of the scandal was 11.5 million leaked files from the Panamanian law firm Mossack Fonseca, which revealed information about more than 214,000 secret companies hidden in 21 different offshore jurisdictions. These companies were linked to individuals in more than 200 countries and territories worldwide. The scandal revealed that secret companies had, among other things, been used for tax evasion, corruption, fraud and money laundering.²

Patent box

A 'patent box' or 'innovation box' is a special tax regime that includes tax exemptions for activities related to research and innovation. These regimes have often been labelled a type of 'harmful tax practice', since they have been used by multinational corporations to avoid taxation by shifting profits out of the countries where they do business and into a patent box in a foreign country, where the profits are taxed at very low levels or not at all.

Profit shifting

See 'Base erosion and profit shifting'.

Public country by country reporting (CBCR)

Country by country reporting would require transnational companies to provide a breakdown of profits earned and taxes paid and accrued, as well as an overview of their economic activity in every country where they have subsidiaries, including offshore jurisdictions. As a minimum, it would include disclosure of the following information by each transnational corporation in its annual financial statement:

- A global overview of the corporation (or group): The name of each country where it operates and the names of all its subsidiary companies trading in each country of operation.
- The financial performance of the group in every country where it operates, making the distinction between sales within the group and to other companies, including profits, sales and purchases.
- The number of employees in each country where the company operates.
- The assets: All the property the company owns in that country, its value and cost to maintain.
- Tax information i.e. full details of the amounts owed and actually paid for each specific tax.

Special purpose entity (SPE)

Special purpose entities, in some countries known as special purpose vehicles or special financial institutions, are legal entities constructed to fulfil a narrow and specific purpose. Special purpose entities are used to channel funds to and from third countries and are commonly established in countries that provide specific tax benefits for such entities.

Swiss Leaks

The Swiss Leaks scandal broke in 2015 when the International Consortium of Investigative Journalists (ICIJ) exposed 60,000 leaked files with details about more than 100,000 HSBC clients in Switzerland. Among other things, the data showed how the bank was helping clients set up secret bank accounts to hide fortunes from tax authorities around the world, and assisting individuals engaged in arms trafficking, blood diamonds and corruption to hide their illicitly acquired assets.³

Tax avoidance

Technically legal activity that results in the minimisation of tax payments.

Tax evasion

Illegal activity that results in not paying or under-paying taxes.

Tax-related capital flight

For the purposes of this report, tax-related capital flight is defined as the process whereby wealth holders, both individuals and companies, perform activities to ensure the transfer of their funds and other assets out of the country where the wealth is generated, with the aim of achieving a tax benefit. The result is that assets and income are often not declared for tax purposes in the country where a person resides or where a company has generated its wealth. This report is not only concerned with illegal activities related to tax evasion, but also the overall moral obligation to pay taxes and governments' responsibility to regulate accordingly to ensure this happens. Therefore, this broad definition of tax-related capital flight is applied.

Tax ruling

A tax ruling is a written interpretation of the law issued by a tax administration to a taxpayer. These can either be binding or non-binding. Tax rulings cover a broad set of written statements, many of which are uncontroversial. One type of ruling is the so-called advance pricing agreements (APAs), which are used by multinational corporations to get approval of their transfer pricing methods. Tax rulings have attracted increasing amounts of attention since they have been known to be used by multinational corporations to obtain legal certainty for tax avoidance practices. The documents exposed in the LuxLeaks scandal were APAs.

Tax treaty

A legal agreement between jurisdictions to determine the cross-border tax regulation and means of cooperation between the two jurisdictions. Tax treaties often revolve around questions about which of the jurisdictions has the right to tax cross-border activities and at what rate. Tax treaties can also include provisions for the exchange of tax information between the jurisdictions. For the purpose of this report, treaties that only relate to information exchange (so-called Tax Information Exchange Agreements (TIEA)) are considered to be something separate from tax treaties that regulate cross-border taxation. TIEAs are therefore not included in the term tax treaty.

Transfer mispricing

This is a term relating to different subsidiaries of the same multinational corporation buying and selling goods and services between themselves at manipulated prices with the intention of shifting profits into low tax jurisdictions. Trades between subsidiaries of the same multinational corporation are supposed to take place at 'arm's length', i.e. based on the prices on the open market. Market prices can be difficult to quantify, however, particularly in respect to the sale of intangible assets such as services of intellectual property rights.

Transparency

Transparency is a method to ensure public accountability by providing public insight into matters that are, or can be, of public interest.

Whistleblower

A whistleblower is a person who reports or discloses confidential information with the aim of bringing information about activities that have harmed or threaten to harm the public interest out into the open.

Executive summary

After a wave of international tax scandals, the group of European governments in favour of greater tax transparency is finally beginning to grow. However, the battle is not yet won, as a number of governments remain opposed.

Meanwhile, on the issue of stopping tax dodging by multinational corporations, the picture is more worrying. Despite the LuxLeaks scandal, the number of secret 'sweetheart deals' between European governments and multinational corporations is skyrocketing.

European governments also continue to sign very problematic tax treaties with developing countries. These treaties can help to facilitate corporate tax dodging and impose restrictions on tax systems in developing countries. The bottom line is that these countries keep paying a high price for a global tax system that they did not create. Sadly, this report shows that the vast majority of decision makers in Europe remain strongly opposed to the idea of giving the poorest countries a seat at the table when global tax standards are decided.

Specifically, this report finds that:

Transparency

- Following the Panama Papers scandal, a soft breeze of growing political will in favour of transparency seems to be blowing, at least over some parts of Europe. Compared with 2015, there has been a significant increase in the amount of countries that have either expressed support for public registers of beneficial owners (Finland, the Netherlands, Norway), or already started introducing them at the national level (UK, France, Denmark, Slovenia). The group of countries opposed to ownership transparency is now significantly smaller than the group of countries in favour. And it seems the positive development might continue in future. In both Germany and the Czech Republic, there are clear signs of movement towards increased support for transparency.
- A similar, but weaker, tendency is seen on the issue of whether multinational corporations should publish data on a country by country basis showing the amount of business activity taking place, and tax payments made, in each country where they operate. On this issue, the group of countries opposing such a proposal (Austria, Czech Republic, Denmark, Germany, Latvia, Slovenia and Sweden) remains larger than the group that have expressed support for it (France, Netherlands, Spain and potentially the UK). However, compared with 2015, support has grown substantially, and it seems this will become one of the major political battles of 2017.
- Contrary to the developments on transparency, the picture remains bleak when it comes to taxation.

Taxation

- Following the LuxLeaks scandal and several ongoing state aid cases concerning so-called 'sweetheart deals', which governments have made with multinational corporations, one might have thought that fewer deals would be signed by European governments. But on the contrary, the number of sweetheart deals in the EU has soared from 547 in 2013, to 972 in 2014, and it finally reached 1444 by the end of 2015 – which is an increase of over 160 per cent between 2013 and 2015 (and an increase of almost 50 per cent from 2014 to 2015). The most dramatic increases have occurred in Belgium and Luxembourg, where the amount of sweetheart deals skyrocketed after the LuxLeaks scandal, increasing by 248 per cent and 50 per cent respectively in just one year.
- While the LuxLeaks scandal does not seem to have placed a constraint on the number of sweetheart deals in the EU, it has had another consequence. The two whistleblowers, together with one of the journalists, who brought the scandal to the public, are on trial in Luxembourg. This trial serves as a stark reminder of the fact that Europe is still much more committed to protecting dirty corporate secrets than those who act in the public interest and expose injustice.
- European governments continue to sign very problematic tax treaties with developing countries. An analysis of the countries covered by this report shows that they on average have 42 treaties with developing countries, and that these treaties on average reduce developing country tax rates by 3.8 per cent. Of all the countries analysed, Ireland has on average introduced the highest amount of reductions of developing country tax rates – 5.2 percentage points. Analysis by ActionAid has also revealed that even among the countries that do not, on average, have treaties which impose high restrictions on developing country taxing rates, there are a significant amount of 'very restrictive' tax treaties which impose strong constraints on the individual developing countries that have signed them. Among the countries covered by this report, Italy, the UK and Germany are the countries with the highest amount of those very problematic tax treaties with developing countries.

Global solutions

The vast majority of the countries covered by this report remain opposed to the proposal to create an intergovernmental UN tax body, which would grant developing countries a seat at the table when global tax standards are negotiated. Some governments might have thought that this issue would fall off the international political agenda, after a dramatic year in 2015, when developed countries managed to block a strong push from developing countries to get an intergovernmental UN tax body. However, the developing countries are showing no intention to let this issue go.

This report recommends that governments:

1. Adopt registers of the beneficial owners of companies, trusts and similar legal structures, which are in an open data format that is machine readable and fully accessible to the public without conditions.
2. Adopt full country by country reporting for all large companies and ensure that this information is publicly available in an open data format that is machine readable and centralised in a public registry.
3. Carry out and publish spillover analyses of all national and EU-level tax policies, including special purpose entities, tax treaties and incentives for multinational corporations, in order to assess the impacts on developing countries and remove policies and practices that have negative impacts on developing countries.
4. Ensure that the new OECD-developed 'Global Standard on Automatic Information Exchange' includes a transition period for developing countries that cannot currently meet reciprocal automatic information exchange requirements due to lack of administrative capacity. Furthermore, developed country governments must commit to exchange information automatically with developing countries by establishing the necessary bilateral exchange relationships.
5. Undertake a rigorous study, jointly with developing countries, of the merits, risks and feasibility of more fundamental alternatives to the current international tax system, such as unitary taxation, with special attention to the likely impact of these alternatives on developing countries.
6. Establish an intergovernmental tax body under the auspices of the UN with the aim of ensuring that developing countries can participate equally in the global reform of international tax rules.
7. Publish data showing the flow of investments through special purpose entities in their countries.
8. Remove and stop the spread of existing patent boxes and similar harmful structures.
9. Publish the basic elements of all tax rulings granted to multinational companies and move towards a clear and less complex system for taxing multinational corporations, which can make the excessive use of tax rulings redundant.
10. Adopt effective whistleblower protection to protect those who act in the public's interest, including those who disclose tax dodging practices.
11. Support a proposal on a Common Consolidated Corporate Tax Base (CCCTB) at the EU level that includes the consolidation and apportionment of profits, and avoid introducing new mechanisms that can be abused by multinational corporations to dodge taxes, including large-scale tax deductions.
12. When negotiating tax treaties with developing countries, governments should ensure a fair distribution of taxing rights between the signatories to the treaty; desist from reducing withholding tax rates; and ensure transparency around treaty negotiations, including related policies and position of the government, to allow stakeholders, including civil society and parliamentarians, to scrutinise and follow every negotiation process from the inception phase until finalization.

Global developments 2016

Introduction

On the morning of 4 April 2016, citizens around the world woke up to yet another shocking tax scandal – the so-called ‘Panama Papers’. The leaking of 11.5 million files from the law firm Mossack Fonseca in Panama had given journalists at the International Consortium of Investigative Journalists (ICIJ) a rare chance to see the real owners and structures of more than 200,000 secret companies based in 21 offshore secrecy jurisdictions across the world.⁴ The leak drew links to more than 200 countries and territories, and involved 12 current and former world leaders, more than 100 politicians and public officials and numerous known criminals.⁵ Among other things, it revealed how secret companies were being used as vehicles of tax evasion, corruption, fraud and money laundering.

In September 2016, another scandal known as the ‘Bahamas Leaks’ hit the news. This time, a leak of 1.3 million files from the national corporate registry of the Bahamas revealed secret offshore dealings of more than 175,000 Bahamian companies, trusts and foundations registered between 1991 and 2016. Once again, the scandal drew clear links to high-level decision makers, including a former Commissioner in the European Union (EU).⁶

The scandals also confirmed what activists and campaigners have known for years: the systematic abuse of a broken international tax system that allows the rich and powerful to hide their money and their dealings in secrecy jurisdictions.

Following the revelations, citizens around the world reinforced the call on their leaders to deal with tax dodging and make sure everyone pays their fair share of taxes.⁷ The heated debates concerned both illegal tax evasion, as well as tax avoidance by multinational corporations, the latter being tax planning practices that are often technically speaking legal, but stretch existing rules to their limits to reduce tax payments. Due to the high level of opacity surrounding corporate tax payments, the full scale of global tax avoidance by multinational corporations is hard to determine. However, conservative estimates have found that one type of tax avoidance alone is costing developing countries between US \$70 billion and \$120 billion per year.⁸ Similarly, conservative estimates have found that tax avoidance by multinational corporations is costing the EU between €50 billion and €70 billion per year.⁹ Thus, tax avoidance leads to significant revenue losses for public coffers, and is considered by many to undermine public spending goals and the principle of economic equality.

There is also increasing acknowledgment that global tax justice is essential for developing countries to be able to raise more domestic funds, also called domestic resource mobilisation – thus making it an integral part of the global agenda to achieve the United Nation’s Sustainable Development Goals.¹⁰

Whilst the Panama Papers dealt mainly with rich individuals hiding their wealth, big multinationals have also made the headlines around the world. In January 2016, it was announced that Google had made a deal with the British tax authority HMRC to pay back £130 million in taxes based on the profits it made in the UK over the last decade.¹¹ This caused an immediate uproar, as the amount was seen by many as far too low.¹² France took a tougher stance, raiding Google’s Paris offices and announcing that France will ‘go all the way’ to ensure that multinationals pay their taxes, and that more cases could follow.¹³

Another major multinational corporation – Apple – was at the core of public debate when the European Commission (EC) concluded that Ireland had granted the corporation illegal tax benefits of up to €13 billion, leading to Apple paying an effective corporate tax rate of only 1 per cent.¹⁴ Apple responded to the ruling in an open letter addressed to the Apple community in Europe, writing that the EC’s claims have ‘no basis in fact or in law’.¹⁵ The Commission’s ruling also met resistance from the Irish Cabinet, which has decided to appeal it at the European Court of Justice.¹⁶ Meanwhile, the EC is continuing its investigations, including ongoing cases against Luxembourg in relation to McDonalds, Amazon and GDF Suez group (now called Engie).¹⁷ However, these individual cases only scratch the surface of a much wider problem. The actions taken to tackle the issue still leave much to be desired. This report analyses the concrete steps taken at the global and EU levels, and evaluates their potential impact on developing countries.



Campaign image by *Americans for Tax Fairness*, calling on Apple to pay its fair share of taxes.

Developing countries and tax

Tax dodging by corporations and rich individuals deprives governments of the resources required to progressively realise human rights such as the right to health, food and education.¹⁸ As corporate income tax on average makes up a bigger portion of national budgets in developing countries than in European countries,¹⁹ the effective taxation of multinationals is especially important for them. In some cases, governments try to raise funds from other sources that have a harder impact on the poor, including through regressive taxes, such as taxing ordinary consumer goods and services.²⁰ Shrinking public coffers also have implications for gender equality. Many women and girls have no choice but to take on unpaid care work looking after family members when public services are deteriorating or non-existent, and many women are themselves dependent on a well-functioning healthcare system for their reproductive health and maternity needs.²¹

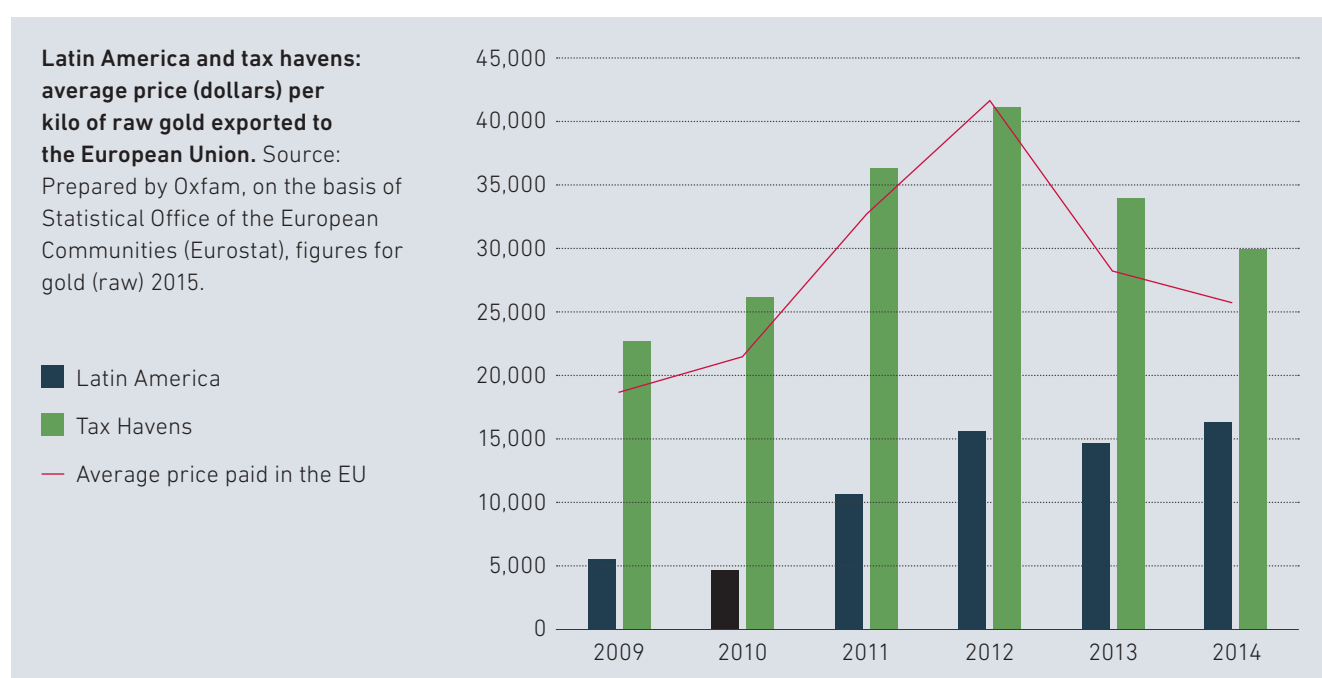
Yet there are clear indications that the global offshore industry also has strong links to developing countries. The Panama Papers showed that businesses in 52 out of Africa's 54 countries used offshore companies created by Mossack Fonseca. In the extractive sector, which is one of the most important sources of income for many developing countries,²² the Panama Papers revealed that offshore companies set up by Mossack Fonseca were used to assist oil, gas and mining deals and exports in no less than 44 countries in Africa. In total, journalists from the ICIJ found more than 1,400 companies whose names alone indicate activity in the extractive industries.²³

A mapping of the companies holding petroleum rights in Kenya shows widespread use of tax havens and low tax jurisdictions in the structures of these companies.²⁴ Although information about the corporate structure in itself is not enough to determine whether a company is engaging in tax avoidance or evasion, this kind of widespread use of tax havens does lead one to ask what purpose these subsidiaries serve.

However, shell companies are not the only source of concern. Intra-firm transactions that move profits from one country to another using so-called transfer pricing is a well-known way for multinationals to avoid taxes, as it allows them to shift their profits into jurisdictions where they pay lower or no taxes on those profits.²⁵

For example, statistics show large disparities between the average price of raw gold exported from Latin America and the export prices registered in tax havens, with the price of gold in tax havens being considerably higher than the price paid in source countries.²⁶ This means bigger profits are registered in these intermediate countries, where the taxes are very low and may even be zero per cent.

According to a survey conducted by the United Nations (UN) Committee of Experts on International Cooperation in Tax Matters, developing country tax authorities see the issue of transfer (mis)pricing as their biggest challenge in trying to collect taxes from multinationals.²⁷



Another method used by multinationals to dodge taxes is what is known as ‘treaty shopping’. This method means that a company, in order to minimise its tax liability, artificially shifts its operations or profits into a jurisdiction that has a favourable tax treaty in place. The Panama Papers revealed how the oil company Heritage Oil & Gas Ltd. relocated its stakes in the Ugandan oil business from the Bahamas to Mauritius in 2010 in order to avoid paying US\$404 million in taxes on its sale of oil field stakes.²⁸ In a country that ranks at 163 on the Human Development Index of the United Nations Development Programme (UNDP), aggressive tax planning by one single company may have wide-reaching effects. In this case the Ugandan government decided to push back and in the end it was able to collect taxes on the sale from the buying party, Tullow Oil. However, this only happened after long court battles and also after a deal was reached between the government and Tullow to substantially lower the final tax bill.²⁹

Government officials in developing countries may often find it difficult to stand firm against big foreign investors that use complex aggressive tax planning strategies to minimise their tax bills. In cases where developing countries do take steps to change national tax policies or reduce tax breaks, they may face the prospect of being sued by the companies under domestic law or on the basis of the investor–state dispute settlement clauses that are found in many bilateral investment treaties and trade agreements. For many poor countries, even the risk of being involved in expensive court cases that go on for years will be enough of a deterrent for them not to push back.³⁰ However, public awareness about tax dodging and illicit financial flows is growing rapidly in developing countries. In 2015, the so-called Mbeki High Level Panel on Illicit Financial Flows from Africa found that Africa is losing at least US\$30–60 billion per year – a phenomenon referred to as ‘the bleeding of the continent’s resources through illicit financial outflows’.³¹ Following up on the report, a coalition of civil society organisations across Africa kicked off the campaign ‘Stop the Bleeding’, to end illicit financial flows from Africa.

Another element that has increased awareness of tax dodging and illicit financial flows is the adoption of the new UN Sustainable Development Goals (SDGs). In discussions about how to finance the achievement of the goals in developing countries, a lot of emphasis has been put on the need for developing countries to raise more domestic funds. Tax is, of course, one important way for countries to raise revenue, as noted by the Addis Ababa Action Agenda adopted at the Financing for Development summit in the Ethiopian capital in July 2015.³² However, independent of institutional capacity, tax dodging by multinational companies is a problem that all countries are struggling with. The fundamental causes must be addressed at the global level through a serious reform of the policies and regulations that perpetuate this drain on public resources.

Exclusive global decision-making

Civil society organisations have strongly argued that democratic reform of the international tax system is necessary to deal with the problem of international tax dodging.³³ At the 2015 UN Financing for Development summit, the issue of establishing an intergovernmental tax body where all countries have a seat at the table was one of the main issues left unresolved. It was strongly pushed by developing country delegates but effectively blocked by rich countries such as the United States and EU members (in particular France and the United Kingdom).³⁴

Still today, the key decision-making body on international tax standards is the Organisation for Economic Cooperation and Development (OECD) – also known as the ‘Rich Countries’ Club’ – which consists of only 35³⁵ member countries. In recent years, OECD decision making has included an increasing involvement of the Group of 20 (G20), which includes some of the world’s largest developing countries. However, more than 100 developing countries have continued to be excluded from decision making.³⁶

One of the latest examples of decision making is the joint OECD G20 project on base erosion and profit shifting (BEPS), which concerned international tax dodging by multinational corporations and was finalised in 2015.³⁷ Initially it was hoped that the process would deal with fundamental problems in the current approach to transfer pricing as well as specific developing country issues (such as the extractive industry). In the end, however, both the exclusive decision-making process and the final outcome made it very clear that the new rules were far from the solutions needed. Instead, it was apparent that they would only amount to minor tweaks to a deeply flawed system based on the highly controversial ‘arm’s length principle’ (see Box 3 on ‘Multinational corporations – separate or single entities?’).



Civil society chanting “EU! US! Shame–Shame!” and calling for developing countries to participate on an equal footing in tax decision making. UNCTAD 14 conference, Nairobi, Kenya, July 2016. Photo: Eurodad.

Box 1

Concerns about BEPS

In August 2016, an All-Party Parliamentary Group in the UK released a new assessment of the OECD base erosion and profit shifting (BEPS) project.³⁸ Among other things, the group highlighted that: 'The OECD proposals are likely to add to an already complicated global tax system. The new complex rules could provide opportunities for new loopholes to be identified by accountancy firms, banks, lawyers and advisers remains.' The group added that: 'The OECD's proposals will reform existing rules and give tax authorities better tools to crack down on tax avoidance. However, these proposals are a "sticking plaster" on a global tax system that is struggling to remain fit for purpose with the growth of multinational companies operating in a digital environment. The BEPS process should represent the first step in a longer process of radical reform.'

Concerns have also been raised by other actors, including the secretariat of the UN Economic and Social Commission for Asia and the Pacific, which highlighted that 'dealing with complex international tax system issues, such as those addressed in the BEPS project, is beyond the capacities of tax authorities in smaller and low-income countries with little expertise in the field, while the policies, standards and practices recommended by G20-OECD in this area might not always be the most suitable for the region's developing countries'.³⁹

Meanwhile, in September 2016, Grant Thornton announced that: 'A global survey of 2,600 businesses in 36 countries finds little impact from the OECD BEPS programme which was finalised last October, as 78 per cent of businesses say they have not changed their businesses approach to taxation (...) The lack of impact is even greater in the [Group of 7] (83 per cent), with 89 per cent of US businesses and 86 per cent of UK businesses saying that BEPS has had little impact on their tax planning. According to the businesses surveyed, BEPS has had the greatest impact on business tax planning in the countries of Indonesia (35 per cent), Nigeria (38 per cent) and India (36 per cent)'.⁴⁰

Regarding the question of whether the public should be allowed to know where multinational corporations do business, and how much tax they pay in those countries (so-called public country by country reporting), the BEPS outcome rejects this idea and instead requires multinationals to share such information with tax authorities only. The UK All-Party Parliamentary Group highlighted that: 'By failing to secure public country by country reporting the OECD has missed a real opportunity to open up the tax system. Transparency is the best way to restore people's trust and simply providing more information to tax authorities is not enough. We need to open companies' affairs to proper public account. Only when we know the activity that companies undertake in every country, the revenues they earn in every country and the profits they make from those revenues, will we be able to see if the tax they pay is fair.'⁴¹

Civil society has also previously raised concerns that BEPS failed to address the more fundamental problems of international corporate tax dodging; that the proposals to combat harmful tax practices are too unambitious to be effective; and that BEPS in some cases ended up endorsing practices that should have been abolished, such as, for example, patent boxes.⁴²

Not only did BEPS fail to achieve the level of ambition needed to put an end to tax dodging by multinational corporations, the project has wider policy implications that are very troubling from a tax justice perspective. The OECD BEPS has become a way for some governments to appear tough on corporate tax avoidance without having to deal with some of the more fundamental problems of an outdated international tax system, and without addressing the interests of developing countries. However, as highlighted next, issues that go beyond BEPS, including public country by country report and more fundamental reforms of the tax system, quickly came back on the political agendas of many countries, and are now, for example, being negotiated across Europe.

Although there was very limited participation of developing countries in the BEPS decision-making process, these same countries are now being pressured to sign up to the new rules and guidelines, which have not been designed in their interest. In February 2016, the OECD established a so-called 'Inclusive Framework', which allows all countries to join in the implementation of the BEPS outcome.⁴³ Despite the OECD referring to this as including all countries 'on an equal footing', it is important to note that this forum will deal mainly with the monitoring and implementation of the BEPS decisions that have already been agreed. The countries that sign up to the Framework will be allowed to participate in discussions about further additions to the BEPS decisions. However, in order to join, they also need to sign up to follow the almost 2,000 pages of decisions and guidelines already adopted within the BEPS project.⁴⁴ Adding further pressure, the EU member states are now discussing whether to threaten countries that do not sign up to BEPS with both blacklisting and, potentially, sanctions (see also below under 'Blacklisting 'non-cooperative jurisdictions)').⁴⁵

This approach has been heavily criticised by civil society organisations, which continue to call for a genuine intergovernmental body on tax where all countries would have an equal say in designing the rules.⁴⁶

The Inclusive Framework is not the only new international initiative. Ahead of its annual spring meeting in April 2016, the International Monetary Fund (IMF) announced plans for a 'Platform for Collaboration on Tax'.⁴⁷ This platform will include the secretariats of the IMF, the World Bank, OECD and the United Nations (UN). The idea is to increase information-sharing and produce toolkits for the implementation of standards for international tax matters.⁴⁸ However, this body also fails to fulfil the demand of ensuring developing countries get a seat at the table when international tax standards are decided, for the simple reason that the platform members are international institutions – not countries. In response to the IMF's announcement, the Global Alliance for Tax Justice noted that the UN represents the broadest membership of both developed and developing countries and said: 'That the UN has now been asked to participate in a technical platform for select information sharing on international tax matters only emphasizes the absurdity of how the UN has not been empowered to convene all member states to discuss and make decisions on these issues in full.'⁴⁹

Meanwhile, developing countries and civil society continue to push for truly inclusive global decision making on tax. During a meeting of the United Nations Conference on Trade and Development (UNCTAD) in Nairobi in July 2016, developing countries once again proposed recognition of their right to participate on an equal footing, but the proposal was once again rejected by developed countries.⁵⁰



Supporters of the #StopTheBleeding campaign, Nairobi, Kenya
stopthebleedingafrica.org

However, developing countries are not taking no for an answer. In September 2016, the President of Ecuador relaunched the proposal to establish an intergovernmental UN tax body, underlining that this will be a vital step in the fight to end tax havens globally. The President stressed that: 'This will not be an easy struggle. We are already seeing much resistance. The boycott by a number of wealthy countries of the tax justice agenda during last year's UN Finance for Development Conference in Addis Ababa was a stark reminder of the opposition and shameful arguments we will confront in pursuing this cause. But since then, the clamor for real action has grown. Now is the time for a historic ethical pact to finally deliver tax justice to the world.'⁵¹ Ecuador has been elected as the 2017 chair of the Group of 77 (G77)⁵² – a coalition of more than 130 developing countries – and underlined that this will be one of their major priorities.⁵³

[(I bis.) Assist developing countries in enhancing their capacities and capabilities in international tax matters and support their participation, on an equal footing in global initiatives in international taxation; (G77 add)]

Extract from the negotiating text at the UNCTAD 14 conference in Nairobi, Kenya, July 2016, where the recognition of developing countries' right to participate on an equal footing was deleted. In the end, the entire paragraph taken out of the text

Europe's role in upholding an unjust tax system

This chapter will look at the main EU policies and new proposals related to tax and transparency, with a special focus on their impacts on developing countries.

Anti-tax avoidance measures

In January 2016, the European Commission launched its Anti Tax Avoidance Package, which included legislative proposals on how to implement the OECD BEPS outcome in a harmonised way across the EU.⁵⁴ Considering that the BEPS outcome in itself was very weak (see Box 1 on 'Concerns about BEPS'), it was no big surprise that the Anti Tax Avoidance Directive included in the package did not present any reforms that would fundamentally change the current system.⁵⁵ Some of the provisions did include mechanisms that could potentially make certain tax avoidance strategies more difficult, such as the limitation of interest deductions on intra-group loans or the introduction of Controlled Foreign Company rules. However, once the proposal was negotiated between the EU Member States, it became clear that the level of ambition was extremely low. As often seen before, the final text⁵⁶ agreed on by Member States was even weaker than the original proposal.⁵⁷

More and more European countries are also introducing so-called general anti-abuse rules in their legislation as well as in tax treaties, including with developing countries.⁵⁸ These rules are meant to provide an opportunity for tax authorities to reject tax benefits or impose an increased tax liability on a multinational corporation in cases where it is clear that a corporation, which might be complying with the letter of the law, is in fact trying to circumvent the spirit of the law with the aim of avoiding taxes.⁵⁹ While the basic idea of preventing treaty abuse is positive, these clauses are not always effective. In some cases they have limited scope and a high level of discretion involved.⁶⁰ In other cases, they will not work unless the tax authority also has good access to further information about the nature of the intra-company transaction, something developing country tax administrations in particular often do not have.⁶¹ Furthermore, they do not address the main concern of tax treaties, namely that they often shift taxing rights from developing countries to developed countries and are even used to reduce tax rates in developing countries (see 'Tax treaties').

EU spillover analysis

Civil society has repeatedly highlighted the fact that EU tax policies can have significant negative impacts on developing countries. This concern has been echoed by the European Parliament, which has proposed a spillover analysis of the EU's tax policies to assess their potential impacts on developing countries.⁶² As part of its Anti Tax Avoidance Package, the Commission published an 'External Strategy', which highlighted that '[the EU] is aware of the need to remain vigilant that domestic tax policies do not have negative spill-over effects on third countries'.⁶³

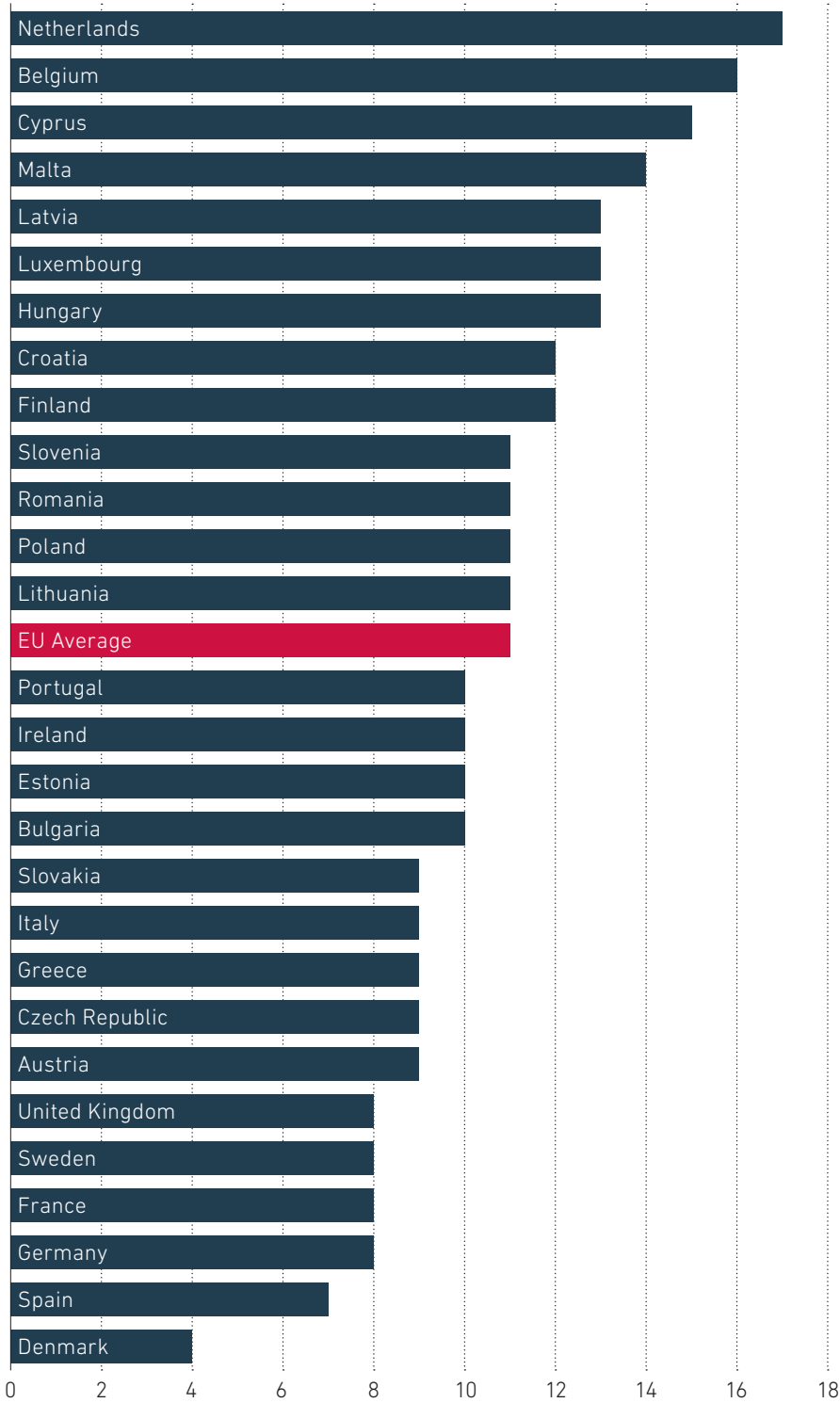
However, the Commission has not yet presented any concrete measures regarding how this vigilance will be carried out, and has not itself taken on board the proposal to conduct a comprehensive spillover analysis. This is in spite of the fact that, as highlighted below, several Member States have a number of potentially harmful tax practices that are well known to be used by multinational companies in their global tax planning strategies to minimise taxes, and can thus have a negative impact on developing countries.

Harmful tax practices

A study commissioned by the Commission shows that all Member States have legal structures in place that can be used for aggressive tax planning by multinationals (see Figure 1).⁶⁴ The study defines aggressive tax planning as: "taking advantage of the technicalities of a tax system or of mismatches between two or more tax systems for the purpose of reducing tax liability." In the study, the authors distinguish between three types of indicators:

- Active indicators, which can directly promote or prompt aggressive tax planning. This includes structures such as patent boxes (see below under 'Patent boxes').
- Passive indicators, which do not by themselves promote or prompt any aggressive tax planning, but are necessary to prevent or block it. This, for example, includes generous tax exemptions for dividends.
- Indicators of lack of anti-abuse rules to prevent tax avoidance – for example, lack of 'controlled foreign company rules' (see below under 'Common Consolidated Corporate Tax Base').

Figure 1: Number of aggressive tax planning structures



Number of structures in place in EU Member States that can be used by multinational corporations for aggressive tax planning and tax avoidance. The graph includes all indicators. Source: Ramboll Management Consulting and Corit Advisory.⁶⁵

Letterbox companies

The setting up of letterbox companies is one of the practices used by multinational corporations to avoid paying taxes in countries where their economic activity takes place.⁶⁶ Other phrases used to describe the same type of companies are 'shell companies' or 'special purpose entities'. These structures are companies with few employees, if any, and no real economic activity. Multinational corporations can establish letterbox companies in jurisdictions where they can get favourable tax treatment, and then start collecting payments from other subsidiaries of the same corporation (for example by charging for services that are hard to value, such as 'management fees' or the right to use the corporation's logo). Thereby, multinational corporations can transfer their profits from the subsidiaries in countries where real economic activity takes place and end up with much lower profits (and thus lower tax payments), while the profits get registered in the low-tax jurisdiction where the letterbox is located.

Looking at global investment flows, it is clear that several European countries are major centres providing attractive tax regimes for letterbox companies and thus functioning as conduits for multinationals' investments. By comparing the statistics of foreign direct investments (FDI), Dutch organisation SOMO shows that the Netherlands is by far the largest exporter of FDI in the world, ahead of much bigger economies such as the United States and China.⁶⁷ The small European country of Luxembourg is third on the list of global FDI exporters.⁶⁸ This may seem strange, but the reason these countries rank so high up the list is that large parts of the investments attributed to the Netherlands and Luxembourg are in fact made by investors residing in other countries. This is because these investment flows are passed through Dutch or Luxembourg letterbox companies. The original investment decision (or research and development) was done in another country, but by routing investments through a mailbox company, multinational corporations are able to avoid paying taxes. Between 80-90 per cent of the investments originating from both countries flow through letterbox companies, indicating a massive rerouting of international investments through these jurisdictions for tax optimisation or other investment benefits (such as those granted under bilateral investment treaties).⁶⁹

Developing countries are among those that lose out in this system, as has been shown by cases like that of the Australian mining company Paladin, which routed its profits made in Malawi through a Dutch letterbox company. According to a report by ActionAid, this led Malawi – one of the poorest countries in the world – to lose approximately US\$27.5 million in tax revenue over six years.⁷⁰ The findings have been rejected by Paladin.⁷¹

About 9 per cent of investments into developing countries are routed through special purpose entities (SPEs). The figure is lower than the global average of 19 per cent, but the trend is worrying as the numbers have been increasing rapidly since 2000.⁷²

While the European Parliament has called for the abolition of letterbox companies,⁷³ the European Commission has deemed that the problem will be solved by so-called general anti-abuse rules.⁷⁴ However, this is not likely to solve the full extent of the problem of letterboxes (see 'Anti-tax avoidance measures').

Patent boxes

Intellectual property such as patents, trademarks and copyrights do not have a strong connection to geographical places in the same way as, for example, production has. Furthermore, the real value of a brand or certain know-how is difficult to determine. This makes intellectual property easily transferable from one jurisdiction to another, which is what multinationals can do in order to minimise their taxes. Research shows that patent applications are responsive to corporate income tax levels and that European companies' intellectual property is more likely to be held by subsidiaries in low-tax jurisdictions.⁷⁵

In recent years, several EU governments have chosen to introduce so-called patent boxes, a type of tax incentive that grants corporations preferential tax treatment for income from intellectual property. Twelve EU countries currently have patent boxes (see Box 2 on 'EU countries with patent Boxes'), with tax rates varying between 0 per cent (Malta) and 15 per cent (France).⁷⁶ Countries that have introduced patent boxes often do so with the stated aim of attracting research and development activities. In effect, however, these special tax regimes undermine the tax base of other countries and are very much a part of ongoing 'tax competition' between countries. The negative impact is felt also by developing countries, which risk becoming manufacturing platforms with profits diverted into European patent boxes.⁷⁷ In addition, there is very little evidence that patent boxes do anything to boost research and development or national innovation. They help boost the number of patents being filed at national intellectual property offices. However, this might very well be due to tax planning by multinational corporations rather than any increase in scientists conducting research in those countries.

"[Patent boxes] have not proven as effective in fostering innovation in the Union as they should have [The European Parliament] regrets that they are, instead, used by MNEs for profit-shifting through aggressive tax planning schemes."

European Parliament resolution

It is perhaps for these reasons that patent boxes were the subject of intense debate among EU Member States a couple of years ago. In 2013, German Finance Minister Wolfgang Schauble publicly criticised patent box regimes as 'going against the European spirit', suggesting that they should be banned.⁷⁸ However, a deal between the UK and Germany at the end of 2014 put an end to the discussion.⁷⁹ The deal does not entail a ban on patent boxes, but rather introduces a set of complicated guidelines for how patent boxes should be designed, based on what is called the 'modified nexus approach', which was later also adopted by the OECD BEPS project.⁸⁰

The intention behind the 'modified nexus approach' is to ensure that the tax benefits associated with patent box regimes are linked to the location of the related economic activity, and to where the intellectual property was originally developed. However, many people have raised doubts about the effectiveness of this approach, and patent boxes still raise strong concerns.⁸¹ The deal on the modified nexus approach furthermore ensured that countries were allowed to introduce the old type of patent box regimes, without applying the new 'modified nexus approach' until June 2016, and that these and all existing patent box agreements would be allowed to continue unchanged until 2021.⁸²

Box 2

EU countries with patent boxes⁸³

Belgium	Cyprus	France
Hungary	Ireland	Italy
Luxembourg*	Malta	The Netherlands
Portugal	Spain	United Kingdom

*The old Luxembourg patent box regime has been closed down, albeit with a guarantee from the government that multinational corporations that were already using the system can continue doing so until 2021.⁸⁴ The government has also announced that a new system will be introduced to replace the old one.⁸⁵

The European Parliament has taken a rather critical stance towards the modified nexus approach, stating it will not be enough to sufficiently limit the problems associated with patent boxes.⁸⁶ In its resolution from June 2016, the Parliament further states that patent boxes 'have not proven as effective in fostering innovation in the Union as they should have' and 'regrets that they are, instead, used by MNEs for profit-shifting through aggressive tax planning schemes'.⁸⁷ The Parliament goes on to call on the Commission to put forward a proposal on patent boxes 'building on and addressing the weaknesses of the OECD Modified Nexus Approach'.⁸⁸

While the European Commission has so far shown no intention of proposing a ban of patent boxes, it has put forward a proposal to replace some of them with large corporate tax deductions, which could become mandatory for companies with an annual minimum turnover of €750 million should an EU Common Consolidated Corporate Tax Base be adopted (see 'Common Consolidated Corporate Tax Base').

'Sweetheart deals'

In November 2014, the LuxLeaks revelations exposed the secret world of Advance Pricing Agreements (APAs) – also known as sweetheart deals – which benefited multinational corporations, in some cases with tax rates lower than 1 per cent.⁸⁹

Public insight into these kinds of deals is very rare indeed, since they are kept highly confidential. In fact, the LuxLeaks revelations were followed by legal charges against the two whistleblowers, as well as one of the key journalists, who brought the story to the public. The case is still ongoing in Luxembourg (see 'Lack of whistleblower protection').

Advocates of APAs, such as PwC, highlight that they are a way of 'removing uncertainty from transfer pricing'.⁹⁰ This argument relates to the fact that the international rules that guide transfer pricing (regulating prices paid on goods and services traded between subsidiaries of the same multinational) are based on the so-called Arm's Length Principle, which is – as the name indicates – a general principle, but not a clear, transparent and effective method to ensure fair corporate taxation (see Box 3). The unclear transfer pricing rules are a great problem when it comes to corporate taxation, because internal trading between subsidiaries is a way for multinational corporations to move their profits from the countries where the business activity takes place to tax havens. APAs are a way for multinational companies to get their future transfer pricing methods agreed on with the authorities ahead of time, to ensure that the tax administration will not challenge the transfer pricing methods used. These tax deals can bring certainty to taxpayers, but they can also be misused for tax avoidance purposes, as the LuxLeaks scandal revealed.

Other examples of problematic APAs have been highlighted by the European Commission's state aid cases. For example, APAs played a central role in the tax arrangements between Luxembourg and Fiat, the Netherlands and Starbucks, and Apple and Ireland. In these cases, the European Commission found the tax advantages given to the multinational corporations, through APAs, to be a violation of the EU's State Aid rules.⁹¹ The Commission's decisions have all been appealed by the Netherlands, Luxembourg and Ireland, respectively, and the cases are currently pending at the European Court of Justice.⁹²

However, although important, the state aid cases will only be able to address selected individual examples of tax avoidance by multinational corporations, but not the underlying problem of secrecy and a broken corporate tax system.

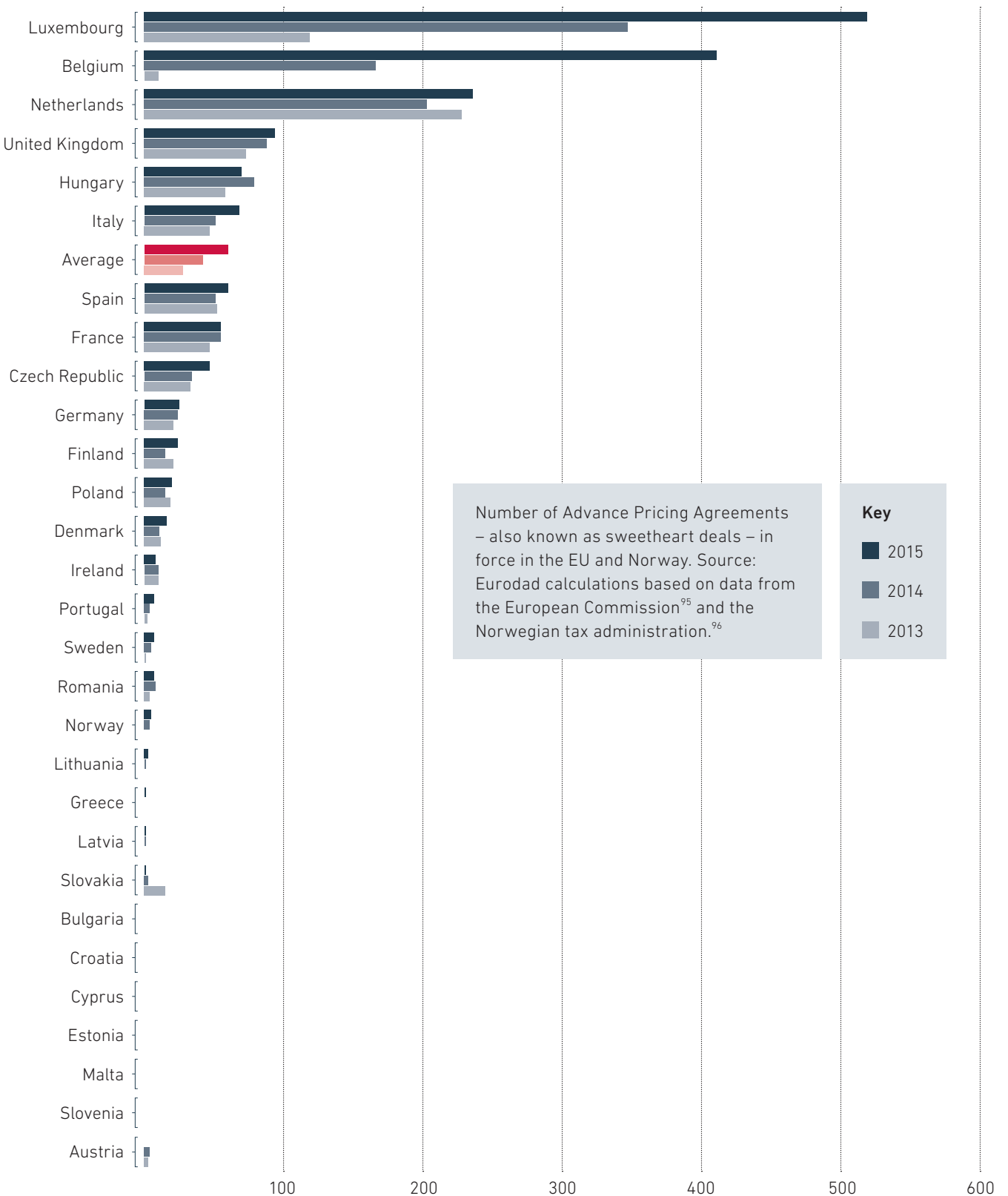
Calls from the European Parliament and civil society to publish the key elements of APAs have so far been rejected.⁹³ In October 2015, EU Member States decided that details of tax rulings would be automatically exchanged between their respective tax administrations, but remain secret to the public.⁹⁴ Therefore, the exact impact of APAs will be difficult to estimate. However, it is very clear that APAs are a tax practice that can be abused for large-scale tax avoidance.

Table 1: Number of Advance Pricing Agreements – also known as sweetheart deals – in force in the EU and Norway

Source: See Figure 2.

	'Sweetheart deals' in force		
	2015	2014	2013
Luxembourg	519	347	119
Belgium	411	166	10
Netherlands	236	203	228
UK	94	88	73
Hungary	70	79	58
Italy	68	51	47
Average	60	41.96	27.67
Spain	60	51	52
France	55	55	47
Czech Republic	47	34	33
Germany	25	24	21
Finland	24	15	21
Poland	20	15	19
Denmark	16	11	12
Ireland	8	10	10
Portugal	7	4	2
Sweden	7	5	1
Romania	7	8	4
Norway	5	4	0
Lithuania	3	1	0
Greece	1	0	0
Latvia	1	1	0
Slovakia	1	3	15
Bulgaria	0	0	0
Croatia	0	0	0
Cyprus	0	0	0
Estonia	0	0	0
Malta	0	0	0
Slovenia	0	0	0
Austria	0	4	3

Figure 2: 'Sweetheart deals' in force at the end of 2013, 2014 and 2015



Number of Advance Pricing Agreements – also known as sweetheart deals – in force in the EU and Norway. Source: Eurodad calculations based on data from the European Commission⁹⁵ and the Norwegian tax administration.⁹⁶

Key

- 2015
- 2014
- 2013

One might have thought that the LuxLeaks scandal would have led to a reduction in the number of APAs between governments and multinational corporations. However, official data from the European Commission indicates quite the opposite – it seems that these ‘sweetheart deals’ are becoming a rapidly growing trend in Europe (see Table 1 and Figure 2). At the end of 2014, the total number of APAs had grown to 972 from 547 in 2013 – an increase of 78 per cent.⁹⁷ At the end of 2015 – one year after the LuxLeaks scandal – that number had grown to 1,444, an additional increase of 49 per cent since 2014.⁹⁸

One question that remains unanswered is how many of these APAs are simply legitimate agreements to ensure tax certainty for multinational corporations, and how many are the type of instruments of large-scale tax avoidance that have been exposed in the LuxLeaks scandal and the state aid cases. Meanwhile, the ongoing state aid court cases show that there is clearly no consensus on what is legally acceptable in terms of tax advantages given to multinational corporations through APAs.

It is clear that APAs – or secret sweetheart deals – remain an issue of great concern in Europe.

Tax treaties

A tax treaty is an agreement between two countries that aims to create a framework originally intended to prevent companies or individuals that are operating across borders from having to pay tax twice on the same income (also known as double taxation). One of the main reasons for developing countries to sign on to these agreements is that they are expected to increase foreign investment. However, empirical evidence does not support this.⁹⁹ Rather, the global network of more than 3,000 tax treaties poses several challenges from a developing country perspective, since many of the agreements have been designed in a way that deprives poor countries of tax revenues.¹⁰⁰

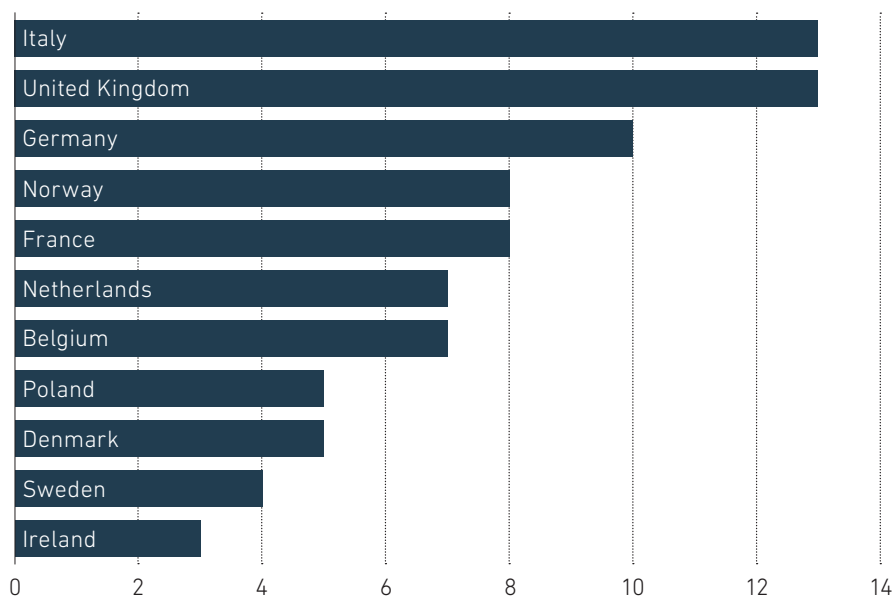
Civil society organisations are also very alert to the potential risks with tax treaties, and there is particular awareness about the risks associated with tax treaties signed with countries that have high levels of financial secrecy or low levels of taxation. Tax Justice Network Africa (TJN-A) has filed a law suit on behalf of Kenyan taxpayers against the Kenyan government, challenging the constitutionality of the tax treaty signed between Kenya and Mauritius.¹⁰¹ Whilst the treasury defended the tax treaty in court as a way to attract investments,¹⁰² TJN-A argues that the agreement ‘significantly undermines Kenya’s ability to raise domestic revenue to underpin the country’s development by opening up loopholes for multinational companies operating in the country and super-rich individuals to shift profits abroad through Mauritius to avoid paying appropriate taxes’.¹⁰³ The court case is still pending.

Another key concern related to tax treaties is that they often include provisions to lower – or remove – withholding taxes on cross-boundary financial flows, and thus can lead to lower tax income in the countries signing on to such treaties, including developing countries. For example, research by ActionAid shows that a tax treaty between Uganda and the Netherlands, signed in 2004, completely takes away Uganda’s right to tax certain earnings paid to owners of Ugandan companies if the owners are resident in the Netherlands. Ten years later, half of Uganda’s foreign investment is owned from the Netherlands, at least on paper, which means Uganda will not be able to tax it.¹⁰⁴ Uganda has since announced its intention to renegotiate unfavourable tax treaties.¹⁰⁵ Figure 3 provides an overview of which European countries that have ‘very restrictive’ tax treaties with developing countries in Asia and Africa.

However, it is not only the worst tax treaties that have negative impacts on developing countries. Tax treaties that are less extreme also contain reductions of developing country tax rates.

Table 2 and Figure 4 provide an overview of the total number of tax treaties between developing countries and the European countries covered by this report, as well as the average reduction in withholding taxes in developing countries that has been introduced through these treaties.

Figure 3: Number of 'very restrictive' tax treaties in force

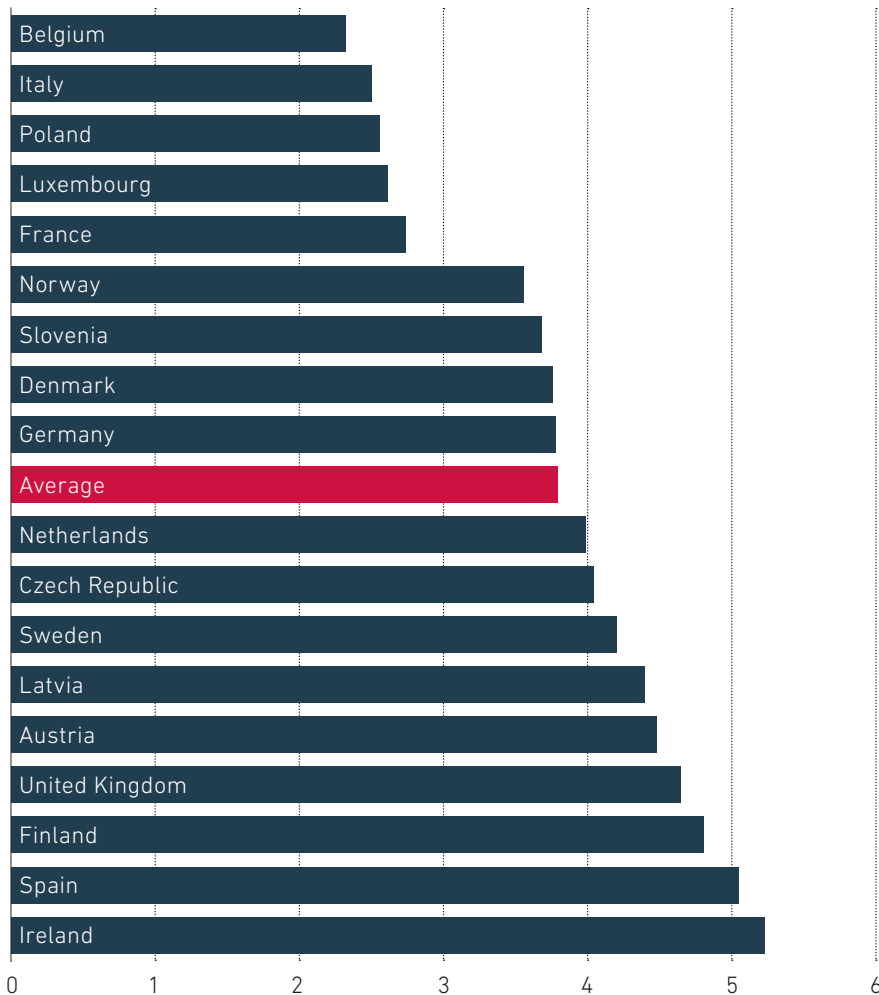


European countries with 'very restrictive' tax treaties with developing countries in Africa and Asia. These treaties introduce strong limitations on the taxing rights of the developing countries that sign them. The concept of 'very restrictive' treaties' is based on a thorough assessment by ActionAid, which analyses how each treaty allocates taxing rights between the signatories as well as the level of reductions of developing country tax rates. For more information, see ActionAid. (2016). *Mistreated*.¹⁰⁶

Table 2: Total number of tax treaties between developing countries and the European countries covered by this report Source: See Figure 4.

	Low Income	Lower Middle Income	Upper Middle Income	Total
Slovenia	0	6	15	21
Latvia	0	8	14	22
Luxembourg	0	11	15	26
Ireland	1	10	17	28
Finland	1	16	19	36
Denmark	2	15	20	37
Poland	1	17	20	38
Czech Republic	1	16	22	39
Austria	1	15	25	41
Average	2.72	17.22	22.61	41.83
Sweden	3	15	24	42
Netherlands	2	19	23	44
Norway	9	14	21	44
Spain	1	17	29	47
Belgium	2	22	26	50
Germany	2	23	26	51
Italy	5	20	26	51
United Kingdom	7	28	32	67
France	11	24	33	68
	49	295	407	752

Figure 4: Average reduction of tax rates (%) in tax treaties with developing countries



Average reduction in withholding tax rates (in percentage points) as a result of tax treaties between developing countries and the European countries covered by this report. Source: Eurodad calculations.¹⁰⁷ The average rate reduction covers withholding taxes on four income categories: royalties, interests, dividends on companies and qualified companies. It does not cover tax rates on services or management due to the lack of data. The average rate reduction refers to the difference between the rates contained in the individual treaties and the statutory rates in the developing country for all four income categories. The figure for the overall average reduction is an un-weighted average for all of the 18 European countries covered in this report.

In general, there are two main models for tax treaties being used, one developed by the OECD and the other by the UN. A key difference between the two models concerns the issue of how the profits of multinational corporations are allocated between the countries where they do business. Whereas the OECD model favours the country where the corporate headquarters and investors are based, the UN model is more favourable to the so-called 'source countries', where the income arises.¹⁰⁸ Since most developing countries are source countries, this difference has a significant impact on the corporate tax income in developing countries.¹⁰⁹ The UN model is therefore seen as more favourable to developing countries than the OECD model.

A third option is treaties which only focus on exchange of information, the so-called Tax Information Exchange agreements (TIEA). These treaties don't contain the elements such as lowering of tax rates and distribution of taxing rights between countries, and are therefore not controversial in the same way as ordinary tax treaties.

In its resolution on policy coherence for development, the European Parliament in June 2015 called on the EU 'to ensure fair treatment of developing countries when negotiating tax treaties in line with the UN Model Double Taxation Convention, taking into account their particular situation and ensuring a fair distribution of taxation rights'.¹¹⁰

In its communication on an external strategy on tax, published in January 2016, the European Commission acknowledged that the tax treaties of EU Member States can have negative impacts on developing countries. Rather than suggesting concrete measures to address the issue, such as a spillover analysis (see above under 'EU spillover analysis'), the Commission intends to launch a debate with Member States on the issue and suggests that the Member States could 'reconsider' aspects of their tax treaties with developing countries.¹¹¹ It is still unclear what the concrete outcomes, if any, of this work will be.

Common Consolidated Corporate Tax Base

Box 3

Multinational corporations – separate or single entities?

The underlying problem in the international tax system today is that multinational companies are treated as a collection of 'separate entities' even though in reality they function as unified firms, with subsidiaries under the central control of the parent company. In today's system, subsidiaries of the same company are expected to trade with each other 'at arm's length', as if they did not have any connection to each other.

The fundamentals of the transfer pricing rules governing taxation for multinationals date back almost 100 years. Since then, the way companies do business has changed radically. Technological transformations, increasingly complex corporate structures and business strategies based on branding are all part of the explanation as to why the arm's length principle has become prone to misuse. Setting up long chains of separate entities within the same company has been normalised and it is not always easy to decipher which corporate structures serve legitimate economic purposes and which are designed solely to avoid paying taxes or to circumvent other regulations and social obligations.¹¹² Another underlying problem with the arm's length principle is that the data needed to determine whether multinational corporations have used an 'arm's length price' in their internal trades is either not available to tax administrations, or simply does not exist.¹¹³

However, the arm's length principle is being called into question, as it is becoming increasingly clear that it lies at the heart of the problem of profit shifting by multinationals. The UK's disputed tax deal with Google in January 2016 prompted both the Financial Times and the Economist to write about what the Economist called the 'damaging fiction' of separate entities.¹¹⁴ According to the Economist, 'the "transfer pricing" rules that police this system are complex and flawed. Keeping this approach, but toughening up the policing, means creating yet more rules – and loopholes. Better to think of each firm as a single entity.'

Thinking of multinational companies as one single entity for tax purposes is one of the solutions put forward by academics and civil society organisations. So-called unitary taxation means that the company produces one set of master accounts, including one final income and profit statement. A proportion of the profit is then allocated to the states where the company has had operations, based on a formula that is constructed to reflect real economic activity. To measure this real economic activity, this formula would typically include elements such as assets, number of employees and sales. Once the profit has been designated to relevant states, this designated bit of the profit is taxed according to the corporate tax rate in each country.¹¹⁵

In 2011, the European Commission put forward a proposal for a so-called Common Consolidated Corporate Tax Base (CCCTB),¹¹⁶ which would in fact be a type of unitary taxation. However, the proposal got stuck in negotiations in the EU Member States, some of which were very opposed to the idea.

In October 2016, the Commission introduced a new proposal on the CCCTB, as part of a larger tax package.¹¹⁷ The idea with the CCCTB is to improve the environment for businesses in the EU by reducing complexities and compliance costs for companies engaging in cross-border activities. The Commission also notes that the CCCTB could be effective in eliminating profit shifting by multinationals as it would replace the entire transfer pricing system, amongst other things.¹¹⁸

The CCCTB could be an important step forward, but it needs to be carefully designed in order for it to be successful.¹¹⁹ The consolidation and a system for allocating the tax base among Member States, could align taxation with economic activity by replacing the transfer pricing system with a system that treats multinational corporations as single entities (rather than as a group of independent companies). Although the CCCTB technically speaking only deals with tax bases in EU countries, it can create a precedent that could, in the long run, impact on the global tax system.

Unfortunately, the European Commission's relaunch also included some major weaknesses. Rather than proposing a negotiation on the CCCTB, the Commission proposed a two-step approach, with the first phase dealing only with the common tax base and postponing consolidation until after the common base has been agreed.¹²⁰ As part of the first step, the Commission also proposed introducing several new types of tax deductions for companies in the EU. For example, the Commission has suggested a 'super-deduction', which would not only allow companies to deduct research and development (R&D) expenses from their tax base, but would also introduce large extra bonus deductions for companies with high R&D expenses.

Such types of large-scale tax deduction regimes can potentially introduce new incentives for multinational corporations to shift their profits from non-EU countries (including developing countries) to EU countries with the aim of avoiding taxes. On the positive side, the 'super-deduction' would replace the controversial patent boxes.

The proposed first step also includes elements such as Controlled Foreign Company (CFC) rules.¹²¹ If Member States are willing to be ambitious in this area, these rules could help to reduce the incentive for tax avoidance by introducing an obligation for EU countries to tax multinational corporations with headquarters in the EU for their global activities, unless these corporations can demonstrate that they have paid taxes in another country. Since the corporations will have to pay taxes regardless, CFC rules can remove the corporate incentive for engaging in tax avoidance in the first place, and thus also promote corporate tax payments in the countries where the corporations have business activity, including in developing countries. It can also remove the pressure on countries to offer tax incentives in order to 'attract' multinational corporations, since these corporations will be taxed in the country where they have their headquarters unless they have already paid taxes elsewhere.

In summary, the first step of the process has the potential to create new dangerous loopholes, or important improvements. However, the issue of consolidation, which was the key element of the old CCCTB proposal, would not be addressed until the second step. Since the first step does not begin to address the real political obstacles to consolidation, it is highly doubtful that this two-step approach will make it any easier to agree on the second step.

The European Parliament has, since 2011, been supportive of a common consolidated corporate tax base.¹²² However, the European Parliament is not part of the decision-making process when it comes to EU legislation on tax. It will be up to Member States to make sure that the CCCTB becomes efficient in closing the loopholes used by multinationals to dodge taxes, but the EU's rules require unanimity among all Member States for a final decision to be reached.

It is worth noting that unitary taxation through formulary apportionment of taxing rights has been in place in federal states such as the United States, Canada and Switzerland for many years.¹²³ These systems are limited to the division of corporate income among members of a specific federation, but they do not deal with the division of income between the federation and other countries around the world.

Blacklisting 'non-cooperative jurisdictions'

The EU is currently working towards establishing a common blacklist of so-called 'non-cooperative jurisdictions', or, in other words, tax havens. The Commission revealed plans for a common list in its external strategy on tax, published in January 2016,¹²⁴ and the idea has been supported by the Member States.¹²⁵ The European Parliament has also called for a common EU list of tax havens, but has emphasised that the list needs to be 'regularly updated and based on comprehensive, transparent, robust, objectively verifiable and commonly accepted indicators'.¹²⁶ Unfortunately, this does not seem to be the case with the EU blacklist. First of all, the European Commission has made it clear that no EU Member State can be included on the EU blacklist, and thus all countries will not be treated equally.¹²⁷ This is in spite of the fact that several EU Member States are using a number of tax practices that can facilitate corporate tax dodging (see Table 1 and Figure 2). Second, the internal negotiations about the blacklist are currently taking place in the so-called Code of Conduct Group on business taxation¹²⁸ – a discussion forum that has become controversial due to its high level of secrecy and opacity, as well as the very political nature of the discussions.¹²⁹ In other words, the process is not transparent.

Third, the EU Member States have now agreed a first set of criteria for what constitutes a 'non-cooperative jurisdiction'.¹³⁰ These criteria are very top level and leave a lot of room for discretion and political bias.

Lastly, in addition to excluding EU countries, there is a risk that an EU blacklist would not include traditional allies, such as Switzerland and the United States.¹³¹ This is in spite of the fact that the Financial Secrecy Index, published by the Tax Justice Network, ranked Switzerland as top of the list of the most important providers of international financial secrecy in 2015.¹³² The United States, which ranked third on Tax Justice Network's list, is also increasingly being pointed to as one of the biggest, and growing, tax havens in the world.¹³³

Another concern with the first criteria adopted by EU Member States is that there is a strong focus on demanding that countries sign up to the OECD decisions on BEPS and exchange of information.¹³⁴ As explained earlier in this report (under 'Concerns about BEPS') and later (under 'Bank secrecy and the not very automatic information exchange'), the OECD standards do not necessarily guarantee that countries will not be tax havens. Meanwhile, developing countries may find themselves faced with the choice of being blacklisted by the EU (and risk being sanctioned) or having to sign up to a set of agreements that have been agreed behind closed doors by the OECD and G20 members, while more than 100 developing countries were excluded from the negotiations (see above under 'Exclusive global decision-making'). This means developing countries could be pressured to agree to standards that have not been designed in their interest.

A fair list of tax havens would need to be negotiated at the global level, with all countries participating on an equal footing in both the standard setting and the blacklisting, and no countries should be exempt from blacklisting. However, the essence of the tax haven problem is that financial assets can be moved from one end of the world to the other with the click of a mouse. Therefore, a blacklist that includes a few smaller tax havens, but excludes some of the world's biggest, would not solve the problem but would simply move the problem from one country to the other.

Another concern is that the Commission has linked the tax havens blacklist to its proposal on public country by country reporting, which strongly undermines the proposal, as discussed in more detail later in this report.

Financial and corporate transparency

Bank secrecy and the not very automatic exchange of information

In 2015, leaks from the Swiss branch of Europe's biggest bank, HSBC, revealed more than €51 billion stashed away in 50,000 bank accounts with connections to developing countries.¹³⁵ In order to deal with the tax evasion and avoidance risks related to banking secrecy, some developed countries, such as the EU Member States, have agreed to start exchanging information on financial accounts automatically amongst each other.¹³⁶ This means that, for example, the Belgian tax authorities will, automatically and on a periodic basis, receive information on any bank accounts or assets held by Belgians in other EU Member States. The aim of this automatic information exchange is to improve the efficiency of tax collection and prevent taxpayers from hiding capital or assets abroad.¹³⁷

.....

"€51 billion was stashed away in 50,000 bank accounts with connections to developing countries."

Swiss Leaks relating to Europe's biggest bank HSBC, 2015

.....

At the global level, 101 jurisdictions, including all countries covered in this report, have signed up to the so-called automatic exchange of information for tax purposes through the OECD's Common Reporting Standard (CRS).¹³⁸ However, it remains to be seen whether developing countries will be able to benefit from this system.

The CRS builds on the idea of reciprocity, which means that, in order to receive information, a country has to be able to share information on account holders within its borders as well.¹³⁹ Many developing countries do not have the technological capacity or the staff to compile this information, and it may not be a top priority on their development agenda. Therefore, civil society has argued that, as long as developing countries can guarantee that the information will be kept confidential, they should be allowed a transition period during which they receive information without a requirement for full reciprocity. This point has been supported by an independent UN expert¹⁴⁰ as well as by the European Parliament.¹⁴¹ However, the Commission 'is aware of developing countries' problems in meeting reciprocal conditions but prefers to assist in capacity building rather than to promote transitional derogations'.¹⁴²

Another fundamental concern with the CRS is that it does not contain an obligation for signatories to automatically exchange information with all other signatories. Instead, the countries signing up to the global agreement get to 'pick and choose' which other countries they would like to share information with, and the final agreement to share information will be established through bilateral agreements.¹⁴³ Thus there is a risk that developing countries that sign up to the international agreement and install the systems needed to exchange information automatically will still not be able to get the necessary bilateral agreements (so-called exchange relationships) with other countries to receive information automatically.¹⁴⁴ In fact, early data already indicates that this will be the case.¹⁴⁵

Box 4

Financial secrecy and women's rights

There is increasing recognition that corporate tax dodging has a negative impact on the fulfilment of internationally agreed human rights.¹⁴⁶ By avoiding paying their taxes, some multinationals and wealthy individuals are part of the problem of decreasing public finances and deteriorating public services, in developing countries as well as in Europe. The impacts are felt even more by women than by men when, for example, inadequate spending on social services means a heavier burden of care-giving falls on families – predominantly on women.¹⁴⁷

By providing financial secrecy and adopting policies that facilitate tax dodging, some governments are playing an active role in supporting this inequality. At the same time they are undermining the ability of other states to mobilise the maximum available resources for the realisation of women's rights. However, as the UN Independent Expert on Foreign Debt and Human Rights has pointed out: 'International law requires that States should refrain from conduct that harms the enjoyment of human rights outside their own territory'.¹⁴⁸

In early 2016, civil society organisations made a submission to the UN Committee on the Elimination of Discrimination Against Women (CEDAW), arguing that Switzerland's lax tax and financial rules are jeopardising women's rights, especially in developing countries.¹⁴⁹

For example, the submission outlines how revenue shortfalls during the 2014–2015 Ebola public health crisis affected women's rights in West Africa. Due to the traditional caregiving role of women and the serious financial constraints on public spending on health in the countries affected, up to 75 per cent of the 11,000 victims were women. In the decade before Ebola, the public health budgets in Guinea, Liberia and Sierra Leone were on average only US\$140 million per year.

As a result of this civil society submission, the CEDAW committee has asked Switzerland to provide information on the measures taken to ensure that its 'tax and financial secrecy policy does not contribute to large-scale tax abuse in foreign countries, thereby having a negative impact on resources available to realize women's rights in those countries'.¹⁵⁰

Keeping country by country data secret from developing countries

A long-awaited proposal from the European Commission was put forward in April 2016, namely the proposal on public country by country reporting (CBCR) for all sectors. The idea of having multinational companies publish key information on their economic activities and taxes paid for each country where they operate has been a key demand made by CSOs and trade unions for many years. Unfortunately, the Commission's proposal¹⁵¹ was a disappointment, since it only requires multinationals to publish key financial data from some countries, but not from others. The core of the proposal is that multinational corporations should publish the data on a country by country level for their operations within the EU. As the proposal came only a week after the Panama Papers scandal broke, at the last minute the Commission added the requirement for companies to publish information from any EU blacklisted tax havens where they have a subsidiary.¹⁵²

Although at first glance the addition of reporting from tax havens may seem like a good solution, this proposal is highly problematic in many ways. There is currently no common EU blacklist of tax havens, and even though there are now plans to agree on one, this list is likely to be far from politically neutral. As was discussed earlier in this report, an EU blacklist will most likely not include allies such as Switzerland and the United States. Companies would therefore still be able to hide their profits in tax havens not listed by the EU, and there could be a risk of new jurisdictions taking up a tax haven role. Thus the proposal would keep citizens, journalists and lawmakers in the dark regarding the full global operations of multinationals.¹⁵³

What this means in practice is that the data from the country by country reports would be meaningless, as it would not give a full picture of multinationals' activities. A full overview is needed for the public to be able to judge whether companies are paying their taxes in the countries where they have their real economic activity. Developing countries would be especially disadvantaged, as they would not have access to any information on the activities and tax payments of multinational companies operating in their countries (unless, ironically, they were listed on the EU's blacklist of tax havens, in which case the country by country data for their countries would be made public).

In addition, the proposal put forward by the Commission also sets a very high threshold for which companies will be required to report, as it only covers companies with a minimum consolidated turnover of €750 million per year. According to OECD estimates, only 10–15 per cent of the world's multinationals fulfil this requirement.¹⁵⁴

The €750 million threshold stems from the OECD's BEPS project,¹⁵⁵ which deals with secret country by country reporting and was adopted by the EU and proposed by the Norwegian government in May 2016.¹⁵⁶ From 2017, EU governments will require companies (with a consolidated annual turnover of €750 million or more) to submit full country by country reports to the tax authorities in the country where their headquarters are located (or where a European subsidiary is located, if the headquarters are not based in the EU). Tax authorities around the world are then supposed to exchange this information with each other on a regular basis. Although this secret country by country reporting can be a helpful tool for tax administrations to make sure that multinationals are paying their fair share, it will not allow citizens, journalists or parliamentarians access to the information so that they can hold multinational corporations and governments to account.

Furthermore, as explained earlier, there is a real risk that developing countries will not be able to receive the information automatically. In fact, the Commission's impact assessment for public country by country reporting indicates that the EU countries might not be planning to exchange country by country reports with all governments. According to the assessment, fully public CBCR would involve 'the risk that third country tax authorities seek tax adjustments on third country operations'.¹⁵⁷ This could be interpreted as suggesting that the EU Member States are not really planning to exchange the secret country by country reports automatically with all other governments. If they were, there should not be any difference on this point between public and secret reporting – the 'third countries' should receive the reports anyway through the automatic information exchange.

Less than 1%: The tax rate agreed between some multinational corporations and Luxembourg

LuxLeaks, 2014

The argument that country by country reports should be kept secret to avoid third country (including developing country) tax administrations seeking 'tax adjustments' is highly problematic. In plain English, it would seem that the reason why the European Commission is arguing for keeping the information from a number of third countries, including developing countries, is that the EU wants to protect its multinationals from having to pay more taxes in these countries. This would be a highly problematic stance for the EU to take, as it would go squarely against the its own principles of policy coherence for development.¹⁵⁸ It would essentially mean that the Commission is refusing to support developing countries in their efforts to collect their fair share of taxes from multinationals.

The proposal on public CBCR will be negotiated by the European Parliament, the Commission and the EU Member States over the coming months. The European Parliament has previously supported public country by country reporting that would require companies to publish information from all countries.¹⁵⁹ In fact, the Parliament already put forward its own proposal for public CBCR in July 2015 as an amendment to the Shareholders' Rights Directive,¹⁶⁰ which is still under negotiation between the Parliament and the Council. However, it is likely that these negotiations will now instead take place as part of the decision making process on the Commission's proposal from April 2016.

Box 5

Country by country reporting by big banks

Public country by country reporting for financial institutions was adopted in the EU in 2013¹⁶¹ and the first data has now been published by EU headquartered banks. As the EU is currently discussing the extension of this reporting requirement to cover all big multinationals, it is worth looking at what the legislation has meant for the financial sector.

First, there has been no sign of negative side effects to banks as a result of more public disclosure. In fact, at a hearing in the European Parliament in November 2015, HSBC and Barclays stated their support for public country by country reporting.¹⁶² Research carried out by Transparency International also concludes that there is no link between public disclosure of country by country information and a company's competitiveness.¹⁶³

Second, and in more practical terms, a lesson can be learnt regarding how public CBCR should be done. According to a study by PwC, both Member States and banks have interpreted the text of the directive in different ways, which means there is a large difference in the format and content of the reports.¹⁶⁴ For country by country information to be fit for purpose and easily comparable with other data sets, Member States should receive enough guidance to ensure coherent implementation. The reports should also be published in machine readable open data format, preferably in a centralised register.

Third, despite these shortcomings, it is already clear that the reporting has been useful in enabling civil society to ask more informed questions about the economic activities of banks. For example, a report published by French CSOs on the biggest French banks shows a significant discrepancy between business activities and the banks' reported profits in different countries.¹⁶⁵ The five banks investigated disclosed having 16 subsidiaries in the Cayman Islands alone, with not a single staff member. Yet Credit Agricole, for example, declared €35 million in profits from the Caymans.¹⁶⁶ The study also shows that the banks made a third of their international profits in tax havens – close to €5 billion – even though only one-sixth of their total number of employees are located in these jurisdictions.¹⁶⁷ This goes to show that making country by country reports public will enable journalists and civil society, as well as decision makers, to get a clearer picture about international money flows and thus have a more informed debate on international taxation.

Hidden ownership

It is no secret that wealthy individuals and corporations alike can find ways to benefit from secrecy jurisdictions to hide their money and minimise their taxes. Tax Justice Network Africa (TJN-A) has looked at the number of registered offshore companies, revealed by the Panama Papers, that have links to 16 African countries. By comparing those figures to the amount of illicit financial flows from these same countries, they found that the countries with the highest illicit financial flows also have the highest number of offshore companies.¹⁶⁸ TJN-A notes that, between 2004 and 2014, the countries in focus lost more than US\$50 billion to illicit financial flows, while over the same period, they received US\$30 billion in Official Development Assistance (ODA).¹⁶⁹ Considering that many of these countries are struggling with high poverty levels and inequality, it is clear that this outflow of resources has a negative impact on their development aspirations.

In the aftermath of the Panama Papers, several developing country governments, including Ghana, Nigeria, Kenya and Afghanistan, have stated their intent to create public registers of the beneficial owners of companies.

In the aftermath of the Panama Papers, several developing country governments, including Ghana, Nigeria, Kenya and Afghanistan, have stated their intent to create public registers of the beneficial owners of companies.¹⁷⁰ Beneficial ownership is essentially about tracking down the individual person who ultimately controls and benefits from a company. Making beneficial ownership information public would help law enforcement to detect crime and at the same time allow civil society, journalists and citizens to see the owners of the companies that operate in their society. As the Panama Papers have illustrated, this can be an important step forward in the battle against corruption and tax evasion.

In addition, there is also a strong business case for public information on beneficial owners. EY's Global Fraud Survey 2016, which is based on information collected from 2,800 senior executives in 62 countries and territories across the world, shows that 91 per cent of respondents believe it is important to know the ultimate beneficial ownership of the companies with which they do business.¹⁷¹ Unless beneficial ownership registers are made public, this information would not be easily available to other companies.

The Financial Secrecy Index is produced by Tax Justice Network, based on a thorough assessment of the level of financial secrecy in each jurisdiction, including transparency around beneficial ownership of companies, trusts and similar legal structures.¹⁷² The highest ranking countries have the highest levels of financial secrecy.

Table 3: The Financial Secrecy Index 2015

Global ranking	Jurisdiction
6	Luxembourg
8	Germany
15	UK*
24	Austria
31	France
37	Ireland
38	Belgium
41	Netherlands
53	Norway
56	Sweden
58	Italy
59	Latvia
66	Spain
75	Poland
81	Czech Republic
83	Denmark
88	Slovenia
90	Finland

*The UK is ranked as number 15 at the global level. However, as noted in the Financial Secrecy Index, the UK would be top of the list if it the British Overseas Territories and Crown Dependencies were included in the assessment of the UK.¹⁷³

The Commission reacted to the Panama Papers by revisiting recent EU legislation on anti-money laundering and beneficial ownership, only half way through the implementation period during which Member States are expected to turn the directive into national legislation. The 4th Anti-Money Laundering Directive, adopted in the summer of 2015, introduced centralised national registers of the real owners of companies and trusts in all EU Member States. One of the key issues discussed was whether the public should have access to these registers. The final text limited the accessibility to persons and organisations that can show a 'legitimate interest' in the information about who owns a company, and denied the public any access to ownership information about trusts.¹⁷⁴ However, this provision was revisited in June 2016, and the Commission proposed to have fully public registers for some companies and some trusts.¹⁷⁵

While the Parliament has stated its support for public registers,¹⁷⁶ the issue is likely to raise some debate between EU governments. Countries such as France, the UK, the Netherlands and Denmark have already decided to make their company registers public. However, several EU Member States are still showing strong scepticism towards this type of transparency (see 'Report findings').

Although the European Commission's proposal¹⁷⁷ to have public registers of beneficial owners is a positive and important step forward, it still contains some loopholes. The Commission makes a distinction between 'commercial' and 'non-commercial' trusts, with the beneficial ownership information of the former being made public, but not the latter. This distinction will not always be an easy one to make in practice, and so-called family trusts can also be used to hide money. In addition, the directive still includes the option of allowing companies where no beneficial owner can be identified to continue existing, as long as the senior management has been identified. There is a clear risk of this option being exploited as it would essentially allow companies that have no official owner to continue to exist and do business through nominee directors.¹⁷⁸

By closing these loopholes, the Parliament and Member States could make a great contribution towards increased financial transparency.

Lack of whistleblower protection

As long as full transparency around the structures and activities of multinational corporations is not in place, the public will have to rely on whistleblowers to reveal information on the tax dodging that is costing societies billions every year. In late 2014, Antoine Deltour, a former PwC employee, released information about more than 300 tax rulings that Luxembourg had issued to multinational companies, allowing them to substantially lower their tax rates, sometimes to below one per cent.¹⁷⁹ The LuxLeaks scandal that resulted has been something of a watershed moment in the fight against corporate tax avoidance in Europe, as it revealed the favourable treatment that some multinational companies are taking advantage of.

However, Antoine Deltour – together with another whistleblower, Raphaël Halet – were put on trial in Luxembourg, accused of violating professional secrecy and theft of data, amongst other things. The court sentenced Deltour to a 12-month suspended jail term and a €1,500 fine and Halet to nine months suspended jail and €1,000. They have both appealed the court decision.¹⁸¹ A French journalist who revealed the story, Edouard Perrin, was acquitted of all charges, but will also now face another trial as the Luxembourg state prosecutor has announced it will appeal all three verdicts.¹⁸²

It is clear that the threat of being put in jail is a strong deterrent for people who may be in possession of information about wrongdoings that would be of great value to the general public. Civil society organisations stressed that the whistleblowers had acted in the public interest and should be thanked, not punished.¹⁸³

So far the EU has not taken concrete steps to improve the protection of whistleblowers. Rather, the EU has moved in the opposite direction. The Trade Secrets Directive proposed by the European Commission in 2013 is designed to give a common definition of what constitutes a business secret – for example, new production techniques or know-how with economic value to the company. The directive also provides the framework for companies to claim reparations when their trade secrets have been stolen.¹⁸⁴ The original proposal was heavily criticised for undermining freedom of information by allowing businesses to prosecute journalists or whistleblowers who reveal confidential information.¹⁸⁵

The proposal was actively debated in the European Parliament for more than two years until the Parliament reached an agreement with the Council to include an article on whistleblower protection in late 2015. The directive was adopted by the Council in May 2016.¹⁸⁶ However, despite the new clause on whistleblower protection, CSOs and unions have widely criticised the legislation for making secrecy the default status for internal corporate information and for causing a threat to anyone in society who 'acquires, uses or publishes' information considered to be a trade secret.¹⁸⁷

The Commission's inaction on the issue of whistleblower protection prompted the Greens/EFA group in the European Parliament to launch its own proposal for a directive dealing specifically with this issue.¹⁸⁸ According to this draft text, the protection of whistleblowers would include exemptions from any criminal proceedings relating to the protected disclosure and prohibitions on other forms of reprisal such as dismissal or coercion. The burden of proof to demonstrate that any measure taken against a whistleblower is not related to the act of disclosing information would fall on the employer.

In July 2016, the Commission responded to the calls for whistleblower protection in a Communication¹⁸⁹ setting out the next steps for increasing tax transparency in the EU, announcing that it would monitor Member States' provisions for whistleblowers and help facilitate research and exchange of best practices to encourage protection at the national level. The Commission also announced in its Communication that it would assess the possibility of further EU action aimed at protecting whistleblowers over the coming months.

European support for global solutions

Excluding developing countries from decision making

The official EU position is that the OECD – also known as the 'Rich Countries' Club' – is the right forum to set global standards on tax, despite the fact that the OECD consists of only 35 member countries.¹⁹⁰ In a reply to a question from the European Parliament about whether the Commission would support the 'establishment of an international tax agency under UN auspices to combat tax avoidance and tax competition between countries',¹⁹¹ the European Commission gave the evasive answer: 'Regarding the creation of an international tax agency to combat tax avoidance and tax competition between countries, the Commission believes that good progress can be made with the new inclusive framework of the Organisation for Economic Cooperation and Development (OECD) for the Base Erosion and Profit Shifting project (BEPS), which should involve as many countries as possible, including developing ones.'¹⁹² As highlighted earlier (under 'Exclusive global decision-making'), this is highly problematic. Although developing countries are invited to participate in the implementation of the agreed decisions, more than 100 developing countries have repeatedly been excluded from agenda setting and decision making on global tax issues.

Considering the strong democratic traditions in Europe, and the fact that taxation is considered an issue of great importance to national sovereignty, it seems rather odd that the EU has taken such a negative approach to the inclusion of developing countries in the setting of global tax standards.

This resistance is not shared by the European Parliament, which once again in 2016 reiterated that it 'supports the creation of a global body within the UN framework, well-equipped and with sufficient additional resources, to ensure that all countries can participate on an equal footing in the formulation and reform of global tax policies.'¹⁹³

Building capacity or compliance?

'Capacity building' for developing countries has become something of a buzzword in discussions on how to solve the problems of corporate tax dodging. In its communication on an external strategy on tax,¹⁹⁴ released in January 2016, the Commission highlights that the EU will focus on providing capacity building and supporting international initiatives to 'strengthen legislation and regulation' in developing countries.

While more resources should indeed be devoted to building the capacity of developing countries on tax matters, such projects have at times resulted in problematic approaches – for example, when representatives from developed countries and international organisations start drafting legislation for developing countries.¹⁹⁵

In 2016, Eurodad published a report¹⁹⁶ about the initiative known as Tax Inspectors Without Borders, which is jointly led by OECD and the UN Development Programme UNDP. The report included previously unpublished internal OECD documents about three pilot projects of Tax Inspectors Without Borders, and among other things found that:

- The Tax Inspectors Without Borders initiative involves highly sensitive working methods, since it is based on an approach where foreign experts get direct access to the tax administration of developing countries.
- In none of the three pilot projects were the developing countries receiving the assistance actually leading the processes when the pilot projects in their countries were initiated. The authors find this to be contrary to the aid effectiveness principle on developing country ownership and leadership and increases the risk that tax assistance will not be in line with developing country priorities and interests.
- Serious conflicts of interest seem to have occurred, and there is a clear risk of further conflicts in the future. In a pilot project between the UK and Rwanda, PwC – a company that provides advice to multinational corporations on their tax planning – played a central management role. Furthermore, in all three cases, the donor countries, which were also providing experts to be deployed into the tax administrations of the developing countries, had substantial corporate interests in the recipient country.
- To this day, the Tax Inspectors Without Borders initiative does not seem to have a clear mechanism for avoiding similar problems in the future.

Considering that the implementation of transfer pricing rules is difficult even for developed countries (see Box 3 on 'Multinational corporations – separate or single entities'), it is clear that this system will pose even bigger problems for developing countries. As Sol Picciotto, Emeritus Professor at Lancaster University, notes: 'There has been significant investment in capacity building for these countries, by the IMF, the World Bank, the OECD itself, and others; and many have enacted laws and regulations in recent years, generally based on the OECD approach, especially on transfer pricing. However, devoting scarce skilled human resources in developing countries to attempting to administer a defective system could provide at best a short-term solution.'¹⁹⁷

Report findings

Financial and corporate transparency

Following the Panama Papers scandal, a soft breeze of growing political will in favour of transparency seems to be blowing, at least over some parts of Europe.

Ownership transparency

Compared with 2015, there has been a significant increase in the amount of countries that have either expressed support for public registers of beneficial owners (Finland, the Netherlands, Norway), or already started introducing them at the national level (UK, France, Denmark, Slovenia). For the first time ever, the proposal has also received at least partial support from the European Commission. Similar to 2015, about 45 per cent of the countries covered by this report remain undecided, but the group of countries opposed to ownership transparency is now significantly smaller than the group of countries in favour. And it seems the positive development might continue in future. In both Germany and the Czech Republic, there are clear signs of movement towards increased support for transparency.

Public country by country reporting

A similar, but weaker, tendency is seen on the issue of whether multinational corporations should publish data on a country by country basis showing the amount of business activity taking place, and tax payments made, in each country where they operate. On this issue, the group of countries opposing such a proposal (Austria, Czech Republic, Denmark, Germany, Latvia, Slovenia and Sweden) remains larger than the group that have expressed support for it (France, Netherlands, Spain and potentially the UK). However, compared with 2015, support has grown substantially. It is also positive that France, which used to be a champion on this issue, is showing signs of wanting to step back into a leadership role. That, and the fact that the European Parliament has shown strong and constant dedication to this issue, should keep the pressure for progress high. Thus, it seems that the issue of public country by country reporting will become one of the major political battles of 2017.

Taxation

Contrary to the developments on transparency, the picture remains bleak when it comes to taxation.

'Sweetheart deals'

The LuxLeaks scandal showed how advance pricing agreements (or 'sweetheart deals') between governments and multinational corporations had been used to lower corporate tax rates dramatically, in some cases to below one per cent. This finding has been reconfirmed by ongoing state aid cases, and the European Commission is now heading to court over disputes with Luxembourg, Belgium, Ireland and the Netherlands on whether some of the countries' sweetheart deals constituted illegal state aid in the million (and in some cases billion) Euro scale.

One might have thought that these revelations would cause fewer deals to be signed by European governments. But on the contrary, the number of sweetheart deals in the EU has soared from 547 in 2013, to 972 in 2014, and it finally reached 1444 by the end of 2015 – which is an increase of over 160 per cent between 2013 and 2015 (and an increase of almost 50 per cent from 2014 to 2015). The most dramatic increases have occurred in Belgium (with the number of sweetheart deals going from 10 in 2013 to 166 by the end of 2014, and 411 by the end of 2015), and in Luxembourg, where the amount of sweetheart deals skyrocketed after the LuxLeaks scandal. By the end of 2015, the number of sweetheart deals in Luxembourg reached 519, compared with 347 at the end of 2014 – an increase of 50 per cent in just one year.

While the overall increase in sweetheart deals in the EU is being led by Luxembourg and Belgium, deals are being signed by governments all across Europe. One of the few countries that were not using sweetheart deals (Slovenia) has now introduced the legislative basis needed to start signing them. Since these deals are secret to the public, the specific content of the deals that are being signed is unknown.

The LuxLeaks scandal does not seem to have placed a constraint on the number of sweetheart deals in the EU. Sadly, however, one noticeable consequence of LuxLeaks is the fact that the two whistleblowers, together with one of the journalists, who brought the scandal to the public, are on trial in Luxembourg.

Aggressive tax planning structures

A study of the number of structures in the legislation of EU Member States, which can facilitate aggressive tax planning by multinational corporations, showed that there are a great number of very diverse problems on this front across the EU. When it comes to the harmful practice known as patent boxes, the dramatic increase which was seen in 2015 has now stabilised. 2016 has been the year when many political announcements to introduce patent boxes were turned into concrete legislation. In total, patent boxes now exist in over 40 per cent of EU Member States (12 countries, including Belgium, France, Ireland, Italy, Luxembourg, the Netherlands, Spain and the UK).

Tax treaties

European governments continue to sign very problematic tax treaties with developing countries. An analysis of the countries covered by this report shows that they on average have 42 treaties with developing countries, and that these treaties on average reduce developing country tax rates by 3.8 per cent. Of all the countries analysed, Ireland has on average introduced the highest amount of reductions of developing country tax rates – 5.2 percentage points. Analysis by ActionAid has also revealed that even among the countries that do not, on average, have treaties which impose high restrictions on developing country taxing rates, there are a significant amount of ‘very restrictive’ tax treaties, which impose strong constraints on the individual developing countries that have signed them. Among the countries covered by this report, Italy, the UK and Germany are the countries with the highest amount of those very problematic tax treaties with developing countries.

Global solutions

The vast majority of the countries covered by this report remain opposed to the proposal to create an intergovernmental UN tax body, which would grant developing countries a seat at the table when global tax standards are negotiated.

A former champion – Norway – has fallen silent on the issue, but the European Parliament has remained progressive, and repeatedly called for an intergovernmental UN tax body to be established.

Some governments might have thought that this issue would fall off the international political agenda, after a dramatic year in 2015, when developed countries managed to block a strong push from developing countries to get an intergovernmental UN tax body. However, the developing countries are showing no intention to let this issue go. During the UNCTAD 14 negotiations in July 2016, the discussion re-emerged and once again became a central point of disagreement between developed and developing countries. And in September 2016, Ecuador announced that this would be one of their key priorities when they take over the chairmanship of the G77 – a coalition of more than 130 developing countries – by January 2017.

Methodology for country rating system

Category 1

Ownership transparency

This category is based on information from the national chapters (for countries), the chapter on 'Europe's role in upholding an unjust tax system' (for the European Parliament and Commission) and on Table 3 in the chapter on 'Hidden ownership'.

Green: Governments that have announced that they are introducing public registers of beneficial ownership information on companies. If the country allows the establishment of trusts or similar legal structures, these will also be subject to a public register of beneficial owners. This category also includes governments and EU institutions that have supported public registers of beneficial ownership at EU-wide level.

Yellow: The country or institution is either undecided or has chosen a problematic 'middle way', for example by establishing a public register of beneficial owners of companies while at the same time providing opportunities for establishing secret trusts or similar legal structures.

Red: The country or institution has rejected the option of establishing public registers of beneficial owners. This category also includes countries that figure in the global top 10 in the Financial Secrecy Index and have not yet shown any intention to introduce public registers of beneficial owners.

Category 2

Public reporting for multinational corporations

This category is based on information from the national chapters (for countries) and the chapter on 'Europe's role in upholding an unjust tax system' (for the European Parliament and Commission).

Green: A champion and is actively promoting EU decisions on public country by country reporting.

Yellow: Neutral at the EU level. Yellow is also used to categorise countries or EU institutions with positions that are unclear or somewhere in between positive and negative.

Red: Actively speaking against public country by country reporting at the EU level.

Category 3

Tax Treaties

This category is firstly based on information from Figure 4 and Table 2 on the average rate of reduction of developing country withholding taxes in tax treaties and the total number of tax treaties between the European countries covered in this report and developing countries (see the chapter on 'Tax treaties'). Secondly, this rating takes into account whether a country has 'very restrictive' treaties with developing countries (see Figure 3 in the chapter 'Tax treaties'). As noted in the report, an increasing number of countries are currently introducing anti-abuse clauses in their tax treaties. Although this is positive, these clauses do not address the main concern about tax treaties – namely that treaties are used to lower tax rates in developing countries and reallocate taxing rights from poorer to richer countries. Therefore, the presence of anti-abuse clauses is not used as a determining factor in the rating system outlined below. For the European Parliament and Commission, this category is based on information from the chapter on 'Europe's role in upholding an unjust tax system'.

Green: Governments that do not have any 'very restrictive' tax treaties with developing countries, and for whom the average reduction of withholding tax rates in treaties with developing countries is below one percentage point. For the EU institutions, this category includes institutions that have proposed concrete measures to mitigate and prevent negative impacts on developing countries due to treaties signed with EU Member States.

Yellow: The average reduction of withholding tax rates in treaties with developing countries is above one percentage point. However, the negative impacts of the country's tax treaty system is relatively limited because the country doesn't have any 'very restrictive' tax treaties with developing countries, and because the average reduction of tax rates or the number of tax treaties the country has with developing countries is below average among the countries covered in this report (3.8 percentage points and 42 treaties respectively). For the EU institutions, this category includes institutions that have acknowledged the problems tax treaties can cause for developing countries, but have not yet put forward concrete proposals for mitigating and preventing these problems.

Red: The tax treaty system of the country is relatively harmful, either because the country has signed some 'very restrictive' treaties with developing countries, or because the average reduction of withholding tax rates in treaties with developing countries, as well as the total number of tax treaties the country has with developing countries, are both above the average among the countries covered in this report (3.8 percentage points and 42 treaties respectively). For EU institutions, this category includes those who have not yet acknowledged the problems tax treaties can cause for developing countries.

Category 4

Global solutions

This category is based on information from the national chapters (for countries) and the chapter on 'Europe's role in upholding an unjust tax system' (for the European Parliament and Commission).

Green: Supports the establishment of an intergovernmental body on tax matters under the auspices of the United Nations, with the aim of ensuring that all countries are able to participate on an equal footing in the definition of global tax standards.

Yellow: The position of the government or institution is unclear or neutral.


Red: The government or institution is opposed to the establishment of an intergovernmental body on tax matters under the auspices of the UN, and thus not willing to ensure that all countries are able to participate on an equal footing in the definition of global tax standards.

Symbols




Arrows: Show that the country seems to be in the process of moving from one category to another. The colour of the arrow denotes the category being moved towards.





'Restricted access' sign: Shows that the position of the government is not available to the public, and thus the country has been given a yellow light due to a lack of public information.

EUROPEAN COMMISSION			
TRANSPARENCY 	REPORTING 	TAX TREATIES	GLOBAL SOLUTIONS
<p>Following the Panama Papers, the European Commission launched a proposal to introduce public registers of beneficial owners of some companies and some trusts in the EU.¹⁹⁸</p>	<p>The European Commission has launched a proposal that requires multinational corporations to publish country by country data from some countries but not others. This conflicts with the fundamental idea of public country by country reporting, which is to obtain a full overview from all countries where a corporation is operating. The proposal is therefore, in reality, not country by country reporting.¹⁹⁹</p>	<p>The European Commission has now recognised that tax treaties can potentially have a negative impact on developing countries. However, the Commission has not yet proposed any actions that can adequately address this problem.²⁰⁰</p>	<p>The European Commission does not support the establishment of an intergovernmental UN tax body.²⁰¹</p>

EUROPEAN PARLIAMENT			
TRANSPARENCY	REPORTING	TAX TREATIES	GLOBAL SOLUTIONS
<p>The European Parliament has proposed public registers of beneficial owners of companies, trusts and similar legal structures.²⁰²</p>	<p>The European Parliament has proposed full public country by country reporting.²⁰³</p>	<p>The European Parliament has recognised the potential negative impacts of tax treaties on developing countries, and called for a fair allocation of taxing rights between countries, and that treaties be negotiated.²⁰⁴</p>	<p>The European Commission has repeatedly supported the establishment of an intergovernmental UN tax body.²⁰⁵</p>

AUSTRIA			
TRANSPARENCY	REPORTING	TAX TREATIES	GLOBAL SOLUTIONS
 <p>Austria's position on the issue of public access to its future register of beneficial owners is unknown.</p>	<p>The Austrian government is against full public country by country reporting, and even the European Commission's proposal for partially public country by country reporting.</p>	 <p>Although Austria's number of treaties with developing countries is slightly below average, the average rate of reduction of developing country tax rates through those treaties is significantly above average, which shows that these treaties could have significant negative impacts on developing countries.</p>	 <p>The Austrian government does not have an official position on the issue of establishing an intergovernmental UN body on tax.</p>

BELGIUM			
TRANSPARENCY	REPORTING	TAX TREATIES	GLOBAL SOLUTIONS
 <p>The transposition of the 4th Anti-Money Laundering Directive is foreseen by the end of 2016 and the Minister of Finance accords high importance to this directive. However, Belgium has not taken a formal position on the issue of public access to beneficial ownership registers.</p>	 <p>It is unclear whether the Belgian government is for or against full public country by country reporting.</p>	<p>Belgium generally has a relatively high number of tax treaties with developing countries, but the average reduction in developing country tax rates through these treaties is low. However, that the average does not show is that several of Belgium's tax treaties with developing countries are 'very restrictive'. There are also clear indications that Belgium's tax treaties have significant negative impacts on the developing countries that sign them. A conservative estimate puts the fiscal cost to 28 developing countries at €35 million in 2012.</p>	<p>The Belgian government does not support the establishment of an intergovernmental UN body on tax.</p>

CZECH REPUBLIC			
TRANSPARENCY 	REPORTING	TAX TREATIES	GLOBAL SOLUTIONS
<p>The position of the Czech government on the issue of ownership transparency is ambiguous. On the one hand, the new Czech law is very restrictive in terms of access to information in the Czech beneficial ownership register (in fact, it seems that the definition of the "legitimate interest" is so narrow that in practice it will be inaccessible for the public, no matter if they have a legitimate interest or not). On the other hand, the government seems to recently have changed position and now supports public registers of beneficial owners at EU level, which is a significant and very welcome step forward.</p>	<p>Although the government does not have an official position, the Ministry of Finance has expressed strong skepticism towards the idea of full public country by country reporting.</p>	<p>Compared to the other countries covered by this report, the number of tax treaties between the Czech Republic and developing countries is slightly below average, and the reduction of tax rates through those treaties is slightly above average. The Czech Republic does not have any 'very restrictive' treaties.</p>	<p>The Czech government does not support the establishment of an intergovernmental UN tax body.</p>

DENMARK			
TRANSPARENCY	REPORTING	TAX TREATIES	GLOBAL SOLUTIONS
<p>Denmark has adopted a law which includes the establishment of a public register of beneficial owners of both companies and foundations. Thus, Denmark generally seems in favour of public registers.</p>	<p>The Danish government does not support full public country by country reporting. Instead, Denmark supports the proposal from the European Commission, which would only allow the public to get a partial picture of the activities and tax payments of multinational corporations.</p>	<p>Denmark's number of treaties with developing countries is below average, while the reduction of the tax rates in developing countries through those treaties matches the average among the countries covered by this report. However, what the average number does not show is that Denmark has several specific treaties which are very restrictive, and include strong limitations on the taxing rights of the developing countries which are signatories.</p>	<p>The Danish government does not support the establishment of an intergovernmental UN body on tax.</p>






FINLAND

TRANSPARENCY	REPORTING	TAX TREATIES	GLOBAL SOLUTIONS
<p>Finland has not yet introduced a register of beneficial owners. However, the government has in a recent draft bill proposed that the upcoming register should be made public.</p>	<p>Finland has been progressive by introducing public country by country reporting for state-owned companies. However, the reporting requirements include loopholes that allow companies to determine which data to include, and the resulting reports have important shortcomings. Despite evident shortcomings, the government has not revised the requirements since 2014. Although Finland supports the European Commission's proposal for partial public country by country reporting, the government is not currently supporting full public country by country reporting.</p>	<p>Although Finland has fewer tax treaties than average among the countries covered in this report, the country's tax treaties have a relatively high negative impact on those developing countries that have signed them. This is because Finland's tax treaties with developing countries on average contain relatively high reductions in developing country tax rates.</p>	<p>Despite recognising that decisions on tax have a major impact on developing countries, the Finnish government does not support giving developing countries a seat at the table by establishing an intergovernmental UN tax body.</p>

FRANCE

TRANSPARENCY	REPORTING	TAX TREATIES	GLOBAL SOLUTIONS
<p>After having introduced a public register of beneficial owners of trusts, France introduced another public register for beneficial owners of companies, and the government seems progressive on the issue. However, at the same time, the French Constitutional Court declared the public register of beneficial owners of trusts unconstitutional.</p>	<p>After having blocked the attempt by the French Parliament to introduce full public country by country reporting in France, the government decided to adopt a strange compromise. However, the French government also promised to work at the EU level for complete public country by country reporting, which is very positive.</p>	<p>Although the French tax treaties with developing countries on average reduce the tax rates less than most other countries covered in this report, France has eight 'very restrictive' tax treaties with developing countries. In total, France also has the highest number of treaties with developing countries among all countries covered by this report.</p>	<p>France has been one of the main blockers of the proposal to establish an intergovernmental UN body on tax.</p>

GERMANY			
TRANSPARENCY 	REPORTING	TAX TREATIES	GLOBAL SOLUTIONS
<p>There are signs of rapid and very positive developments in Germany on the issue of public beneficial ownership registers. Previously, the Germany government has worked very actively against this proposal. Now, however, the German Ministry of Finance has announced its intention to introduce a public register in Germany. While citizens will most likely have to pay a fee to access the register, this is nonetheless a major step forward. On the other hand, Germany still allows problematic secrecy arrangements, such as bearer shares.</p>	<p>The German government has previously worked very actively against the adoption of full public country by country reporting at EU level. Germany remains very sceptical, even towards the proposal from the European Commission, which would only introduce partially public country by country reporting.</p>	<p>Germany's tax treaties with developing countries are a cause of concern due to the high number of very restrictive treaties. Also of concern is the fact that Germany's total number of treaties with developing countries is significantly above average.</p>	<p>Germany does not support the establishment of an intergovernmental UN body on tax.</p>

IRELAND			
TRANSPARENCY 	REPORTING 	TAX TREATIES	GLOBAL SOLUTIONS
<p>The government's position on the issue of public access to beneficial ownership registers is not clear..</p>	<p>The government's position on the issue of full public country by country reporting is not clear.</p>	<p>Of all the countries covered by this report, the Irish tax treaties with developing countries introduce the highest average reductions on the tax rates of their developing country treaty partners. Among the Irish tax treaties with developing countries are three 'very restrictive' treaties.</p>	<p>The Irish government does not support the establishment of an intergovernmental UN tax body.</p>

ITALY

TRANSPARENCY



Italy has not yet transposed the 4th Anti-Money Laundering Directive and the government's position on the establishment of public registers of beneficial owners is unclear.

REPORTING



The Italian government has signed a commitment to global public country by country reporting, but this has not been followed up with concrete next steps, and the government's position on introducing full public country by country reporting in the EU is unclear.

TAX TREATIES

Although the Italian tax treaties with developing countries on average reduce the tax rates less than most other countries covered in this report, Italy and the UK are the countries that have the highest number of 'very restrictive' tax treaties with developing countries.

GLOBAL SOLUTIONS

Italy does not support the establishment of an intergovernmental UN body on tax.

LATVIA

TRANSPARENCY

As part of Latvia's upcoming implementation of the 4th Anti-Money Laundering Directive, the government plans to have very strong limitations on access to the information. In fact, it is not even clear that all individuals who can show a 'legitimate interest' will be allowed access, despite this being a requirement of the EU directive.

REPORTING

The Latvian government supports the European Commission's proposal for partially public country by country reporting, but not full public country by country reporting.


TAX TREATIES


Although Latvia has relatively few tax treaties with developing countries, these have a relatively high negative impact on those developing countries that have signed them. This is because Latvia's tax treaties with developing countries on average contain relatively high reductions in developing country tax rates.

GLOBAL SOLUTIONS



The position of the Latvian government on the issue of establishing an intergovernmental UN tax body is unknown.

LUXEMBOURG			
TRANSPARENCY	REPORTING	TAX TREATIES	GLOBAL SOLUTIONS
<p>According to the Financial Secrecy Index, Luxembourg has the highest level of financial secrecy of all the countries covered by this report (and ranks at number 6 at the global level). The government's position on the issue of public registers of beneficial owners is unclear.</p>	<p> The government of Luxembourg has not taken a clear position for or against full public country by country reporting.</p>	<p>Although not unproblematic, the Luxembourg tax treaty system gives fewer reasons for concern compared with the other countries covered by this report, since Luxembourg's amount of treaties with developing countries, as well as the average reduction of the tax rates in developing countries, are both significantly below average among the countries covered by this report.</p>	<p>The government of Luxembourg is undecided on the issue of establishing an intergovernmental UN body on tax.</p>

NETHERLANDS			
TRANSPARENCY	REPORTING	TAX TREATIES	GLOBAL SOLUTIONS
<p>While the plans are not yet finalised, the Netherlands has made the welcome announcement that it intends to establish a public register of beneficial owners. Although the registry will have some restrictions, the Netherlands generally seems in favour of transparency around beneficial owners.</p>	<p> The Dutch government is generally in favour of full public country by country reporting, but has proposed to give multinational corporations the option to 'comply or explain'.</p>	<p>The government states that it is willing to accept higher tax rates in its treaties with developing countries than otherwise. However, a recent report by ActionAid found that the Netherlands currently has some extremely restrictive tax treaties with developing countries, which make it difficult for those developing countries to collect taxes. Netherlands generally also has more tax treaties with developing countries, and is more aggressive in negotiating the lowering of tax rates in developing countries, than the average among the countries covered in this report. In addition, the government does not levy withholding taxes on outgoing payments to tax havens, which would be an effective anti-abuse measure that would not require lengthy treaty renegotiations.</p>	<p>The Dutch government does not support the establishment of an intergovernmental UN body on tax.</p>



NORWAY

TRANSPARENCY	REPORTING	TAX TREATIES	GLOBAL SOLUTIONS
<p>The Norwegian government has announced its intentions to present a proposal for introducing public registers of beneficial ownership in Norway.</p>	<p>The Norwegian government is considering the option of public country by country reporting, and the issue is being debated intensely in Norway at the moment. However, it is still not clear what the outcome will be.</p>	<p>Norway has a high number of 'very restrictive' tax treaties with developing countries.</p>	<p>Norway has previously been a champion on the issue of establishing an intergovernmental UN tax body. However, the position of the government is currently unknown.</p>



POLAND

TRANSPARENCY	REPORTING	TAX TREATIES	GLOBAL SOLUTIONS
<p>The government is opposed to public registers of beneficial owners at EU level, and therefore presumably also at national level.</p>	<p>The government supports the proposal on partially public country by country reporting that has come from the European Commission, but it is unknown whether the government would be willing to accept full public country by country reporting.</p>	<p>Poland has a significant number of 'very restrictive' tax treaties with developing countries.</p>	<p>The Polish government has not provided a position on the issue of establishing an intergovernmental tax body under the UN.</p>

SLOVENIA			
TRANSPARENCY	REPORTING	TAX TREATIES	GLOBAL SOLUTIONS
<p>Slovenia has now established a public register of beneficial owners of companies and other legal structures that can generate tax obligations in Slovenia. There is room for improvement, in particular as regards allowing full electronic analysis of the data (by ensuring that it is available in an open data format) and allowing the public full access to the data needed to determine beneficial owners with certainty. Nonetheless, the establishment of the public register is a step forward.</p>	<p>Slovenia does not support full public country by country reporting. Instead, Slovenia supports the proposal from the European Commission, which would only allow the public to get a partial picture of the activities and tax payments of multinational corporations.</p>	<p>Although Slovenia has a low number of tax treaties with developing countries, the treaties that are in place reduce withholding tax rates in developing countries by 3.7% which, although slightly below average, is not insignificant. It is also of concern that Slovenia plans to negotiate further treaties with developing countries based on the OECD model (which can damage developing countries' interests), and is not planning to conduct a spillover analysis to assess the potential harmful impacts.</p>	<p>The position of the Slovenian government on the issues of establishing an intergovernmental UN body on tax has previously been positive, but is currently unknown.</p>

SPAIN			
TRANSPARENCY	REPORTING	TAX TREATIES	GLOBAL SOLUTIONS
<p>On the issue of public registers of beneficial owners of companies and trusts, the position of the Spanish government is unclear. Spain does not have particularly high levels of financial secrecy.</p>	<p>The Spanish government states that it does not oppose full public country by country reporting in the EU, but underlines that the impact would be greater if this was agreed at the global level.</p>	<p>Among all the countries covered by this report, Spain has on average been the second most aggressive negotiator when it comes to lowering developing country tax rates through tax treaties. Spain also has a relatively high number of tax treaties with developing countries, which gives even more reason for concern.</p>	<p>The Spanish government has not taken a position on the proposal to establish an intergovernmental UN tax body.</p>

SWEDEN			
TRANSPARENCY	REPORTING	TAX TREATIES	GLOBAL SOLUTIONS
 <p>Sweden has previously been against public registers of beneficial owners, but is currently undecided as to whether or not to allow public access to beneficial ownership information in Sweden.</p>	<p>Sweden is against full public country by country reporting, and is even against the European Commission's proposal for partially public country by country reporting.</p>	<p>Sweden has four 'very restrictive' tax treaties with developing countries.</p>	<p>The Swedish government does not support the establishment of an intergovernmental UN body on tax.</p>

UNITED KINGDOM			
TRANSPARENCY	REPORTING	TAX TREATIES	GLOBAL SOLUTIONS
 <p>The UK has been a true frontrunner by creating a public register for beneficial owners of companies. However, the UK has not used the powers it has available to increase transparency in the Overseas Territories and also been opposed to increased transparency around the owners of trusts. It remains to be seen what position the new UK government will take on the issue of trusts.</p>	 <p>The UK is now supportive of public CBCR, but wants to proceed on a multilateral basis.</p>	<p>Together with Italy, the UK has the highest number of 'very restrictive' tax treaties with developing countries. On average, the UK's tax treaties with developing countries contain relatively high reductions in developing country tax rates. The fact that the UK at the same time has the second highest number of treaties with developing countries gives even more reason for concern.</p>	 <p>Following the change of leadership and ministers in the UK, no statements have been made in relation to the establishment of an intergovernmental UN tax body.</p>

Recommendations to governments and EU institutions

There are several recommendations that governments and the EU institutions can – and must – take forward to help bring an end to the scandal of tax dodging. They should:

1. Adopt registers of the beneficial owners of companies, trusts and similar legal structures, which are in an open data format that is machine readable and fully accessible to the public without conditions. At EU level, the revision of the EU anti-money laundering directive provides an important opportunity to do so, and governments must ensure that the problems related to secret ownership, as exposed in the Panama Papers, are finally resolved.
2. Adopt full country by country reporting for all large companies and ensure that this information is publicly available in an open data format that is machine readable and centralised in a public registry. This reporting should be at least as comprehensive as suggested in the OECD BEPS reporting template,²⁰⁶ but crucially it should be made public and should cover all companies that meet two or all of the following three criteria: i) balance sheet total of €20 million or more; 2) net turnover of €40 million or more; 3) average number of employees during the financial year of 250 or more. At EU level, governments and EU institutions should support the adoption of public country by country reporting for all sectors, and ensure that multinational corporations provide data that is disaggregated on a country by country level for all countries where they are present. The upcoming negotiations about a directive on public country by country reporting provides the key opportunity for real, full and public country by country reporting to be introduced in the EU.
3. Carry out and publish spillover analyses of all national and EU-level tax policies, including special purpose entities, tax treaties and incentives for multinational corporations, in order to assess the impacts on developing countries and remove policies and practices that have negative impacts on developing countries.
4. Ensure that the new OECD-developed 'Global Standard on Automatic Information Exchange' includes a transition period for developing countries that cannot currently meet reciprocal automatic information exchange requirements due to lack of administrative capacity. This transition period should allow developing countries to receive information automatically, even though they might not have the capacity to share information from their own countries. Furthermore, developed country governments must commit to exchange information automatically with developing countries by establishing the necessary bilateral exchange relationships.
5. Undertake a rigorous study, jointly with developing countries, of the merits, risks and feasibility of more fundamental alternatives to the current international tax system, such as unitary taxation, with special attention to the likely impact of these alternatives on developing countries.
6. Establish an intergovernmental tax body under the auspices of the UN with the aim of ensuring that developing countries can participate equally in the global reform of international tax rules. This forum should take over the role currently played by the OECD to become the main forum for international cooperation in tax matters and related transparency issues.

7. All EU countries should publish data showing the flow of investments through special purpose entities in their countries.
8. Remove and stop the spread of existing patent boxes and similar harmful structures.
9. Publish the basic elements of all tax rulings granted to multinational companies and move towards a clear and less complex system for taxing multinational corporations, which can make the excessive use of tax rulings redundant.
10. Adopt effective whistleblower protection to protect those who act in the public's interest, including those who disclose tax dodging practices.
11. Support a proposal on a Common Consolidated Corporate Tax Base (CCCTB) at the EU level that includes the consolidation and apportionment of profits, and avoid introducing new mechanisms that can be abused by multinational corporations to dodge taxes, including large-scale tax deductions.
12. When negotiating tax treaties with developing countries, governments should:
 - Adhere to the UN model rather than the OECD model in order to avoid a bias towards developed country interests;
 - Conduct a comprehensive impact assessment to analyse the financial impacts on the developing country and ensure that negative impacts are avoided;
 - Ensure a fair distribution of taxing rights between the signatories to the treaty;
 - Desist from reducing withholding tax rates;
 - Ensure transparency around treaty negotiations, including related policies and position of the government, to allow stakeholders, including civil society and parliamentarians, to scrutinise and follow every negotiation process from the inception phase until finalisation, including the intermediate steps in the process.

In general, all countries should show great caution on the issue of tax treaties, in particular when the treaty party is a country that offers financial secrecy or tax benefits to multinational corporations. As an alternative to tax treaties, governments should consider signing tax information exchange agreements (TIEAs), which do not have the same problematic elements as tax treaties.

Austria

“I think we should not overshoot in tackling these things out of the hysteria on Panama.”

Hans Jörg Schelling

Austrian Finance Minister, in reaction to requests for public country by country reporting²⁰⁷

Overview

Documents revealed among the so-called Panama Papers showed a connection between the Panamanian law firm Mossack Fonseca and two Austrian banks, namely Raiffeisen Bank International and Hypo Landesbank Vorarlberg. These banks are being investigated by Austrian financial market regulators to see whether they followed required procedures to prevent money laundering.²⁰⁸ Raiffeisen Bank International was reported to have a connection to a company owned by Ukrainian President Petro Poroshenko.²⁰⁹ Only a few days after the Panama Papers were revealed, the Chief Executive of Hypo Landesbank Vorarlberg decided to resign, albeit emphasising that he was ‘convinced that the bank at no point violated laws or sanctions’.²¹⁰

In general, Austria is known to offer considerable financial secrecy, which has contributed towards making it an attractive place for questionable money.²¹¹ According to the latest Financial Action Task Force (FATF) assessment report: “Austria has a mixed understanding of its [money laundering and terrorist financing] risks. (...) Austria did not demonstrate that it had any national [anti-money laundering or counter-terrorist financing] policies.”²¹² For example, the ‘Treuhand’ arrangement allows a person to authorise someone else – the so-called ‘Treuhand’ (similar to trustee) – to exercise rights over his or her assets, without creating any written record of this binding agreement. This ‘hidden Treuhand’ can be abused by individuals who want to hide their ownership of certain assets.

The FATF assessment report found that: ‘the measures taken to prevent the misuse of Treuhand arrangements are limited. There is no registry of Treuhand arrangements (neither public, nor restricted)’. Among other things, FATF recommended that ‘Austria should introduce measures that would increase the transparency of the Treuhand arrangements’.²¹³ However, with regards to transparency, the last few years have not been without progress. For example, measures were taken in 2015 to abolish banking secrecy, including allowing tax inspectors to gain access to all the bank accounts of a taxpayer in case of a tax audit.²¹⁴ Austria also gave in to EU demands for automatic exchange of financial account data, after having been a blocker on the issue for many years.²¹⁵

Transparency

Public country by country reporting

Like most other EU Member States, and in line with the legal requirements of the EU, Austria has introduced public country by country reporting (CBCR) for the financial industry and non-public CBCR for multinational corporations that are based in Austria and have a turnover of at least €750 million.²¹⁶

Austria does not support public CBCR, not even in the very limited version proposed by the European Commission. According to the Ministry of Finance, the risks are too high for business, including the risk of violations of confidentiality and misinterpretation of data. The ministry also argues that public reporting would not be in line with the agreements made on non-public reporting made in the OECD BEPS project and would thus be a breach of international obligations.²¹⁷

Although Austria is currently against public CBCR, in the case of an EU agreement on this issue, there might be flexibility in terms of whether to lower the threshold of €750 million turnover for those companies that will have to publish data.²¹⁸

Ownership transparency

Austria has not yet introduced legislation on a centralised register of beneficial ownership of companies. However, the government plans to do so before mid-2017, which is the official deadline for transposition of the EU’s 4th Anti-Money Laundering Directive.

Trusts are not allowed in Austria, but trustees can act from within Austria for trusts established under other countries’ laws. However, lawyers and notaries do have the obligation to enquire whether the customer is acting as a trustee for a foreign-established trust, and the customer has the obligation to disclose this information as well as the identity of the settlor of the trust.²¹⁹ The government’s plans on whether or not to allow the public access to the register are unclear.

According to the 2015 Financial Secrecy Index, Austria has the fourth highest level of financial secrecy out of the 18 countries included in this report (ranked number 24 at the global level).²²⁰

Taxation

Tax treaties

Austria has its own model treaty, which largely follows the OECD's Model Treaty.²²¹

At the moment, Austria has 41 tax treaties with developing countries, which is slightly below average among the countries covered in this report.²²² Although Austria does not have any 'very restrictive' treaties with developing countries,²²³ the average rate of reduction of developing country tax rates through the treaties is relatively high compared to the other countries covered by this report.²²⁴ This is a cause for concern, and strengthens the need for Austria to conduct a spillover analysis, to assess the impacts of Austrian treaties on developing countries. Unfortunately, the government has not announced any plans to conduct such an assessment.

Harmful tax practices

According to a study on aggressive tax planning structures, Austria has nine indicators, compared to the EU average of 10.6. Austria does not have a patent box. However, the study found one active indicator, which is that Austria allows a tax deduction for deemed interest costs on interest-free inter-company debt, without ensuring that the deducted amount is taxed by another country.²²⁵

There has been a formal procedure for obtaining unilateral and multilateral advance pricing agreements (APAs) in Austria since 2011.²²⁶ Austrian tax authorities provide information regarding advance tax rulings to foreign tax authorities if there is an agreement on exchange of information.²²⁷ However, data from the European Commission shows that Austria had four advance pricing agreements in force at the end of 2014, but that this dropped to zero by the end of 2015.²²⁸

Global solutions

Austria has not made any official statement on the proposal to establish an intergovernmental UN body on tax.

Conclusion

The high level of financial secrecy in Austria remains a matter of serious concern. In particular, the so-called Treuhand can provide opportunities for tax evaders and other criminals to conceal their assets. It is also worrying that the Austrian government opposes public access to information about where multinational corporations do business and what they pay in taxes (public country by country reporting).

Austria's amount of treaties with developing countries is slightly below average among the countries covered by this report. Although Austria does not have any 'very restrictive' treaties with developing countries, the average rate of reduction of developing country tax rates through the treaties is relatively high compared to the other countries covered by this report. This is a persuasive reason for Austria to conduct a spillover analysis, to assess how its tax treaties impact developing countries. Unfortunately, however, no such analysis is currently planned.

On a positive note, Austria only has few harmful tax practices and data from the European Commission suggests that Austria's number of advance pricing agreement dropped to zero by the end of 2015.

Belgium

“As you all know, I am not a big fan of taxes. Let there be no discussion. I like them as low as possible.”

Johan Van Overtveldt

Minister of Finance on 12 April 2016²²⁹

Overview

Tax justice remains high on the agenda in Belgium as opinion polls show a significant part of the population feels the government is not doing enough to ensure fair sharing of the tax burden.²³⁰ After the Panama Papers revealed over 700 Belgian nationals making use of secret shell companies to hide assets from tax authorities,²³¹ Finance Minister Van Overtveldt acknowledged that ‘we have reached a tipping point, public opinion will no longer accept a small group avoiding taxes on a large scale’.²³² In April 2016, the minister announced a package of eight measures to address tax fraud, including the establishment of a special task force combining expertise from the justice and finance departments, a doubling of fiscal experts at the Federal Public Service of Finance and negotiations with Panama to conclude a tax information exchange agreement (TIEA).²³³

Against the backdrop of an apparently firm approach to tax fraud, Belgium still seems to maintain an approach of ‘fiscal particularism’ with generous tax deductions for foreign investors in certain ‘high-added value’ sectors.²³⁴ Belgium also played an unconstructive role during the negotiations on the Anti-Tax Avoidance Directive in the European Council in June 2016, which included an unambitious agreement on limiting interest deductions for large corporations.²³⁵ Recently, however, the Belgian government is showing signals that it may be changing strategy in a post-BEPS landscape. During the summer, Minister Van Overtveldt proposed to lower the corporate income tax rate to 20 per cent while cancelling most deductions.²³⁶

Transparency

Public country by country reporting

Like most other EU Member States, and in line with the legal requirements of the EU, Belgium has introduced public country by country reporting (CBCR) for the financial industry²³⁷ and non-public CBCR for multinational corporations which have their headquarters in Belgium and have a turnover of at least €750 million.²³⁸

To ensure Belgian tax authorities have access to CBC documentation, a Belgian group entity that has its headquarters outside of Belgium should also file a CBC form in case the ultimate parent company is not obliged to submit a form in its country of residence or when there is no effective automatic exchange of reports between Belgium and the resident country of the ultimate parent company. In those cases, a group can decide to appoint a “surrogate parent entity” to comply with the reporting requirements. Penalties ranging from €1,250 to €25,000 are imposed if there is more than one infringement of these reporting and filing requirements.²³⁹

Despite proposals from several Members of Parliament to expand non-public CBCR reporting requirements to all large companies (excluding only small and medium sized enterprises), and to make the reports public,²⁴⁰ the Belgian government decided to stick with the original scope and keep CBC information confidential, as proposed by the OECD. In the explanatory memorandum attached to the law, the government explicitly states that “it is important that the confidentiality and correct usage of the received information is guaranteed”.²⁴¹ Although this position could indicate that Belgium is against public country by country reporting, the official position of the Belgian government on the European Commission’s proposal on public country by country reporting within the EU and so-called “non-cooperative jurisdictions” is currently unclear. Meanwhile, the Advisory Council on Policy Coherence for Development – an advisory body to the minister of development cooperation representing civil society and academia – has recommended that the Belgian government increases the scope of public reporting requirements to all large undertakings with a turnover exceeding €40 million and for all jurisdictions where the company operates.²⁴²

Ownership transparency

In October 2016, the Minister of Finance declared that Belgium had joined the initiative to create an ‘Ultimate Beneficial Owners’ register.²⁴³

However, there is still no clarity on the issue of transparency of the future Belgian register. While the Anti-Money Laundering Directive is currently undergoing its fifth revision, Belgium has not yet implemented the fourth EU Anti-Money Laundering Directive. The Minister of Finance has declared that he will take the lead in this transposition “given its importance”.²⁴⁴ Belgian authorities aim to complete the transposition of the EU directive into Belgian law by December 2016.²⁴⁵

According to the 2015 Financial Secrecy Index, Belgium has the seventh highest level of financial secrecy out of all of the 18 countries included in this report (ranked at number 38 at the global level).²⁴⁶

Taxation

Tax treaties

In total, Belgium has 50 tax treaties with developing countries, which is above average among the countries covered by this report. Within those treaties, the average rate of reduction of developing country tax rates – 2.3 per cent – is the lowest among all the countries covered by this report.²⁴⁷ However, this does not mean that the Belgian tax treaty system is unproblematic for developing countries. According to research by ActionAid, seven of Belgium's tax treaties with developing countries are so-called 'very restrictive' treaties, which impose strong limitations on developing country taxing rights.²⁴⁸

In February 2016, Belgian NGO 11.11.11 issued a report assessing the potential economic and fiscal effects of Belgian tax treaties on developing countries, with a focus on 28 treaties which include reduced withholding tax rates for income from dividends and interests. A conservative estimate puts the fiscal cost to these developing countries at €35 million in 2012.²⁴⁹ More in-depth analysis of Belgium's treaties with African countries such as Rwanda, Democratic Republic of Congo or Senegal identified a number of deviations from OECD and UN models that erode the tax base of these countries.²⁵⁰ The report sparked a debate in the Belgian Parliament, including a series of hearings of representatives from the European Commission, the OECD, academia, the private sector and civil society in the Parliament's foreign affairs committee.²⁵¹

Following the debate, a resolution was tabled by Members of Parliament belonging to the opposition asking the government to conduct a thorough and independent impact assessment of existing tax treaties, especially with developing countries, and to refrain from signing tax treaties with tax havens. It also called for the government to base negotiations with developing countries on the UN Model Treaty, to increase investment in the tax administrative capacity of developing countries and regional cooperation in tax matters, to revise the current model treaty in light of international developments and to increase the transparency of ongoing and future negotiations of tax treaties.²⁵² Meanwhile, Finance Minister Van Overtveldt has stated Belgium takes the 'special circumstances of partner countries including developing countries' into account when negotiating tax treaties and is willing to 'respond to a country's request to revise a certain treaty', but is not considering conducting an impact assessment.²⁵³

In general, Belgium adheres to the OECD model treaty as closely as possible when negotiating with partner countries. An explicit public policy on tax treaties is unavailable, but in 2008 the administration issued a Belgian model convention that implicitly indicates what policy is followed. The current model convention dates from 2010.²⁵⁴ Relevant stakeholders, including civil society, are not officially consulted during the negotiations of double tax treaties.

To address treaty shopping, Belgium has introduced some general anti-abuse provisions. However, the current provision in the Belgian model treaty (article 27, paragraph 3) is very broad, and largely deviates from the OECD's guidelines. It is also unclear how effective it is. In principle, if the administration becomes aware of particular issues, an attempt will be made to incorporate specific anti-abuse provisions into the treaty under consideration. The Court of Audit has concluded that in this area "give and take is often involved in the negotiations with regard to the position and the sensitivities of the other partner state".²⁵⁵

Following the OECD's plan on BEPS, Belgium committed to 'support all multilateral initiatives to modify tax treaties' and 'to include additional anti-abuse clauses in future treaties and treaty revisions to tackle so-called treaty shopping as determined in the OECD's plan of action'.²⁵⁶ At the time of writing, the model treaty has not been revised in this sense. In response to parliamentary questions on the subject, minister Van Overtveldt stated that the inclusion of article 26, §5 of the OECD model treaty allowing for automatic exchange of information is an 'absolute condition' for Belgium to sign a new tax treaty.²⁵⁷

Harmful tax practices

Although discussions within the Belgian government focus on shifting from specific tax schemes to a corporate tax policy based on low tax rates and less generous deductions,²⁵⁸ the statutory corporate income tax rate currently stands at 33.99 per cent.²⁵⁹ While this debate is still ongoing, Belgium has a large number of corporate tax deductions available to investors that reduce the effective tax burden to 17 per cent on average.²⁶⁰

Research commissioned by the European Commission identified a total of 16 'aggressive tax planning (ATP) indicators' ranking Belgium second only after the Netherlands with 17 ATP-indicators.²⁶¹ The report specifically identified three active indicators that can directly promote or prompt an ATP structure: the notional deduction regime, Belgium's patent box regime and the excess-profit rulings.

Notional Interest Deduction

According to the Belgian Notional Interest Deduction (NID) regime, resident companies may deduct an imaginary interest expense from their taxable profits, which is calculated on the basis of a fixed rate of maximum 3 per cent and an adjusted value of the company's equity.²⁶² The rationale behind the NID was to eliminate the fiscal discrimination between debt and equity financing in order to promote capital-intensive investments in Belgium and attract multinational corporations to allocate activities such as intra-group financing, central procurement and factoring to a Belgian group entity.²⁶³ The general anti-abuse clause in Belgian tax law is applicable where the main purpose of entering into an operation was to obtain a notional interest deduction and where obtaining this deduction in these circumstances would be contrary to the object of the measure.²⁶⁴ However, the system is controversial for several reasons. Firstly, the NID can turn out to have a high fiscal costs. For example, the estimated costs were around €21 billion between 2006 and 2010, while it mainly attracted corporations without any additional employment in Belgium.²⁶⁵ Secondly, it is controversial because there are concerns that this mechanism can be abused by multinational corporations seeking to avoid taxes. For example, a recent report commissioned by the Greens in the EU Parliament lists the scheme as one of the ways that IKEA is avoiding taxes and underlines that 'the NID can facilitate profit shifting and tax avoidance'.²⁶⁶ In response, IKEA said the report had 'incorrect assumptions and misunderstandings, leading to false conclusions'.²⁶⁷

Tax deductions for patent income

Since 2008, Belgium has applied a patent income scheme granting an 80 per cent deduction for patent income applied on a gross basis which allows the effective tax rate (ETR) on such income to be reduced to a maximum of 6.8 per cent. This 6.8 per cent rate can be further decreased with other deductions (such as tax-deductible business expenses, including research and development expenses) as well as by making use of other tax incentives such as investment deductions of research and development expenses or tax credits and the notional interest deduction.²⁶⁸

However, in response to the OECD Action Plan on BEPS, Belgium abolished its 'patent income deduction' scheme as of 1 July 2016.²⁶⁹ According to tax advisors PwC and KPMG, the Belgian government is instead working on a new 'innovation income deduction' scheme to be in line with OECD BEPS.²⁷⁰ The percentage of this deduction will be raised from 80 per cent under the existing Patent Income Deduction (PID) regime to 90 per cent under the proposed regime.²⁷¹ Although the new regime was not finalised by 1 July 2016, it is expected to take effect from that date.²⁷² In line with the OECD guidelines,²⁷³ a so-called 'grandfathering provision' is expected to be part of the new Belgian regime, and will mean that many multinational corporations which have tax benefits under the old regime will be able to keep these benefits until 2021.²⁷⁴

Excess profit ruling

The 'excess-profit ruling' regime in Belgian corporate tax law allows a company to reduce its taxable profits in Belgium by subtracting the part of the profit that does not originate from real business activities in Belgium but rather from importing profits created abroad.²⁷⁵ It is therefore a form of legalized profit shifting and tax avoidance. In January 2016, the European Commission concluded its investigation of this regime by deciding that it discriminates against small companies and constitutes a form of illegal state aid, and ordered Belgium to recover a total sum of around €700 million from the companies that benefitted from such rulings.²⁷⁶

On 22 March 2016, not satisfied with the Commission's decision, the Belgian authorities led by Finance Minister Van Overtveldt appealed the ruling, seeking its annulment.²⁷⁷ In April 2016, the Belgian government also sought to temporarily suspend the recovery of the €700 million pending the results of its appeal. However, the President of the General Court of the European Court of Justice rejected this request on 19 July 2016.²⁷⁸

Belgian tax authorities also offer advance pricing agreements (or 'sweetheart deals') to multinational corporations. In fact, the number of advance pricing agreements issued by Belgium soared from 10 at the end of 2013 to 166 at the end of 2014, and reached 411 at the end of 2015.²⁷⁹ This rapid increase placed Belgium as the country with the second highest number of advance pricing agreements in the EU, just behind Luxembourg.²⁸⁰

Global solutions

Belgium did not support the proposal for a global tax body at the Financing for Development summit in Addis Ababa in July 2015.²⁸¹ There has been no indication that the government has changed its position on this.

Conclusion

Although international developments in the tax field are stirring a lot of debate in Belgium, it remains clear that the country is not a first mover on issues such as transparency around what multinational corporations pay in taxes, corporate ownership, stopping tax avoidance and reforming global tax governance, but rather limits itself to transposing OECD-agreed minimum standards and EU legislation.

Belgium remains a concern on the issue of harmful tax practices, since the Belgian tax system includes a number of elements that can be used by multinational corporations to avoid taxes.

The Belgian tax treaty system is also an issue of concern. A conservative estimate suggests that 28 developing countries lost €35 million in 2012 due to tax treaties with Belgium. Furthermore, several of the Belgian tax treaties have been categorized as 'very restrictive'.

Czech Republic

“Unfair tax practices in corporate taxes are certainly unacceptable, but those related to VAT have to be discussed with the same intensity as direct taxes.”

Andrej Babiš
Minister of Finance²⁸²

Overview

In 2016, the Czech government continued to prioritise domestic improvements of indirect tax collection (mostly value added tax (VAT)) over corporate tax collection. The Ministry of Finance does not consider international tax avoidance a key issue for the Czech Republic or the international community, and thus they do not see any need to support more ambitious proposals regarding corporate tax transparency than those contained within OECD BEPS. For example, during negotiations on the EU Anti-Tax Avoidance Directive in June 2016, the Czech Finance Minister Andrej Babiš threatened to veto the final compromise proposal unless the EU gave the Czech Republic an exemption from European VAT rules to implement stronger measures to combat fraud.²⁸³

General reflection on the broader impacts of tax dodging, especially in relation to developing countries, is very scarce in government documents. A promise to “push for greater transparency in the ownership structures and financial reports” appeared in a draft of the Strategic framework for Sustainable Development - Agenda 2030.²⁸⁴ No other more concrete plans about how the Czech Republic wants to support mobilisation of domestic resources developing countries could be found.

Transparency

Public country by country reporting

Like most other EU Member States, and in line with the legal requirements of the EU, the Czech Republic has introduced public country by country reporting for the financial industry.²⁸⁵ The government is currently working on implementation of non-public country by country reporting for multinational corporations with a turnover of a minimum of €750 million.²⁸⁶

Regarding full public country by country reporting for all sectors, the government does not have an official position. Comments by the Ministry of Finance indicate that the Czech government is not in favour of public reporting requirements. The ministry argues that the exchange of information between tax authorities is sufficient. Furthermore, the ministry highlights that public reporting could increase the administrative burden for corporations and that “excessive transparency” can negatively affect their competitiveness. Lastly, the ministry believes that due to incomplete understanding of data, the public could misinterpret the data if it is published by corporations.²⁸⁷

It is therefore very unlikely that the current government will promote full public country by country reporting on activities in all countries where multinational corporations do business.

Ownership transparency

After lengthy discussions, a new law was adopted which establishes a register of beneficial owners as part of the transposition of the EU's 4th Anti-Money Laundering Directive into national law. The register will include information on companies as well as trusts, but public access will be very limited, if possible at all. The law only guarantees access to “obliged entities” (such as the finance intelligence unit, police or courts). If any public access is granted, it will be given to those who are able to demonstrate a legitimate interest.²⁸⁸ However, the definition of “legitimate interest” is very narrow. The law includes concrete areas in which a person or organisation will need to prove its legitimate interest to access the information in the register.²⁸⁹ Civil society organisations have raised concerns that this definition of access is very narrow and in practice could lead to exclusion of public access.²⁹⁰ Some experts doubt that the Czech access requirement is wide enough to be in line with the directive.²⁹¹ Czech civil society organisations, in collaboration with a member of the parliament, prepared an amendment which would guarantee access at least to persons with legitimate interest.²⁹² However, in the end, the amendment was rejected.²⁹³

After approval of the national register with very limited access for the public, Czech civil society organisations focused on the European Commission's proposal of full public access to the beneficial ownership registers²⁹⁴ under the ongoing revision of the EU's 4th Anti-Money Laundering Directive.²⁹⁵ Initially, the Czech government disagreed with the Commission's proposal. However, according to sources close to the government, as well as from Brussels networks, it seems that during November 2016 the government has changed its position and now supports the EC's proposal. The change of position could be partly attributed to pressure from civil society organisations, as well as to increased media attention on the issue of ownership transparency.²⁹⁶

According to the 2015 Financial Secrecy Index, the Czech Republic has the fourth lowest level of financial secrecy out of all the 18 countries included in this report (ranked at number 81 at the global level).²⁹⁷ In other words, the Czech Republic has low levels of financial secrecy.

Taxation

Tax treaties

Since September 2015, the Czech Republic has signed a new tax treaty with Turkmenistan,²⁹⁸ among others, and treaties with Pakistan²⁹⁹ and Kazakhstan³⁰⁰ have entered into force. According to available information, the Czech Republic does not plan to do any spillover analysis of its tax treaties to assess their impacts on developing countries.

In total, the Czech Republic has 39 tax treaties with developing countries, which is slightly below the average (42 treaties) among the countries covered by this report. The average reduction of developing country tax rates within those treaties – 4 percentage points – is slightly above average (3.8 percentage points) among the countries covered by this report.³⁰¹ The Czech Republic does not have any tax treaties that stand out as being ‘very restrictive’.³⁰²

Harmful tax practices

According to a study on aggressive tax planning structures, the Czech Republic exhibits nine indicators that aggressive tax planning structures exist in its legislation, as compared with the EU average of 10.6.³⁰³ The Czech Republic does not have a patent box and there were no other active indicators found.

Statistics published by the European Commission shows that the Czech Republic had 34 advance pricing agreements (or ‘sweetheart deals’) in force at the end of 2014. By the end of 2015, this number had increased to 47, which makes the Czech Republic the country with the ninth highest amount of advance pricing agreements in the EU.³⁰⁴ The Czech authorities publish abstracts of advance tax rulings in tax journals, but there is no public disclosure of the details of specific rulings.³⁰⁵

Although the Czech Minister of Finance Andrej Babiš admits that aggressive tax avoidance could be harmful for the state budget, in his blog he positively commented on special tax regimes in Luxembourg and the Netherlands which in his opinion helped to attract foreign investment.³⁰⁶ Just recently he announced that if he is re-elected he would like to cancel or at least considerably reduce the tax on dividends.³⁰⁷

Global solutions

The Czech Ministry of Finance does not support the establishment of an intergovernmental UN body on tax, preferring the OECD as the global standard setter. In general, the Ministry of Foreign affairs shows more understanding for the global and developmental dimensions of tax justice. However, they do not consider the agenda important enough to challenge the Ministry of Finance on the issue.³⁰⁸

Conclusion

The Czech Government seems to have an ambivalent position on the issue of transparency. On the one hand, the Ministry of Finance raises strong concerns about public country by country reporting, and the Czech law on beneficial ownership registers is very restrictive in its access requirements and even raises concerns about being consistent with the EU’s Anti-Money Laundering Directive. On the other hand, the government has not yet taken an official position on the issue of public country by country reporting, and has just announced support for public registers of beneficial ownership at EU level.

When it comes to taxation, the Czech Republic is neither among the worst nor the best. The number of tax treaties with developing countries, as well as the reduction of developing country tax rates through those treaties, are both around average. When it comes to harmful tax practices and sweetheart deals with multinational corporations, the Czech Republic has a significant number of both, but is not among the extremes in the EU.

The official position of the Czech government is that it does not support the establishment of an intergovernmental UN tax body, despite the fact that the Ministry of Foreign affairs has expressed some understanding on this issue.

Denmark

"I feel cheated on everyone's behalf. We struggle with getting our national budget to make ends meet."

Lars Løkke Rasmussen
Danish Prime Minister³⁰⁹

Overview

In Denmark the debate about tax havens and media coverage of the trial of LuxLeaks whistleblower Antoine Deltour³¹⁰ as well as the Panama Papers³¹¹ has been very comprehensive. It got a lot of political attention and generally the fight against tax havens enjoys broad political support among all parties, excluding one minor liberal party.³¹²

The Panama Papers once again exposed the role of the banks in facilitating more or less legitimate or legal tax dodging, and it has received attention in return. The scandal of how the Danish Tax Authority had been subject to tax fraud and paid out billions of Danish Kroner on false claims was also widely covered by the media.³¹³ The Danish Tax Authority has been challenged by a lack of resources and cuts in its funding for several years in row.³¹⁴ However, in August 2016 the Minister for Tax announced new resources.³¹⁵

As mentioned below, Denmark has introduced a number of new measures to combat tax dodging. However, attention to the impact on developing countries and the issue of policy coherence for development receives little attention from media and politicians. This is unfortunate especially in times of decreasing and reorienting official development assistance, where policy coherence for development is urgently needed.

Transparency

Public country by country reporting

Like most other EU Member States, and in line with the legal requirements of the EU, Denmark has introduced public CBCR for the financial industry³¹⁶ as well as non-public CBCR for multinational corporations which are based in the Denmark and have a turnover of minimum €750 million.³¹⁷ The law on non-public CBCR was passed in 2015, before it became an EU requirement (in 2016).

However, the Danish government does not support full public country by country reporting for all large multinational corporations. Instead, the government supports that very large multinationals (with a turnover of minimum €750 million) report on their activities in the EU and in so-called non-cooperative jurisdictions, but not in all countries.³¹⁸ As mentioned in the chapter on 'Keeping country by country data secret from developing countries', this is similar to what has been proposed by the European Commission, but does not constitute 'real' country by country reporting.

Ownership transparency

In March 2016, Denmark adopted a law introducing a fully public register of beneficial owners.³¹⁹ The register will cover companies and trusts, as well as a range of sub-types. Accessing the register will be free of charge and does not require users to register.

The Danish law does not define a beneficial owner in terms of a certain percentage of shareholding, but applies a fairly wide definition that encompasses any "natural person who ultimately owns or controls, whether directly or indirectly, a sufficient part of the equity, interests, or voting rights, or who exercises control via other means".³²⁰ This definition can be more difficult to circumvent than a strict percentage limit, and is thus a positive step. However, more problematically, the law allows for the board of management to be recognised as the beneficial owner in situations where the real beneficial owner cannot be identified.³²¹ This means that companies, which are on paper "ownerless" can still exist in Denmark.

A different definition is used for ownership of a foundation: "A beneficial owner in a foundation is considered to be the natural person(s) who ultimately, directly or indirectly, control the foundation or who have other ownership authority, including;

- The board of directors; and
- Particular beneficiaries, or where these are individuals benefiting from the distribution of the foundation, persons not yet known to the foundation, the class of persons in whose main interest the foundation is established or operates.³²²

If there are no beneficial owners, or in situations where a beneficial owner cannot be identified, the Danish government has decided that the board of management will be recognized as the beneficial owner in the IT system.³²³ This means that it is also possible to have ownerless foundations in Denmark. As the Danish register will be publicly available, European citizens will also be able to access the register.

According to the 2015 Financial Secrecy Index, Denmark has the third lowest level of financial secrecy out of all the 18 countries included in this report (ranked at number 83 at the global level).³²⁴ In other words, Denmark has very low levels of financial secrecy.

Taxation

Tax treaties

Tax treaties remain the solitary domain of the Ministry of Taxation.³²⁵ In 2016, the Minister for Tax announced that he now wished to secure that more tax treaties were concluded with countries where there had previously been none.³²⁶ The more recent tax treaties that Denmark has signed with developing countries tend to follow the OECD model rather than the UN model, diminishing taxing rights of the developing country treaty partners.³²⁷ After civil society organisations manifested themselves as critical voices in the debate about the conclusion of the tax treaty between Denmark and Ghana in 2015, the Minister has expressed a wish to initiate a dialogue also with civil society as stakeholders,³²⁸ which is positive. However, as the Ministry of Taxation does not allow for the participation of external stakeholders when tax treaties are negotiated, there is a real challenge in terms of access to information about the actual conclusion of the treaties.

Unfortunately, and despite encouragement from NGOs specifically on this, the Ministry of Taxation has no plans to perform a spillover analysis of Danish tax treaties, in order to grasp the developmental impact that these treaties have upon the signing country.³²⁹ The treaties do not contain any specific anti-abuse clauses.³³⁰ However, they are subject to a "Super General Anti-Abuse Rule" adopted in 2015,³³¹ which made all Danish tax treaties subject to an anti-abuse clause, largely inspired by the OECD BEPS Action 6 on "Preventing the Granting of Treaty Benefits in Inappropriate Circumstances".³³² A more preferable solution would be to have the anti-abuse clauses written into the actual treaty texts.

At the moment, Denmark has 37 tax treaties with developing countries, which is below average (42 treaties) among the countries covered in this report. The average rate of reduction of tax rates within those treaties – 3.8 percentage points – is exactly average.³³³ What the average number does not show, however, is that Denmark has several specific treaties which are 'very restrictive', and include strong limitations on the taxing rights of the developing countries which are signatories. Research by ActionAid showed that five such treaties are currently in place.³³⁴

Harmful tax practices

In Denmark, a multinational company can obtain an advance pricing agreement. There is no known intention to make any information about specific advance pricing agreements public. At the end of 2015, Denmark had a total of 16 advance pricing agreements in force, which is relatively low compared to other EU countries.³³⁵

Based on the EU wide comparison of harmful tax practices done by Ramboll for the European Commission, Denmark has the least harmful tax practice features compared to other Member States.³³⁶ Denmark only has four indicators and they are all passive.

Denmark does not have a patent box and generally Denmark has, where they have been identified, been trying to assess the impacts of harmful tax practice features such as the notorious "kommandit selskaber" (Limited Liability Partnerships). This practice merited a special effort by tax authorities that issued a report concluding that this type of partnership can constitute a means to avoid tax, and should be looked at further.³³⁷

Global solutions

The Danish government does not support the establishment of an intergovernmental tax body under the United Nations.³³⁸ Instead, the Danish government believes that the current international system, where the OECD, and to some extent the G20, is the primary forum for international tax negotiations, is to be preferred. The government argues that it is concerned about the proliferation of institutions and is of the opinion that it is better to focus on improving cooperation among the existing bodies while at the same time making sure that all countries are in a position to participate and fully benefit from increased transparency at an international level.³³⁹

Conclusion

By introducing a public register of beneficial ownership, Denmark has taken a progressive stance. The same is not the case for transparency around where multinational corporations do business and what they pay in taxes, since Denmark is currently not supportive of full public country by country reporting.

Denmark has very few indicators of harmful tax practices, which is very positive. Also when it comes to tax treaties, there are currently fewer reasons for concern than with many other EU countries. However, there is a trend of more recent treaties lowering tax levels and also taking away a greater part of the taxing rights of developing countries than previously, as Denmark tends to adhere to the OECD model. Transparency around tax treaty negotiations, to ensure that civil society can contribute in an informed and meaningful manner, would help to ensure that this remains the case as Denmark initiates new tax treaty negotiations.

It is problematic that Denmark still opposes the creation of an intergovernmental UN tax body, which would give developing countries a chance to participate on a truly equal footing in the setting of global tax standards.

Finland

“We must address tax avoidance, tax crime, aggressive tax planning and money laundering. We have to act as fast as possible. We must increase transparency. We must exchange information. We must create common registries and establish a blacklist of countries.”

Alexander Stubb
Former Minister of Finance³⁴⁰

Overview

Fiscal austerity, new cases of aggressive tax planning and the Panama Papers scandal have kept tax evasion and avoidance in the spotlight both in the media and in parliamentary debates in Finland.

For example, the Finnish centre-right government attempted to introduce legislation that would allow Finnish investors to hide their shareholdings under the guise of complying with EU regulation on central securities depositories.³⁴¹ However, EU regulation includes an exception that allows Finland to maintain its current system, which is more transparent than in most Member States.³⁴² Currently, the account holder at the Central Securities Depository (often also the beneficial owner), and national investors, are not able to hide behind custodial account holders. Nominee registration of securities is currently only possible for foreign investors.³⁴³ In June, the Parliament's Commerce Committee asked the government to introduce new legislation that would maintain the transparency of shareholders.³⁴⁴

In addition, the aggressive tax avoidance structure used by the electric grid company Caruna, which holds a monopoly position, sparked outrage in the first months of 2016.³⁴⁵ In May, the Supreme Administrative Court ruled that two multinational corporations had used artificial structures to avoid taxes in Finland. The Tax Administration has similar disputes ongoing with 10-20 companies.³⁴⁶

Corporate tax scandals have also had direct links to government ministers.³⁴⁷ In September 2015, the media revealed that Minister of Transport and Communication Anne Berner served as a member of the board of a holding company in Luxembourg which was accused of aggressive tax planning.³⁴⁸ In response, the minister said that, although she had served on the board, she had filed her resignation since becoming a minister and the Luxembourg company was simply part of international capital raising.³⁴⁹

In late 2015, the media exposed that another minister, the Minister of Trade and Development Lenita Toivakka, served on the board of a holding company in Belgium, which allegedly was set up with the aim of avoiding taxes.³⁵⁰ The Minister admitted that the Belgian-based company was founded partly for tax planning, but stated that the steps taken had been commonplace and legitimate.³⁵¹

However, in June 2016, the Minister resigned partly due to the scandal around the Belgian-based company.³⁵²

As regards developing countries, the government acknowledges that international decisions on tax have a major impact on developing countries.³⁵³ However, the main focus of the government is on supporting capacity building in developing countries,³⁵⁴ rather than giving them a seat at the table when international tax standards are negotiated (see below under 'Global solutions'). A Tax and Development Action Programme was introduced in August.³⁵⁵

Transparency

Public country by country reporting

Finland supports the Commission's proposal on public country by country reporting but is not promoting disaggregated reporting for all countries or a lower reporting threshold. A position paper by the Ministry of Economic Affairs and Employment underlines that Finland supports increased transparency, but that the administrative burden for companies should not increase.³⁵⁶

State-owned enterprises have been obliged to publish country by country reports since 2015. However, the vagueness of the reporting guidelines has led to poor-quality reports that do not provide a comprehensive overview of the companies' tax structures.³⁵⁷ The government's new strategy for state-owned enterprises includes a ban on aggressive tax planning and a plan to produce uniform reporting instructions reflecting the European Commission's requirements on country by country reporting.³⁵⁸

Like most other EU Member States, and in line with the legal requirements of the EU, Finland has introduced public CBCR for the financial industry.³⁵⁹ In November, the Parliament adopted a bill that introduces non-public CBCR for multinational corporations which are based in Finland and have a turnover of a minimum of €750 million.³⁶⁰

Ownership transparency

Finland does not currently have a public register of the beneficial owners of companies or similar entities, but a proposal for transposing the 4th Anti-Money Laundering Directive into national legislation was given in November.³⁶¹ A government-led working group has suggested that the registers would be made public in accordance with data protection legislation. This is due to the fact that the information would be held as part of the national trade register that holds public data.³⁶² The Finnish legal system does not recognise trusts, but the draft bill requires that the Finnish trustee of an express trust registers the beneficial owners in Finland. The draft bill proposes that beneficial ownership information is included in the existing online Business Information System, which can be accessed free of charge.³⁶³

According to the 2015 Financial Secrecy Index, Finland has the lowest level of financial secrecy out of all the 18 countries included in this report (ranked at number 90 at the global level).³⁶⁴ In other words, Finland has very low levels of financial secrecy.

Taxation

Tax treaties

Tax treaties concluded by Finland have articles along the lines of the OECD model treaty as well as along the lines of the UN model treaty. All tax treaties are subject to approval by the parliament. Finland is not planning to assess the spillover effects of its tax treaties with developing countries.³⁶⁵

Although in the past an anti-abuse clause has not been systemically included in tax treaties, several treaties do in fact include such a clause, and the government is planning to review its approach.³⁶⁶

In total, Finland has 36 tax treaties with developing countries, which is below the average (42 treaties) among the countries covered by this report. The average reduction of developing country tax rates within those treaties – 4.8 percentage points – is, however, significantly above the average (3.8 percentage points) among the countries covered by this report.³⁶⁷ This means that Finland's treaties have a relatively high negative impact on the tax rates of developing countries. While the average reduction of tax rates is high, Finland does not have any tax treaties that stand out as 'very restrictive'.³⁶⁸

Harmful tax practices

According to a study on aggressive tax planning structures, Finland exhibits 12 indicators of structures of aggressive tax planning, which makes it the country with the eighth highest number of indicators in the EU (tied with Croatia).³⁶⁹ Finland does not have a patent box and there were no other active indicators found.³⁷⁰

According to data from the European Commission, Finland had 21 advance pricing agreements (or 'sweetheart deals') in place with multinational corporations by the end of 2013. The number dropped to 15 in 2014, but increased to 24 by the end of 2015.³⁷¹

When the European Commission presented its proposal for an Anti-Tax Avoidance Directive, the government's position was lukewarm. While stating that it was in support of most of the Commission's proposal, the government also underlined the importance of protecting the competitiveness of EU corporations, and expressed concerns as to whether similar regulation would be imposed on multinational corporations outside the EU.³⁷²

Global solutions

In its development policy, the Finnish government has recognised that: "EU decisions and agreements in fields such as taxation, trade and agriculture and similar decisions by other organisations carry major immediate or indirect consequences for developing countries."³⁷³ However, Finland does not support the establishment of an intergovernmental UN tax body, which would ensure that developing countries have a seat at the table when global tax standards are decided. The Ministry of Finance sees a global body under the UN as "double work" and considers that developing countries are able to participate sufficiently in OECD-led processes.³⁷⁴

In its statement regarding Finland's new development policy, the parliamentary Foreign Affairs Committee noted that the possibility of strengthening the UN Tax Committee should be looked into.³⁷⁵

Conclusion

Finland remains more progressive than most countries on the issue of transparency. However, the government does not currently seem to be championing the issue internationally. At the national level, the government tried to reduce the levels of transparency around shareholder ownership, but was blocked by parliament.

In Finland, political parties across the spectrum condemn aggressive tax planning, but the ruling parties have not taken the necessary ambitious measures to introduce real solutions. While not amongst the worst, Finland has a significant number of indicators of aggressive tax planning structures and sweetheart deals with multinational corporations. Finnish tax treaties with developing countries are also an issue of concern. Although they are relatively few in numbers, they do cause relatively high reductions in developing country tax rates.

Lastly, it is problematic that Finland does not support the establishment of an intergovernmental UN tax body, which would ensure that developing countries have a seat at the table when global tax standards are negotiated. This is in spite of the fact that the government acknowledges that these decisions have major impacts on developing countries.

France

“Of course, the fight against [...] tax avoidance, which allows companies to not pay their taxes anywhere, neither in our country or elsewhere, is an absolute priority [...] The French position is to make the text of [the EU directive on public country by country reporting] move towards even greater transparency.”

Michel Sapin

Minister of Finance in the National Assembly,
9 June 2016³⁷⁶

Overview

Corporate tax and tax dodging have also continued to hit the headlines in France during the past year. Not least the raids on offices of multinational companies such as Google and McDonalds have stirred public debate. French police in May 2016 raided Google's Paris headquarters as part of an investigation where French tax authorities are seeking about €1.6 billion in back taxes from the company.³⁷⁷ Another story which hit the headlines in France³⁷⁸ occurred in September, when the European Commission opened an investigation³⁷⁹ into tax deals offered by Luxembourg to Engie (former GDF Suez).

According to the Minister of Finance Michel Sapin, French authorities “will go all the way” and will not settle any deals with multinationals that are suspected of not paying their fair share of taxes.³⁸⁰

Despite tough words from the minister, the government has not played a very constructive role when it comes to increasing corporate tax transparency at the French level. Public country by country reporting has been discussed twice within a year at the French Parliament with a passion that should be highlighted. But in the end the most progressive Members of Parliament did not manage to force through legislation that would make French multinationals disclose full country by country reports. Instead, a weak and strange compromise was found (see below). However, the government did promise that France will fight for genuine and complete public country by country reporting at the EU level.³⁸¹

On beneficial ownership, the French government's position is more progressive, and there was no need this time to wait for a common position at the EU level. Following the Panama Papers scandal, the French government put forward a proposal to introduce public registers of beneficial owners (see below).

Another result of the Panama Papers scandal is the announcement by French authorities that they are investigating 560 taxpayers on suspicion of tax evasion.³⁸² This comes in addition to 724 tax payers who were also mentioned in the documents, but were already known to the authorities. In 2013, the French authorities allowed those holding undeclared offshore accounts to come forward voluntarily. Through this mechanism, €6.3 billion has already been recovered in unpaid taxes and fines.³⁸³ However, although this mechanism is useful for recovering money, it has some worrying side effects. It means that tax evaders will not have to face further prosecution, and leaves the public with the impression that fraud is acceptable – if you get caught you will just have to give the money back.

The trial of the whistleblowers from the LuxLeaks revelations should serve as a reminder to the French government on why more transparency is needed. Both of the whistleblowers, Antoine Deltour and Raphaël Halet, as well as Edouard Perrin, the journalist who helped reveal the story of hundreds of multinational sweetheart deals in Luxembourg, are French citizens. As the trial began, Minister of Finance Michel Sapin highlighted that he had asked the French ambassador to Luxembourg to ‘assist [Mr Deltour] at this difficult time when he defends the general interest’.³⁸⁴ In June 2016, the Luxembourgish court sentenced Deltour to 12 months and Halet to nine months suspended jail time.³⁸⁵ Perrin was acquitted but will face another trial as the Luxembourgish state prosecutor has appealed all the verdicts.³⁸⁶ The trial was widely reported in French media and civil society organisations condemned the verdicts, stating that whistleblowers acting in the public interest should be thanked, not punished.³⁸⁷

Transparency

Public country by country reporting

In December 2015, members of parliament proposed legislation on full public country by country reporting for French multinationals, and won a second vote in the assembly, which essentially would have meant the law was passed. The government, however, suspended the session (although it was already past midnight) and proposed an amendment to suppress the provision on country by country reporting, which had just been voted through. After a delayed suspension and a re-vote, the government had managed to prevent the adoption of full public country by country reporting in France.³⁸⁸ The Ministry of Finance argues that such a measure might hurt the competitiveness of French companies and hamper the functioning of non-public country by country reporting and exchange of information among tax authorities, which was agreed in the OECD's BEPS project.³⁸⁹ Instead, the government says it would like to see public country by country reporting adopted at EU level.

However, some members of parliament did not want to give up on the issue, and introduced public country by country reporting again in an amendment to a transparency bill, which was debated from April 2016 and eventually adopted in November 2016. This time, a really complicated compromise was found.³⁹⁰

French multinationals and foreign multinationals having a subsidiary in France will have to disclose information on their activities and taxes paid in other countries on a country by country basis, but some conditions have been imposed for certain types of countries. To understand what happened, three different types of countries need to be distinguished:

- **1st: Yet-to-determined tax havens.** For subsidiaries in these jurisdictions, multinational corporations have to do public country by country reporting with no restrictions.
- **2nd: EU countries.** For subsidiaries in these jurisdictions, multinational corporations have to do public country by country reporting, but only if the company has more than one subsidiary in the country.
- **3rd: Rest of the world.** For these subsidiaries, multinational corporations only have to do public country by country reporting if they have more than a certain amount of subsidiaries in the country. The specific amount will be determined later on by decree.

Analysis by civil society has shown that this compromise has major shortcomings. For example, this proposal will exclude at least 37 out of the 98 countries of operation of Total, a major French oil & gas company.³⁹¹

Just a few years ago, France was much more open to being a leader on corporate transparency, adopting public CBCR for banks even before the EU had reached a final agreement on similar legislation.³⁹² This clearly is not the case anymore.

In addition to this new law, France has also introduced public CBCR for the financial industry, and, in accordance with EU legal requirements, introduced non-public CBCR for multinational corporations which are based in France and have a turnover of a minimum €750 million.³⁹³ This threshold was, however, lowered to €50 million in the transparency bill.

Ownership transparency

Following the Panama Papers scandal, an amendment to introduce public registers of beneficial owners was introduced in the French Transparency Law and backed by the government. It was finally adopted on the 8 November³⁹⁵ and a decree will later spell out precisely which information will be public and which information will only be for judicial and fiscal authorities.

Meanwhile, a step backward occurred on the 21 October 2016 regarding another public register, namely a register for beneficial owners of trusts. The decision to establish such a register was taken in May 2016, with the result that basic information on owners of about 16,000 trusts “with tax consequences in France” would become available online.³⁹⁶ The law was voted on in 2013, but the decree actually putting the law into force³⁹⁷ only came after the Panama Papers scandal. Although this was an important step towards increased transparency, civil society organisations criticized the law for not going far enough in making sure it is the ultimate beneficial owner that was actually registered.³⁹⁸ The format of the online register (a search engine) also made it difficult to search and was only available to French tax payers (providing their tax number).³⁹⁹ Moreover, the register was suspended less than three weeks after the register came online, after an American citizen with trusts in France challenged the public nature of the registers, arguing it violated her right to privacy.⁴⁰⁰ In October 2016, the Constitutional Court of France declared public registers of beneficial owners of trusts unconstitutional, arguing that it “excessively violated privacy rights”, and the register has thus been permanently suspended.⁴⁰¹

It remains to be seen what wider consequences, if any, this decision will have.

According to the 2015 Financial Secrecy Index, France has the fifth highest level of financial secrecy out of the 18 countries included in this report (ranked at number 31 at the global level).⁴⁰²

Taxation

Tax treaties

In total, France has 69 tax treaties with developing countries, which is the highest amount of all the countries covered by this report (average is 42 treaties). The average rate of reduction of developing country tax rates within those treaties – 2.7 percentage points – is significantly below average (3.8 percentage points).⁴⁰³

However, what the average number does not show is that France has several specific treaties which are 'very restrictive', and include strong limitations on the taxing rights of the developing countries which are signatories. Research by ActionAid showed that eight such treaties are currently in place.⁴⁰⁴ For example, the French tax treaty with the Democratic Republic of Congo – one of the poorest countries in the world – completely bans tax on interest payments paid to overseas lenders. When affiliates of the same multinational company borrow money from each other, the borrower will pay interest to the lender. These interest payments can sometimes be used by multinationals to artificially lower their profits and tax bills in a certain country, and cancelling the right of a developing country to tax interest paid may make this kind of abuse even more tempting.⁴⁰⁵

Harmful tax practices

According to the comparative study commissioned by the European Commission, France has relatively few indicators of aggressive tax planning structures, exhibiting eight indicators as compared to the EU average of 10.6. One of the indicators, namely the patent box, is active.⁴⁰⁶

France also keeps increasing tax credits for companies, in particular through an incentive meant to boost competitiveness and jobs (Crédit d'impôt Compétitivité et Emploi (CICE)). In 2016, tax credits have reached €83 billion,⁴⁰⁷ but it is difficult to evaluate their efficiency.

France offers advance pricing agreements (or 'sweetheart deals') to multinational corporations. It had 55 advance pricing agreements in force at the end of 2014 (as compared to 47 at the end of 2013), and the number did not increase in 2015.⁴⁰⁸ This makes France the EU country with the eighth highest number of advance pricing agreements in force, according to European Commission statistics.⁴⁰⁹

Global solutions

France has been one of the main opponents of establishing an intergovernmental body on tax under the United Nations. For example, France strongly opposed this at the Financing for Development summit in Addis Ababa in July 2015.⁴¹⁰ There has been no indication that the government has changed its position on this.

Conclusion

Transparency has been high on the French agenda this year and even if the compromise found on public country by country reporting at the national level can be criticised, one must recognise that France is the first country in Europe to have adopted a type of public country by country reporting for all companies, without waiting for the adoption of anything at the EU level. It is also encouraging that the French Finance Ministry publicly stated that France will work for strong country by country reporting at the EU level.

Furthermore, France introduced public registries of beneficial owners, which gives hope that France, with six months to the national election, is trying to regain its former status as a transparency champion.

The French tax treaty system is of concern, in particular due to a high number of 'very restrictive' tax treaties with developing countries, which significantly undermine the tax system in those countries.

On the issue of harmful tax practices, which can help multinational corporations avoid taxes, France is neither the worst nor the best.

It is highly problematic that France has in the past worked very actively against the creation of an intergovernmental UN tax body, which would give developing countries a chance to participate on a truly equal footing in the setting of global tax standards. Unfortunately, there are no signs that the government has changed its position on this point.

Germany

“[T]he ones who are hiding money and those who help them can no longer be sure that they can do this business in the dark undisturbed [...] We must definitely continue on this path. And that means, of course, that you have to do it at the international level. Because it is no use if you stand alone while all others offer these lucrative possibilities and you cannot. But then one must of course also be clear about this: while drying this marsh you will be sitting with frogs at the table.”

Dr. Norbert Walter-Borjans

Finance Minister, Sozialdemokratischen Partei Deutschlands (SPD), North Rhine-Westphalia⁴¹¹

Overview

The Panama Papers started when journalists from a German newspaper – the *Süddeutsche Zeitung* – received a major leak from the Panamanian law firm Mossack Fonseca.⁴¹² One of the things that the journalists Bastian Obermayer and Frederik Obermaier noticed was that: ‘German banks were evidently actively and systematically involved in helping clients evade tax. This went on for years, and quite a few of the shell companies they arranged for their clients are still up and running’.⁴¹³ In total, six out of the seven largest banks in Germany were providing, or had in the past provided, access to or had managed offshore companies in cooperation with Mossack Fonseca – in most cases through the banks’ subsidiaries in Switzerland and Luxembourg.⁴¹⁴ German banks have also faced investigations for breaches of anti-money laundering rules in places as diverse as the United States, Dubai and India.⁴¹⁵

Germany does not have a strong record on combating illicit financial flows. After the government had signed the UN Convention on Corruption, it took ten years before Germany finally ratified the convention, in late 2014.⁴¹⁶ Previously, Germany has also lagged behind on other similar matters. For example, Germany allowed bribe payments to be tax-deductible until as late as 1999 – long after the vast majority of other countries in the world had already outlawed this practice.⁴¹⁷

Money laundering activities and illicit capital flows also include funds from developing countries. For example, after the ‘Arab Spring’, Germany froze billions of dollars of assets from countries such as Libya, Tunisia and Egypt, raising the question of how these funds managed to get to Germany undiscovered in the first place.⁴¹⁸

In his book *Tax Haven Germany*, Tax Justice Network (TJN) researcher Markus Meinzer calculated that non-residents held assets, which were tax exempt and interest bearing, in the German financial system worth somewhere in the range of €2.5 trillion to over €3 trillion in August 2013.⁴¹⁹

Transparency

Public country by country reporting

Like most other EU Member States, and in line with the legal requirements of the EU, Germany has introduced public country by country reporting for the financial industry.⁴²⁰ The government has also published a draft bill on non-public country by country reporting for multinational corporations that are based in Germany and have a turnover of at least €750 million.⁴²¹

Regarding the European Commission’s proposal for limited public reporting, the government has stated that it has ‘significant concerns’, and ‘therefore scrutiny reservations have been made’.⁴²²

When full public country by country reporting was discussed in the EU (as part of the Shareholders’ Rights Directive), Germany is reported to have led a coalition of blockers – with the goal of preventing public country by country reporting from being adopted as part of the directive.⁴²³

Ownership transparency

Germany has previously been a key blocker in the EU on anti-money laundering and transparency efforts. During the negotiations of the 4th Anti-Money Laundering Directive, Germany was reported to be one of the biggest blockers of allowing public access to registers on beneficial owners of companies.⁴²⁴ After the Panama Papers scandal broke, the German Finance Minister Wolfgang Schäuble published a ‘10 Point Action Plan against Tax Fraud, Tax Avoidance Schemes and Money Laundering’, which includes the call for a global register on beneficial owners.⁴²⁵ Furthermore, a recently published draft version of the implementation of the 4th Anti-Money Laundering Directive includes a register of beneficial owners, which will be open to public access via the internet. Unfortunately, the Ministry of Finance plans to make access conditional on payment of a fee. Nonetheless, this is a very important step forward.⁴²⁶

In July 2016, the European Commission responded to the Panama Papers scandal by proposing public registers of beneficial owners of companies and some trusts.⁴²⁷ The German government's current position is unclear, as it has only stated it will 'analyse' the proposal.⁴²⁸ It is too soon to say what role the German government will play.

The 2015 Financial Secrecy Index, published by the TJN at the end of 2015, ranks Germany as the eighth biggest enabler of financial secrecy in the world (second highest out of all the 18 countries included in this report).⁴²⁹ According to the report, Germany has shown negligent enforcement of anti-money laundering rules, and it offers a worrisome set of secrecy facilities and instruments, such as bearer shares, which allow the owner of the shares complete anonymity.⁴³⁰

Taxation

Tax treaties

According to the government, German tax treaties with developing countries include articles suggested by the OECD Model, as well as those suggested by the UN Model, those developed by Germany and articles developed by the developing country. German tax treaties with developing countries normally include clauses against treaty abuse. There are no plans for a spillover analysis to assess the impacts on developing countries. However, the Ministry of Finance states that, when the legislative bodies (Bundestag and Bunderat) discuss a new tax treaty, the accompanying explanation will include remarks about the possible effects of the treaty.⁴³¹

In total, Germany has 51 tax treaties with developing countries, which is significantly above the average number (42 treaties) among the countries covered in this report. The average reduction of developing country tax rates within those treaties – 3.8 percentage points – matches the average.⁴³²

Additionally, research by ActionAid has shown that ten of the tax treaties between Germany and developing countries are so-called 'very restrictive' treaties, which include strong limitations on the taxing rights of the developing countries that are signatories.⁴³³ For example, ActionAid estimates that a tax treaty with Germany cost Bangladesh more than US\$450,000 due to lower tax income on dividends alone.⁴³⁴

Harmful tax practices

A study on aggressive tax planning structures shows Germany has eight indicators, compared to the 10.6 average among EU countries. Germany does not have a patent box, nor were other active indicators found in the study.⁴³⁵

Germany had 24 advance pricing agreements (or 'sweetheart deals') in force at the end of 2014 (compared with 21 at the end of 2013). By the end of 2015, this number had increased to 25, which makes Germany the country with the tenth highest number of advance pricing agreements in the EU.⁴³⁶ In principle, Germany agrees only bilateral or multilateral advance pricing agreements with its treaty partners, while unilateral agreements are available only in exceptional cases.⁴³⁷ The government states that it 'supports public disclosure of general rulings but not of individual rulings because the latter contain sensitive information covered by tax secrecy'.⁴³⁸

Global solutions

Germany does not support the establishment of an intergovernmental body on tax. According to the government, 'the present UN Tax Committee works quite effectively, [and] as decided [at the Financing for Development summit] in Addis Ababa, the frequency of its meetings will be increased as well as the engagement of the [UN's Economic and Social Council (ECOSOC)]'.⁴³⁹

Conclusion

Germany has previously been a key blocker in the EU on anti-money laundering and transparency efforts, and furthermore offers high levels of financial secrecy in its own country. However, a recent announcement by the Ministry of Finance creates hope that a public register of beneficial owners will be introduced in Germany.

Germany's tax treaties with developing countries are also a cause for concern. This is due to the content of the treaties, which in many cases include strong restrictions on the ability of developing countries to collect taxes, but it is also due to the fact that Germany has a relatively high number of treaties with developing countries.

On the issue of harmful tax practices, Germany is neither among the worst or the best countries.

Last but not least, it is problematic that Germany does not support the creation of an intergovernmental UN tax body, which would give developing countries the chance to participate on a truly equal footing in the setting of global tax standards.

Ireland

“[T]here was a lot of envy across Europe about how successful we have been in putting the headquarters of so many companies into Ireland and especially into Dublin.”

Michael Noonan

Irish Finance Minister, commenting on the European Commission's decision that Ireland had provided illegal state aid to Apple

Overview

The Panama Papers revealed links between Mossack Fonseca and a number of Irish personalities, ranging from builders and sportsmen to bankers, solicitors and accountants.⁴⁴⁰ In total, there were 323 companies in the leaked Mossack Fonseca files associated with addresses in Ireland, mostly by way of the intermediaries that acted for the ultimate beneficial owners.⁴⁴¹

In response to the Panama Papers, the Irish government announced that it will tighten the laws to facilitate the prosecution of serious cases of offshore tax evasion. The government also announced the allocation of an additional €5 million to the Revenue Commissioners to hire 50 new staff and strengthen the systems for auditing and investigation. The expectation is that this effort will generate an extra €50 million in government income in 2017.⁴⁴²

Besides the Panama Papers, the main tax dodging ‘scandal’ of the year was the Apple case, which concerned two advance pricing agreements – or sweetheart deals – issued by Ireland to Apple (see below under ‘Harmful tax practices’). After the European Commission concluded that Ireland had provided illegal state aid to Apple,⁴⁴³ the Irish Finance Minister, Michael Noonan, stated: “I disagree profoundly with the Commission’s decision. Our tax system is founded on the strict application of the law (...) The decision leaves me with no choice but to seek Cabinet approval to appeal the decision before the European Courts. This is necessary to defend the integrity of our tax system; to provide tax certainty to business; and to challenge the encroachment of EU state aid rules into the sovereign Member State competence of taxation. It is important that we send a strong message that Ireland remains an attractive and stable location of choice for long-term substantive investment.”⁴⁴⁴ The Irish cabinet supported the minister’s proposal and decided to appeal the Commission’s decision to the European Court of Justice.⁴⁴⁵

Transparency

Public country by country reporting

Like most other EU Member States, and in line with the legal requirements of the EU, Ireland has introduced public country by country reporting for the financial industry,⁴⁴⁶ and non-public country by country reporting for multinational corporations which are based in Ireland and have a turnover of minimum €750 million.⁴⁴⁷

The government does not have a stated position on full public country by country reporting.

Ownership transparency

Although no beneficial ownership register has yet been established, the government has issued a statutory instrument outlining the responsibilities of beneficial owners of companies and other legal entities to report to the register and keep the information up-to-date. In cases where no beneficial owner can be identified, individuals in senior management positions can be registered instead.⁴⁴⁸

The government is still undecided regarding level of access to the register, including on whether to make the register accessible to the public.⁴⁴⁹

According to the 2015 Financial Secrecy Index, Ireland has the sixth highest level of financial secrecy out of the 18 countries included in this report (ranked at number 37 at the global level).⁴⁵⁰ In other words, although not among the worst, Ireland has relatively high levels of financial secrecy.

Taxation

Tax treaties

In 2015, the International Bureau of Fiscal Documentation (IBFD) carried out a spillover analysis of the Irish tax system on behalf of the Irish government.⁴⁵¹ The aim of the analysis was to assess the impacts on developing countries, and the overall conclusion of the analysis was that “the Irish tax system on its own can hardly lead to significant loss of tax revenue in developing countries.”

One of the arguments for this conclusion is that the amount of financial flows from Ireland to developing countries is low. However, the spillover analysis also notes that there was a general problem with lack of data. Among other things, it is highlighted that “a substantial percentage of [foreign direct investment] is labelled “confidential (...)” or “unspecified (...)” and this may in part go to developing countries”.⁴⁵² Thus, it could be the case that flows to developing countries were not covered because the data was unavailable.

Furthermore, it should be noted that the World Investment Report 2016 highlighted that Ireland has recently risen significantly in the global ranking of the top 20 investor countries (rising to 5th place in 2015).⁴⁵³

The spillover analysis includes an assessment of the impacts of Irish tax treaties with developing countries, and among other things concludes that: "The reduction of withholding taxes on dividends, interest and royalties under the tax treaties concluded by Ireland is not significant compared to the domestic withholding tax rates of the Irish tax treaty partners".⁴⁵⁴

This is not the conclusion reached by this report. In fact, the analysis provided in Table 4 and Figure 2 shows that the average reduction of tax rates between Ireland and developing countries is 5.2 percentage points, compared with the average of 3.8 percentage points among the countries covered by this report. This is not only significant, but in fact the highest reduction rate found among all the countries covered by this report.⁴⁵⁵

While both analyses include the full range of developing countries (ranging from low-income – such as Zambia – to upper middle-income – such as South Africa), one notable difference is that the official spillover analysis is based on a sample of seven treaties,⁴⁵⁶ whereas the analysis in this report includes all of Ireland's treaties.⁴⁵⁷

There are, however, some points of convergence between the two analyses. The spillover analysis notes that "several Irish tax treaties lead to a significant reduction of royalty withholding tax in the source state. The reduction of source state taxing rights regarding royalties under a number of tax treaties concluded by Ireland (Morocco, Pakistan, the 1967 Zambia treaty) is more significant than is available under many of the tax treaties concluded by the reference countries with the same developing countries." This finding is confirmed by the calculations produced for this report. However, what the calculations also show is that it is not only on royalties that the Irish treaties reduce the tax rates in developing countries. One important reason for this is because the Irish treaties include relatively high reductions on all income categories, whereas many of the other countries covered by this report have large reductions on some categories but not others.⁴⁵⁸

Another point of convergence between the spillover analysis and this report is that Ireland still has relatively few tax treaties with developing countries (28 in total),⁴⁵⁹ albeit the number of treaties has been increasing in recent years.⁴⁶⁰

Recent research by ActionAid Ireland⁴⁶¹ ranked three of Ireland's tax treaties with developing countries as 'very restrictive' on the taxing rights of those countries, including two treaties which were recently renegotiated – namely those with Zambia and Pakistan. While the Spillover Analysis includes "all Irish tax treaties with African and selected tax treaties with Asian developing countries concluded before 1 September 2014", the research by ActionAid covers both renegotiated treaties and the treaty signed with Ethiopia in November 2014, which are not included in the spillover analysis and all score as 'very restrictive'.⁴⁶²

Harmful tax practices

According to a study on aggressive tax planning structures, Ireland exhibits 10 indicators of harmful structures, which makes it the country with the 14th highest number of indicators in the EU.⁴⁶³ One of these is an active indicator, namely the Irish patent box or 'Knowledge Development Box' (KDB).⁴⁶⁴ The KDB provides an effective corporation tax rate of 6.25 per cent to certain profits arising from intellectual property assets, including patents and copyrighted software.⁴⁶⁵

Ireland has a long history of issuing advance pricing agreements (or 'sweetheart deals'). An advance pricing agreement which Ireland issued to Apple in 1991 became a central element of the European Commission's case against Ireland concerning illegal state aid to Apple.⁴⁶⁶ In August 2016, the Commission concluded that this agreement, as well as another advance pricing agreement issued to Apple in 2007, constituted illegal state aid.⁴⁶⁷ As mentioned above, the European Commission's decision has been appealed to the European Court of Justice.⁴⁶⁸

In total, Ireland had eight advance pricing agreements in force at the end of 2015 (compared to 10 at the end of 2014). This makes Ireland the country with the 14th highest number of advance pricing agreements in the EU.⁴⁶⁹

Global solutions

On the issue of establishing an intergovernmental UN tax body, the Irish Finance Minister, Michael Noonan, has stated in a Parliamentary debate: "The Irish position has always been that the issues of base erosion and profit shifting are best addressed by a multilateral solution and that the OECD has the recognised international experts in this area. It is, therefore, important that the work of the EU, the UN or other intergovernmental work on tax takes into account the ongoing work at the OECD, and that a twin-track and potentially conflicting approach is avoided."⁴⁷⁰ In other words, the Irish government does not support the establishment of an intergovernmental UN tax body.

Conclusion

When it comes to transparency, the position of the Irish government is unclear, both as regards transparency around beneficial owners of companies and trusts, as well as around full public country by country reporting.

Ireland still has relatively few tax treaties with developing countries, although the number has been increasing throughout recent years. However, it is concerning that the Irish treaties on average reduce the tax rates in its developing country treaty partners more than any other country covered by this report. Furthermore, it is worrying that Ireland has three 'very restrictive' treaties with developing countries.

Finally, it is of concern that the Irish government opposes the establishment of an intergovernmental UN tax body, which would give developing countries the chance to have a seat at the table when global tax standards are agreed.

Italy

“After our meeting in Milan last November and the excellent agreement on tax contingencies between Apple and the government, Tim Cook will be here and we will talk again tomorrow.”

Prime Minister Matteo Renzi

On the eve of his meeting with Tim Cook (CEO, Apple Inc.) held in Rome on 22 January 2016⁴⁷¹

Overview

The Panama Papers scandal had strong links to Italy. The Italian names published by L'Espresso, the national outlet cooperating with the International Consortium of Investigative Journalists, ranged from former PM Silvio Berlusconi and former Member of the Senate Nicola di Girolamo to high-level corporate leaders, TV presenters, actors and Formula 1 drivers, among others.⁴⁷² The Italian bank UBI Banca was also highlighted due to its role in setting up shell companies through its subsidiary in Luxembourg, a number of which were still active when the Panama Papers were published.⁴⁷³ The Government announced a major fiscal inquiry⁴⁷⁴ while the prosecutor's office in Turin opened a formal investigation for alleged money laundering.⁴⁷⁵

The subsidiaries of big international corporations operating in Italy have been under reinforced scrutiny by the Italian judiciary and fiscal authorities. In late December 2015, Apple Italy sealed a deal with the Italian Revenue Agency (IRA), settling the payment of €318 million out of the alleged €880 million of avoided corporate taxes between 2008 and 2013.⁴⁷⁶

An Italian investigation is also ongoing into Credit Suisse Ag. The Switzerland-based group's parent company is charged with systematically having helped 13,000 Italian clients to hide their assets of more than €14 billion abroad.⁴⁷⁷ In December 2014, the fiscal police discovered internal documentation with strict instructions to bank officials on how to circumvent controls and escape the inquiries. The documentation was nicknamed the 'manual of a perfect tax-dodger and money launderer' by the prosecutor's functionaries.⁴⁷⁸ In October 2016, Credit Suisse Ag agreed to pay €100 million to the Italian tax authorities to settle the legal dispute.⁴⁷⁹

The investigations into corporate tax practices by foreign multinational corporations gives an impression that Italy is keen to crack down on corporate tax dodging. However, at the same time, harmful tax practices in Italy (see below) give reason for concern. Italy has, however, previously shown support for the European Commission's proposal to adopt a Common Consolidated Corporate Tax Base under the EU.⁴⁸⁰ As explained above (under 'Common Consolidated Corporate Tax Base), this is a proposal which could, if designed correctly, be an important step towards removing harmful tax practices in the EU. Italy has not yet responded to the concrete proposal from the European Commission, which was launched in October 2016.⁴⁸¹

Transparency

Public country by country reporting

Italy has, in accordance with EU legal requirements, introduced public country by country reporting (CBCR) for the financial industry.⁴⁸² Non-public CBCR for multinational corporations which are based in Italy and have a turnover of minimum €750 million was introduced in the finance bill in December 2015, and the Italian Ministry of Finance aims to publish the corresponding decree by the end of 2016.⁴⁸³

During the Anti-Corruption Summit in London in May 2016, Italy committed to supporting the development of "a global commitment for public country-by-country reporting on tax information for large multinational enterprises".⁴⁸⁴ However, it is not clear what concrete actions will follow, if any. As regards the European Commission's proposal to require big multinational companies (with a turnover of more than €750 million) to publish country by country reports on their activities in the EU and in so called "non-cooperative" jurisdictions, the position of the Italian government is unclear. The government has expressed concerns that the requirement of public disclosure might impact negatively on the ongoing OECD process of including more countries in the non-public exchange of information on country by country reports.⁴⁸⁵

Ownership transparency

Italy has not yet transposed the EU's 4th Anti Money Laundering Directive into national legislation. The government's plans on the definition of beneficial ownership of companies, as well as whether the public should have access to the register of beneficial owners, are still unclear,⁴⁸⁶ but will likely become clear within the coming year, since the deadline for transposition of the directive is June 2017.⁴⁸⁷ Current legislation defines as a beneficial owner anyone holding 25 per cent plus one share in a company.⁴⁸⁸ The current law also allows senior managers to be listed as beneficial owners in cases where the true beneficial owner cannot be identified.⁴⁸⁹

According to the 2015 Financial Secrecy Index, Italy has the eleventh highest level of financial secrecy out of the 18 countries included in this report (ranked at number 58 at the global level).⁴⁹⁰

Taxation

Tax treaties

In total, Italy has 51 tax treaties with developing countries, which is significantly above average (42 treaties) among the countries covered in this report. The average rate of reduction of developing country tax rates within those treaties – 2.5 percentage points – is significantly below average (3.8 percentage points).⁴⁹¹

However, what the average number doesn't show is that Italy has several specific treaties which are 'very restrictive', and include strong limitations on the taxing rights of the developing countries which are signatories. In fact, according to research by ActionAid, the UK and Italy hold the same position as the countries with the largest number of 'very restrictive' treaties with lower income Asian and sub-Saharan African countries.⁴⁹²

For example, the Italian tax treaty with the Democratic Republic of Congo – one of the poorest countries in the world – completely bans tax on interest payments paid to overseas lenders. When affiliates of the same multinational company borrow money from each other, the borrower will pay interest to the lender. These interest payments can sometimes be used by multinationals to artificially lower their profits and tax bills in a certain country, by setting up an internal loan between a subsidiary in that country and a subsidiary in a low-tax jurisdiction. When there are no tax payments on interest payments to overseas lenders, this kind of abuse becomes even more tempting.⁴⁹³

Harmful tax practices

According to a study on aggressive tax planning structures, Italy has nine indicators of such structures, as compared with the EU average of 10.6.⁴⁹⁴ One of the indicators is active, namely the notional interest deduction for share capital.⁴⁹⁵ After the conclusion of the study, Italy has introduced another active indicator, namely a patent box.⁴⁹⁶

Italy offers advance pricing agreements (or 'sweetheart deals') to multinationals.⁴⁹⁷ There were 51 deals in force at the end of 2014, and 68 by the end of 2015, making Italy the EU country with the sixth highest number of advance pricing agreements.⁴⁹⁸

Global solutions

Italy has not been a supporter of the establishment of an intergovernmental body on tax under the UN,⁴⁹⁹ and there has been no indication that this position has changed.

Conclusion

On the issue of transparency, Italy still seems very undecided, and thus neither progressive nor regressive.

The Italian tax treaty system is concerning due to a high number of 'very restrictive' tax treaties with developing countries, which significantly undermine the tax system in those countries.

Regarding the tax payments of multinational corporations, Italy has shown a strong commitment to ensuring that corporations pay taxes in Italy. However, at the same time, attention needs to be paid to the monitoring of indicators of aggressive tax planning structures, as well as the volume of advance pricing agreements.

Lastly, it is problematic that Italy does not support the creation of an intergovernmental UN tax body, which would give developing countries the chance to participate on a truly equal footing in the setting of global tax standards.

Latvia

“We still have a high income inequality in society and it can be reduced by progressive taxation: poorer paying less, but wealthy – more.”

Dana Reizniece-Ozola
Latvian Minister of Finance⁵⁰⁰

Overview

When Latvia joined the EU in 2014, concerns were raised about the EU gaining one more new tax haven.⁵⁰¹ One of the key concerns was Latvia’s holding companies, which are subject to a very generous tax regime (see below under ‘Harmful tax practices’). Furthermore, Latvia has lax regulation and surveillance of the sources of funds transferred to and from the country. This makes the country a convenient vehicle for money laundering. For example, a big fraud scandal in Moldova in 2015 revealed that almost €700 million had been shifted out from the country three years earlier (about 12 per cent from the country’s GDP). Some of the money, it turned out, had been deposited into Latvian bank accounts under the names of various foreigners.⁵⁰² As a part of Latvia’s accession process to the Eurozone (in 2014) and the OECD (in July 2016), the government has committed more resources to fighting financial crimes.⁵⁰³

Yet Latvia still has a large shadow economy. Although it shrank slightly in 2015, compared with 2014, Latvia still has the biggest shadow economy out of the Baltic states, estimated at 21.3 per cent of GDP. This is mainly due to underreporting of business income and paying salaries in cash.⁵⁰⁴

Latvia is one of the few European countries where the tax system has remained relatively regressive, with taxes directed more at taxing labour and consumption than at corporate profits and capital.⁵⁰⁵ Latvia is also one of the most unequal societies in Europe.⁵⁰⁶

However, Latvia has experienced external pressure to change its tax system, not least from the OECD, which in 2015 highlighted that: “Better targeting of social benefits to low-income households is needed to address poverty risks, while lowering taxes on low-paid jobs would promote formal employment, reduce inequality and include more Latvians in the social security system.”⁵⁰⁷ This recommendation coincided with Latvia’s negotiations about membership of the OECD.⁵⁰⁸

Following the criticism, a solidarity tax was introduced in 2016, requiring those with income higher than €48,600 a year to pay about 34 per cent tax.⁵⁰⁹ Later on, the Minister of Finance admitted that the income from this tax has been lower than expected as the people with such an income are 20 per cent fewer than previously estimated (approximately 3800 high earners instead of 4700).⁵¹⁰ The government assumes this is because the law is being circumvented by potential taxpayers.⁵¹¹ The new tax has also resulted in several court cases, brought about by individuals and companies who seek to abolish the tax.⁵¹² While the government has announced an intention to review the tax, it is not planning to abolish it.⁵¹³

Meanwhile, the World Bank has added its voice to critics raising concerns about the Latvian tax system, and has proposed that Latvia introduces progressive taxation of labour and raises taxes on capital.⁵¹⁴

In order to increase government revenue and minimise the risks in relation to the financial sector, a proposal to introduce tax on high-risk financial transactions by non-residents was considered in summer 2016. This proposal came after several banks had been involved in money laundering scandals. However, the proposal was criticised by the Association of Latvian Commercial Banks, which said that “imposing a charge on non-resident transactions would damage both Latvia’s reputation and competitiveness”, and the idea was scrapped.⁵¹⁵

The large shadow economy is a possible explanation as to why there is no widespread public support for, or interest in, tax issues. An online petition asking for progressive tax reform launched in 2011 has so far gathered only 10,494 signatures.⁵¹⁶

The Panama Papers revealed 15,951 records with links to Latvia. According to the media, the high number is in part due to Latvian banks servicing non-residents, and in part due to the Scandinavian bank Nordea marketing offshore accounts in Latvia.⁵¹⁷

Transparency

Public country by country reporting

Latvia has, in accordance with the legal requirements of the EU, introduced public CBCR for the financial industry.⁵¹⁸ The government is planning to introduce non-public CBCR for multinational corporations with a turnover of a minimum of €750 million by the end of 2016.⁵¹⁹

The government supports the European Commission's proposal to require big multinational corporations (with an annual turnover of €750 million) to publish country by country reports on their operations in EU Member States and so called "non-cooperative jurisdictions" (but not from all countries where they do business). The government does not support a lower threshold for which companies should be required to report, nor does it support the proposal for full public country by country reporting (which would require multinational corporations to report from all countries where they operate).⁵²⁰

Ownership transparency

Latvia is planning to transpose the EU's 4th Anti Money Laundering Directive into national legislation by the end of 2016. The government is planning to establish a lower threshold (than the 25 per cent shareholding mentioned in the Directive) for the definition of 'beneficial owner', and to list the beneficial owner regardless of the ownership percentages in the company. However, the government also plans to include very limited access to the register of beneficial owners, allowing only "persons who have an obligation under the law to carry out State administration tasks" to see the information. Given that the Directive specifies that everyone who can document a 'legitimate interest' should be given access to the information,⁵²¹ it is not clear that the Latvian access requirement is wide enough to be in line with the directive.

In addition, Latvia has no plans to make amendments to the regulatory framework on trusts.⁵²²

Latvia's position regarding the European Commission's proposal on public registers of beneficial owners of companies and some trusts is unclear, but taken the government's current plans, it seems unlikely that Latvia would support public access.

According to the 2015 Financial Secrecy Index, Latvia has the twelfth highest level of financial secrecy out of the 18 countries included in this report (ranked at number 59 at the global level).⁵²³

Taxation

Tax treaties

When negotiating tax treaties with developing countries, Latvia uses the OECD Model with individual provisions of the UN model. Anti-abuse clauses have been included in some treaties, namely with India, Kuwait and United Arab Emirates. There are currently plans to negotiate a new treaty with Bahrain.⁵²⁵

According to the government, Latvia takes into consideration that any treaties signed, or planned, with developing countries should align with the contracting country's priorities. For example, the treaty with Pakistan, as well as others, retains the option of withholding taxes in the country of source from income such as royalties, interest income and dividends. Latvia has not, however, conducted a spillover analysis of the potential effects of its tax treaties on developing countries, nor does the government plan to do so.

In total, Latvia has 22 tax treaties with developing countries, which is significantly below the average (42 treaties) among the countries covered by this report. The average reduction of developing country tax rates within those treaties – 4.4 percentage points – is, however, significantly above the average (3.8 percentage points) among the countries covered by this report.⁵²⁶ This means that the relatively few tax treaties which Latvia has with developing countries have a relatively high negative impact on the tax rates of those countries. While the average reduction of tax rates is high, Latvia does not have any tax treaties that stand out as 'very restrictive'.⁵²⁷

Harmful tax practices

According to a study on aggressive tax planning structures, Latvia exhibits 13 indicators of such structures, which makes it the country with the fifth highest number of indicators in the EU.⁵²⁸ Latvia does not have a patent box and no other active indicators were found.

Latvia is known for its favourable holding regime, in force since January 2013. Certain income from European subsidiaries, such as dividends, can be paid to a Latvian holding company without being taxed at all. Dividends can also be paid out to a foreign parent company, again with zero per cent tax.⁵²⁹ This contributes to making Latvia an attractive destination for multinationals looking to cut their tax bills.

Latvia offers advance pricing agreements (or 'sweetheart deals') to multinational corporations, although at the end of 2015, there was only one such agreement in force.⁵³⁰ The government does not support making essential elements of tax rulings public.⁵³¹

Global solutions

The Latvian government's position on the establishment of an intergovernmental body on tax is currently not known.

Conclusion

There are a number of elements of concern in relation to Latvia. Despite repeated money laundering scandals, the government is still showing resistance towards financial transparency. In particular, the plans to introduce very strict limitations on access to the upcoming register of beneficial owners raises the question of whether Latvia will even comply with the minimum EU requirements of letting all those who can prove a 'legitimate interest' access the register. The government is also opposing full public country by country reporting for multinational corporations.

This concern is further exacerbated by the fact that Latvia has a high number of indicators of structures that can facilitate corporate tax avoidance, as well as the Latvian holding companies, which are subject to very generous tax benefits, and can thus become vehicles of corporate tax avoidance.

While Latvia has relatively few tax treaties with developing countries, the average reduction of the tax rates of developing countries that have signed those treaties is high, and thus also a reason for concern.

Lastly, it is problematic that Latvia does not support the creation of an intergovernmental UN tax body, which would give developing countries a chance to participate on a truly equal footing in the setting of global tax standards.

Luxembourg

“With us, everything is in order.”

Pierre Gramegna

Finance Minister of Luxembourg, in response to the Panama Papers⁵³²

Overview

One and a half years after the LuxLeaks revelations,⁵³³ which showed how the Luxembourg tax authorities had issued hundreds of so-called ‘sweetheart deals’ that helped multinational corporations avoid taxes, the whistleblowers who leaked the documents, as well as one of the journalists who brought forward the story, were all put on trial in Luxembourg.⁵³⁴ Antoine Deltour and Raphaël Halet, former employees at the consultancy firm PricewaterhouseCoopers (PWC), were accused of theft and violating Luxembourg’s secrecy laws.

Civil society organisations stressed that the whistleblowers had acted in the general interest and should be thanked, not punished.⁵³⁵ Nevertheless, the court sentenced Deltour to a 12 month suspended jail term and a €1500 fine and Halet to 9 month suspended jail and a €1000 fine. They have both appealed the court decision.⁵³⁶ The French journalist Édouard Perrin, who revealed the story, was acquitted of all charges, but will be facing another trial as the Luxembourg state prosecutor appealed all the verdicts.⁵³⁷

Luxembourg’s ‘sweetheart deals’ have also been the subject of the European Commission’s state aid investigations. The Commissioner for Competition Margrethe Vestager announced that the selective tax advantage issued through a tax ruling for Fiat in Luxembourg was illegal under EU state aid rules.⁵³⁸ Luxembourg has appealed the decision to the European Court of Justice.⁵³⁹ Further investigations are ongoing regarding deals issued by Luxembourg to McDonalds and Amazon.⁵⁴⁰

In 2016, Luxembourg reappeared in another tax scandal, namely the documents revealed in the Panama Papers. For example, on the list of countries with most intermediaries, such as law firms and banks involved in setting up companies in Panama, Luxembourg features as number seven.⁵⁴¹

Following the revelations of the Panamas Papers, the Luxembourg tax administration (l’Administration des Contributions Directes (ACD)) sent an inquiry to lawyers that had been identified as having Panamanian companies. The ACD requested the names of the companies concerned, names of their economic beneficiaries and the persons empowered to carry out transactions on behalf of the companies. The president of the Luxembourg Bar Association responded that this was problematic given that the data, on which this inquiry was based, was obtained from Mossack Fonseca in a wrongful manner.⁵⁴²

Transparency

Public country by country reporting

Like most other EU Member States, and in line with the legal requirements of the EU, the government of Luxembourg has presented a draft bill to introduce non-public CBCR for multinational corporations which are based in Luxembourg and have a turnover of minimum €750 million.⁵⁴³ Also in line with EU requirements, Luxembourg has introduced public country by country reporting for the financial industry.⁵⁴⁴ The government is not aware of any cases where negative impacts have been triggered by making country by country information relating to Luxembourg banks publicly available.⁵⁴⁵

The Luxembourg government “partly” supports the Commission’s proposal for public country by country reporting, stating that it is not opposed to making publicly available certain tax information as proposed by the EU Commission in April 2016.⁵⁴⁶

Ownership transparency

On 30 October 2015, the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes announced that Luxembourg now has a rating as “largely compliant” with the OECD’s standards.⁵⁴⁷ Meanwhile, Luxembourg was ranked in the 2015 Financial Secrecy Index as the country having the highest level of financial secrecy out of the 18 countries included in this report (ranked at number 6 at the global level).⁵⁴⁸

Luxembourg continues to make news as a key player in the global offshore business. As part of the Panama Papers story, the International Consortium of Investigative Journalists released a top ten list of banks that have established the most offshore companies for clients through Mossack Fonseca. No less than four Luxembourg banks figured in the global top ten list, including the two banks at the top of the list.⁵⁴⁹ In total, more than 10,000 offshore companies from the Panama Papers had connections to Luxembourg.⁵⁵⁰

Luxembourg has not established a register of beneficial owners, and no bill has yet been put forward to implement the 4th Anti-Money Laundering Directive.⁵⁵¹ The government’s position on allowing public access to a future beneficial ownership register remains unknown, but will likely become clear within the coming year, since the deadline for transposition of the directive is June 2017.⁵⁵²

Meanwhile it seems that another proposal, which had the potential to increase financial secrecy in Luxembourg even further, has also stalled. The patrimonial fund – nicknamed the ‘Luxembourg trust’⁵⁵³ – was proposed by the Luxembourg government in 2013 through the so-called ‘Bill 6595’.

One Luxembourg newspaper notes that: 'Pending the transposition of the [Anti-Money Laundering] directive (by June 2017), the patrimonial foundation will remain in hibernation. In the current context, Bill 6595 has been transformed into a "reputational risk". Luxembourg knows it is under close observation'.⁵⁵⁴

Taxation

Tax treaties

Luxembourg mainly uses the OECD model, but there are also double tax treaties that include elements of the UN Model. Luxembourg has recently concluded double tax treaties that contain specific anti-abuse clauses. In principle, the Luxembourg Ministry of Finance negotiates double tax treaties in collaboration with the Luxembourg tax authorities, without involvement of other stakeholders. There are no plans to carry out a spillover analysis.⁵⁵⁵

At the moment, Luxembourg has 26 tax treaties with developing countries, which is below average among the countries covered in this report. The average rate of reduction of developing country tax rates within those treaties – 2.6 percentage points – is also significantly below average (3.8 percentage points), and thus also less harmful.⁵⁵⁶ Luxembourg does not have any tax treaties that stand out as 'very restrictive'.⁵⁵⁷

Harmful tax practices

In the study on aggressive tax planning structures commissioned by the European Commission, Luxembourg is found to have a total of 13 indicators which is above the 10.6 EU average. The only active indicator is the patent box.⁵⁵⁸ This patent box has, however, now been closed down, albeit with an agreement that multinational corporations that were already using the Luxembourg patent box can continue doing so until 2021.⁵⁵⁹ The government has also announced that a new system will be introduced to replace the old one.⁵⁶⁰

After the LuxLeaks scandal and several state aid cases, one might have expected that the number of advance pricing agreements (or 'sweetheart deals') with multinational corporations would stop escalating in Luxembourg. However, data from the European Commission shows that on the contrary, the number of advance pricing agreements skyrocketed.⁵⁶¹ From 199 advance pricing agreements by the end of 2013, and 347 at the end of 2014, the number of deals reached 519 by the end of 2015. In other words, after the LuxLeaks scandal, the number of sweetheart deals in Luxembourg increased by 50 per cent.

As of 1 January 2015, Luxembourg has introduced a special procedure for advance pricing agreements. This includes a requirement that any request for such agreements be made through an Advance Rulings Board (Commission des décisions anticipées (CDA)) established within the tax administration. The aim is to ensure a uniform application of the law and compliance with the principle of equality of taxpayers before the tax law. The new procedure has slowed down the decision-making procedure,⁵⁶² but as noted earlier, the number of agreements still keep increasing rapidly.

In May 2016, Luxembourg was accused by the Belgian media of offering "oral tax rulings" in order to circumvent the new EU legislation that obliges Member States to exchange information on tax rulings with tax authorities in other Member States.⁵⁶³ The accusations also led to a parliamentary question in the European Parliament, asking whether the European Commission will open an inquiry into the matter.⁵⁶⁴ The Luxembourg finance minister has denied all allegations.⁵⁶⁵

Global Tax Body

Having previously been against the establishment of an intergovernmental tax body under the UN, the Luxembourg government states it is "currently undecided" regarding the issue.⁵⁶⁶

Conclusion

In spite of the LuxLeaks scandal, Luxembourg has continued to issue a very high number of advance pricing agreements (or 'sweetheart deals') to multinational corporations - with a 50 per cent increase during the year following the scandal. This, as well as the fact that Luxembourg generally has a significant amount of indicators of aggressive tax planning, is highly concerning.

Also, on the issue of financial secrecy, Luxembourg remains a high concern – currently placed as number 6 at the list of the world's most secretive countries.

Luxembourg's tax treaties with developing countries, although not unproblematic, are less of a concern than many other countries covered by this report. Luxembourg's amount of treaties with developing countries, as well as the average reduction of tax rates in developing countries, are both significantly below average.

Netherlands

“The Netherlands used to be part of the problem, too often enabling countries to avoid paying taxes. Now it is time we, as EU President, are part of the solution.”

Jeroen Dijsselbloem

Dutch Finance Minister, August 2016⁵⁶⁷

Overview

The Netherlands continues to be a key player in international tax avoidance strategies. Between 2013 and 2015, the number of letterbox companies in the Netherlands grew by 17 per cent.⁵⁶⁸ The Panama Papers contained references to approximately 200 Dutch addresses, 50 Dutch intermediaries, and 100 entities affiliated to the Netherlands, which the government is investigating.⁵⁶⁹

As EU President in 2016, the Netherlands has had a major role in finalizing the EU Anti-Tax Avoidance Package. While these policy measures are welcomed as means to combat tax avoidance, the Dutch State Secretary for Finance also announced that in light of these measures, the Netherlands will lower its corporate income tax rate in order to preserve the attractiveness of its “fiscal business climate”.⁵⁷⁰

Meanwhile, analysis of documents obtained under a Freedom of Information request by Oxfam Novib and SOMO expose the influence of corporate interests on Dutch fiscal policy.⁵⁷¹ The documents show that the Dutch employers’ organization (VNO-NCW), as well as the American Chamber of Commerce and the Dutch Association of Tax Advisers were all closely involved in several policymaking processes. They were able to effectively lobby the Ministry and represent their business interests.

A parliamentary inquiry on “undesired international fiscal planning via The Netherlands” is scheduled to be held in December.⁵⁷² The inquiry was initiated by the Greens, the Labour Party, and the Socialist Party, in light of the developments around the Panama Papers, LuxLeaks and the investigations by the European Commission into state support to Starbucks, Apple and Ikea. Parliament will invite letterbox companies,⁵⁷³ tax advisors and the supervising authorities, who cannot refuse to attend and will be heard under oath. An expert meeting was already held by Parliament in September to inform Members of Parliament about the role of the Netherlands in international fiscal constructions.

The government in May 2016 also published a law proposal to strengthen oversight of the country’s trust offices (“trustkantoren”), a term used in The Netherlands for corporate service providers. The proposal includes better integrity checks and stricter policy to combat money laundering.⁵⁷⁴ However, it is problematic that the trust offices will still have a so-called ‘gatekeeper’ function regarding the thousands of letterbox companies under their management. This means that the supervisor of the trust sector, the Dutch Central Bank, will not directly monitor the risks associated with those letterbox companies. The law will come into force in 2018.⁵⁷⁵

Transparency

Public country by country reporting

Earlier this year, the Dutch Parliament adopted two motions calling on the government to support full and public country by country reporting within the EU.⁵⁷⁶

In a letter by the Minister of Justice sent to Parliament in October 2016, the Dutch government has acknowledged the importance of full public country by country reporting for multinational corporations with a presence in the EU, and is generally in favor. However, the Ministry also emphasises doubts about legal possibilities to enforce publication of CBCR data for non-EU countries by EU subsidiaries and branches of multinationals headquartered outside the EU. Therefore the NL government favours a “comply or explain” approach for the separate reporting per non-EU country.⁵⁷⁷

Ownership transparency

The Dutch government is in the process of preparing legislation for an Ultimate Beneficial Ownership (UBO) register. The plans are not yet finalized but the Ministry of Finance says it will follow the measures laid out in the EU’s 4th Anti-Money Laundering Directive and make the register public.⁵⁷⁸ The register will include corporate partnerships and other legal entities. The register will not include trusts (trusts here meaning trust funds), because “there are no trusts which are governed by Dutch law”.⁵⁷⁹ Beneficial ownership is defined as the natural person who has formal or factual control over a legal entity. Indications for control are a ‘sufficient’ degree of ownership or shares in the entity, but also the power to fire board members can indicate beneficial ownership.

One of the most crucial aspects of the government's proposal is who will be able to get access to which information and how. While the register will be public, the Dutch government has proposed two restrictions, which it argues will ensure the "privacy" of the UBO's: 1) The registration of the users of the registry; 2) a fee for the use of the registry. The government has also suggested that only the minimum set of data will be made available in the public register, and when there is a risk of kidnapping or blackmailing in individual cases, UBO data will be shielded from the public registry (and in the case of minors). Only specific authorities (such as the Dutch Central Bank, public prosecutor, etc.) will gain unlimited access, which includes information on the address of the beneficial owner and his or her Tax Identification Number (TIN). Others will only be able to access the name, year and month of birth, nationality, country of residence and the nature and size of the economic interest of the UBO.⁵⁸⁰

The Dutch Chamber of Commerce, which will be administering the registry, is currently not registering company information according to an open data format, and an open data format is currently not foreseen in the future.⁵⁸¹ In May 2016, the Dutch Parliament adopted a motion requesting the government to take into account the importance of accessibility of the register for civil society and journalists.⁵⁸² The final outcome of the register remains uncertain at the time of writing. A publicly accessible UBO register, however, is crucial not only in the fight against tax dodging, but also money laundering. According to the 2015 Financial Secrecy Index, the Netherlands has the eighth highest level of financial secrecy out of the 18 countries included in this report (ranked at number 41 at the global level).⁵⁸³

Taxation

Tax treaties

The Netherlands, which in total has some 90 bilateral tax treaties, is known to be used for treaty shopping using Dutch letterbox companies.⁵⁸⁴ Corporations resident in other countries and thus not entitled to Dutch treaty benefits set up a Dutch letterbox to benefit from, amongst others, lower withholding tax rates in countries of operation. This enables them to shift profits out of the countries where business activity is taking place, via the Netherlands to tax havens. This Dutch conduit arrangement is facilitated by domestic tax laws, such as the participation exemption and lack of withholding taxes on outgoing royalty, interest and most dividend payments, even if these are made to tax havens.

Recognising that treaty shopping is incoherent with development goals,⁵⁸⁵ the Netherlands announced in 2013 that it will propose including anti-abuse provisions in its tax treaties with 23 developing countries. All 23 countries have now been approached and so far five treaties have been changed to include anti-abuse rules (Ethiopia, Zambia, Kenya, Malawi and Ghana). The government is in talks with seven other countries.⁵⁸⁶

The government claims that, when it comes to developing countries, it is more willing than in other cases to accept taxation measures benefiting the source country, such as higher withholding tax rates at source.⁵⁸⁷ Yet research by ActionAid found that the Netherlands currently has seven tax treaties with developing countries that are 'very restrictive', and impose significant restrictions on the corporate tax collection in the developing countries that sign them.⁵⁸⁸

In total, the Netherlands has 44 tax treaties with developing countries, which is slightly above average among the countries covered in this report (42 treaties). The average rate of reduction of tax rates within those treaties – 4 percentage points – is also above average (3.8 percentage points).⁵⁸⁹

Harmful tax practices

As mentioned above, the Dutch letterbox system remains an issue of high concern. Furthermore, corporate tax rulings constitute another potentially harmful aspect of the Dutch tax system. Through these rulings, companies can negotiate with the Dutch government the terms on which they will be taxed while they are in the Netherlands. As mentioned in the chapter on 'Sweetheart deals', these type of agreements were the center of the so-called LuxLeaks scandal, and can be used by multinational corporations to avoid taxes. They remain a secret to the general public as well as Parliament. The total number of advance pricing agreements and advance tax rulings in 2015 came to 642, compared to 632 in 2014 and 669 in 2013.⁵⁹⁰

In 2015, the European Commission ordered the Netherlands to claim back €20 to €30 million in tax from Starbucks, after the Netherlands, in the view of the Commission, gave the company an unfair advantage as part of an advance pricing agreement.⁵⁹¹ The Dutch government has appealed the decision. According to the Ministry of Finance, the same tax provisions apply to taxpayers with and without a tax ruling; they do not benefit one tax payer over the other.⁵⁹²

A recent study commissioned by the European Commission found the Netherlands to have the highest number of harmful tax practices in the EU. Out of 33 indicators, the Netherlands scored 17.⁵⁹³ Three of these are active indicators, namely the patent box, the excess profit rulings scheme and the fact that tax deductions are allowed for interest cost without corresponding adjustment.

In the Netherlands tax revenue losses due to the patent box came to €742 million in 2012, and are estimated to rise to €1.2 billion in 2016.⁵⁹⁴ The patent box is by and large used by big corporations, with 80 per cent of the total tax profits going to large corporations, while they are only responsible for 59 per cent of research and development in the Netherlands.⁵⁹⁵ The Netherlands Bureau for Economic Policy Analysis (CPB), a government research agency, is critical of the patent box and concluded in February 2016 that instruments such as the patent box provide incentives and opportunities for profit shifting between countries.⁵⁹⁶

Leaked EU documents show that the Netherlands is attempting to undermine EU plans to tackle harmful tax practices by introducing a minimum tax rate of 10 per cent for royalties and interest payments.⁵⁹⁷ They reveal that the Netherlands has proposed exceptions in the plans for its patent box provision, which can reduce taxation on revenues resulting from research and development to 5 per cent. This provision, which is a key component of the Dutch tax system, would be threatened by a 10 per cent minimum rate.

The Dutch government states that it finds the EU's Code of Conduct Group to be an effective tool to remove harmful tax practices, both inside the EU and in third countries, by means of peer pressure.⁵⁹⁸ However, as mentioned in the chapter on 'Blacklisting 'non-cooperative jurisdictions'', this group has raised concerns because of its opacity and apparent inefficiency,⁵⁹⁹ and leaked information published by Spiegel showed that the Dutch government, together with Luxembourg and Belgium, have also successfully managed to block attempts by other EU Member States to remove harmful tax practices during the (secret) meetings of the Group.⁶⁰⁰ Rather than a recent phenomenon, the OECD and EU Code of Conduct Group have both criticised the Netherlands for engaging in harmful tax competition for over 15 years.⁶⁰¹ Under the chairmanship of Dawn Primarolo from the UK, the EU Code of Conduct Group on Business Taxation reported fifteen practices in Dutch Law which were considered in contravention of the Code in late 1999. Critiques from other EU countries, voiced since at least the 1990s, have resulted in concerted lobby and stalling practices by consecutive Dutch governments rather than meaningful policy reform.⁶⁰²

Global solutions

The Dutch government does not support the establishment of an intergovernmental UN body on tax. It argues that it wishes to "maintain the momentum of the [OECD's] BEPS project, and is concerned that a transfer of responsibilities now will disrupt this process."⁶⁰³ Instead, the Netherlands is highly engaged in the 'Addis Tax Initiative',⁶⁰⁴ a coalition of 30-plus countries and organisations, which has a strong focus on capacity building of developing countries.⁶⁰⁵ This initiative has been criticized by the Independent Commission for Aid Impact in the UK, which found that "The Addis Tax Initiative was developed by (...) donor countries with only limited consultation with developing countries and no explicit assessment of their needs."⁶⁰⁶

The government also supports an increased involvement of developing countries in the OECD's BEPS project,⁶⁰⁷ but as mentioned in the chapter on 'Exclusive global decision making', this process now mainly focuses on implementing the many decisions that were made while more than 100 developing countries were excluded from the negotiations.

Conclusion

The Netherlands has taken a progressive stance on the issue of transparency, by supporting both public registers of beneficial owners and public country by country reporting.

However, the Dutch tax system still includes a number of structures which multinational corporations can use to avoid taxes in developing countries as well as the rest of the world. This includes letterbox companies, 'sweetheart deals' and patent boxes. Adding to this concerning picture is the Dutch tax treaty system, which can also have a negative impact on developing countries. The number of tax treaties between the Netherlands and developing countries, as well as the average reduction of tax rates as a result of those treaties, are both above average. However, what the average does not show is that the Netherlands has a significant number of 'very restrictive' tax treaties with developing countries.

A number of domestic provisions facilitate treaty shopping, namely, the participation exemption and a lack of withholding taxes on outgoing royalty, interest and most dividend payments, even if these are made to tax havens.

Lastly, it is problematic that the Netherlands still opposes the creation of an intergovernmental UN tax body, which would give developing countries a chance to participate on a truly equal footing in the setting of global tax standards.

Norway

Overview

Once the Panama Papers were published in April 2016, it was revealed that the Norwegian bank DNB had used the Panamanian law firm Mossack Fonseca to help clients in its "Luxembourg Private Banking branch" establish shell corporations in the Seychelles.⁶⁰⁸ This caused a public outcry, not least because DNB is the largest Norwegian bank, and it is partly owned by the Norwegian government.⁶⁰⁹ In response to the revelations, the CEO of DNB, Rune Bjerke, underlined that DNB regrets its actions.⁶¹⁰

A public debate also broke out around the Norwegian Sovereign Wealth Fund – the largest government pension fund in the world – and whether it should divest from companies that have a presence in tax havens.⁶¹¹ It has been estimated that the fund has more than €20 billion invested in tax havens.⁶¹² The fund itself has offices in Luxembourg and it is partly incorporated in Delaware in the United States, a state known for corporate secrecy and low taxes.⁶¹³ The Norwegian Parliament has asked the fund to propose new guidelines on how to secure transparency and avoid tax havens in its investments.⁶¹⁴

Furthermore, the Panama Papers sparked discussions about the investments of the Norwegian investment fund for developing countries, Norfund. Norfund is funded by the Norwegian aid budget and partners with commercial investors to do projects in developing countries. The investment vehicles are often incorporated in Mauritius and other secrecy jurisdictions,⁶¹⁵ which has led civil society organisations to question whether the fund should adopt stricter policies to avoid tax havens.⁶¹⁶ So far the fund has not seemed willing to change its policies.⁶¹⁷

Transparency

Public country by country reporting

The Norwegian Parliament in June 2015 asked the government to review current public country by country reporting obligations (in force for the extractive and logging industries since 2014) with a view to widen the scope of the legislation.⁶¹⁸ The concrete steps taken by the government so far have, however, been modest. Instead of a review, the Ministry of Finance in May released a legislative proposal which, in line with the OECD BEPS decisions, introduces non-public reporting for multinational corporations which are based in Norway and have a minimum turnover of €750 million.⁶¹⁹ Unlike the EU, Norway does not have legislation requiring financial institutions to publish country by country reports.

In her reply to a written question by a member of parliament, Finance Minister Siv Jensen writes that the ministry is planning to evaluate current public country by country reporting requirements by spring 2017. She also refers to the European Commission's current proposal and says that, if adopted in the EU, it will also be relevant for Norway to implement it.⁶²⁰

At the Anti-Corruption Summit in London in May 2016, Norway committed to "consider the case for a global commitment for public country by country reporting on tax information for large multinational enterprises."⁶²¹ During the same summit, several other countries, including for example Nigeria,⁶²² Afghanistan,⁶²³ India,⁶²⁴ Russia,⁶²⁵ France,⁶²⁶ Italy,⁶²⁷ Netherlands,⁶²⁸ Spain⁶²⁹ and the UK,⁶³⁰ stated that they are in support of a global commitment for public country by country reporting, rather than simply considering it.

Ownership transparency

The Norwegian parliament in June 2015 voted in favour of a resolution asking the government to create a public register of beneficial owners of companies.⁶³¹ The government states its ambition is to propose public registers by the end of 2017.⁶³² A legislative committee is currently studying options for how the register should be designed and the government will consult stakeholders on the issue by the end of 2016.⁶³³

According to the 2015 Financial Secrecy Index, Norway has the 9th highest level of financial secrecy out of the 18 countries included in this report (ranked at number 53 at the global level).⁶³⁴

Taxation

Tax treaties

The treaties generally are based on the OECD model, though treaties with developing countries are often based on the UN model.⁶³⁵ In total, Norway has 44 tax treaties with developing countries, which is above the average (42 treaties) among the countries covered by this report. The average rate of reduction of developing country tax rates within those treaties – 3.6 percentage points – is slightly below average (3.8 percentage points) among the countries covered by this report.⁶³⁶

However, what the average number doesn't show is that Norway has several specific treaties which are 'very restrictive', and include strong limitations on the taxing rights of the developing countries which are signatories. Research by ActionAid showed that eight such treaties are currently in place.⁶³⁷ For example, ActionAid estimates that a tax treaty with Norway cost Bangladesh more than US\$2,486,704 due to lower tax income on dividends alone.⁶³⁸ Norway's tax treaty with Benin completely prevents Benin from taxing royalty payments to Norway.⁶³⁹ This is problematic since multinational corporations can use royalty payments between subsidiaries to minimize their profits and thereby avoid taxes in the countries where they have business activities.⁶⁴⁰ Removing developing country taxation of these flows increases the risk that this will happen.

Harmful tax practices

Advance pricing agreements (or 'sweetheart deals') are available only for the pricing of natural gas. However, the Norwegian tax authorities are currently running a pilot scheme whereby such agreements may be obtained for other transfer pricing matters.⁶⁴¹

Norway does not have a patent box. It does however have a very favourable tax regime for shipping companies, albeit in line with EU countries' legislation. Shipping income is tax-exempt and qualifying companies instead pay a small tax based on the tonnage of its vessels.⁶⁴²

Global solutions

The previous Norwegian government launched a white paper in 2013 where it stated its intention to support the upgrade of the UN Committee of Experts on International Cooperation in Tax Matters to an intergovernmental body.⁶⁴³ However, the new government did not take a strong public stance in favour of the global tax body at the Financing for Development conference in Addis Ababa in July 2015. This might have been due to the fact that Norway was co-facilitating the negotiations.⁶⁴⁴

Conclusion

The debate about public country by country reporting is currently ongoing in Norway, and it remains to be seen whether Norway will support public access to information about what multinational corporations pay in taxes and where they do business. On the issue of beneficial ownership, the Norwegian government has now announced that it will introduce public registers.

The Norwegian tax treaty system is concerning, in particular due to a high number of 'very restrictive' tax treaties with developing countries, which significantly undermine the tax system in those countries.

The number of advance pricing agreements (or 'sweetheart deals') that Norway has signed with developing countries is unknown.

Lastly, it is concerning that Norway no longer actively supports the establishment of an intergovernmental UN tax body, which would allow developing countries a seat at the table when global tax standards are negotiated.

Poland

“It seems to us that those who earn more should pay a little bit more than those who earn less.”

Mateusz Morawiecki
Polish Minister of Economic Development and Finance*

Overview

The Panama papers scandal revealed three names of Polish citizens, including former mayor of Warsaw and former Member of the European Parliament, Pawel Piskorski.⁶⁴⁵ According to Mr Piskorski, he did not report the offshore vehicle to the tax authorities because it was never used for anything and subsequently liquidated.⁶⁴⁶ All three have denied any financial impropriety and insisted they have not been involved in tax evasion.⁶⁴⁷

A special team established by the General Prosecutor is currently investigating information about Polish citizens implicated in the leaked documents.⁶⁴⁸

The new centre-right government has proposed several acts on tax matters, including new taxes for the banking⁶⁴⁹ and retail⁶⁵⁰ sectors. The Banking Tax Act applies to selected financial institutions, including domestic banks, consumer lending institutions and insurance companies, as well as branches of foreign banks and insurance companies operating in Poland.⁶⁵¹ The act came into force on 1 February 2016 and means that banks will be charged with a new tax of 0.44 per cent of their adjusted assets each year.⁶⁵²

The new taxes are generally designed to finance generous spending promises, in particular a new child benefit programme.⁶⁵³ The government is also planning to introduce a new act on value added tax (VAT) to deal with VAT fraud.⁶⁵⁴

At the same time, corporate income tax will be lowered from 19 to 15 per cent. A project bill proposes that companies have to inform the tax administration about tax optimisation behavior, as well as who has provided advice to the company and verified the optimisation plan. Hiding this information may result in fines.⁶⁵⁵

Transparency

Public country by country reporting

Like most other EU Member States, and in line with the legal requirements of the EU, Poland has introduced public CBCR for the financial industry and non-public CBCR for multinational corporations which are based in Poland and have a turnover of at least €750 million.⁶⁵⁶

The government states that it supports the limited public reporting proposed by the European Commission.⁶⁵⁷ It is unknown whether the government would be willing to accept full public country by country reporting.

Ownership transparency

The government is planning to transpose the EU's 4th Anti-Money Laundering Directive into national legislation during the first half of 2017.⁶⁵⁸ The details of the government's plans are not clear.

Poland remains opposed to public registries of beneficial owners.⁶⁵⁹ According to the 2015 Financial Secrecy Index, Poland has the fifth lowest level of financial secrecy out of the 18 countries included in this report (ranked at number 75 at the global level).⁶⁶⁰ In other words, Poland does not have high levels of financial secrecy.

Taxation

Tax treaties

In general, Polish tax treaties follow the OECD Model. Depending on the treaty partner, some treaties may include provisions drafted according to the UN Model.⁶⁶¹ A general anti-abuse rule has been introduced into several other existing treaties.⁶⁶² In total, Poland has 38 tax treaties with developing countries, which is slightly below average (42 treaties) in comparison with the countries covered by this report. The average reduction of developing country tax rates within those treaties – 2.6 percentage points – is significantly below the average (3.8 percentage points) among the countries covered by this report.⁶⁶³

However, what the average number does not show is that Poland has several specific treaties which are 'very restrictive', and include strong limitations on the taxing rights of the developing countries that are signatories. Research by ActionAid showed that six such treaties were in place by 1 December 2015.⁶⁶⁴ One of these treaties – the treaty between Poland and Sri Lanka – has since been revised.⁶⁶⁵

Poland has no plans to commission a spillover analysis of Polish tax treaties with developing countries.⁶⁶⁶

*<http://biznes.onet.pl/podatki/wiadomosci/morawiecki-o-jednolitym-podatku-ci-ktorzy-zarabiaja-wiecej-powinni-placic-troszeczke/e2erge>

Harmful tax practices

According to a study on aggressive tax planning structures, Poland has 11 indicators, compared to the EU average of 10.6.⁶⁶⁷ Poland does not have a patent box or any other active indicators.

Poland had 20 advance pricing agreements (or 'sweetheart deals') in force at the end of 2015. This makes Poland the country with the 12th highest number of advance pricing agreements in the EU.⁶⁶⁸

Global solutions

The previous Polish government stated that further analysis was necessary in order to determine whether Poland could support the establishment of an intergovernmental UN body on tax.⁶⁶⁹ The new government has so far been quiet on the issue.

Conclusions

The Polish government remains opposed to public registers of beneficial owners, which is of concern. On the issue of transparency about where multinational corporations do business and what they pay in taxes, the government supports the European Commission's proposal on partially public country by country reporting.

The Polish tax treaty system is an issue of concern, in particular since Poland has several 'very restrictive' tax treaties, which impose strong limitations on the taxing rights of the developing countries that sign them.

When it comes to harmful tax practices, Poland is not among the worst, but still has a number of indicators of structures which multinational corporations can use for aggressive tax planning, as well as a significant number of 'sweetheart deals' with multinational corporations.

On the issue of whether to establish an intergovernmental UN tax body, the Polish government has not given a position.

Slovenia

“Financial flows to tax havens are problematic, particularly when it is with a view to avoiding payment of taxes in accordance with the provisions in force in the respective country of residence, and thus with consequences for the public finances. The disclosure of data revealing corruption or other possible links is welcome. However, in the quest for transparency, this data should be interpreted cautiously.”

Miro Cerar
Prime Minister⁶⁷⁰

Overview

The Slovenian government has continued its efforts to enhance tax collection during the past year. Many initiatives have been aimed at tackling domestic challenges to the tax system such as the informal sector, also known as the “grey economy.” For example, as of the beginning of 2016 Slovenia implemented an obligation for taxable persons to report cash turnover only through specific electronic cash registers (‘tax cash registers’), providing for traceability and enabling a better trail for audits.⁶⁷¹

There have also been changes made to rules on value added tax (VAT). Higher VAT rates, which were introduced as a temporary measure in 2013 to overcome the financial crisis, became permanent (changing from 20 per cent to 22 per cent and from 8 per cent to 9.5 per cent).⁶⁷²

The government has increased corporate income tax from 17 to 19 per cent, and increased the effective corporate tax rate from 11.5 to 13.2 per cent, starting January 2017.⁶⁷³

In May 2016, the Financial Administration published 100 decisions about additional tax liabilities of companies that do business with entities associated with low tax jurisdictions. The purpose was preventive action and, in particular, highlighting aggressive tax planning schemes.⁶⁷⁴

Other debated issues have included the sale of the third biggest bank Nova KBM (NKBM) by a state-owned holding company, to a mailbox company named Biser Bidco.⁶⁷⁵ The Bank of Slovenia stated that NKBM will be owned by Biser Bidco, which will be owned by trusts indirectly owned by the European Bank for Reconstruction and Development (EBRD) and Apollo. Biser Bidco was registered in Luxembourg by Apollo Global Management LLC, with minimum capital contribution only three weeks before NKBM was bought. This raised questions on whether there will be any hidden owners behind Biser Bidco and whether the use of Luxembourg was due to tax reasons.⁶⁷⁶

The Panama Papers also disclosed information about numerous Slovenians doing their business through mailbox companies in various tax havens, with profiles ranging from business professionals to professors, sports personalities and two Slovenian consuls (to Liechtenstein and Luxembourg).⁶⁷⁷ The company UPC Svetovalna skupina was highlighted as the entrance point to Panama and other secrecy jurisdictions for many Slovenes (UPC was opening mailbox companies and providing support).⁶⁷⁸

The Ministry of Finance has said that they wish to do everything to strengthen their fight against tax havens, but cooperation with other countries is most needed, and that this is why they work on multilateral agreements within the OECD or EU.⁶⁷⁹ As regards the police, priority will be given to pre-trial proceedings related to the protection of the financial interests of the state in connection with tax havens.⁶⁸⁰ The Ministry of Justice has changed the definition of tax evasion to enable law enforcement authorities to effectively prosecute and punish those engaging in it.⁶⁸¹

As a response to the Panama Papers, two parliamentary committees have also called on the government to prepare a list of companies, directly or indirectly owned by the state, that have (themselves or through their affiliates) opened a bank account abroad, and to produce a written report on the effectiveness of measures taken against tax evasion and avoidance.⁶⁸²

Transparency

Public country by country reporting

Slovenia has not yet legislated an obligation on non-public CBCR for multinational companies with an annual consolidated turnover of at least €750 million, but plans to do so in the near future.⁶⁸³

Slovenia supports the European Commission's proposal for public country by country reporting within the EU and so-called non-cooperative jurisdictions as it aims towards "more transparency, fairer competition and general fight against tax avoidance and aggressive tax planning".⁶⁸⁴ However, there is no indication that the government would be willing to push for full public CBCR, i.e. to include reporting from all countries where multinationals have economic activities. In fact, when full public country by country reporting was discussed in the EU (as part of the Shareholders' Rights Directive), the government said that they do not support full country by country reporting. The government also considers that the proposed threshold for reporting (€750 million turnover) is suitable and is not considering any other options at the moment.⁶⁸⁵

Ownership transparency

The new Anti-Money Laundering Act, transposing the 4th Anti-Money Laundering Directive, was passed on 20 October 2016, published in the Official Gazette eight days later, and came into force 15 days after.⁶⁸⁶ It establishes a public registry of beneficial owners (for the first time in Slovenia).⁶⁸⁷ In addition to beneficial owners of companies, the registry also covers beneficial owners of foreign funds, foreign institutions or similar foreign law entities (which would include trusts), whenever these entities generate a tax obligation in Slovenia.⁶⁸⁸

The purpose of public information is to provide a higher level of legal security when entering into business relations, the security of legal transactions, the integrity of the business environment and transparency of business relationships with individuals or commercial entities that operate in the business environment and legal transactions.⁶⁸⁹

The legislation concerning the register is similar to that of the Land Registry Act.⁶⁹⁰ This means that while the registry is public it will not enable searching by a personal name, will not follow open data standards and the database will not be available to download. This makes the Slovenian register more difficult to use than, for example, the UK register.⁶⁹¹ The new Anti-Money Laundering Act⁶⁹² also states that the legal persons will submit data in the register and are liable for that data, but there will be no verification of it. Not having an open data register increases the risk that data will not be accurate as civil society actors, journalists and others will not be able to analyse the database properly.⁶⁹³

If, during the general administrative procedure, the Office for Money Laundering Prevention decides that the person or organisation demonstrates a 'legitimate interest' it may allow them access to the beneficial ownership information which is not publicly available (date of birth and nationality).⁶⁹⁴

The law includes the fall back option of listing a person holding a senior management position in cases where the real beneficial owner has not been identified.⁶⁹⁵

According to the 2015 Financial Secrecy Index, Slovenia has the 2nd lowest level of financial secrecy out of the 18 countries included in this report (ranked at number 88 at the global level).⁶⁹⁶ In other words, Slovenia has very low levels of financial secrecy.

Taxation

Tax treaties

Slovenia ratified a new treaty with Kazakhstan⁶⁹⁷ in March 2016 and the government is currently negotiating a new treaty with Mexico.⁶⁹⁸ The government also states that it plans to negotiate or conclude new treaties with developing countries within the next five years, but that the list of countries is not publicly available.⁶⁹⁹

Slovenian tax treaties in general follow the OECD model, and the treaties with developing countries do not include any anti-abuse clauses. The government does not plan to conduct a spillover analysis to assess the impacts of its treaties on developing countries.⁷⁰⁰

At the moment, Slovenia has 21 tax treaties with developing countries, which is the lowest number of treaties among the countries covered in this report. The average reduction of tax rates within those treaties – 3.7 percentage points – is slightly below average (3.8 percentage points).⁷⁰¹ Slovenia does not have any tax treaties that stand out as 'very restrictive'.⁷⁰²

Harmful tax practices

So far, Slovenia has been one out of a handful of EU countries not providing so-called advance pricing agreements (or 'sweetheart deals'). The authorities do, however, provide other forms of tax rulings such as non-binding clarifications.⁷⁰³ With new amendments to the Tax Procedure Act, it will be possible for companies to request advance pricing agreements in Slovenia from 1 January 2017.⁷⁰⁴

A study on aggressive tax planning structures commissioned by the European Commission found eleven indicators in Slovenia, which is above the EU average of 10.6. Among the indicators, the vast majority are lack of anti-abuse measures. Slovenia does not have a patent box or any other active indicators.⁷⁰⁵

Global solutions

Despite previously stating its support for the establishment of an intergovernmental body on tax,⁷⁰⁶ the Slovenian government has not actively sought to promote a solution that would allow all countries to participate on an equal footing in decision making on international tax standards. It is currently unclear whether the government still supports an intergovernmental body on tax.

Conclusions

2016 will be remembered in Slovenia for tax reforms aimed at tackling domestic challenges to the tax system such as the 'grey economy' as well as for efforts to fight tax dodging based on the OECD BEPS and EU proposals.

In relation to financial transparency, it is a clear step forward that Slovenia has now established a public register of beneficial owners, although there is still room for improvement. In particular as regards allowing full electronic analysis of the data (by ensuring that it is available in an open data format) and allowing the public full access to the data needed to determine beneficial owners with certainty. The government unfortunately still does not support full public country by country reporting.

When it comes to taxation, Slovenia has a number of tax practices which could potentially be harmful, and the fact that Slovenia is now introducing advance pricing agreements (or 'sweetheart deals'), does not improve the situation.

Although Slovenia currently only has a low amount of treaties with developing countries, the government plans to negotiate more treaties without conducting a spillover analysis to map out the potentially harmful impacts these treaties can have on developing countries.

Despite recognising the need to establish an inter-governmental tax body under the UN in the past,⁷⁰⁷ and in spite of yet another international tax scandal through the Panama Papers, Slovenia is not actively supporting or advocating for an intergovernmental UN tax body.

Spain

“Fiscal laws are equal for everyone (...) without exception.”

Cristobal Montoro
Tax Minister of Spain⁷⁰⁸

Overview

In Spain, the Panama Papers scandal had a very direct political impact. The Minister of Industry, Energy and Tourism José Manuel Soria at first claimed that it was “a mistake” that his name was included in the Panama Papers. However, later he stepped down when it became clear that he was directly linked to an offshore investment in the Bahamas from before he entered politics.⁷⁰⁹

According to the Spanish Center for Sociological Research (CIS), 70 per cent of Spanish people believe that there is too much tax fraud in Spain due to a lack of control by the tax administration (21.7 per cent of the respondents) and unemployment (19.4 per cent).⁷¹⁰

New studies released in 2016 revealed new data about the complicated social and economic situation in Spain. One of the most shocking facts is that inequality in Spain has increased almost ten times more than the European average since the 2008 financial crisis.⁷¹¹ Corporate income tax revenues are 58 per cent lower than in 2007, and nine out of every ten tax euros come from workers’ pockets.⁷¹²

Meanwhile, wealthy Spanish people have doubled their money stashed in Luxembourg (more than €13 billion) – afraid of uncertainty and looking for lower tax rates.⁷¹³ Spanish companies also seem to be increasingly preferring to use tax havens: a study showed that all the companies included in the main Spanish stock market (IBEX 35) have subsidiaries in tax havens, and that the total number of subsidiaries increased by 10 per cent from 2013 to 2014.⁷¹⁴ The favourite tax haven among Spanish companies is Delaware in the United States.⁷¹⁵

In June 2016, the Spanish Platform for Tax Justice (Plataforma Justicia Fiscal España) was created, bringing together non-governmental organisations, social movements and trade unions working for tax justice to ensure social policies and address inequality.⁷¹⁶

Transparency

Public country by country reporting

Spain was one of the first countries to implement the OECD non-public country by country reporting in July 2015.⁷¹⁷ In line with EU requirements, Spain also introduced public country by country reporting for the financial sector.⁷¹⁸ The data of the Spanish financial sector entities can be found on the Spanish central bank website.⁷¹⁹

When full public country by country reporting was discussed in the EU earlier in 2016 (as part of the Shareholders’ Rights Directive), the Spanish government stated that it did not oppose the proposal.⁷²⁰ The government also stated that “positive effects will increase when public requirements are equal at the global level and not only in the EU.”⁷²¹ In line with this statement, during the Anti-Corruption Summit in London in May, the Spanish government affirmed its “support [for] the development of a global commitment for public country-by-country reporting on tax information for large multinational enterprises.”⁷²²

Ownership transparency

Spain has not yet implemented the part of the EU’s Anti-Money Laundering Directive that requires establishment of registers of beneficial owners, and the position of the Spanish government on this issue is unclear.

According to the 2015 Financial Secrecy Index, Spain has the 13th highest level of financial secrecy out of the 18 countries included in this report (ranked at number 66 at the global level).⁷²³ In other words, Spain does not have particularly high levels of financial secrecy.

Taxation

Tax treaties

The Spanish tax treaties follow the OECD Model, although some specific parts of the UN Model have been accepted if they do not contradict the essential principles of the OECD.⁷²⁴ Spain includes anti-abuse clauses (although it does not specify in which treaties) and plans to conclude more treaties with developing countries over the next few years.⁷²⁵

In total, Spain has 47 treaties with developing countries, which is significantly higher than average among the countries covered by this report (42 treaties is the average). When it comes to lowering the tax rates of developing countries through tax treaties, the Spanish treaties lower the developing country tax rates with an average of 5 percentage points, which is the second highest among all the countries covered by this report, and significantly above average (3.8 percentage points).⁷²⁶ While the average reduction is high, Spain does not have any individual treaties that qualify as being 'very restrictive'.⁷²⁷

Harmful tax practices

According to a study on aggressive tax planning structures, Spain has seven indicators, which is the second lowest among all EU Member States (average is 10.6). However, two of these are active, including the Spanish patent box.⁷²⁸

In October 2015, the Spanish government adopted an amendment to the Spanish Patent Box Regime as part of the General Budget Law 2016.⁷²⁹ The objective was to change the patent box regime to be in line with OECD BEPS. However, this does not change the fact that the patent box introduces a risk of aggressive tax planning by multinational corporations.

Inside Spain, the Canary Islands (located close to the African Atlantic coast) have a special economic and tax regime that make them "one of the most profitable tax regimes in Europe", according to PwC.⁷³⁰ A tax rate of 4 per cent for companies located there is one of the several tax benefits. Special incentives also are applied in Ceuta and Melilla.⁷³¹

Spain provides a model for holding companies called Empresa de Tenencia de Valores Extranjeros (ETVE). This structure was created to attract foreign direct investment, but risks attracting investments without economic substance in Spain. Dividends, income and capital gains related to foreign companies held by the ETVE are exempt from taxation.⁷³¹ During the first four months of 2016, the investments linked to ETVEs increased 1,000 per cent compared to same period the previous year.⁷³² The main destination for investments through ETVE companies was the Canary Islands.⁷³³

According to European Commission statistics, Spain had a total of 51 advance pricing agreements (or 'sweetheart deals') in force at the end of 2014, which had risen to 60 by the end of 2015.⁷³⁵

Global solutions

The Spanish government has aligned its position on international tax matters with the European Union. At the 3rd UN FFD Conference, the government affirmed that "the fight to tackle tax havens, and in general all the jurisdictions that are not transparent on tax matters, must be a priority for the international community".⁷³⁶ Regarding the proposal of a Global Tax Body under the UN, the Spanish government states that "as it is a proposal so general and imprecise, [the Spanish government] cannot give an opinion on the matter."⁷³⁷

Conclusion

It is positive that Spain is showing openness on the issue of transparency. However, Spain has yet to walk the talk by establishing public registers of beneficial owners of companies in Spain, and showing active support for full public country by country reporting at the EU level.

The Spanish tax treaties with developing countries are a source of serious concern. This is both due to the high number of treaties, as well as the fact that – when it comes to lowering developing country tax rates through tax treaties – Spain has been an aggressive negotiator.

As regards harmful tax practices, there are also grounds for concern. Both the Spanish patent box as well as the special Spanish holding companies (the ETVEs) can potentially be used by multinational corporations to avoid taxes.

“The BEPS project has agreed on country by country reporting between tax administrations [which] Sweden finds good since it will facilitate cooperation [...]. To have public country by country reporting, on the contrary, while there absolutely are many reasons for having transparency and openness, our assessment is that it undermines the BEPS initiative [...] and it is also not something which [...] evidently promotes the competitiveness for EU as a whole. Therefore, Sweden is skeptical about the European Commission proposal.”

Magdalena Andersson

Swedish Minister for Finance⁷³⁸

Overview

The Panama Papers scandal revealed that 400-500 Swedes were using a letterbox company and several of the major Swedish banks were involved in helping clients to set up these companies. Nordea – the biggest bank in the Nordic countries – was the 11th most active bank of 14,000 banks in the Panama Papers database.⁷³⁹

In spring 2016, the issue of tax dodging was hotly debated in Sweden – not only by the government and civil society but also by Swedish companies, which stepped onto the scene to discuss tax transparency.⁷⁴⁰ As a result of the Panama Papers, the Swedish government presented a ten-point plan of action in April 2016 to combat tax dodging and money laundering. Among the ten actions were some positive statements including recognition of the need to “strengthen the conditions for developing countries to fight tax evasion and capital flight, as this often impacts poor countries particularly hard.”⁷⁴¹ However, in practice, the government has not embraced key tax transparency tools such as public country by country reporting. A worrying trend is also the government’s failure to reveal information and answering “don’t know” or “undecided” on major ongoing tax processes.⁷⁴²

On a more positive note, however, the government has re-started its work on Policy Coherence for Development (PCD) and the new PCD programme identifies taxation and capital flight as key issues for development. Each ministry contributed with a work plan that identifies areas for cooperation and specific goals that will generate a new plan for PCD.⁷⁴³ However, these work plans are not public.

Transparency

Public country by country reporting

Like most other EU Member States, and in line with the legal requirements of the EU, Sweden has introduced public country by country reporting for the financial industry.⁷⁴⁴ The government has proposed legislation to introduce non-public country by country reporting for multinational corporations that are based in Sweden and have a turnover of at least €750 million.⁷⁴⁵

Sweden has expressed concerns regarding the European Commission’s proposal to require multinationals to publish key financial figures on their operations in the EU and in so-called ‘non-cooperative jurisdictions’. According to Finance Minister Magdalena Andersson, making CBCR information public risks undermining the OECD’s work on non-public CBCR and it might harm European competitiveness, which is why Sweden is against it.⁷⁴⁶ Nonetheless, the Ministry of Justice states that it is not aware of any negative impacts as a result of the public country by country reporting that has been introduced for banks in Sweden and the rest of the EU.⁷⁴⁷

Ownership transparency

The Swedish government has not yet transposed the EU’s 4th Anti-Money Laundering Directive (AMLD) into national legislation. It has also not decided on what definition of beneficial owner to use or whether senior managing officials should be included as an alternative to listing the beneficial owner, in cases where a beneficial owner cannot be identified. Trusts or similar legal structures are not recognised in Swedish legislation.⁷⁴⁸

In February 2016, a public inquiry presented proposals on how to implement the AMLD in Swedish legislation.⁷⁴⁹ The proposals of the inquiry were followed by a consultation and the Ministry of Finance plans to present legislative proposals to the Swedish Parliament in the beginning of 2017.⁷⁵⁰

Previously, Sweden was skeptical towards the idea of public beneficial ownership registers.⁷⁵¹ However, the government seems to have become more positive towards the idea of wider access to the registers. During the AMLD negotiations, Sweden worked to ensure that Member States would be able to grant wider access nationally than provided by the directive, according to the Ministry of Finance.⁷⁵² The inquiry suggests that access to the registers should be made fully public, but the government has not yet made an official decision about whether to incorporate full ownership transparency.⁷⁵³

According to the 2015 Financial Secrecy Index, Sweden has the 10th highest level of financial secrecy out of the 18 countries included in this report (ranked at number 56 at the global level).⁷⁵⁴

Taxation

Tax treaties

Until recently, it has been unclear what model Sweden is using when negotiating tax treaties with developing countries. According to the Ministry of Finance, Sweden uses a mix of both OECD and UN models in allocating taxing rights, as well as country specific tax treaties. The majority of Swedish tax treaties have limitation of benefit (LOB) clauses, which is a type of anti-abuse clause. Some of these clauses are general and some are targeted,⁷⁵⁵ but none of them address the key concerns about tax treaties – namely that they undermine taxing rights and lower the tax rates of developing countries.

Sweden has not made a spillover analysis of how the existing treaties between Sweden and developing countries impact on these countries, and there are no plans to conduct one. Each negotiation is held in a bilateral context. According to the ministry, this means it "is reasonable to assume that any agreement that is reached is considered to be in line with the priorities of both contracting states."⁷⁵⁶ However, Swedish radio has revealed that Sweden has several treaties in force that substantially reduce the taxes paid by Swedish companies operating in low- and middle-income countries.⁷⁵⁷ The same conclusion was reached by ActionAid, which identified four so-called 'very restrictive' tax treaties between Sweden and developing countries. These kinds of treaties include strong limitations on the taxing rights of the developing countries that are signatories.⁷⁵⁸ For example, ActionAid estimates that a tax treaty with Sweden cost Bangladesh more than US\$826,216 due to lower tax income on dividends alone.⁷⁵⁹

At the moment, Sweden has 42 tax treaties with developing countries, which matches the average among the countries covered in this report. The average rate of reduction of tax rates within those treaties – 4.2 percentage points – is above average (which is 3.8 percentage points).⁷⁶⁰

Harmful tax practices

In the study on aggressive tax planning structures commissioned by the European Commission, Sweden is found to have a total of eight indicators, which is significantly below the 10.6 EU average. Sweden does not have – and does not plan to introduce – a patent box, and no other active indicators were found.⁷⁶¹

Sweden offers advance pricing agreements (or 'sweetheart deals') to multinational companies, but the Ministry of Finance does not disclose the number of rulings.⁷⁶² However, according to European Commission statistics, Sweden had five agreements in force at the end of 2014, and seven at the end of 2015.⁷⁶³ This is relatively low compared to other EU countries.⁷⁶⁴

Global solutions

As was the case during the Financing for Development meeting in Addis Ababa in July 2015, Sweden still does not support an intergovernmental body on tax under the UN. The government does not believe a global tax body would receive full legitimacy and enough resources to achieve its purpose.⁷⁶⁵ Instead, the government supports strengthening the UN expert committee on tax by "pushing for staff reinforcement in the secretariat."⁷⁶⁶

Conclusion

During 2016, the Swedish government has paid lip service to the urgency of tackling tax dodging, but in practice it has taken very few of the necessary steps to address the problem. The government is still not supporting public country by country reporting, and is undecided on the issue of public access to information about company ownership.

Another cause for concern is the Swedish tax treaty system, in particular since several of the treaties, which Sweden has signed with developing countries, qualify as 'very restrictive'.

On a positive note, Sweden only has a few harmful tax practices and has only signed a low number of advance pricing agreements with multinational corporations.

However, it is problematic that Sweden still opposes the creation of an intergovernmental UN tax body, which would give developing countries a chance to participate on a truly equal footing in the setting of global tax standards.

United Kingdom

"[We] understand that tax is the price we pay for living in a civilised society. No individual and no business, however rich, has succeeded all on their own [...] you have a duty to put something back, you have a debt to your fellow citizens, you have a responsibility to pay your taxes. So as Prime Minister, I will crack down on individual and corporate tax avoidance and evasion."

Theresa May

Prime Minister, speaking during her leadership campaign ⁷³⁹

Overview

2016 has been an extraordinary year in British politics. The first half of the year was dominated by the run up to the 'Brexit' referendum in June. The surprising success of the 'leave' campaign led to the rapid resignation of the UK Prime Minister David Cameron and the appointment of a new government under the leadership of former Home Secretary Theresa May.⁷⁶⁸ The vast majority of UK ministers have now changed and this, combined with the uncertainty surrounding the process and impact of 'Brexit' and the ongoing internal struggles of the main opposition Labour Party,⁷⁶⁹ creates a great deal of political and economic uncertainty for the UK.

It remains to be seen what the impact of Brexit will be on UK tax policy (as this is likely to depend in part on the nature of the negotiated future relationship between the UK and the EU). However, there has already been talk of dropping the corporation tax rate to 15 per cent (beyond the already agreed rate of 17 per cent by 2020) in an attempt to counter negative effects on investment⁷⁷⁰ and voices have been raised to point out that the UK will no longer be bound by EU rules on state aid or the code of conduct for business taxation and is thus 'free' to become a tax haven.⁷⁷¹

Throughout all this, however, tax avoidance and tax evasion have stayed firmly near the top of the political agenda. The Panama Papers revelations increased public concerns over the issue even further and shifted the focus away from individual companies and towards the global and systemic nature of the problem. The link revealed by the Panama Papers between shares in an offshore trust and the former UK Prime Minister (the shares were inherited and sold before entering office)⁷⁷² also personalised the issue, with questions about personal tax affairs becoming a core part of the leadership contest for both major political parties.⁷⁷³

Even before the scandal broke, in April 2016, a poll (commissioned by Christian Aid and Global Witness) found overwhelming support from the British public for UK government action on the UK's tax havens – its 'Overseas Territories'. Major findings included the fact that 77 per cent of British adults agreed with the statement that, "David Cameron has a moral responsibility to ensure that the UK's Overseas Territories are as transparent as possible"; while 81 per cent of British adults agreed with the statement that "all companies, whether they are registered in the UK or its Overseas Territories, should be legally required to reveal their ultimate owners."⁷⁷⁴

Indeed, when the newly formed All Party Parliamentary Group on Responsible Taxation held an enquiry into the OECD's BEPS project, they noted in their report that: "The UK Government has been a 'difficult friend' of the process. In public the Government has strongly supported the OECD's process but behind closed doors the Government has undermined some of the OECD's efforts."⁷⁷⁵

The new prime minister has made clear and positive statements about the importance of multinational companies paying their taxes and not using tax havens.⁷⁷⁶ However, in terms of formal government policy, there is a danger of lost momentum as previous ministers have moved from their posts. The challenge for new ministers and their advisers now is to build on the steps already taken and the strong rhetoric towards further concrete steps to ensuring tax transparency, both unilaterally and through support for stronger measures globally. While previous Government commitments remain, the new prime minister is yet to turn good rhetoric on taxation into firm policy.

Anti-Corruption Summit

Before the change in government and the Brexit vote in June 2016, the major focus of activity on financial transparency for the UK was the global Anti-Corruption Summit hosted in London in May 2016. The then-Prime Minister David Cameron called the Summit to bring together world leaders to "commit to taking practical steps to tackle corruption".⁷⁷⁷

While the final communiqué from the summit was largely unspecific in terms of actual commitments, there was some useful language reflecting a clear shift in the understanding of 'corruption'. This new understanding shifted away from simply the bribing of (or by) public officials in poor countries to including the actions of rich countries in facilitating grand corruption by providing the lawyers and banks to facilitate transfers of dirty money and the hiding places required to keep that money safe.⁷⁷⁸ Linked to the Summit, there were also specific commitments made by groups of countries to create central registers of beneficial ownership information, on sharing that information with each other and more limited commitments to making those registers public. There was also some movement on commitment to advancing public country by country reporting globally.⁷⁷⁹ Campaigning efforts around the summit sought to try and persuade the prime minister to adopt public registers of beneficial ownership in the UK's Overseas Territories and Crown Dependencies.⁷⁸⁰ Several NGOs expressed disappointment when only private registers were agreed.⁷⁸¹

Transparency

Public country by country reporting

The UK has introduced public CBCR for the financial industry, in line with the legal requirements of the EU.⁷⁸² As an 'early adopter' of the OECD BEPS process, the UK law on non-public CBCR for multinational corporations which have a turnover of minimum €750 million came into force in March 2016.⁷⁸³ This includes a mechanism for ensuring that multinational corporations with operations in the UK will have to provide information directly to the UK government if the country where they are registered will not be collecting and providing that information to the UK via exchange agreements.

There has been considerable pressure on the government from civil society to make country by country reporting for all sectors public. A survey of major UK firms in September 2015 clarified that such a move would not face major resistance from business.⁷⁸⁴ In February 2016 George Osborne, the UK Chancellor at the time, stated that he supported the principle of public country by country reporting, adding, however, that this should happen on a multilateral basis.⁷⁸⁵

So far, this 'in principle' stance has not been backed by actions when the opportunity has arisen. In April 2016, MEPs of the UK's majority Conservative party failed to back an amendment to a European Parliament report which called for a "move towards public country-by-country reporting". This led to the defeat of the vote on that amendment.⁷⁸⁶

In June 2016, an amendment to the Finance (No. 2) Bill was tabled by Labour MP Caroline Flint, which would have amended the new legislation on country by country reporting to make it a requirement for multinational companies to publish their reports. The vote in the House of Commons on this amendment was defeated by 295 to 273, just 22 votes short of requiring the Government to adopt unilateral public reporting, and was actively opposed by the government.⁷⁸⁷ However, two months later, an amendment to the bill was accepted by the government, which gives it the power to adopt unilateral public CBCR in the UK quickly and easily when it chooses to do so.⁷⁸⁸

The government has described the European Commission's proposal for public reporting in the EU and so called non-cooperative jurisdictions as a "step in the right direction", but has also indicated that it needs to review the proposal further before providing unequivocal support.⁷⁸⁹

Ownership transparency

On 30 June 2016, the UK register⁷⁹⁰ of who ultimately owns and controls British companies went live. The UK was among the first countries to commit to taking such a step. A first analysis of the data available on this register by the campaign group Global Witness indicated that it was revealing genuinely new, and potentially valuable, information.⁷⁹¹ However, there have also been some concerns expressed that the 'self-reporting' approach, the 25 per cent cut-off for designating ownership and the lack of capacity for follow up create potential loopholes that can be exploited by those determined to continue hiding true ownership.⁷⁹² It has already been noted that some companies are declaring that there is "no registrable person or registrable relevant legal entity in relation to the company."⁷⁹³

Furthermore, a step forward was made at the Anti-Corruption Summit in May 2016, as the UK Government insisted that all UK Overseas Territories and Crown Dependencies would have to establish registers by June 2017 that will be accessible to UK law enforcement. However, despite strong pressure from civil society, the UK did not commit to using the powers it holds to require these registers to be made public.⁷⁹⁴

The Anti-Corruption Summit also led to an agreement that 11 countries (growing to a total of 48 by the end of September 2016), including a number of UK Overseas Territories and Crown Dependencies, will share information on beneficial ownership with each other (not publicly).⁷⁹⁵ This reduces one barrier to genuine transparency, since it means that the costs of obtaining and maintaining the records will already be met – so there is no additional cost to making this public. Crucially, however, the list did not include the UK territory of the British Virgin Islands⁷⁹⁶ – which, among all jurisdictions in the world, is the most utilised jurisdiction in the Panama Papers.⁷⁹⁷

One other concrete, and potentially valuable, step forward by the UK, linked to the Anti-Corruption Summit, was the announcement that foreign companies would be banned from purchasing property, or securing government procurement contracts, if their beneficial ownership details were not publicly available.⁷⁹⁸

While the UK has been very progressive on the issue of transparency around company ownership, the same cannot be said when it comes to owners of trusts. In fact, when the EU's Anti-Money Laundering Directive (AMLD) was negotiated a couple of years ago, the then Prime Minister David Cameron personally intervened to try and ensure that trusts did not become subject to the same transparency requirements as companies.⁷⁹⁹ In July 2016, the European Commission put forward a proposal for revision of the AMLD, which includes creating public registers of beneficial owners of companies and some trusts.⁸⁰⁰ The new UK government has not yet taken a formal position on the issue.

According to the 2015 Financial Secrecy Index, the UK has the 3rd highest level of financial secrecy out of the 18 countries included in this report (ranked at number 15 at the global level).⁸⁰¹ However, as noted in the Financial Secrecy Index, the UK would be top of the list if the British Overseas Territories and Crown Dependencies were included in the assessment.⁸⁰²

Taxation

Tax Treaties

The UK has one of the world's largest tax treaty networks. In total, the UK has 67 treaties with developing countries, which is the second highest among all the countries covered by this report.⁸⁰³ The average rate of reduction of tax rates within those treaties – 4.7 percentage points – is significantly above average (3.8 percentage points).⁸⁰⁴

Additionally, research by ActionAid has shown that the UK is tied with Italy as the countries that have entered into the highest number of 'very restrictive' tax treaties with developing countries. These treaties include strong limitations on the taxing rights of the developing countries that are signatories.⁸⁰⁵ For example, ActionAid estimates that a tax treaty with the UK cost Bangladesh more than US\$ 14,560,707 due to lower tax income on dividends alone. ActionAid also highlights the treaty between the UK and Zambia, which blocks Zambia from taxing British companies any more than 5 per cent on dividends from direct investments, as one of the "worst withholding tax deals currently in force."⁸⁰⁶

So far the UK has not committed to any impact assessment for existing tax treaties. However, the tax authority, Her Majesty's Revenue and Customs (HMRC), does conduct a treaty network review programme whereby interested parties, including academics and civil society organisations, can submit comments on existing treaties as well as plans for new negotiations.⁸⁰⁷

The UK is planning a number of new tax treaty negotiations with the following developing countries: Nepal, Uzbekistan, Ghana, Malawi, India, Fiji, Thailand, Kazakhstan and Kyrgyzstan.⁸⁰⁸

Harmful tax practices

A study on aggressive tax planning structures shows that the UK has eight indicators, compared to the EU average of 10.6.⁸⁰⁹ One of the indicators is active, namely the UK's patent box.

Within the UK, so-called 'clearances', including advance pricing agreements (or 'sweetheart deals'), may be sought by any business, regardless of whether it forms part of a domestic group or part of a multi-national group. The government has made clear that it will not provide clearances where an arrangement may be caught by the general Anti-Abuse Rule (GAAR).⁸¹⁰

There are broadly two categories of clearance – statutory and non-statutory:⁸¹¹

- a statutory clearance is one where the UK's tax legislation specifically sets out that a clearance can be requested from HMRC and includes advance pricing agreements; and
- a non-statutory clearance procedure applies where the legislation on which the business seeks clarification does not include specific provision for HMRC to provide a clearance.

Where there is no specific clearance provision, HMRC states that it is nevertheless willing, subject to the request meeting the necessary conditions, to provide a tax clearance as part of its function of efficient management of the UK tax system.⁸¹²

The UK does not publish information on its APAs.⁸¹³ However, according to European Commission statistics, the UK had 88 agreements in force at the end of 2014, and 94 at the end of 2015.⁸¹⁴ This is the fourth highest amount among all EU Member States.

Global solutions

In advance of the change of leadership and ministers, the UK remained opposed to the creation of an intergovernmental body on tax under the UN. It seems likely that these positions will remain following the changes.⁸¹⁵

Conclusion

During 2016, the UK has made some strong steps and commitments towards tackling tax avoidance and evasion and promoting tax transparency. However, it has not always been as proactive as it could have been, and at some points has even worked against progress. Ahead of the Anti-Corruption Summit hosted in London in May 2016, David Cameron made it clear that he wished to see the UK Crown Dependencies and Overseas Territories creating public registers of beneficial ownership. However, it became apparent that (despite public pressure), he was unwilling to use the powers at his disposal to make this happen.

On a positive note, the UK's public register of beneficial owners of British companies is now online and has made genuinely new and potentially important information available to the public. It remains to be seen whether the UK government is now also prepared to accept increased transparency around the owners of trusts.

The UK's numerous tax treaties with developing countries remain an issue of concern. They introduce a significantly higher reduction in developing country tax rates compared to the average among the countries covered by this report, and some of the treaties are among the worst examples of tax treaties between developed and developing countries.

It remains to be seen what the impact of the Brexit vote and the change in leadership in the UK will be. For example, it remains an open question whether the new leadership will maintain strong opposition towards the establishment of an intergovernmental UN body on tax, which the previous government showed.

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815. During oral evidence to the International Development Committee in Parliament on November 23rd 2016 it was stated by a senior DFID representative that the opposition to such a body remained the position of the UK Treasury. This information is not yet available in written form.



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