
# OFF THE HOOK

How the EU is about to whitewash the world's worst tax havens

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Tax havens deprive governments around the world of billions of dollars each year, fuelling inequality and poverty. The EU blacklisting process was announced as an attempt to put an end to the era of tax havens. Unfortunately, according to Oxfam research, the European Union is set to whitewash some of the world's worst tax havens. This report reveals how during the first annual review of the EU's blacklist and grey list of tax havens, at least nine notorious tax havens will be de-listed, including Bermuda, the Cayman Islands and Panama. The report also shows that five EU member states would be blacklisted if the EU applied its own criteria to member states.



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For further information on the issues raised in this paper please email advocacy@oxfaminternational.org



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Cover photo: On 5 December 2017 Oxfam called on European politicians to establish an objective and robust blacklist of tax havens. Photo: Tineke D'haese/Oxfam

# SUMMARY

The EU blacklist of tax havens was launched in December 2017 as a response to major revelations of tax avoidance, such as LuxLeaks, the Panama Papers and the Paradise Papers. The EU blacklist process encompasses two lists, a blacklist and a grey list. At the moment only five small island states – American Samoa, Guam, Samoa, Trinidad and Tobago and the US Virgin Islands – are on the EU blacklist, while 63 countries are on the separate grey list of countries whose governments have committed to reform their practices. The EU's first annual review of the blacklist will shortly be published and is an important test of whether or not it lives up to its ambitions.

In anticipation of this review, Oxfam has assessed the listing process since its launch and concludes that, if the EU perseveres with its current screening methods, most of the world's real tax havens could be de-listed in 2019, removed from both the blacklist and the grey list. Oxfam has identified 23 jurisdictions that, based on current criteria and guidelines, are likely to be on the EU blacklist in 2019 and 32 that are likely to be on the grey list. Based on this research, the countries that could be de-listed include:

- **nine real tax havens** – Bahamas, Bermuda, British Virgin Islands (BVI), Cayman Islands, Guernsey, Hong Kong, Isle of Man, Jersey, and Panama; and
- **two 'too big to be listed' countries** – Switzerland and the United States.[1]

The EU blacklist was intended to be a robust instrument for tackling tax avoidance, but that is currently hard to believe. Singapore, one of the most aggressive tax havens, was astonishingly left out of the first EU blacklist in 2017. Now the EU is about to omit, among others, the British Virgin Islands, the main tax haven featured in the Paradise Papers, and Bermuda, where in 2017 Google shifted profits of approximately $23bn. This cannot be defended, as there is no convincing evidence that profit shifting to these tax havens has ended.

Instead, a strong blacklist of tax havens should list those countries that are proven to attract profits from other countries. The EU should aim to limit base erosion and profit shifting (BEPS) as well as tackling pass-through economies with regimes that significantly affect the location of financial and other service activities, distort trade and investment patterns and undermine the fairness, neutrality and broad social acceptance of tax systems. For example, the eight major pass-through economies – the Netherlands, Luxembourg, Hong Kong, the British Virgin Islands, Bermuda, the Cayman Islands, Ireland and Singapore – host more than 85% of global investment in special purpose entities, which are often set up for tax reasons.[2] But none of these countries will appear on either the EU's blacklist or grey list in 2019.

At the same time, the EU is using the blacklisting process to put pressure on developing countries to adopt standards agreed by the OECD, even though these standards were not agreed by developing countries, and their participation in them is supposed to be entirely voluntary.

One year on, the legitimacy and efficiency of the EU blacklisting process are at risk.

Tax dodging by multinational corporations is a global problem relevant to all countries, developing and developed alike. Oxfam estimates[3] that France, Spain, Italy and Germany combined lost around €35.1bn in tax revenues in 2015 alone – enough for each of these countries to multiply their development aid for health by 35,[4] or reinvest enough in their national health systems to reduce out-of-pocket household payments for healthcare by between 12.4% and 28.3%.[5] This would be a political choice that could contribute significantly to ameliorating people's lives, especially as such payments have been increasing in Italy, France and Spain since the financial crisis.[6] For developing countries, tax dodging is proportionally of even greater concern. The loss of corporate tax revenues is estimated to cost developing countries $100bn each year, and tax havens play a major role in this organized theft. By starving countries of money needed for education, healthcare and job creation, tax havens are exacerbating poverty and inequality across the world. All citizens, and especially women, lose out.

## THE EU BLACKLIST: THE GOOD, THE BAD AND THE UGLY

The good: the EU blacklisting process has had the merit of putting an end to 'business as usual' in many countries. EU pressure has pushed nearly 40 countries to reform more than 100 so-called 'harmful tax practices'. These include tax regimes like special economic zones or export processing zones in which only foreign companies are exempted from tax; they hinder the collection of tax revenues and have negative impacts on the collection of tax in other countries, as they grant substantial tax reductions to large companies.

The bad: the EU bar for assessing countries is set too low, and reforms made in certain jurisdictions may be ineffective or may even do further harm. There are two main issues here. First, the EU is looking only at tax practices that give preferential or selective treatment to specific sectors, foreign profits or to foreign corporations. This means, perversely, that if countries like Hong Kong simply apply their harmful tax practices to all profits, rather than just foreign profits, this counts as a net positive for the EU, despite clearly making things a lot worse. Second, the requirements imposed on low- or zero-tax regimes to tackle the use of shell companies by multinational corporations might be too weak and as such represent a get-out clause that could too easily whitewash the activities of tax havens such as Bermuda.

The ugly: beyond the technicalities, the politics around the blacklist are strong and some countries are just too powerful to be listed. The most prominent examples are the United States and Switzerland. In addition, there are a number of tax havens in the EU itself, but the EU has chosen to screen only countries outside of its borders, omitting some of the worst tax havens in the world from its assessment. To be credible, the EU needs to put its own house in order too. According to Oxfam's analysis, at least five EU tax havens could fail the blacklisting criteria: Cyprus, Ireland, Luxembourg, Malta and the Netherlands.

**To efficiently put an end to non-EU tax havens, the EU and EU governments should take the following actions.**

- **Stronger screening process:** Countries on the grey list that fail to meet the current criteria should be blacklisted, without political interference. If a country has met the current criteria by modifying or replacing a tax regime, the EU should monitor whether the intended economic effects of reducing profit shifting are achieved.

- **Strengthened criteria for blacklisting and a review of the way they are applied:** The EU needs to revise its blacklisting criteria so that they include all types of harmful tax practice in the world's worst tax havens.
- **Sanctions:** The EU should agree on strong sanctions in the next year. The blacklist should have a deterrent effect in order to put an end to tax havens.
- **Domestic revenue mobilization (DRM):** The EU and EU member states should provide more and better support to developing countries for DRM if they really want to support their integration into the international agenda for good tax governance.
- **Governance:** The EU blacklisting process should be reviewed to increase transparency and accountability. But it is also time to take a further step and promote a similar, though improved, listing initiative at the global level by proposing a new set of global reforms on tax, via a UN convention or a UN tax body, with the aim of tackling the issue of tax competition worldwide.

# 1 WHY IS IT IMPORTANT TO COMBAT TAX AVOIDANCE?

The number of billionaires globally has doubled since the financial crisis and their fortunes grow by $2.5bn a day, yet the super-rich and the corporations they own avoid paying their fair share of taxes by using tax havens.[7] Countries are robbed of much needed revenues for universal health, education and other public services that reduce the gap between rich and poor, and between women and men.[8] Moreover, tax havens distort the working of the global economy.[9] According to research, almost 40% of global foreign direct investment (FDI) – close to $12 trillion – is completely artificial: it consists of financial investments passing through empty corporate shells in tax havens, with no real economic activity taking place.[10]

Tax havens have gained in significance due to globalization and the greater mobility of capital, factors that are harming citizens worldwide. Women are often the hardest hit, as they lose out most when health and education spending is cut. They are also more negatively impacted by value added tax (VAT), which many governments are turning to in order to make up for falling corporate tax revenues. The impact on women is outlined further below.

*'Tax evasion isn't just for the West: it conspires to keep Africa poor too.'*

Philip Inman, economics writer, *The Guardian*.

Identifying, sanctioning and transforming the way these tax haven countries work is therefore essential in order to put an end to this phenomenon. Tax evasion and tax avoidance are not just a problem for the EU. Phillip Inman, economics writer for *The Guardian* newspaper, puts it well: 'Tax evasion isn't just for the West: it conspires to keep Africa poor too.'[11] Just like inequality, tax havens are not inevitable – they are a political choice.

## BOTH EU AND DEVELOPING COUNTRIES LOSE OUT

The authors of the paper *The Missing Profits of Nations*, published in 2018, estimated that in 2015 about $600bn in multinational foreign profits were shifted to tax havens. Of these profits, 30% were moved to tax havens within the EU.[12] The paper further estimates that 80% of the profits shifted from EU countries end up in EU tax havens, primarily Ireland, Luxembourg and the Netherlands: in 2015, these three countries accounted for a total of $210bn in profit shifting. Based on this research, Oxfam estimates[13] that France, Spain, Italy and Germany lost around €35.1bn in tax revenues in 2015 alone – enough for each of these countries to multiply their development aid for health by 35,[14] or to reinvest enough n their national health systems to reduce out-of-pocket household payments for healthcare by between 12.4% and 28.3%.[15] This would be a political choice that could contribute significantly to ameliorating people's lives, especially as these payments have been increasing in Italy, France and Spain since the financial crisis.[16]

In 2015, UNCTAD estimated that developing countries are losing around $100bn each year due to tax avoidance by multinational corporations.[17] Corporate tax continues to be proportionally more important for developing countries than for advanced economies, comprising on average 15.3% of all tax revenues in Africa and

15.4% in Latin America and the Caribbean, compared with 9% in the OECD.[18] However, developing countries face greater challenges in collecting taxes, which in total typically account for only 10–20% of their gross domestic product (GDP), while the average for advanced economies is closer to 40%.[19] Success in implementing the 2030 Agenda for Sustainable Development (the Sustainable Development Goals (SDGs))[20] and the African Union's Agenda 2063[21] depends to a great extent on the ability of African countries to generate and mobilize public resources for the provision of essential public services.

Tackling tax dodging, and in particular targeting tax havens, is an effective way for governments to guarantee proper tax collection in order to reduce inequality and fight poverty.[22] For example, Oxfam estimates that India could have lost around $3.6bn in 2015 due to multinational corporations shifting profits to tax havens.[23] In particular, fairer redistribution of revenue, linked to education for children, especially girls, can reduce gender inequality and boost the empowerment of women.[24]

## WOMEN ARE THE HARDEST HIT BY TAX DODGING

Increasing attention has been drawn to how tax avoidance and tax evasion negatively affect women's rights and are detrimental to closing the gender inequality gap. In 2018 a UN Women report concluded that transnational tax avoidance planning and tax havens have negative effects on gender equality.[25] The European Parliament also recognizes the harmful effect of tax avoidance and evasion on women in a new report on gender equality and taxation policies in the EU.[26]

Tax havens have an impact on women's rights in different ways. Losses through tax avoidance and evasion by multinational corporations force governments to cut back public services or to raise a greater proportion of their tax revenue from sources other than corporate tax. Most developing countries raise two-thirds or more of their tax revenue through consumption taxes, which eat up a larger proportion of income the poorer people are.[27] Women are more likely to be poor than men and to depend the most on public services.[28] Corporate tax dodging also widens the inequality gap between men and women in other ways. When companies fail to pay their fair share of taxes, more profits get funnelled to shareholders and senior executives, who are overwhelmingly male.[29] In 2015 a UN review concluded that governments worldwide were allocating insufficient resources for targeted investments in gender equality and also for sectors such as health, education and social protection.[30]

*'Some of the most important ways of stripping profits from African countries are done through offshore jurisdictions, including Mauritius.'*

Alexander Ezenagu, international tax researcher at the International Centre for Tax and Development

All women lose out, including those living in tax haven countries. Mauritius, for example, is often cited as an African success story, which over the past decade has seen substantial economic growth. However, much of this growth is attributable to the fact that Mauritius operates as one of the world's worst tax havens, depriving many other African countries of millions of dollars in tax revenues.[31] Meanwhile, according to a recent World Bank report, inequality among Mauritians has 'widened substantially' over the past 15 years, 'threatening the standards of living of the poor'. Women, in particular, have not shared in the gains, with only 57% of them participating in the labour force by 2015, while women in the private sector are paid on average about 30% less than men.[32] Effectively tackling tax havens is a key issue for women's rights and for gender equality.[33]

# THE EU BLACKLIST: A TOOL TO TACKLE TAX AVOIDANCE

Tax havens can be tackled effectively if there is the political will to do so. This starts with recognizing what a tax haven is, naming tax havens, introducing counter-measures or sanctions, increasing transparency requirements and implementing strong anti-tax avoidance measures. Blacklisting tax havens is just a tool rather than a solution, but a blacklist can help curb tax dodging if it is robust, objective and ambitious. In this sense, Oxfam has welcomed the EU's move to establish a blacklist of tax havens. As an important player in the global economy and as home to many multinational corporations, the EU can curb multinational tax avoidance and profit shifting to a significant extent with a strong blacklist.

If badly managed, however, a blacklist risks becoming a means of 'whitewashing' tax havens and can legitimize the practices used by some countries to rob others of resources for development. The OECD has previously created a blacklist of tax havens under the mandate of the G20, but in 2017 the list consisted of only one country, Trinidad and Tobago.[34] Soon the OECD list will be updated with strengthened transparency criteria,[35] but it will still be weak as it considers only criteria related to tax transparency and the exchange of information. Transparency is essential, but the OECD list will fail to recognize harmful tax rules in many of the worst corporate tax havens, including Bermuda, the Netherlands, Switzerland and Singapore.

It is critical for the world to establish a clear list of the worst tax havens, based on objective criteria and free from political interference. This should ultimately be done by the UN or another independent body and revised on an annual basis.[36]

# 2 A BLACKLIST IN COMA, LONG LIVE THE GREY LIST

In December 2017 the EU released its first blacklist of tax havens. In all, 72 countries failed to meet the criteria it set, but only 17 appeared on the blacklist, including countries such as Namibia and Mongolia.[37] The other countries were put on a grey list or watch list. Countries on the grey list had to commit to reform their national legislation in line with the EU's requirements by the end of 2018.[38] To avoid being put on the blacklist, countries needed to send a commitment letter to the EU that had clear high-level political endorsement. Most of the leading tax havens, like Bermuda and Switzerland, were included on this list rather than on the blacklist.[39] Singapore,[40] however, astonishingly escaped being on either the blacklist or the grey list.[41]

> *'For the process to be credible we need three things: a very strong screening process of the countries in the grey list, transparency and sanctions.'*
>
> Pierre Moscovici, EU Commissioner for Economic and Financial Affairs, Taxation and Customs

In recent months the blacklist has dwindled to just five countries – all small island states – while the grey list has grown to include 63 countries.[42] The credibility of the process now rests entirely on the grey list and how these countries are screened by the EU. EU Commissioner Pierre Moscovici has summarized the situation well: 'For the process to be credible we need three things: a very strong screening process of the countries in the grey list, transparency and sanctions.'[43]

Oxfam has analysed the grey list and its effectiveness in pressuring countries to abolish or reform their harmful tax practices or zero tax regimes. Its preliminary analysis shows that in terms of harmful tax practices not all reforms made by greylisted countries are moving in the right direction, while some are even going in the opposite direction. The reforms required by zero tax havens are too weak and will not address the problem effectively.

## THE EU LISTING CRITERIA

In order to accurately identify tax havens, EU countries have agreed on three criteria in the screening process: transparency, fair taxation and participation in international forums on tax.[44]

**Box 1: The three criteria**

Criterion 1. Tax transparency: Countries are exchanging information automatically and on request; countries are part of the multilateral Convention on Mutual Administrative Assistance in Tax Matters.

Criterion 2. Fair taxation: Countries have no harmful tax practices; countries do not facilitate offshore structures or arrangements aimed at attracting profits that do not reflect real economic activity in the jurisdiction. A zero percent tax rate is used as an indicator.

Criterion 3. Implementation of anti-BEPS measures: Countries apply or commit to the OECD's minimum standards against base erosion and profit shifting (BEPS).[45]

The most important aspect of the blacklisting process is the fair taxation pillar. Although a step in the right direction, two major shortcomings significantly weaken the fair taxation criterion:

- In designing it, the EU decided not to include corporate tax rates that are set at zero or close to zero as a separate criterion, but instead included low tax rates as an indicator.[46]
- In assessing whether tax practices are actually harmful, the EU is still applying a definition introduced in 1997. The definition has remained unchanged and still mostly focuses on tax practices that give preferential treatment in a discriminatory manner to foreign companies or foreign profits over domestic companies and profits generated locally (these are commonly known as preferential regimes). Basically, tax practices are harmful for the EU if they have a discriminatory aspect in their design. In the current environment this definition is outdated and limited, as it pushes countries into a 'race to the bottom' by simply lowering tax rates instead of designing a selective tax practice.

**Box 2: The EU's 1997 definition of harmful tax practices**

The EU's definition of harmful tax practices is still based on criteria it developed in 1997 to curb harmful tax competition between EU member states.[47] The EU uses five components to assess whether tax practices giving preferential treatment to specific sectors, activities or corporations can be regarded as harmful:

1. Advantages are accorded only to non-residents or in respect of transactions carried out with non-residents, or
2. Advantages are ring-fenced from the domestic market, so they do not affect the national tax base, or
3. Advantages are granted even without any real economic activity or substantial economic presence within the member state offering such tax advantages, or
4. The rules for determining profits in respect of activities within a multinational group of companies depart from internationally accepted principles, notably the rules agreed upon within the OECD, or
5. The tax measures lack transparency, including where legal provisions are relaxed at administrative level in a non-transparent way.

## THE MERITS OF THE GREY LIST

The inclusion of zero or low tax rates as an indicator in the fair taxation pillar has been one of the most significant aspects of the EU blacklist to date. For the first time the EU is recognizing that zero tax regimes can potentially be harmful and that they can function as tax havens. All the zero tax regimes screened have committed to reform and are now on the grey list: Anguilla, Bahamas, Bahrain, Bermuda, BVI, Cayman Islands, Guernsey, Isle of Man, Jersey, Marshall Islands, Nauru, Palau, Turks and Caicos Islands, United Arab Emirates and Vanuatu.[48] Some of these jurisdictions appeared on a list compiled by Oxfam in 2016 of the 15 worst corporate tax havens globally,[49] and are some of the most commonly used by multinational corporations.[50] The EU is asking these jurisdictions to implement reforms to ensure that foreign companies cannot abuse their local zero tax systems by setting up shell companies, as is often the case (this is called the real economic activity or substance requirement – for example, requiring a company to have premises and staff and to be engaged in real economic activities). Multinational corporations with intellectual property (IP) in these tax havens will have a particularly hard time respecting the new rules (see Box 6).[51]

A second merit of the grey list is its recognition of the widespread existence of harmful tax practices. Even though the definition of what constitutes a harmful practice is limited and outdated, the EU has yet identified over 100 harmful tax practices in nearly 40 countries.[52] All of these countries needed to change their laws by 31 December 2018 to avoid being put on the blacklist. By identifying all the harmful practices that were not being properly tackled at a global level by the OECD, the EU has shown how common such loopholes still are. As such, the grey list is reopening the debate, including in developing countries, about how to address harmful tax practices.

## THE LIMITS OF THE GREY LIST

Many countries now need to reform their harmful tax practices, but some of the reforms that have been implemented are very undesirable. To bring their tax practices into line with the EU requirements, some countries (e.g. Barbados, Panama,[53] Curaçao,[54] Thailand,[55] Tunisia,[56] Hong Kong[57] and Mauritius[58]) have expanded the scope of the selective tax reductions available to multinational corporations, in order to apply them to domestic companies or profits too. The EU recognizes some of these 'new' regimes to be harmful and has requested that some countries make additional amendments to limit possible abuses,[59] a move that Oxfam welcomes. However, these 'generalized' or expanded harmful tax regimes will still be legitimized by the EU and this will result in a dangerous race to the bottom on corporate tax – Barbados being an excellent example (see Box 3).

The reforms that zero tax regimes are required to enact, apart from the rules applicable to companies holding IP, are mostly weak, leave too much room for interpretation and may be insufficient to tackle tax avoidance.[60] The EU should be careful in expecting these tax havens to have the capacity and the willingness to regulate themselves and to apply the new rules stringently. It seems likely that there will be a game of cat-and-mouse as some multinational corporations try to game the new rules, the tax havens try to balance the EU's desire for action with their own incentives not to drive away business, and the EU itself decides how tough it will get. Experts have already warned that the EU's requirements might in fact reinforce rather than bring a halt to international tax competition.[61]

> *'Simply put, it is no longer possible to do what we have been doing for 40 years; that is, making a distinction between the taxation of companies operating internationally and those acting locally without there being severe sanctions that will affect our capacity to grow at this challenging time.'*
>
> Mia Mottley, Prime Minister of Barbados

In the long term, another undesirable effect of the EU screening process is that some countries, especially neighbouring countries feeling (false) competitive pressure, will start to copy accepted (or 'whitewashed') harmful incentives from others, as has happened in the EU with patent boxes (see section 4).

**Box 3: Barbados – the fiction of compliance**

Barbados is a great example of how the EU criteria have introduced a perverse incentive and are in fact making things worse.

Barbados has recently reformed its legislation to bring it into line with the EU criteria and has committed to change its harmful tax practices. The country offered preferential tax reductions for international companies registered there, which were taxed on their profits at rates of just 0–3%, while domestic companies had to pay 30% tax. In order to align its regime with the EU requirements, Barbados will now apply tax reductions to all companies registered in the country. This effectively means that small companies currently have to pay 5.5% tax on their profits, while the corporate income tax rate for big companies is only 1%.[62] The additional amendments requested by the EU, aimed at limiting possible abuses, will not change the reform in any significant way.[63]

In the end these reforms are detrimental to the people of Barbados. When governments reduce the tax contributions paid by companies, they are usually left with two options for domestic budgets: either to cut back on essential spending needed to reduce poverty and inequality or to shift the burden of tax contributions to local, mostly poor people.

## COUNTER-PRODUCTIVE PRESSURE ON DEVELOPING COUNTRIES

Screening governments' commitment to the agreed OECD BEPS minimum standards[64] and their consistent implementation (criterion 3) has been the major failure of the EU listing process to date. This criterion has put unfair pressure on developing countries, with the likes of Namibia and Mongolia being labelled tax havens for a brief period until committing to the OECD BEPS agenda.

When the OECD BEPS reform package was devised, most developing countries were shut out of the decision-making process. As a consequence, the package lacks a focus on or understanding of the specific needs of developing countries.[65]

In response to this criticism, in 2015 the OECD launched the Inclusive Framework for the implementation of four BEPS minimum standards,[66] involving both developed and developing countries. The purpose of this framework is to monitor the implementation of the OECD BEPS outcomes; however, the United Nations Economic Commission for Africa (UNECA) warns that participation in the Inclusive Framework does not always imply that non-OECD countries will be able to influence core decisions made by the OECD on international tax matters.[67]

*'The EU listing does not provide a fair picture as countries such as Namibia do not provide fertile grounds for tax avoidance. The listing is bullying on the part of the EU, as joining these international bodies and instruments is voluntary for developing countries.'*

ATAF, The African Tax Administration Forum

If the EU really wants to help developing countries, as it has stated in its objectives,[68] it should not unilaterally push them to adopt the OECD international standards. To be moved from the EU blacklist to the grey list, on top of committing to review its harmful tax regimes a country like Namibia had to commit to join the OECD Inclusive Framework as well as the Global Forum on Transparency and Exchange of Information for Tax Purposes. Mapping, screening and identifying harmful tax practices in developing countries is certainly necessary, as these have damaging effects on tax revenues. But it remains inconsistent that at the same time the EU and its member states are doing so little in their aid policies to support developing countries in increasing their domestic tax capacity; this is known as aid to domestic revenue mobilization (DRM).[69]

# STILL NO CONSENSUS ON SANCTIONS

EU member states have not yet agreed on sanctions to be imposed against tax havens. The EU is still considering three types of sanction: withholding taxes; imposing new controlled foreign company (CFC) rules; and eliminating deductible costs.[70] Sanctions need to be treated with caution to ensure that local populations are not harmed or forced to pay the price for choices made by their governments or by multinational groups exploiting tax planning strategies. Different types of sanction should apply, depending on which criteria are not being respected in the jurisdictions concerned. A country freely engaging in a race to the bottom by proposing harmful tax practices represents a much bigger threat to the tax revenues of EU countries and developing countries alike than a low- or middle-income country that is not part of the Inclusive Framework on BEPS.

# A MORE TRANSPARENT PROCESS

Oxfam welcomes the increased transparency of the process. The EU has published the letters it has sent to countries on the grey list and it is also publishing the final assessments of whether countries on the grey list are meeting their commitments. Unfortunately, the EU has not managed to publish all of the commitment letters it has received from such countries. Of 63 greylisted countries, commitment letters have been published from only 47 so far. The missing letters could be of great significance for civil society in the countries concerned.[71]

Transparency in the listing process could be increased further to bolster its legitimacy, its accountability and its effectiveness. Currently, responsibility for the EU's fight against tax havens lies in the hands of one of the most secretive working bodies in Brussels, the Code of Conduct Group (Business Taxation). Created in 1998, this body is made up of EU national tax officials and meets in Brussels 4–6 times a year. Its mandate stresses that its work should be confidential, and so little is known about the discussions that take place. To the detriment of informed public debate and trust, it has been impossible for civil society and the European Parliament to follow the EU listing process in detail as negotiations take place behind closed doors.[72]

# 3 PREVIEW: THE 2019 EU BLACKLIST

The EU plans to publish its first annual revision of its black and grey lists in March 2019. In anticipation of this, Oxfam has assessed which countries are likely to end up or remain on either list. In this exercise, Oxfam has followed the EU's own criteria as currently applied and procedural guidelines. The assessment is based on public information; as the EU has access to more information and is in direct contact with the countries being assessed, its lists could include other countries as well.

Oxfam has identified 18 jurisdictions that are likely to be added to the current EU blacklist, resulting in a total of 23 blacklisted jurisdictions, and 32 that are likely to be on the grey list. The USA and Singapore will escape both lists for the second year, although Singapore is a tax haven with aggressive tax practices and the USA fails the EU criteria.

Tables 1 and 2 are not Oxfam lists of tax havens. Oxfam wants to show the possible pitfalls of the current screening method by looking at the results it produces.

**Table 1: Countries likely to remain on the EU blacklist or to be added in March 2019**

| | | |
|---|---|---|
| American Samoa* | Marshall Islands | Samoa* |
| Bahrain | Morocco | Trinidad and Tobago* |
| Cabo Verde | Nauru | Turkey |
| Cook Islands | New Caledonia | Turks and Caicos Islands |
| Dominica | Niue | United Arab Emirates |
| Fiji | Oman | US Virgin Islands* |
| Grenada | Palau | Vanuatu |
| Guam* | Saint Kitts and Nevis | |

* Countries already on the blacklist.

**Table 2: Countries likely to be on the grey list in March 2019**

| | | |
|---|---|---|
| Albania | Curaçao | Namibia |
| Anguilla | Dominica | Saint Lucia |
| Antigua and Barbuda | Fiji | Saint Vincent and the Grenadines |
| Armenia | Jordan | Serbia |
| Australia*** | Malaysia | Seychelles |
| Barbados | Maldives | South Africa*** |
| Belize | Mauritius | Swaziland |
| Bosnia and Herzegovina | Mongolia | Switzerland** |
| Botswana | Montenegro | Thailand |
| Cabo Verde | Montserrat | Vietnam |
| Canada*** | Morocco | |

Note: Some countries can be on both the blacklist and the grey list. For example, Cabo Verde failed to reform its harmful tax practice by December 2018 but still has until December 2019 to comply with the transparency criteria.

**Oxfam believes that Switzerland should be blacklisted, but that it will most likely end up on the grey list due to political pressure.

*** Australia, Canada and South Africa have so far not been included on the black or grey list.

Based on this research Oxfam concludes that the EU will have an inconsistent blacklist, a soft grey list and most likely, due to the weak commitments requested and outdated criteria, a whitewash of the world's worst corporate tax havens.

# OPERATION CLEAN-UP FOR TAX HAVENS

All of the tax havens listed in Table 3 are likely to be whitewashed in 2019; but how is it that they can be de-listed after just a year on the grey list? De-listing means that a country is completely removed from the blacklist and the grey list. This entails a big responsibility, as it effectively means legitimizing these countries' harmful tax practices and zero or very low tax regimes.

**Table 3: Countries that could be de-listed by the EU in 2019, despite being real tax havens**[73]

| | |
|---|---|
| Bahamas | Hong Kong |
| Bermuda | Jersey |
| British Virgin Islands | Isle of Man |
| Cayman Islands | Panama |
| Guernsey | |

First, as detailed in the previous section, the bar has been set too low in the current method of screening. All the countries shown in Table 3 were on the grey list in 2018, but now claim to have reformed their laws. The EU will have to rigorously consider before de-listing whether the reforms that have been implemented are sufficient and will be effective in preventing profits from being shifted. For Oxfam all of these tax havens are still at risk to facilitate large-scale tax dodging and/or distort investment flows – such as Bermuda, to which in 2017 Google shifted approximately $23bn in profits to avoid paying tax.[74] Oxfam fears that the problems caused by very low or zero tax regimes will persist until the EU recognizes that any regime of this sort will continue to create serious risks of tax avoidance, even if the current requirements are implemented.

Second, the fair taxation pillar is outdated and limited in its ability to identify the real tax havens. Such jurisdictions no longer attract profits by means of harmful tax practices that favour foreign companies over domestic actors, but rather do it through 'generalized' harmful tax practices, as in Hong Kong, and/or aggressive tax rules that facilitate double non-taxation profits. Singapore already masters this kind of aggressive tax competition and consequently was not listed by the EU in December 2017 and most likely will not be in 2019 either.[75]

So, if the EU is serious about tackling tax avoidance, it should expand its narrow definition of harmful tax practices. The definition should include all harmful tax rules employed in both developed and developing countries[76] to attract multinational profits, such as patent boxes, tax holidays and low or zero withholding tax rates.[77]

Finally, the application of the EU criteria should be revised to better identify countries that are facilitating tax dodging by allowing economic indicators to play a prominent role in the analysis. A strong blacklist of tax havens should list those countries that have been proven to attract profits from other countries. The EU should aim at limiting BEPS practices as well as tackling pass-through economies with regimes that significantly affect the location of financial and other service activities, distort trade and investment patterns and undermine the fairness, neutrality and broad social acceptance of tax systems. For example, the eight major pass-through economies – the Netherlands, Luxembourg, Hong Kong, the British Virgin Islands, Bermuda, the Cayman Islands, Ireland and Singapore – host more than 85% of global investment in special purpose entities, which are often set up for tax reasons.[78] However, none of these countries will appear on either the EU's blacklist or grey list in 2019.

## TOO POWERFUL TO LIST? SWITZERLAND AND THE USA

Switzerland is one of the oldest tax havens in the world. One year ago, the EU identified five harmful practices in its tax regime and decided to put the country on its grey list.[79] The EU has called upon Switzerland to reform or abolish these practices,[80] but so far it has not complied.[81] Aware of the deadline and under pressure from the EU, Switzerland announced that it would no longer apply two of the five practices from January 2019 onwards.[82] Oxfam still believes that Switzerland should be blacklisted, however, as it has had the opportunity to abolish or reform all of these practices since 2012 and has failed to do so. Dominik Gross, from Alliance Sud, the Swiss Alliance of Development Organisations, has argued: 'Even if Switzerland fulfils the EU standards required, the new Swiss tax rules for multinational corporations will continue to be one of the most harmful in the world.'[83] [84]

Although the EU decided not to list the United States in December 2017, the question of whether it fails the EU criteria is one that has been extensively debated. Tax Justice Network (TJN) has been following the US case in great detail and for Alex Cobham, the organization's director, the country fails international transparency standards on many levels.[85] TJN believes that the USA has the highest levels of financial secrecy affecting the EU as a whole.[86] The most striking fact about the USA is that it has not signed up to the OECD Common Reporting Standard (CRS), a clear requirement for the EU.[87] It has introduced a similar system, in the form of the Foreign Account Tax Compliance Act (FATCA),[88] but tax authorities of EU member states do not receive as much information from the USA under their bilateral FATCA agreements as they do from countries participating in the multilateral CRS.[89] The EU should thus revise its assessment of the USA and put it on its blacklist.

## HAS THE EU BLACKLIST FAILED IN ITS OBJECTIVE?

The EU blacklist was intended to be a strong instrument to tackle non-EU tax avoidance and to replace the current patchwork of national blacklists in the long term.[90] But what was expected to be a blacklisting exercise has evolved into a complex screening process that focuses on cooperation. The idea of simply listing and sanctioning the worst tax havens that effectively harm EU tax revenues is nowhere to be seen. The focus on cooperation makes it easy for the most powerful tax havens to escape the list; in addition, it is very difficult for EU countries to use the current blacklist at a national level. The blacklist is simply not credible, and it is not stable enough as it has been changed too often: the list was amended five times over a period of 12 months.[91]

**Box 4: History repeating itself – will the EU fail as the OECD did?**

In 2000, an emboldened OECD had the ambition to establish a strong blacklist of tax havens. It adopted a screening process similar to that of the EU today, with a similar fair taxation pillar. The first blacklist contained 35 countries but the worst tax havens, like Bermuda and the Cayman Islands, managed to escape listing by committing to reform. In subsequent years the list shrank to just five countries and the criteria were severely weakened. The OECD initiative failed, and since then tax havens have continued to deprive governments around the world of billions of dollars in tax every year, fuelling poverty and inequality.[92] Nineteen years later, the story is set to repeat itself.

# 4 WHITEWASHING EU TAX HAVENS

While the EU is looking at the tax behaviour of the rest of the world, it is neglecting to act effectively against tax havens within its own borders. EU countries are not covered by the listing procedure, despite the fact that in all recent scandals citizens have witnessed the involvement of EU member states in global tax avoidance schemes.[93] For the EU to remain a leader in fighting tax evasion and avoidance, it first needs to put its own house in order. As mentioned earlier, multinational corporations shifted about $600bn of their foreign profits to tax havens in 2015. Some 30% of these profits were shifted to tax havens in the EU itself.[94]

In Oxfam's 2017 report on tax havens, four EU member states were found to fail the EU's own criteria.[95] This year, Oxfam has assessed all 28 member states again using the EU's own criteria, and has identified five countries that would fail on the basis of fair taxation.[96] These five countries have harmful tax practices and attract a disproportionate amount of profits. For example, Luxembourg has inward and outward FDI stocks to GDP of more than 8,000%. In comparison Croatia has flows of 50% and 10% respectively.[97]

**Table 4: What about EU countries? If the EU applied its own criteria to member states, five would fail on the basis of fair taxation**

| Jurisdiction | Fail criterion 1: Tax transparency | Fail criterion 2: Fair taxation | Fail criterion 3: Implementation of anti-BEPS measures |
|---|---|---|---|
| Cyprus[98] | | X | |
| Ireland* | | X | |
| Luxembourg* | | X | |
| Malta | | X | |
| Netherlands | | X | |

* Ireland and Luxembourg are so-called conduit tax havens (countries through which profits can transit at low or zero tax rates).

## THE EU IS HOME TO LARGE TAX HAVENS

The EU blacklist has never attempted to look at countries within the EU, because member states are believed to already comply with the criteria.[99] This badly damages the credibility of the process, because in reality Ireland, Luxembourg, Malta and the Netherlands are among the most significant tax havens in the world, enabling some of the biggest corporations to pay minimal amounts of tax. For example, currently international tax rules allow Vodafone Group Plc to allocate nearly 40% of its taxable profits to Malta and Luxembourg.[100]

Such practices have been heavily criticized, not only by civil society but also by various EU institutions. In December 2017, for example, the European Parliament held a vote on whether to include Malta, the Netherlands, Luxembourg and Ireland on the EU list of tax havens. However, MEPs were tied in the final vote and the proposal was not adopted.[101] The EC has also criticized the aggressive tax planning regimes of several EU member states, in particular Belgium, Cyprus, Hungary, Ireland, Luxembourg, Malta and the Netherlands.[102] EU Commissioner Pierre Moscovici has even openly stated that some EU countries are 'fiscal black holes'.[103]

The EU should put its own house in order, not only if it is to be credible but also to achieve the objectives it has set itself. While member states are trying to close loopholes abroad in order to protect their tax revenues, they are actually losing more to tax havens closer to home, within the EU itself.

Nevertheless, despite public outrage and the need for more revenues to tackle growing inequalities and climate change, some EU countries still prefer not to take effective action against multinational tax avoidance. Tackling avoidance is not only about raising additional tax revenues – it is also about 'tax morale'. Without action against corporate transgressors, citizens no longer perceive the taxation system to be fair or equitable. This kind of public sentiment has recently led to large-scale protests in France and Belgium by 'gilets jaunes' demonstrators.[104]

The European Commission (EC) has put fair taxation at the heart of its political agenda, and it has made great progress over the past five years. However, EU member states are failing to deliver accordingly. Two striking examples are the weak implementation of CFC rules in some member states[105] and the political stalemate in the Council on public country-by-country reporting.[106] It is time for governments in the EU to show greater political will in tackling tax avoidance. All too often the EC has proposed strong legislative measures that subsequently have been blocked in the Council. EU member states need to stop pointing the finger at others and take a close look at their own behaviour.

## NEXT GENERATION HARMFUL TAX PRACTICE ARE BEING PIONEERED IN THE EU

The EU is attempting to impose its norms on the rest of the world while new and questionable schemes are being adopted by EU countries. Tax competition between EU countries has not only intensified over the years, but its nature has changed as well. The intensification of tax competition is apparent in the corporate tax rates that member states apply. In 1997 the average statutory rate for corporate income tax (CIT) in the EU was 35.2%, but by 2018 it had fallen to 21.9%.[107]

Furthermore, tax competition has intensified in other areas. One area of great importance is the taxation of intangible assets like patents, trademarks and software. Most EU countries aim to support innovation through their fiscal policies, but over the past decade incentives for research and development (R&D) and IP have led to a new and harmful race to the bottom in terms of tax. Rough lines can be drawn between three distinct kinds of incentive: 1) non-harmful incentives that benefit researchers, small companies and others; 2) potentially harmful R&D tax credits[108] and super-deductions;[109] and 3) extremely harmful incentives like patent boxes[110] and other exemptions on income from IP.

**Box 5: The EU – a new global tax haven for intellectual property**

Of the current 28 EU member states, 17 already have a patent box or similar exemption regime,[111] just 18 years after the first modern patent box regime was introduced in France.[112] Although they are extremely harmful in terms of revenue collection and have no significant positive economic impact for countries, patent box regimes have unfortunately been 'whitewashed' by the OECD.[113] Some countries, like Ireland and the Netherlands, have pushed this race to the bottom in the taxation of IP income to another level. For example, foreign multinational corporations that relocate IP assets to a Dutch company can sometimes enjoy an effective tax rate of almost zero per cent.[114]

In economies where intangible assets are becoming increasingly important, such incentives will inevitably lead to large tax cuts for multinational corporations.[115] The *Financial Times* recently reported that multinational corporations are paying lower corporate taxes now than a decade ago, and it is mostly multinational corporations dealing in intangibles, such as big tech companies and pharmaceuticals firms, that seem to profit most from the current tax environment.[116]

Moreover, intangible assets are most often located in developed countries or in tax havens,[117] with multinational corporations shifting profits from developing countries to developed ones, where incentives mean that profits go untaxed. The EC should start looking at this type of tax competition and its harmful impacts on the globalized economy and on DRM in both the EU and in developing countries.

**Box 6: Ireland, closing old loopholes while opening new ones**

Media reports indicate that US multinational corporations have started to change their tax structures, with the EU blacklist pushing them to move their intangible assets from traditional tax haven territories in the Caribbean, like Bermuda and the Cayman Islands, to countries such as Ireland and Singapore.[118]

The full extent of these transfers was discussed recently in the Irish parliament, where it was disclosed that between 2014 and 2017 intangible assets to the value of approximately €300bn were transferred to Ireland.[119] Ireland has incentivized companies to relocate their intangible assets by means of tax reliefs that allow them in many cases to reduce their liability to zero.[120] It is estimated that up to €1 trillion in intangible assets could be transferred to Ireland in the next few years.[121] For companies that moved assets to the country between 2015 and 2017, Ireland may, in effect, be a 'no-tax jurisdiction'.[122] Meanwhile, companies that move intangible assets to Ireland in the future will be able to take advantage of reliefs that could potentially give them an effective tax rate as low as 2.5%.[123] The cost to the Irish taxpayer of these reliefs in 2016 alone was a massive €4.46bn.[124]

# 5 RECOMMENDATIONS

The current blacklisting process is set to fail, due to its many shortcomings and undesired effects. If the EU really wants the blacklist to be a powerful tool to tackle tax avoidance, it should take the following recommendations on board.

**To effectively put an end to non-EU tax havens, the EU and EU governments should take the following actions:**

- The current screening process should be enhanced.
    - The EU should focus not just on limiting tax avoidance but should also tackle pass-through economies with regimes that significantly affect the location of financial and other service activities, distort trade and investment patterns and undermine the fairness, neutrality and broad social acceptance of tax systems.
    - Countries on the grey list that fail to meet the criteria and have not reformed as committed should be blacklisted, without political interference.
    - If a country on the grey list meets the current criteria by modifying or replacing a regime, the EU should monitor if this has the intended economic effect of reducing profit shifting.
- The fair taxation criterion for the EU blacklist should be revised and strengthened.
    - Low or zero (effective) tax rates should be included as a separate criterion. Expand the definition of harmful tax practices to include territorial tax regimes that facilitate double non-taxation, unilateral transfer pricing adjustments and similar rules that result in a deduction without a corresponding inclusion, along with all aggressive tax rules that facilitate tax avoidance (such as low withholding taxes for interests, royalties and dividends) and other no-tax or low-tax regimes that inherently attract profit shifting (regardless of whether they are applied to foreign or domestic companies) like patent boxes and tax holidays.
    - An economic analysis should be a key criterion in order to better identify countries that are facilitating tax dodging.
- The governance of the EU blacklisting process should be reviewed to increase transparency and accountability.
    - Consider mechanisms to better include the voices of non-EU countries in this process. One possibility would be to set up a working group or a consultative body that brings together non-EU countries, civil society and experts to facilitate dialogue on the decisions made. This could significantly increase the legitimacy of the EU process and its acceptance by non-EU countries.
    - Reform the Code of Conduct Group to increase transparency and make the process more objective.
    - Expand the role of the European Parliament to make the process more accountable.
    - Promote a similar, but improved, listing initiative at the global level by proposing a new set of global reforms on tax, via a UN convention or a UN tax body, with the aim of tackling the issue of tax competition.

- The EU blacklist should have a deterrent effect to put an end to tax havens, but different types of sanction should apply depending on the criteria that individual jurisdictions are not respecting. The strongest sanctions should be imposed on those countries that do not respect the criteria on fair taxation.
- The EC should have access to the confidential country-by-country reports that EU member states receive in order to better assess the harmful impacts of policies adopted by non-EU countries.
- The EU should provide direction and support to jurisdictions that are heavily dependent on their tax haven status. Such support should aim to help build fairer, more sustainable and more diversified economies.

**To effectively support developing countries, the EU and EU member states should take the following actions:**

- Provide more and better support to developing countries for DRM, as agreed under the Addis Tax Initiative (ATI).[125]
- Continue to screen harmful tax practices in developing countries, preferably with an extended scope (e.g. by including tax holidays). Observers agree that this is a good and fair approach.
- Allow developing countries to a make a voluntary decision based on their national priorities and capacities as to whether they want to join the OECD BEPS Inclusive Framework and/or adopt the OECD BEPS minimum standards.

**To ensure that it is a credible and legitimate organization in the fight against tax avoidance, the EU and EU governments should take the following actions:**

- Take appropriate measures against tax havens within the EU itself, including the enforcement of new regulations on harmful tax practices and aggressive tax rules, a minimum effective tax rate for types of payment that carry a high risk of tax avoidance, such as royalties and interests,[126] and the adoption of a common consolidated corporate tax base (CCCTB).[127]
- EU member states' national lists of tax havens should not follow the current EU blacklist without adding all zero tax regimes and countries with aggressive tax practices that facilitate tax dodging and/or distort investment flows.
- Increase tax transparency by requiring all large multinational corporations to make country-by-country reports publicly available for each country in which they operate, including a breakdown of their turnover, employees, physical assets, sales, profits and taxes (due and paid), so that an accurate assessment can be made to establish whether or not they are paying their fair share of taxes.
- Work towards better availability of qualitative public data on global economic flows in order to identify jurisdictions at risk of offending.

# APPENDICES

## APPENDIX 1

| **Table A1: Tax revenue losses in selected countries due to foreign profits being shifted by multinational corporations, 2015** | | | | |
|---|---|---|---|---|
| **Countries** | **Profits shifted out of the country USD billion** | **Statutory corporate tax rate + surcharges in 2015**** | **Tax revenue losses USD billion** | **Tax revenue losses EUR billion ***** |
| France | 32 | 38% | 12.2 | 10.1 |
| Germany | 55 | 30.2% | 16.6 | 15 |
| Italy | 23 | 31.3% | 7.2 | 6.5 |
| India | 9 | 43.26% | 3.9 | |
| Spain | 14 | 28% | 3.9 | 3.5 |

Source for table: T. R. Tørsløv, L.S. Wier and G. Zucman (2018). *The Missing Profits of Nations*. NBER Working Paper No. 24701. https://gabriel-zucman.eu/files/TWZ2018.pdf.

* Source for statutory corporate tax rates in the EU: https://ec.europa.eu/taxation_customs/sites/taxation/files/taxation_trends_report_2018.pdf ; source for statutory corporate tax rate in India: http://www.investsaver.com/corporation-tax-india/

** Source for USD-EUR conversion rate: https://www.statista.com/statistics/412794/euro-to-u-s-dollar-annual-average-exchange-rate/

## APPENDIX 2

| **Table A2: Out-of-pocket payments for healthcare in 2015, based on OECD figures** | | |
|---|---|---|
| **Countries** | **Out-of-pocket payments (€m)** | **Possible reduction in out-of-pocket payments if tax revenues losses shown in Appendix 1 were fully recovered and spent on healthcare** |
| France | 59,098.4 | 17.1% |
| Germany | 52,948.0 | 28.3% |
| Italy | 37,728.0 | 17.2% |
| Spain | 28,285.4 | 12.4% |

# APPENDIX 3

| Table A3: Overview of R&D tax incentives in the 28 EU countries | | | |
|---|---|---|---|
| **EU Member States** | **Patent boxes and other exemption regimes** | **R&D super-deductions** | **R&D tax credits** |
| Austria | | | X |
| Belgium | X | X | X |
| Bulgaria | | | |
| Croatia | X | | |
| Cyprus | X | | |
| Czechia | | X | |
| Denmark | | X | |
| Estonia | | | |
| Finland | | | |
| France | X | | X |
| Germany | | | |
| Greece | X | X | |
| Hungary | X | X | X |
| Ireland | X | | X |
| Italy | X | | X |
| Latvia | | | |
| Lithuania | X | X | |
| Luxembourg | X | | X |
| Malta | | | |
| Netherlands | X | | X |
| Poland | X | X | |
| Portugal | X | | X |
| Romania | X | X | |
| Slovakia | X | X | X |
| Slovenia | | X | |
| Spain | X | | X |
| Sweden | | | |
| United Kingdom | X | X | X |

# NOTES

1 Oxfam's analysis shows that Switzerland should normally be moved from the grey list to the blacklist as it has failed to reform all of its harmful tax practices. The United States have not been listed in December 2017, and most likely they will not be listed in 2019 – although the country fails the EU's blacklisting criteria on transparency.

2 J. Damgaard, T. Elkjaer and N. Johannesen (2018). Piercing the Veil. Finance & Development, Vol. 55, No. 2. https://www.imf.org/external/pubs/ft/fandd/2018/06/inside-the-world-of-global-tax-havens-and-offshore-banking/damgaard.pdf

3 Calculations are detailed in Appendix 1.

4 Calculation based on ODA numbers for health sector in 2017. France (164 million USD), Germany (645million USD), Italy (172 million USD) and Spain (44m million USD). OECD Creditor Reporting System: https://stats.oecd.org/Index.aspx?DataSetCode=CRS1#

5 Calculations are detailed in Appendix 2.

6 OECD (n.d.). Health expenditure and financing statistics. Voluntary schemes/household out-of-pocket payments: current expenditure on health (all functions), at current prices for the year 2015. https://stats.oecd.org/#

7 Oxfam (2019). Public Good or Private Wealth? https://www.oxfam.org/en/research/public-good-or-private-wealth

8 Ibid.

9 P. Wintour (2016, May 9). Tax havens have no economic justification, say top economists. The Guardian. https://www.theguardian.com/world/2016/may/09/tax-havens-have-no-economic-justification-say-top-economists

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13 Calculations are detailed in Appendix 1.

14 Calculation based on ODA numbers for health sector in 2017. France (164 million USD ), Germany (645million USD), Italy (172 million USD) and Spain (44m million USD). OECD Creditor Reporting System: https://stats.oecd.org/Index.aspx?DataSetCode=CRS1#

15 Calculations are detailed in Appendix 2.

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51 n June 2018, the EU Code of Conduct Group published its methods for screening jurisdictions, especially in relation to criterion 2.2 (substance requirements for low/very low tax jurisdictions such as the Cayman Islands or Bermuda). http://data.consilium.europa.eu/doc/document/ST-9637-2018-INIT/en/pdf

52 Council of the European Union (2018). Code of Conduct Group (Business Taxation) (9637/18). http://data.consilium.europa.eu/doc/document/ST-9637-2018-INIT/en/pdf

53 Panama has amended its harmful Multinational Headquarters Regime by replacing a tax exemption with income tax set at rates of 2–5%, while expanding the scope of the regime. More information here: https://www.ey.com/gl/en/services/tax/international-tax/alert--panama-enacts-legislation-amending-the-multinational-headquarters-regime

54 The main harmful feature of Curaçao's E-Zone Company regime was related to ring-fencing, treating income from foreign activities differently from income from its domestic market. Companies that were active in international e-commerce (both services and products) had to pay a tax of 2% on profits. In order to align the regime with international standards, the reduced profit tax is now available only for e-commerce in products, in both the domestic and international markets. More information here: http://curacaochronicle.com/politics/curacao-tax-reforms-promote-an-attractive-investment-climate-for-businesses/

55 Thailand replaced its harmful International Business Center (IBC) tax regime with reduced CIT rates of 8%, 5% or 3% depending on the size of the company. Also, exemptions on withholding taxes on dividends or interests will be introduced. More information here: http://www.nationmultimedia.com/detail/Economy/30358960

56 Tunisia applied a 10% preferential tax rate for companies exporting goods. A new finance law introduced at the start of 2019 removed this provision and instead established a preferential tax regime for certain sectors (largely exporting sectors), with a tax rate of 13.5% (instead of the statutory tax rate of 25%) applying to both domestic and foreign companies. More information here: https://www.huffpostmaghreb.com/entry/fiscalite-ce-qui-va-changer-en-2019_mg_5c2c9e51e4b08aaf7a946432?ec_carp=3829509184950648429

57 In Hong Kong companies applying certain harmful tax regimes (corporate treasury centres, offshore captive insurance and offshore reinsurance companies) paid only 50% of the normal CIT rate on their foreign profits. Hong Kong amended its legislation to bring it in line with the EU criteria by effectively applying the tax reduction to the domestic profits of those companies as well. More information here: https://www.ey.com/Publication/vwLUAssets/ey-hong-kong-tax-alert-9-jul-2018/$FILE/ey-hong-kong-tax-alert-9-jul-2018.pdf

58 In Mauritius the harmful Global Business Licence regime was abolished and replaced by a new regime which exempts 80% of income flows from abroad, leading to extremely low tax rates. More information here: https://taxinsights.ey.com/archive/archive-news/mauritius-proposes-changes-to-tax-regime-for-corporations.aspx

59 The EU is reassessing some of the reforms in Barbados, Mauritius, Curaçao, Saint Lucia, Seychelles, and Belize. Council of the European Union (2019). The EU list of non-cooperative jurisdictions for tax purposes – letters seeking commitment on the replacement by some jurisdictions of harmful preferential tax regimes with measures of similar effect (5981/19). https://data.consilium.europa.eu/doc/document/ST-6097-2019-INIT/en/pdf

60 The EU is very much dependent on how stringently the new rules are interpreted and applied by these tax havens. First of all, practical changes in such jurisdictions are not likely to be immediate, since some tax havens have given themselves up to six years to determine whether or not all companies meet the EU requirements. Secondly, the EU has not required these tax havens to include in their laws a quantitative definition of the 'adequate' quantity of business and staff a multinational must locate in a jurisdiction in order to qualify for its zero-tax regime. This means that EU member states will have to monitor closely how the new rules on substance are actually being applied in practice. Some tax havens have already signalled that they intend to judge the meaning of 'adequate' on a case-by-case basis. The guidance issued to the private sector by Jersey, Guernsey and the Isle of Man, for instance, states: 'What is adequate for each company will depend on the particular facts of the company and its business activity.' With such an approach, there is a risk of lenient or selective application of the rules. Finally, the EU is too soft in its guidance on how these tax havens should sanction companies that do not respect the legislation.

61 A. Reurink and J. Garcia-Bernardo (2018). Competing with whom? For what? And how? The great fragmentation of the firm, FDI attraction profiles, and the structure of international tax competition in the European Union. https://osf.io/preprints/socarxiv/7ugbr

62 Deloitte (2018). IBC and ISRL regimes to be abolished and no new licenses to be granted. https://www.taxathand.com/article/10696/Barbados/2018/IBC-and-ISRL-regimes-to-be-abolished-and-no-new-licenses-to-be-granted

63 The EU is reassessing some of the reforms in Barbados, Mauritius, Curaçao, Saint Lucia, Seychelles, and Belize. Council of the European Union (2019). The EU list of non-cooperative jurisdictions for tax purposes, op. cit.

64 OECD (n.d.). About the Inclusive Framework on BEPS. http://www.oecd.org/tax/beps/beps-about.html

65 W. Lips, I.J. Valderrama and D. Lesage (2018). Tax and Development: The Link between International Taxation, The Base Erosion Profit Shifting Project and The 2030 Sustainable Development Agenda. UNU-CRIS, 2018/4. http://cris.unu.edu/sites/cris.unu.edu/files/W-2018-4.pdf

66 OECD (n.d.). About the Inclusive Framework on BEPS, op. cit.

67 UNECA (2018). Base Erosion And Profit Shifting In Africa: Reforms to Facilitate Improved Taxation of Multinational Enterprises. https://www.uneca.org/sites/default/files/PublicationFiles/base_erosion_en.pdf

68 European Commission (2016). Communication on an External Strategy for Effective Taxation, COM/2016/024 final. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52016DC0024

69 Oxfam America (2018). Doubling down on DRM. https://www.oxfamamerica.org/static/media/files/DOUBLING_DOWN_ON_DRM_-_2018_LVC7aXc.pdf. In 2016 the aid in DRM contributions were: Spain $0.1m; Germany $43.2m; France $158.6m; Italy $0.2m. For more information see: https://drm.taxcompact.net/

70 J. Kirwin (2017, August 9). EU Mulls Options for Sanctions for Tax Haven Blacklist. BNA Bloomberg. https://www.bna.com/eu-mulls-options-n73014463075/

71 The commitment letters are published at: https://www.consilium.europa.eu/register/en/content/out?typ=SET&i=ADV&RESULTSET=1&DOC_TITLE=&CONTENTS=&DOC_ID=6972%2F18&DOS_INTERINST=&DOC_SUBJECT=&DOC_SUBTYPE=&DOC_DATE=&document_date_from_date=&document_date_from_date_submit=&document_date_to_date=&document_date_to_date_submit=&MEET_DATE=&meeting_date_from_date=&meeting_date_from_date_submit=&meeting_date_to_date=&meeting_date_to_date_submit=&DOC_LANCD=EN&ROWSPP=25&NRROWS=500&ORDERBY=DOC_DATE+DESC

72 J. Langerock (2018). Opening Statement for the TAX3 committee public hearing on the fight against harmful tax practices within the European Union and abroad. http://www.europarl.europa.eu/cmsdata/147402/5%20%2005%20Opening%20Statement%20Johan%20Langerock_TAX3%20hearing%2015th%20of%20May.pdf

73 Based on Oxfam’s research. See the accompanying methodology note.

74 The Guardian (2019, January 3). Google shifted $23bn to tax haven Bermuda in 2017, filing shows. The Guardian. https://www.theguardian.com/technology/2019/jan/03/google-tax-haven-bermuda-netherlands

75 Council of the European Union (2018). The EU list of non-cooperative jurisdictions for tax purposes (15429/17). https://www.consilium.europa.eu/media/31945/st15429en17.pdf

76 UNECA (2018). Base Erosion And Profit Shifting In Africa, op. cit.

77 To expand the fair taxation pillar, the EU could use the methodology applied in two studies on aggressive tax planning it conducted in 2015 and 2017. It could expand the criteria to identify hybrid mismatches and low withholding taxes and to target all harmful tax practices regardless of their scope, including for example interest-free loans and other debt schemes, patent boxes and other IP-related schemes and tax exemption regimes such as tax holidays. H. Meldgaard, J. Bundgaard, K.D. Weber, A. Floristean et al. (2015). Aggressive tax planning indicators: Final Report. DG TAXUD: Taxation Paper No. 61. https://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/taxation/gen_info/economic_analysis/tax_papers/taxation_paper_61.pdf; and S. Loretz, R. Sellner, B. Brand et al. (2017). Aggressive tax planning indicators: Final Report. DG TAXUD: Taxation Paper No. 71. https://ec.europa.eu/taxation_customs/sites/taxation/files/taxation_papers_71_atp_.pdf

78 J. Damgaard, T. Elkjaer and N. Johannesen (2018). Piercing the Veil, op. cit.

79 Switzerland currently has five active harmful tax regimes (two federal, three at cantonal level). Council of the European Union (2018). The EU list of non-cooperative jurisdictions for tax purposes (6972/18 ADD 43). http://data.consilium.europa.eu/doc/document/ST-6972-2018-ADD-43/en/pdf

80 With the EU blacklist in mind, the Swiss government did try to abolish these regimes, but it failed as the Swiss people rejected the proposed corporate tax reforms in a referendum in 2017. M. Shields (2017, February 12). Swiss voters soundly reject corporate tax overhaul. Reuters. https://www.reuters.com/article/us-swiss-tax/swiss-voters-soundly-reject-corporate-tax-overhaul-idUSKBN15R0HQ

81 The reform proposed to abolish the regimes targeted by the EU, while introducing new harmful tax

incentives. A new corporate tax reform has now been proposed along similar lines and may be put to a referendum in May 2019. PriceWaterhouseCoopers (n.d.).Overview of the most important developments regarding Tax Proposal 17. https://www.pwc.ch/en/services/tax-advice/corporate-taxes-tax-structures/corporate-tax-reform-ii.html

82 The Federal Tax Administration (2018). TRAF – No more new principal companies and Swiss finance branches from 2019. https://www.efd.admin.ch/efd/en/home/dokumentation/nsb-news_list.msg-id-72938.html

83 The new rules can result in very low effective tax rates, because Switzerland would allow large deductions following the revaluation of assets transferred to the country. Pestalozzi Attorneys at Law (2018). Swiss Corporate Tax Reform. https://pestalozzilaw.com/en/news/legal-insights/swiss-corporate-tax-reform/

84 Dominik Gross, private correspondence with author. D. Gross (2018). Tax proposal 17: Forward to the past. Alliance Sud. http://www.alliancesud.ch/en/politics/finance-and-tax-policy/tp17-tax-loopholes-multinationals

85 The worst secrecy risks created by the USA are related to banking secrecy, automatic exchange of information and beneficial ownership information. It is expected that the EU will incorporate beneficial ownership at a later stage (2021) as a fourth transparency criterion for screening. However, member states have not yet agreed on how this criterion should be applied.

86 M.B. Mansour (2018, September 23). EU tax haven blacklist blocks just 1% of financial secrecy services threatening EU economies. Tax Justice Network. https://www.taxjustice.net/2018/09/23/eus-tax-haven-blacklist-blocks-just-1-of-financial-secrecy-services-threatening-eu-economies/

87 OECD (n.d.). What is CRS. http://www.oecd.org/tax/automatic-exchange/common-reporting-standard/

88 IRS (n.d.). Foreign Account Tax Compliance Act. https://www.irs.gov/businesses/corporations/foreign-account-tax-compliance-act-fatca

89 A. Knobel (2018). Reporting taxation: Analyzing loopholes in the EU's automatic exchange of information and how to close them. Greens/EFA Group in the European Parliament. http://extranet.greens-efa-service.eu/public/media/file/1/5729; P. A. Cotorceanu (2015). Hiding in plain sight: how non-US persons can legally avoid reporting under both FATCA and GATCA. https://www.anaford.com/wp-content/uploads/2017/03/Trusts-Trustees-2015-Cotorceanu-tandt_ttv178.pdf

90 European Commission (2016). Communication on an External Strategy for Effective Taxation. COM/2016/024 final. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52016DC0024

91 European Commission (2018). Factsheet: Evolution of the EU list of tax havens. https://ec.europa.eu/taxation_customs/sites/taxation/files/eu_list_update_04_12_2018_en.pdf

92 M.A. Sullivan (2007, July 30). Lessons From the Last War on Tax Havens. Tax Analysts. http://www.taxjustice.net/cms/upload/pdf/Tax_Notes_0707_Lessons_from_the_war_on_tax_havens.pdf

93 For example, the involvement of the Netherlands in the Paradise Papers in November 2017.

94 T. R. Tørsløv, L.S. Wier and G. Zucman (2018). The Missing Profits of Nations, op. cit.

95 A. Chardonnet and J. Langerock (2017). Blacklist or whitewash? What a real EU blacklist of tax havens should look like. Oxfam. https://www.oxfam.org/en/research/blacklist-or-whitewash-what-real-eu-blacklist-tax-havens-should-look

96 For more information about criteria and how the jurisdiction performed, see the accompanying methodology note.

97 For more information, see the methodology note.

98 Cyprus appears in this list for the first time. In its previous assessment, Oxfam did not identify the country as having harmful tax practices as it had not been screened by the OECD Forum on Harmful Tax Practices. Cyprus does in fact have harmful tax practices, such as a patent box, and also fails on several economic indicators.

99 European Commission (2017). Questions and Answers on the EU list of non-cooperative tax jurisdictions. http://europa.eu/rapid/press-release_MEMO-17-5122_en.htm

100 T. Faccio and V. Fitzgerald (2018). Sharing the corporate tax base: equitable taxing of multinationals and the choice of formulary apportionment. Transnational Corporations, Vol. 25, no. 2, pp.67-90. https://unctad.org/en/PublicationChapters/diae2018d4a5.pdf. Vodafone provides an explanation for its effective tax rate in Luxembourg in its 2016–17 tax report: https://www.vodafone.com/content/dam/sustainability/pdfs/vodafone_2017_tax.pdf

101 C. Tani (2017, December 14). EU countries are not 'tax havens', parliament says. EU Observer. https://euobserver.com/economic/140279

102 Oxfam (2018). EU tackles tax competition inside EU and increases pressure on tax havens. Press

release. https://www.oxfam.org/en/pressroom/reactions/eu-tackles-tax-competition-inside-eu-and-increases-pressure-tax-havens

103 I. Kostaki (2018, January 18). Moscovici accuses some EU member states of being "black tax holes". New Europe. https://www.neweurope.eu/article/moscovici-accuses-eu-member-states-black-tax-holes/

104 A.Spire (2018, December). Les classes populaires et l'injustice fiscale: Aux sources de la colère contre l'impôt. Le Monde Diplomatique. https://www.monde-diplomatique.fr/2018/12/SPIRE/59371

105 Oxfam has analysed the implementation of CFC rules in the EU, and has found these rules to be extremely effective against corporate tax avoidance if implemented correctly. The EU agreed the Anti-Tax Avoidance Directive (ATAD) in 2016, which obliged EU member states to implement such rules. However, some countries – unsurprisingly, many of them the same countries that have been singled out as fiscal black holes, such as Ireland and the Netherlands – have deliberately implemented weak CFC rules.

106 Another strong measure is public country-by-country reporting (public CBCR). Legislation on this issue was proposed by the EC in 2016 in the wake of the revelations contained in the Panama Papers. Public CBCR would ensure that multinational corporations are transparent about where they pay tax and how much tax they pay. The big EU banks already have to comply with this measure, and their experience has shown that transparency can lead to behavioural change. M. Overesch and H. Wolff (2018). Financial Transparency to the Rescue: Effects of Country-by-Country Reporting in the EU Banking Sector on Tax Avoidance. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3075784

However, for the past two years this crucial piece of legislation has been blocked by certain EU member states, such as Germany.

107 DG Taxation and Customs Union (2018). Taxation trends in the European Union. https://ec.europa.eu/taxation_customs/sites/taxation/files/taxation_trends_report_2018.pdf

108 R&D tax credits are incentives designed to encourage companies to invest in R&D. Companies can reduce their tax bills or claim payable cash credits as a proportion of their R&D expenditure.

109 R&D super-deductions allow companies to deduct eligible R&D expenses from their tax base twice – first as a normal tax-deductible expense, and second as an additional super-deduction.

110 A patent box is a special tax regime used by a number of countries to incentivize R&D by taxing revenues from patents differently from other commercial revenues. It is also known as an intellectual property box regime, innovation box or IP box.

111 Appendix 3 offers an overview of all harmful or potentially harmful incentives related to IP or R&D in the EU.

112 US Senate, Joint Economic Committee (2016). Patent Boxes: A Brief History, Recent Developments, and Necessary Considerations. https://www.jec.senate.gov/public/_cache/files/02a2a18a-1e08-42ce-8c14-72b6138b54dd/031016-patent-boxes.pdf

113 European Parliament (2016). European Parliament resolution of 6 July 2016 on tax rulings and other measures similar in nature or effect (2016/2038(INI)). http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P8-TA-2016-0310+0+DOC+PDF+V0//EN

114 These companies use what is called 'informal capital ruling''. More information here: https://leidenlawblog.nl/articles/new-evidence-of-secret-dutch-tax-deals

115 'The relative rates of growth over the last five years of royalties and licensing fee receipts (almost 5 per cent annually) compared with trade in goods and FDI (less than 1 per cent per year) show how international production is shifting from tangible cross-border production networks to intangible value chains.' UNCTAD (2018). World Investment Report 2018: Investment and new industrial policies. https://unctad.org/en/PublicationsLibrary/wir2018_en.pdf

116 R. Toplensky (2018, March 12). Multinationals pay lower taxes then a decade ago. Financial Times. https://www.ft.com/content/2b356956-17fc-11e8-9376-4a6390addb44

117 Eurostat (2016). Patent Statistics. https://ec.europa.eu/eurostat/statistics-explained/index.php/Archive:Patent_statistics

118 L. Davison (2018, November 15). U.S. Companies Flee No-Tax Caribbean Havens After EU Crackdown. Bloomberg. https://www.bloomberg.com/news/articles/2018-11-15/corporate-america-flees-zero-tax-caribbean-havens-post-crackdown

119 Debate in Irish Parliament (2016). https://www.oireachtas.ie/en/debates/question/2016-07-19/154/#pq_154

120 Ibid.

121 S. Coffey (2018, July 18). When can we expect the next wave of IP onshoring? https://economic-incentives.blogspot.com/search/label/Corporation%20Tax

122 Debate in Irish Parliament (2018).

https://data.oireachtas.ie/ie/oireachtas/debateRecord/select_committee_on_finance_public_expenditure_and_reform_and_taoiseach/2018-11-07/debate/mul@/main.pdf

123 Office of the Revenue Commissioners (2017). An Analysis of 2015 Corporation Tax Returns and 2016 Payments. https://www.revenue.ie/en/corporate/documents/research/corporation-tax-returns-2016.pdf

124 Irish Revenue figures show that €35.7bn of company profits booked in Ireland in 2016 were not taxable due to the fact that these companies received 100% IP capital allowances. If these profits were taxed at Ireland's corporate tax rate of 12.5%, this would have generated €4.46bn in tax revenue. L. McCarthy and G. McGuinness (2018). Corporation Tax 2017 Payments and 2016 Returns. Statistics & Economic Research Branch, Revenue. https://www.revenue.ie/en/corporate/documents/research/ct-analysis-2018.pdf

125 Oxfam America (2018). Doubling down on DRM, op, cit.

126 The EC has been proposing ways to improve the taxation of passive income such as royalties and interest since 2011. However, divisions between member states, especially regarding the implementation of a minimum effective tax rate, mean that no such legislation has been passed to date. European Commission (2011). Proposal on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States COM (2011) 714 final. http://www.europarl.europa.eu/RegData/docs_autres_institutions/commission_europeenne/com/2011/0714/COM_COM(2011)0714_EN.pdf

127 European Commission (2016). Proposal for a Council Directive on a Common Corporate Tax Base, 2016/0337 (CNS). https://ec.europa.eu/taxation_customs/sites/taxation/files/com_2016_685_en.pdf; and European Commission (2016). Proposal for a Council Directive on a Common Corporate Consolidated Tax Base (CCTB), 2016/0336 (CNS). https://ec.europa.eu/taxation_customs/sites/taxation/files/com_2016_683_en.pdf

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