



## Hidden profits:

The EU's role in supporting an unjust global tax system 2014



**A report coordinated by Eurodad**

# Acknowledgements:

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This report was coordinated by Eurodad with contributions from civil society organisations in 15 countries across Europe including:

11.11.11 (Belgium), Action Solidarité Tiers Monde (ASTM) (Luxembourg), Centre national de coopération au développement (CNCD-11.11.11) (Belgium), Christian Aid (UK), CCFD-Terre Solidaire (France), Debt and Development Coalition Ireland (DDCI) (Ireland), Demnet (Hungary), Ekvilib Institute (Slovenia), Forum Syd (Sweden), Global Policy Forum (Germany), Glopolis (Czech Republic), IBIS (Denmark), InspirAction (Spain), Instytut Globalnej Odpowiedzialności (IGO), Oxfam France (France), Oxfam Intermón (Spain), Re:Common (Italy), the Centre for Research on Multinational Corporations (SOMO) (Netherlands) and World Economy, Ecology & Development (WEED) (Germany). A special acknowledgement goes to Doctoral Researcher Martin Hearson of the London School of Economics and Political Science (LSE) for providing data and valuable input on the sections related to tax treaties.

Each country chapter was written by - and is the responsibility of - the nationally-based partners in the project, and does not reflect the views of the rest of the project partners.

**For more information, contact Eurodad:**

Eurodad  
Rue d'Edimbourg, 18 – 26  
Mundo B building (3rd floor)  
1050 Ixelles, Brussels  
Belgium  
tel: +32 (0) 2 894 46 40  
e-fax: +32 (0) 2 791 98 09

**Design and artwork:** March Design Studio

**Copy editing:** Vicky Anning and Julia Ravenscroft

The authors believe that all of the details in this report are factually accurate as of 7 October 2014.



The report has been produced with the financial assistance of the European Union and Norad. The contents of this publication are the sole responsibility of Eurodad, and the authors of this report and can in no way be taken to reflect the views of the funders.

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# Glossary

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## 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 income is earned to the taxpayer’s country of residence. As a result, the tax authority of a tax payer’s country of residence can check its tax records to verify that the taxpayer has accurately reported their foreign-source income.

## Base Erosion and Profit Shifting

This term is used to describe the shifting of taxable income 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.

## Country by country reporting

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.

## 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 two definitions of illicit financial flows. It 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.

## Offshore jurisdictions or centres

Usually known as low-tax jurisdictions specialising in providing corporate and commercial services to non-resident offshore companies and individuals, and for the investment of offshore funds. This is often combined with a certain degree of secrecy. ‘Offshore’ can be used as another word for tax havens or secrecy jurisdictions.

## Profit shifting

See ‘Base erosion and profit shifting’.

## Special purpose entity

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.

## 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 offshore rather than into the banks of the country where the wealth is generated. 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 throughout the report.

## 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 but 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.

# Acronyms

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<b>AIE</b>	Automatic Information Exchange	<b>IDA</b>	Irish Industrial Development Agency
<b>AFD</b>	French Development Agency	<b>IFSC</b>	Irish Financial Services Centre
<b>AJPES</b>	Republic of Slovenia Agency for Public Legal Records and Related Services	<b>IMF</b>	International Monetary Fund
<b>AMLD</b>	Anti-Money Laundering Directive	<b>LDCs</b>	Least Developed Countries
<b>ATR</b>	Advance Tax Ruling	<b>LLP</b>	Limited Liability Partnership
<b>CBCR</b>	Country by country reporting	<b>MoF</b>	Ministry of Finance
<b>CCCTB</b>	Common Consolidated Corporation Tax Base	<b>NFIA</b>	Netherlands Foreign Investment Agency
<b>CDIS</b>	Consolidated Direct Investment Statistics	<b>ODA</b>	Official Development Assistance
<b>CFC</b>	Controlled Foreign Companies	<b>OECD</b>	Organisation for Economic Co-operation and Development
<b>CSD</b>	Central Securities Depository	<b>OFCs</b>	Offshore Financial Centres
<b>CSO</b>	Civil society organisation	<b>PwC</b>	PricewaterhouseCoopers
<b>DTT</b>	Double Taxation Treaty	<b>S&amp;D</b>	Socialists and Democrats
<b>EC</b>	European Commission	<b>SEZ</b>	Special Economic Zone
<b>EP</b>	European Parliament	<b>SFI</b>	Special Financial Institution
<b>EPP</b>	European People's Party	<b>SPE</b>	Special Purpose Entity
<b>EU</b>	European Union	<b>SPV</b>	Special Purpose Vehicle
<b>FDI</b>	Foreign Direct Investment	<b>TIEA</b>	Tax Information Exchange Agreement
<b>FfD</b>	Financing for Development	<b>UN</b>	United Nations
<b>FSI</b>	Financial Secrecy Index	<b>UNCTAD</b>	United Nations Conference on Trade and Development
<b>GDP</b>	Gross Domestic Product	<b>VAT</b>	Value Added Tax
<b>GNI</b>	Gross National Income		

# Executive summary

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This report – the second in a series of three annual reports – brings together civil society organisations (CSOs) in 15 countries across the EU. Experts in each CSO have examined their national governments' commitments and actions towards combatting tax dodging and ensuring transparency. This year, for the first time, each country is also directly compared with its fellow EU member states on four critical issues: the fairness of their tax treaties with developing countries; their willingness to put an end to anonymous shell companies and trusts; their support for increasing the transparency of economic activities and tax payments of transnational companies; and their attitude towards letting the poorest countries get a seat at the table when global tax standards are negotiated. This report doesn't only cover national policies, but also governments' positions on existing and upcoming EU-level laws and global reform proposals.

## Overall, the report finds that:

- Practices which facilitate tax dodging by transnational corporations and individuals are widely used, in some cases so governments can claim to be 'tax competitive'. This is creating a 'race to the bottom' – meaning that many countries are driving down standards to try to attract transnational corporations to their countries. Some of the countries that have been most successful in attracting companies – Ireland, Luxembourg and the Netherlands – are also currently under investigation by the European Commission for making competition-distorting arrangements with transnational companies behind closed doors. Several countries also allow 'letterbox' companies and other structures to be set up (so-called Special Purpose Entities – SPEs) which can, and often are, misused for tax dodging purposes.
- European countries have a high number of tax treaties with developing countries, with France and the UK leading the pack respectively with 72 and 66 of such treaties. These treaties often push down the taxation levels on financial transfers out of developing countries, and thus create routes through which transnational corporations can avoid taxation. Of the countries covered by this report, Spain, the UK and Sweden have negotiated the biggest reductions in developing country tax levels through their treaties. Despite several studies proving the negative effects these treaties can have on developing countries, only the Netherlands out of the 15 EU governments covered in this report has so far produced a 'spillover analysis' to estimate the impact of these treaties on the world's poor. Ireland is set to publish a similar study that will hopefully also focus on its tax treaties in the coming months.
- Most EU countries studied have failed to expose the true – or beneficial – owners of companies, trusts and similar legal structures operating within their countries. Some countries have done away with harmful structures that previously helped to hide identities, but are now in the process of creating new problematic structures. Both the Czech Republic and Luxembourg recently decided to abolish anonymous bearer shares – an instrument that has received much international criticism. At the same time, both countries are introducing 'trusts' into their national legislation, potentially providing new options for anonymous ownership that might replace the ones that are disappearing.
- Although EU governments have introduced country by country reporting for banks – meaning they will have to adhere to stronger transparency rules – many countries are still reluctant to do this for transnational companies in other sectors.
- Although many are undecided, none of the EU governments studied actively support the establishment of an intergovernmental body on tax matters under the auspices of the United Nations. Such a body would allow developing countries to have a say on global tax standards instead of the current situation, where the Organisation for Economic Development and Co-operation (OECD) is the dominant decision-making body, despite the fact that it only represents wealthy countries.

## A direct comparison of the 15 EU countries finds that:

- France is currently the strongest country on issues of transparency and reporting rules for transnational corporations and has actively championed the issue. However, recent developments seem to indicate the government may be back-tracking. Its vast range of tax treaties have also caused substantial lowering of developing country tax rates. No analysis of these impacts is planned.
- Germany, Luxembourg, the Netherlands, Spain and Sweden received a red light on transparency, meaning that they have a lack of transparency of company ownership at the national level or are resisting EU-wide initiatives to promote transparency on company ownership.
- Spain has managed to negotiate the largest reductions in developing country tax rates – an average reduction of 5.3 percentage points – through its tax treaties with developing countries.

## A summary overview of the report

### The global perspective

The first section of the report gives a global overview, explaining the scale of the problem of international tax dodging and its severe impact on efforts to fight poverty in developing countries. It highlights the fact that sub-Saharan Africa is still experiencing a fall in aid levels, while tax dodging results in very high amounts of lost tax revenues for these countries. Estimates have shown that developing countries as a whole lose more resources due to transnational corporations dodging taxes than they receive as development aid. The report shows that several EU countries are facilitating this incoherent system.

This section also covers the overall picture in Europe and the continuing scandals, which again brought strong political rhetoric against tax evasion and avoidance. It analyses the state of play as regards EU-level regulation, including some concrete steps forward and opportunities for further progress.

The global chapter also focuses on policies that undermine taxation in developing countries, such as unfair tax treaties and the existence of harmful tax practices that create ways for transnational corporations to avoid taxation in other countries, including developing countries.

Finally, it examines how decisions are being made and by whom and underlines the need to give the poorest countries a seat at the table when global tax standards are being negotiated. This can be done by establishing an intergovernmental body on tax matters under the auspices of the United Nations.

### National reviews

Each national chapter provides an overview of individual government's positions and actions in relation to tax avoidance and evasion.

Each chapter provides a general overview, and covers in more detail:

- **Tax policies.** This includes levels of taxation of transnational corporations, the existence of potentially harmful tax structures and the country's use of tax treaties.
- **Financial and corporate transparency.** This includes information on whether countries publish information about the real – or beneficial – owners of companies and trusts, and whether they support increased transparency around the economic activity and tax payments of transnational corporations.
- **Global solutions.** This includes the attitude of each government to including developing countries in decision-making processes on global tax standards.

## Recommendations to EU member states and institutions

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

- Adopt EU-wide rules to establish **publicly accessible registries of the beneficial owners** of companies, trusts and similar legal structures. The EU negotiations over revisions to the Anti-Money Laundering Directive, which are now close to conclusion, provide an important window of opportunity to establish such registries.
- Adopt **full country by country reporting for all large companies and ensure that this information is publicly available**. This reporting should include:
  - 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, purchases and labour costs.
  - The assets i.e. all the property the company owns in that country, its value and cost to maintain.
  - The number of employees in each country where it operates.
  - Tax information i.e. full details of the amounts owed and actually paid for each specific tax.
- Carry out **spillover analyses** of national tax policies, in order to assess the impacts on developing countries and **remove policies and practices that have negative impacts** on developing countries in order to strengthen policy coherence for global development.
- 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 a lack of administrative capacity.
- Undertake a rigorous study jointly with developing countries, on 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.
- 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 existing 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.
- All EU countries should publish an **impact assessment of their special purpose entities** and similar legal constructions, as well as **data showing the flow of investments** through such entities in their countries.
- Ensure that **special purpose entities** and similar legal constructions cannot be abused for tax purposes by introducing sufficiently strong substance requirements for all such entities. The General Anti-Abuse Rule as proposed by the European Commission in its Recommendation on Aggressive Tax Planning in December 2012 could serve as a guideline for defining the right level of substance requirements.
- When negotiating tax treaties with developing countries, EU countries 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.



*Poster urging citizens to “pay your taxes promptly” in Sierra Leone’s capital Freetown. Meanwhile, developing countries are losing much needed revenues due to transnational companies who dodge their tax responsibilities, helped along by the policies of European countries. Developing countries need tax revenue to invest in social services, such as education and the health sector. In Sierra Leone, the current Ebola outbreak has clearly demonstrated the importance of such investments.*

# The global perspective

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The economic and financial crisis in Europe has raised awareness and frustration among both leaders and the public on the issue of tax dodging and its cost to the public purse. However, this awareness has not yet led to changes to the underlying causes of the problems, including the lack of transparency and effective tax co-operation between governments. Furthermore, debates around the world are centred on domestic losses due to tax dodging, but often fail to take into account the impact that domestic tax laws can have on tax collection in other countries, including on the world's poorest.

In 2008 Christian Aid estimated that developing countries lost around US\$ 160 billion<sup>1</sup> per year in corporate tax revenues due to transnational enterprises and other trading entities illegally manipulating their profits to shift them into tax havens, where they face little or no tax. This is tax evasion, with the sums involved considerably larger than, for example, the \$120 billion that the Organisation for Economic Co-operation and Development (OECD) estimates will be needed to meet the Millennium Development Goals, which focus on eradicating extreme poverty, ending hunger, achieving universal primary education and improving global health.<sup>2</sup>

Many transnationals and other companies trading across borders, however, also use perfectly legal loopholes in the global tax system to move profits into low tax jurisdictions to reduce their tax liability in the jurisdictions where the profits were made. This is tax avoidance. Although legal, it has of late been repeatedly called into question in rich countries where the public has objected to the low taxes paid by high street names. One UK parliamentarian, Margaret Hodge, after hearing evidence from one executive that his employer was doing nothing illegal, retorted: "We're not accusing you of being illegal, we're accusing you of being immoral."<sup>3</sup> As with tax evasion, however, its impact is obviously greater in poorer countries where tax revenues are already low.

In this report, the term tax dodging is used to describe the use of artifice to make major reductions in a tax bill while leaving open the question of whether or not criminality has taken place.

In May 2013, EU leaders called for "rapid progress" and underlined that "it is important to take effective steps to fight tax evasion and tax fraud, particularly in the current context of fiscal consolidation, in order to protect revenues and ensure public confidence in the fairness and effectiveness of tax systems."<sup>4</sup> In the G20, the leaders have also acknowledged the importance of addressing both tax evasion and avoidance and underlined that "Developing countries must reap the benefits of the G20 tax agenda."<sup>5</sup>

## Scandals

In Europe, the clothing industry has had its fair share of tax evasion and tax avoidance scandals of late. Meanwhile, corporate tax scandals are still frequent. In early 2014, Bloomberg reported that the world's biggest fashion retailer, Inditex, which is the parent company of the fashion brand Zara, has shifted almost €1.5 billion<sup>6</sup> to a tiny unit operating in the Netherlands and Switzerland. Although this unit was said to employ only 0.1% of the company's staff, it has recorded 20% of the company's profits. Meanwhile, the company reports very low profits in the countries where it has its major markets, including Italy, Germany, France and the UK. Through this exercise, the company was said to have avoided, through perfectly legal means, paying up to €245 million since 2009.<sup>7,8</sup>

In Italy too, the Italian authorities are reportedly investigating alleged tax avoidance by Prada.<sup>9</sup> In Poland, meanwhile, there have been calls for a boycott of brands such as Reserved, Reserved Kids and CroppTown, after their owner LLP S.A.<sup>10</sup> announced it was moving the brands to subsidiaries registered in the tax havens of Cyprus and the United Arab Emirates.

However, the shifting of profits into low tax jurisdictions is by no means the preserve purely of the fashion retail industry. High-profile cases of tax avoidance reported of late in the UK press include Google, Starbucks, Amazon, Microsoft, Apple, Coca-Cola, General Electric, Nike and PepsiCo.<sup>11</sup>

## From poor to poorer

Even though tax avoidance and evasion have far-reaching negative impacts on the world's poorest, this rarely becomes an internationally debated topic. This is despite the fact that tax revenues are desperately needed in developing countries to close financing gaps in the fight for health, education and sustainable development. This financing gap is particularly worrying because the amount of development aid being delivered by governments is still very limited. Even though the decline in aid (at the global level) was reversed in 2013, and overall funds increased by 6.1%, some of the world's poorest countries, including the countries in sub-Saharan Africa, are still experiencing a decline in aid.<sup>12</sup> Developing countries as a whole also continue to lose more resources due to transnational corporations dodging taxes than they receive as development aid.<sup>13</sup>

Emerging discussions on the relationship between tax and human rights do give hope for more far-reaching results. The United Nations special rapporteur on Human Rights and Extreme Poverty, Magdalena Sepulveda, recently published a report outlining the fact that tax havens “can directly undermine the ability of another State to mobilize the maximum available resources for the progressive realization of economic, social and cultural rights.”<sup>14</sup> The human rights perspective on tax policies is an important reminder of the fact that such policies have strong and direct impacts on human well-being, and that governments have international obligations that should be respected when adopting policies that can undermine the enjoyment of human rights.

Meanwhile, the International Monetary Fund (IMF) released a study illustrating how countries are undermining each other’s tax systems, which concluded that: “These spillover effects are especially strong for developing countries”.<sup>15</sup>

### The EU debate heats up

As Europe emerges from the worst financial crisis in a century, it remains unacceptable that the EU is losing around one trillion euros<sup>16</sup> every year due to tax evasion and avoidance. This fact received much attention during the European parliamentary elections in spring 2014, and the largest party grouping in the European Parliament – the European People’s Party (EPP) – announced that “Tackling tax evasion, addressing bank secrecy and fighting money laundering are crucial components of a functioning democracy”.<sup>17</sup>

Meanwhile, the second largest group, the Socialists and Democrats (S&D) highlighted that: “Tax evasion is money stolen from the public and growth and jobs lost. It is time to stop fraudsters and tax exiles!” The S&D promised: “We will fight to bring in common company tax rules to simplify the tax law jungle, cut the scope for tax avoidance by transnationals and prevent erosion of the tax base.”<sup>18</sup>

The issue of tax dodging also figured prominently in the debate that led to the election of the former Prime Minister of Luxembourg, Jean-Claude Juncker, to become President of the European Commission. The discussion centred around Juncker’s role in the design of the Luxembourgian tax system, which has been a key element in a number of international tax scandals. It was also argued that Jean-Claude Juncker should not lead the European Commission, while the same Commission is conducting investigations into Luxembourg’s role in international tax dodging.<sup>19</sup> In the end, Juncker was approved as President of the Commission. However, there will be a lot of attention focused on his actions when it comes to tackling EU’s problems with tax dodging.



Campaign action during the European parliamentary elections urging companies to pay their taxes.

## Steps forward

After years of delay, the EU adopted the Savings Tax Directive in spring 2014, and thereby improved the exchange of information for tax purposes among EU countries. This will likely strengthen tax collection since foreign bank accounts that have previously been hidden by bank customers will now be visible to tax administrations. While its scope does not include standard wealth concealment structures such as trusts or foundations, its wider reach constitutes a step forward. The EU has also finished the review of the Parent Subsidiary Directive by agreeing on measures to close the most obvious loopholes in the intra-EU tax regulation of transnational enterprises. Although many problems still exist, this also constitutes a step forward. Meanwhile, the Interest and Royalty Directive is in the process of reform.<sup>20</sup>

These directives focus on internal EU matters and thus do not have a direct benefit for developing countries. They do, however, serve as concrete examples of ways in which some of the many loopholes in the international tax system could be closed. A more ambitious proposal on combating tax avoidance in the EU – by calculating the profits of transnational enterprises at an EU level rather than at a national level, the so-called Consolidated Corporate Tax Base (CCCTB)<sup>21</sup> – is unfortunately still stalled in the European Council, despite having received very strong backing from the European Parliament.

## Will the public be left in the dark?

The EU is still debating whether the public will be allowed access to basic information about the companies operating in our societies.

When it comes to information about who really owns companies, trusts and similar legal structures (the “beneficial owners”), the EU is still negotiating whether to establish registries where such information must be logged and whether they should be open to the public. Such public registries could be of crucial value in the fight against tax dodging and corruption. This is because hidden ownership is in many cases a key part of the strategy for hiding money from the tax authorities and for structuring investments and capital flows in ways that will avoid taxation. The discussion about publicly accessible registries is taking place as part of the review of the EU’s Anti-Money Laundering Directive (AMLD). In early 2014, the European Parliament took a clear stand in support of establishing registries of beneficial owners of all types of companies and similar legal structures as well as making them open to the public.<sup>22</sup> However, the ministers of the EU member states, through the European Council, have not so far supported the idea of public access to information

about company ownership.<sup>23</sup> Should registries be established, they might decide to restrict access to tax authorities only. The EU negotiations between the Council, the European Parliament and the European Commission are expected to run for the rest of 2014 and potentially into 2015.

On the issue of corporate transparency, the EU took an important first step when, in 2013, it introduced country by country reporting for banks in the EU. This means that banks now have to report their turnover, taxes paid, subsidies received and number of employees on a country by country level. Furthermore, the European Commission was asked to undertake an impact assessment analysing the effects of disclosing the reported information to the public. Unless the assessment shows “significant negative effects”, the European Commission is supposed to make the reported information accessible to the public.<sup>24</sup> The impact assessment process itself became a matter of controversy when the European Commission awarded accountants PricewaterhouseCoopers (PwC) a €395,000 contract to carry out a major part of the assessment. Civil society organisations argued that PwC has obvious conflicts of interest, not least due to the fact that the company had recently spoken strongly against public country by country reporting while participating as a stakeholder in an OECD consultation. Despite these concerns, the European Commission decided against terminating the contract.

Although in spring 2013 EU Member States expressed joint support for expanding country by country reporting to all sectors,<sup>25</sup> political negotiations within the EU to follow up on this commitment were complicated by the imminence of European Parliament elections that took place in May 2014. Despite resistance from the Parliament, the Council postponed the discussion until 2018.<sup>26</sup> However, it is unlikely that this issue will remain off the agenda for long since recognition of the importance of corporate transparency is growing rapidly and political interest in the issue remains high. For the time being, however, the public must remain in the dark about this basic information about the economic activities, profits and tax payments of transnational enterprises except – potentially – for banks, when public country by country reporting adopted as part of the Capital Requirements Directive becomes reality.

Limitations in access to information about companies will not only undermine the possibilities for journalists, parliamentarians, civil society organisations and the broader public to access basic information about the companies operating in our societies. It can also make it impossible for developing countries to access the information they need to combat tax dodging and other types of illicit financial flows out of their countries. Finally, it could undermine public trust in transnational enterprises, and the governments that are supposed to regulate them.

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### Box 1: Local initiatives to stop tax dodging

A campaign launched in France in 2009 called “Stop Paradis Fiscaux” sparked a local response against secretive company ownership and opaque tax havens.<sup>27</sup> It aimed to start a momentum of local and regional authorities declaring themselves “tax haven free” and demanding voluntary country by country reporting from financial institutions bidding for public contracts. Nineteen regions and the city of Paris have joined this initiative – making it one of the largest local campaigns on tax justice issues in Europe.

Local municipal politicians in the Swedish city of Kalmar also introduced a public procurement policy stating that “our contractors must not have any links to companies based in so called ‘tax havens’”.<sup>28</sup> However, the Swedish Competition Authority later ruled that the policy was a violation of Swedish public procurement legislation.<sup>29</sup> The city council of Kalmar then re-phrased the policy to say:

“Our contractors must tax the profits at the point where it arises. The contractors may not have any connection to what we in everyday language call ‘tax havens’.

- If any deviations are detected at time of audit, the contractor shall take appropriate action. If Kalmar municipality finds the deficiencies sufficiently serious, the municipality reserves the right to take measures such as, for example, imposing a fine or suspending the cooperation.

- The Municipality of Kalmar reserves the right to request country by country reporting on tax matters.”<sup>30</sup>

This decision is now reflected in the “Code of conduct for sustainable procurement” of Kalmar municipality. Municipalities from France, the Nordic countries, the UK and Spain have founded a joint platform to advance the idea of tax haven-free municipalities.<sup>31</sup>

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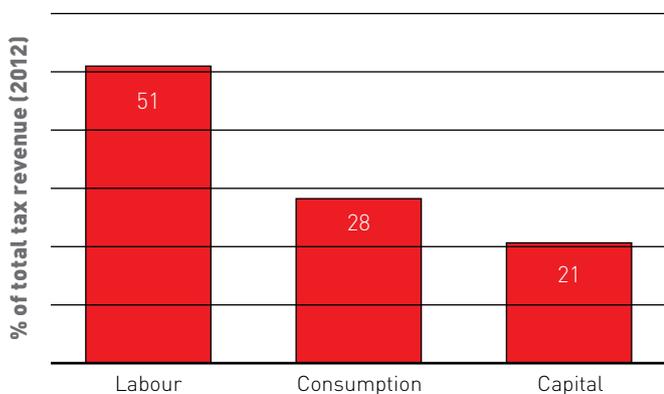


*Campaign action during the European parliamentary elections urging companies to pay their taxes.*

## Corporate taxation in the EU

The debate about corporate taxation can be understood in light of statistics on tax collection in the EU-28 countries. The latest figures from Eurostat show that in all EU Member States, taxes on capital make up the smallest share of tax revenue compared to labour and consumption. As illustrated by Figure 1, taxes on labour account for more than half of the tax revenue in the European Union as a whole.<sup>32</sup>

**Figure 1 Sources of Tax Revenue in EU-28**



Source: Eurostat, 2014

Internally in the EU, self-employed people and small enterprises can be competitively disadvantaged by the current international tax system. Transnational corporations find ways of avoiding taxes by hiring large numbers of expensive accountants and lawyers to assist them, thus reducing their tax burden significantly. Transnational corporations can also engage in "treaty shopping" to see which tax treaties provide the most convenient ways to avoid paying taxes.

In France, a report by the Parliamentary Accounts committee showed that "large enterprises on average pay 8% corporate tax, while small enterprises pay 33%".<sup>33</sup> This inequality has upset a number of self-employed people, who launched a petition to protest against unfair tax treatment.<sup>34</sup>

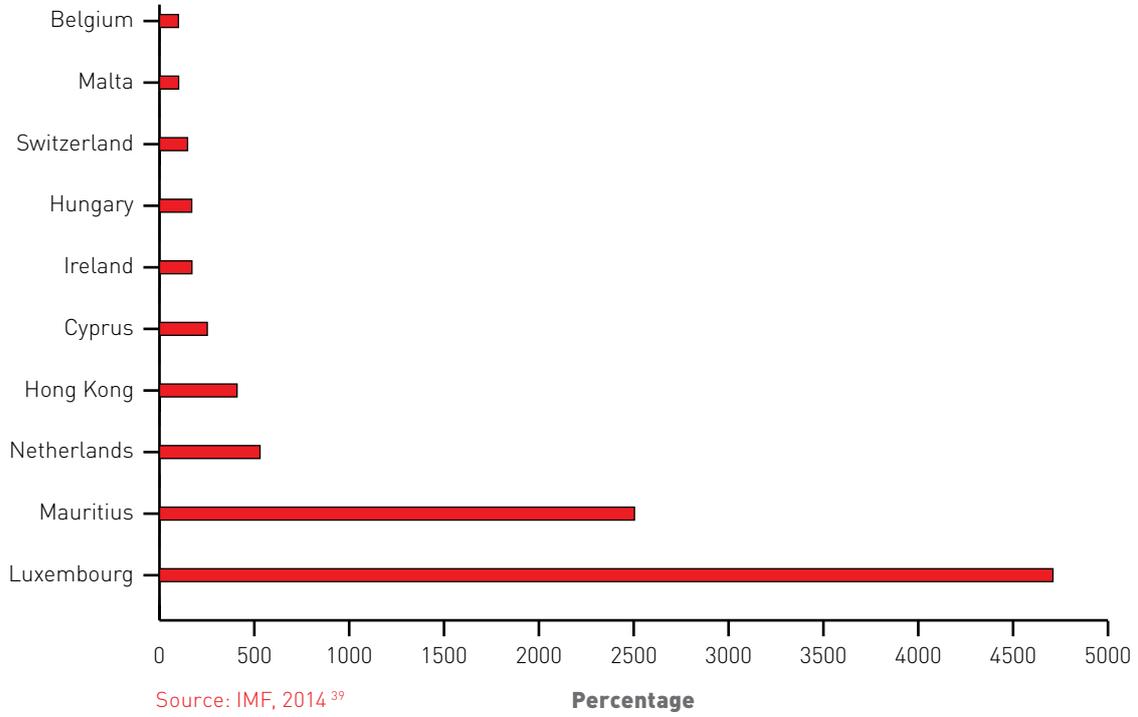
## European practices harming the poor

Since 1997, addressing harmful tax practices within the EU has been the task of a Council Group called the Code of Conduct on Business Taxation. The group's discussions are not open to the public, and minutes are not produced. Only a six-monthly report is produced of the group's proceedings.<sup>35</sup> The group is considered to have eliminated 250 potentially harmful regimes, of which 66 were particularly harmful, and has the mandate to monitor, rollback and work towards a standstill on national legislation and regulation that is harmful to other member states.<sup>36</sup> However, the mandate on harmfulness does not cover harm caused to developing countries.

Governments in Europe – as well as globally – still seem strongly focused on "attracting investments", without questioning the quality of such investments, nor the harmful impacts the policies they use to attract investments can have on other countries. The official debate has largely ignored the role played by investment and trade flows that do not contribute to real economic activity – but are rather a smokescreen for tax dodging activities. In order to attract investments, governments create tax regimes that are meant to attract foreign direct investment (FDI) into their economy, and may do so at the cost of reducing the tax base of developing countries. One way this happens is by encouraging transnational enterprises to avoid taxation by shifting their profits out of the countries where the economic activity is taking place. This pursuit of lucrative tax arrangements also has a big impact on global investment flows. For example, relatively small European countries such as Luxembourg and Ireland are among the top receivers of foreign direct investment globally and among the top investors in the world. Figures 2 and 3 include the ten countries globally that have the highest FDI stocks compared to their Gross Domestic Product (GDP) and their share of global FDI stocks and GDP.<sup>37</sup> The inconsistencies are clear to see. For example, the investment flow of Luxembourg amounts to more than 45 times the size of the economy. As the International Monetary Fund (IMF) stated in their policy briefing on spillover effects of tax policies "patterns of FDI are impossible to understand without reference to tax considerations".<sup>38</sup>

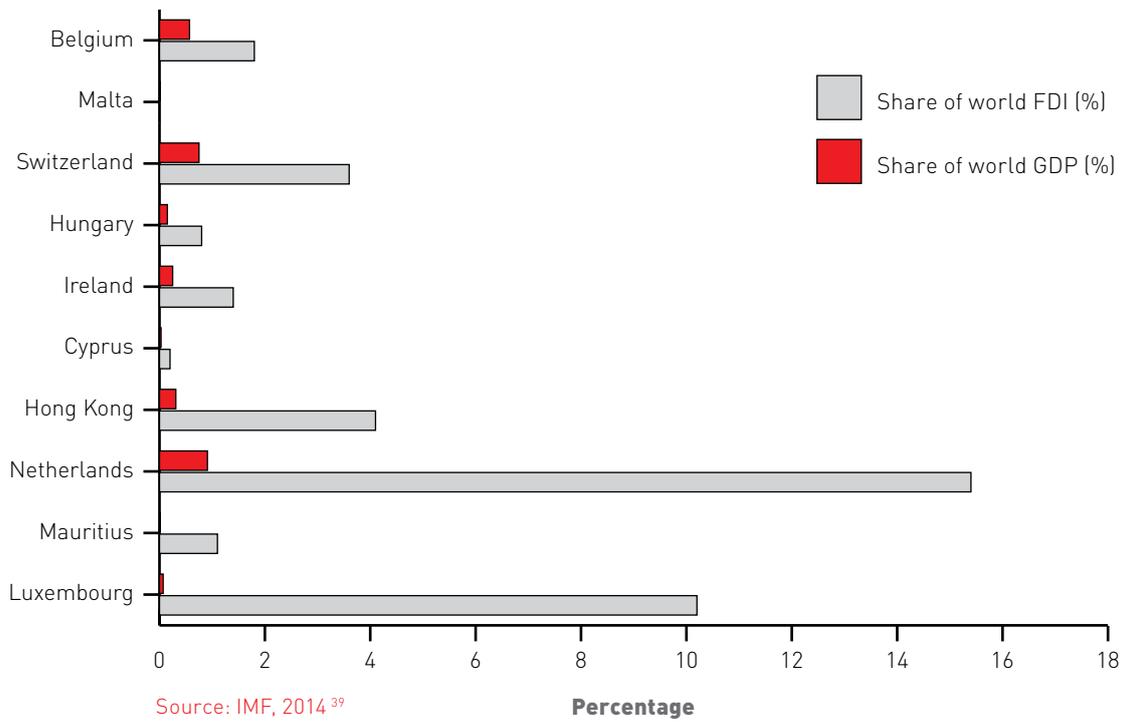
**Figure 2**

**FDI Stocks in % of GDP**



**Figure 3**

**Share of world FDI stocks compared to world GDP**



## Special purpose entities

By offering special tax arrangements for transnational enterprises and taxing earnings that the company has generated in other countries far below the normal corporate tax level, countries can maintain their relatively high levels of corporate taxation and at the same time act as low-tax jurisdictions for transnational enterprises – an approach often referred to as “ring-fencing”.

A key tool for ring-fencing is so-called ‘special purpose entities’, also known as special purpose vehicles or special financial institutions. These are structures established for the purpose of carrying out international transactions, but have very few or no local operations in the country where they are located.<sup>40</sup>

In its 2013 World Investment Report, the United Nations Conference on Trade and Development (UNCTAD) wrote about special purpose entities:

“Offshore finance mechanisms in FDI include mainly (i) offshore financial centres (OFCs) or tax havens and (ii) special purpose entities (SPEs).

(...) Both OFCs and SPEs are used to channel funds to and from third countries.

SPEs play an even larger role relative to FDI flows and stocks in a number of important investor countries, acting as a channel for more than \$600 billion of investment flows. Over the past decade, in most economies that host SPEs, these entities have gained importance in investment flows. In addition, the number of countries offering favourable tax treatment to SPEs is on the increase.

Tax avoidance and transparency in international financial transactions are issues of global concern that require a multilateral approach. To date, international efforts on these issues have focused mostly on OFCs, but SPEs are a far larger phenomenon.”<sup>41</sup>

SPEs take different legal and organisational forms in Europe, ranging from a limited purpose corporation under UK law, or offshore corporations in Jersey. SPEs can also be constituted as corporations, partnerships, trusts, Stichting (i.e. a foundation under Dutch law), unincorporated entities, or multi-user structures such as a protected cell company where the owners of the company are hidden.<sup>42</sup> Not all countries account for SPEs, as UK Limited Liability Partnership (LLPs) and the special Spanish tax regime for foreign-securities holdings (ETVEs) have many of the characteristics of SPEs despite not being named as such.

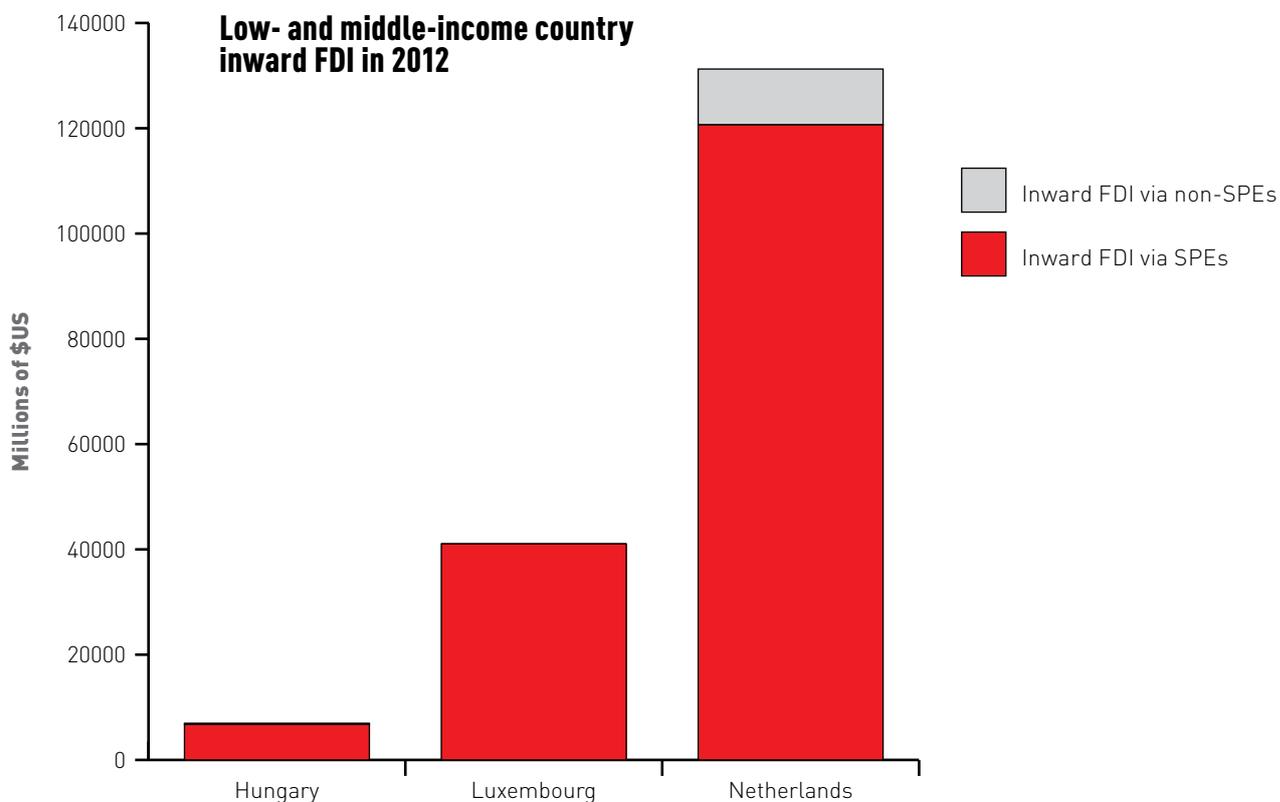
Several EU jurisdictions, in particular the Netherlands and Luxembourg, have been highlighted as conduit countries for so-called ‘letter box’ or ‘mailbox’ companies, which are popular names for these types of entities. While the Netherlands is known to house around 12,000 special purpose entities (in the Netherlands referred to as ‘special financial institutions’), there are no European-wide estimates of the total number of special purpose entities.

Furthermore, only a limited number of EU countries report on the amount of resources flowing through special purpose entities in their countries. Among the countries covered by this report, it is only Hungary, Luxembourg and Netherlands that publish these numbers. Figures 4 and 5 show the flows going out of and into low- and middle-income countries from these three countries through special purpose entities as well as non-special purpose entities.

The concern relating to these flows through special purpose entities is the risk that these resources, which are flowing to and from developing countries, are channelled through these mechanisms with the purpose of dodging taxes.

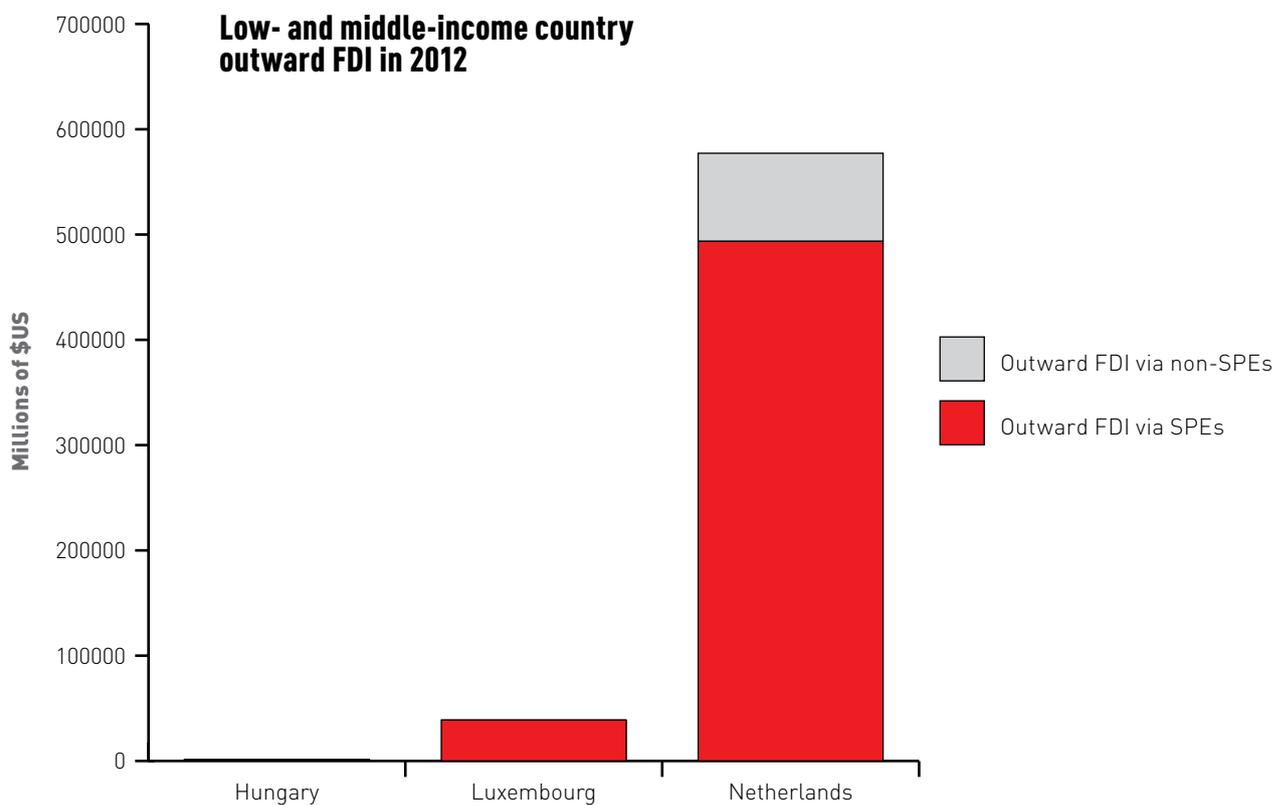
Compared to Hungary, the Netherlands and Luxembourg are clearly major contributors of FDI flows to low- and middle-income countries through SPEs. However, if more European countries would report on FDI via SPEs, we might find other large contributors.

**Figure 4**



Source: Eurodad calculations based on IMF Consolidated Direct Investment Statistics (CDIS)<sup>43</sup> and Eurostat FDI<sup>44</sup> data.

**Figure 5**



Source: Eurodad calculations based on IMF CDIS<sup>43</sup> and Eurostat FDI<sup>44</sup> data.

## Unfair tax treaties

Another key tool for reducing the tax burden of transnational corporations is bilateral tax treaties, which are increasingly becoming a part of international tax regulation. These tax treaties have become controversial mainly for two reasons. Firstly, with the aim of avoiding so-called 'double-taxation', which refers to a situation where a taxpayer has to pay taxes on the same income in two different countries, bilateral tax treaties allocate taxing rights between the two signing countries. As regards bilateral tax treaties between developed and developing countries, there is a general concern that developed countries most often manage to protect their interests better than developing countries, and thus the treaties are unfair towards developing countries.

Secondly, since tax treaties are being used to lower taxation of cross-border financial transfers, they have become a key tool for transnational enterprises shifting their profits out of the countries where the profits have been earned to jurisdictions where they are able to pay little or no taxes.

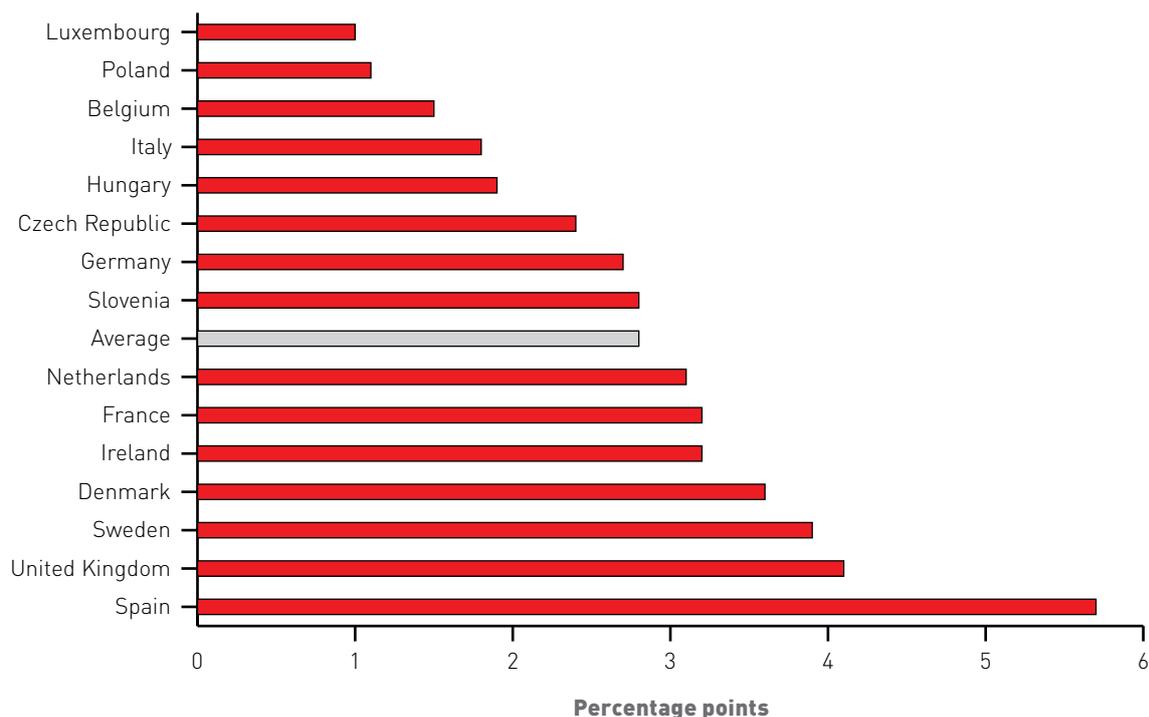
From around only 1,000 tax treaties in 1993 there are almost 3,000 tax treaties in effect today. This rise has largely been due to the rapid expansion of tax treaties between OECD countries and non-OECD countries.<sup>45</sup>

Many developed country governments, including EU countries, are signing new tax treaties with developing countries and one in every three tax treaties that EU members are currently negotiating is with a developing country.<sup>46</sup> When signing a bilateral tax treaty with a developing country, the interest of the European country is most often to lower or remove certain types of withholding taxes, which would otherwise be applied to financial flows from the developing country to the European country.

Figure 6 shows by how many percentage points the European countries covered in this report have reduced withholding tax rates with developing countries through their treaties. It shows that, on average, they have cut almost three percentage points off the rates. In some cases, the rate reductions are much more. For example, in its tax treaty with Sierra Leone, the UK has negotiated the tax rate on royalties down from 25 per cent to a flat 0 per cent. The outcome of these low withholding tax rates is likely to be a loss of tax revenues for developing countries.

Figure 6

### Average rate reductions in treaties between European countries and developing countries



Source: Based on data obtained from Martin Hearson, London School of Economics and Political Science and the International Bureau of Fiscal Documentation (IBFD) tax research portal.<sup>47</sup>

The supposed benefit for developing countries is a theoretical increase in investment flows from Europe. However, tax treaties have received harsh criticism from many sides. In a policy paper released in May 2014, the IMF notes that the empirical evidence on whether tax treaties attract investment is mixed<sup>48</sup> and furthermore underlines that “the use of tax treaty networks to reduce tax payments - is a major issue for many developing countries, which would be well-advised to sign treaties only with considerable caution”.

Most of the world’s tax treaties are based on the OECD Model Tax Convention, which sets a framework for how to divide taxing rights between governments for companies that are based in one country (the residence country) and operating in another country (the source country). Whereas developing countries, and in particular the poorest countries, primarily find themselves in the role of source country, most OECD member states are very often in the role of residence countries. Since the OECD Model Tax Convention was seen as favouring residence countries (i.e. OECD countries) over source countries (i.e. developing countries), another Model Tax Convention was developed under the auspices of the United Nations to ensure a more balanced approach to the allocation of taxing rights between governments. For example, the UN Model has a definition of the concept “permanent establishment”, which makes it easier for source countries to obtain taxing rights for foreign companies operating in their country. The UN Model also does not specify a maximum withholding tax rate for dividends, whereas the OECD Model has a 5 per cent maximum withholding tax rate limit for FDI dividends.<sup>49</sup>

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## **"If money is made from activities in Uganda, then Uganda should have the taxing right."**

*Nelly Busingye Mugisha, SEATINI Uganda*

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Despite the fact that the UN Model was negotiated and agreed by developed and developing countries in cooperation, many developed countries still insist on using the OECD Model Tax Convention as the starting point when negotiating bilateral tax agreements with other countries.

This has raised concerns among civil society organisations globally and not least in Uganda, where September 2014 saw the launch of a study on Uganda’s tax treaty network and revenue loss.<sup>50</sup>

Nelly Busingye Mugisha with SEATINI Uganda, one of the organisations behind the report, notes that developing countries should rely less on the favoured OECD template for tax treaties and more on the UN template: “a key outset for negotiations should not be the models that mainly favour the developed countries and their investors. If money is made from activities in Uganda, then Uganda should have the taxing right. In order to achieve this, the outset should be that Uganda looks to develop a model that works for Uganda, or even a model that the region can use as a template”.<sup>51</sup> The Government of Uganda seems to agree that there is cause to be cautious and have suspended tax treaty negotiations while they develop a policy framework for their tax treaties.<sup>52</sup>

Uganda’s neighbour, Kenya, seems to be undergoing a similar revelation. The Commission General for Kenya Revenue Authority in 2014 also encouraged developing countries to renegotiate unfavourable tax treaties:

“...[there is a] great need for countries (especially in Africa) to pool efforts in confronting the scourge of international tax avoidance. These efforts need to extend into the area of Double Taxation Agreements (DTAs) where many developing countries have been getting raw deals due to weak negotiation capability. Fortunately, with the developing countries now awakening to the damaging reality of international tax avoidance, the hope exists for the developed world to push for renegotiation of unfair DTAs that have served merely to legitimize multinational profit and tax shifting.”<sup>53</sup>

Among the countries covered by this report, France, the UK, Germany, Italy, the Netherlands and Belgium have the largest number of tax treaties overall.<sup>54</sup> When looking at tax treaties with developing countries, again France and the UK clearly have the highest number, followed by Italy, Germany and Belgium.

The important aspects in these tax treaties are the withholding tax rates included in them (on interest, dividends, royalties and management fees). They may allow for companies to pay taxes at lower rates than what they would pay with higher national withholding tax rates.

Low withholding tax rates in tax treaties alone are not necessarily a sign of harmful tax practices, as they often need to be combined with low overall tax treatment of foreign income – which is what makes the Netherlands an attractive place for mailbox companies.<sup>55</sup> Other examples of harmful features that can work in combination with low withholding tax rates are patent box provisions and participation exemptions, which can significantly reduce effective tax rates.

Due to concerns about the negative impacts of tax treaties, civil society organisations have been calling for impact assessments of European tax policies on developing countries. Such assessments have now been carried out by the Netherlands and Switzerland, and one is underway in Ireland at the time of writing.

The study in the Netherlands<sup>56</sup> concluded that: "Treaty shopping is possible for many [foreign direct investment] routes where Dutch tax treaties specify relatively low withholding tax rates, (...) Furthermore, the Dutch tax system facilitates avoidance of withholding tax, (...) Various studies estimate that these effects lead to foregone dividend and interest withholding tax revenues in developing countries in the range €150-550 million per year."

The study in Switzerland, which was conducted by researchers from the University of Bern,<sup>57</sup> concluded that: "In order to create more favourable conditions for foreign investment, Switzerland is pursuing, together with other OECD countries, a unilateral strategy of committing developing countries to low withholding tax rates. It fails to take due account of the fact that sustainable foreign investment depends on a sustainable tax system based on a good balance between excessively high and low rates. Lastly, a fair division of tax revenues from multinational actors requires a fair division of tax claims between source and residence countries."

The study furthermore concludes that: "[Swiss double taxation agreements with developing countries] are quite evidently the result of bargaining between stronger and weaker partners and tend to contain provisions that are more favourable to Switzerland."

## Global solutions

### Who makes the decisions?

Currently, the primary forum for negotiations of global tax policies and standards is the OECD, in many cases with a mandate from the G20. As Figure 7 illustrates, this arrangement means that a large number of countries, and in particular the poorest countries, are excluded from the decision-making processes.

As mentioned above, the development of 'global' standards for tax treaties without ensuring equal participation of developing countries is an issue that has caused much concern. The exclusion of developing countries is also becoming a very eminent risk in relation to the development

of an OECD standard for automatic exchange of information for tax purposes between tax administrations. This work was mandated by the G20 leaders, who underlined the importance of including the interests of developing countries in the design of the new standard.<sup>60</sup> Due to this, and a series of related political developments, a World Bank representative announced that a "billion dollar opportunity for developing countries"<sup>61</sup> was opening up. Sadly, the positive announcement stands in contrast to the current political picture, and several OECD countries have now openly raised a number of concerns about sharing information with developing countries outside the G20, and therefore refused to commit to doing so.<sup>62</sup>

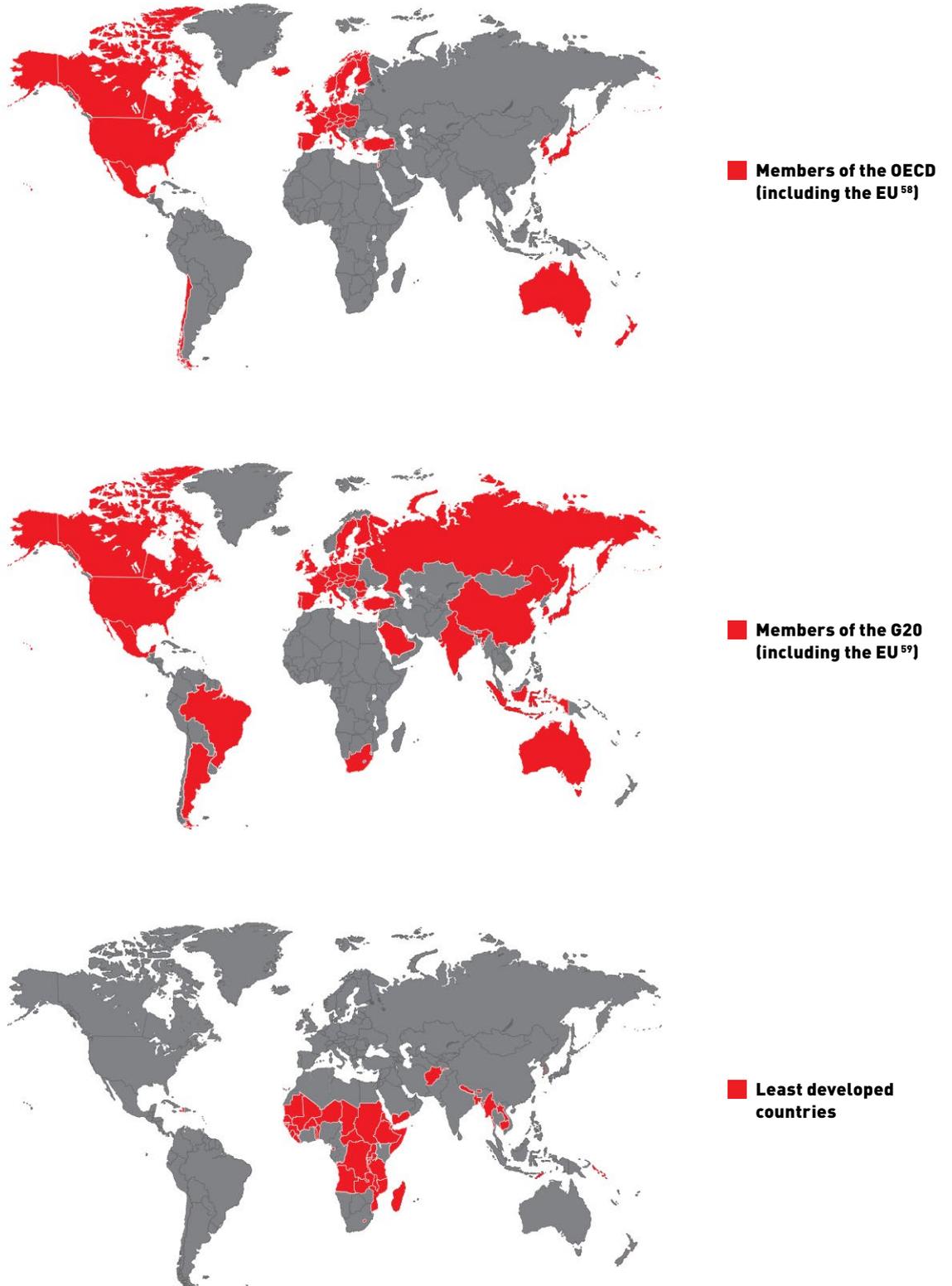
Meanwhile, there seems to be a growing list of demands from OECD countries to developing countries, specifying the technical, technological and legal systems that need to be established in developing countries before automatic information exchange can even be considered. And more worryingly, this list of requirements is not very well-defined. Even in the case where developing countries would fulfil all of the initial requirements, it seems they would still not be guaranteed permission to participate in automatic information exchange.

As the Roadmap for Developing Country Participation specifies: "Following successful completion of testing procedures, there would be additional steps to take in order for automatic exchanges to occur with treaty partners. These would be set out in the relevant Competent Authority Agreements."<sup>63</sup>

Civil society organisations have repeatedly urged the G20/OECD countries to incorporate a transition phase into the new system for automatic information exchange, which could allow developing countries to receive information automatically even when they do not yet have the capacity to send the same type of information back to the developed countries (non-reciprocity). Although different mechanisms are still under consideration, a mechanism for non-reciprocity for low capacity tax administrations has not yet been integrated into the model. Thus, it is still very uncertain whether the poorest countries will be able to achieve any significant benefits, even in the case where they do manage to comply with all the requirements.

**Figure 7**

**Membership of OECD, G20 and the group of least developed countries**



The OECD process on base erosion and profit shifting (BEPS) is under increasing criticism for the lack of participation of developing countries in the process. It has also been highlighted that the BEPS action plan sticks to the assumption that the different entities of transnational enterprises should be regarded as separate corporate entities and have their profits calculated individually, rather than be regarded as one global entity. Alternative approaches to taxation of transnational enterprises<sup>64</sup> focus on both simplification of existing transfer pricing systems<sup>65</sup> and new regimes in the extractive industries, but none of these have been included for consideration in the BEPS process.<sup>66</sup>

As part of the BEPS process, a new OECD standard on country by country reporting for all types of transnational enterprises is also being developed. However, despite the ambitious political rhetoric from the OECD and G20 regarding the importance of corporate transparency, it was decided early on that the OECD/G20 standards on country by country reporting will only provide information for tax administrations and not for the wider public.<sup>67</sup> The debate now focuses on whether and how the G20 and the OECD will allow the poorer developing countries, which are not members of either body, to access country by country information about transnational enterprises operating in their own countries.

### **A truly global tax body**

Considering the fact that all countries have a right to participate in decision-making relating to their ability to tax, the United Nations (UN) emerges as the most prominent forum where developing country representation can be ensured. Within the UN, the problems related to the OECD rules, including the OECD Model Tax Treaties and Transfer Pricing Guidelines, could be discussed in a more representative forum.

During the last decade, developing countries and experts have repeatedly proposed the establishment of an intergovernmental body under the auspices of the UN to handle intergovernmental cooperation in tax matters.<sup>68</sup> However, every time this has been proposed, OECD member states have stood in opposition and insisted that negotiations about global tax standards be negotiated within the OECD.<sup>69</sup>

The issue of whether tax-related political processes at the G20, OECD and EU level will be of benefit to developing countries was analysed during a Fact-Finding Mission on Tax and Transparency, which a delegation of experts from developing countries carried out in 2013. The delegation concluded that:

“Some changes are afoot within the area of tax and transparency, but regrettably the ongoing changes seem to be driven by a narrow focus on the problems faced by tax collectors in the US and Europe, not bearing in mind the needs and interests of developing countries. Therefore, there is a high risk that the problems faced by the global south, and in particular the least developed countries, will not be solved.”<sup>70</sup>

In UNCTAD’s Trade and Development Report 2014, the conclusion about the G20 and OECD processes stated: “Because these initiatives are mostly led by the developed economies – some of which themselves harbour secrecy jurisdictions and powerful TNCs [transnational corporations] – there are risks that the debate will not fully take into account the needs and views of most developing and transition economies. It will therefore be important to give a more prominent role to institutions like the United Nations Committee of Experts on International Cooperation in Tax Matters, and consider the adoption of an international convention against tax avoidance and evasion. A multilateral approach is essential because, if only some jurisdictions agree to prevent illicit flows and tax leakages, those practices will simply shift to other, non-cooperative locations.”<sup>71</sup>

The increasing frustrations with the OECD and G20-led process could generate a new momentum for the establishment of a truly global process, and tax and transparency are set to become central issues at the next UN meeting on Financing for Development, which is scheduled to take place in Addis Ababa in July 2015. If the EU and its Member States show constructive engagement in these negotiations it would be an important step forward towards stronger policy coherence for development within the EU.

# Report findings

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## Tax policies

Regional differences in the approach to the tax debate are apparent across Europe. While the debate in the UK, Spain and the Nordic countries has included a significant emphasis on transnational corporations dodging taxes, the debate in countries like Slovenia has focused on fighting the underground economy and greater enforcement of tax rules across the tax system.

These differences cannot simply be explained by differences in the size of the underground economy between the countries in question. Differences in political focus and the level of information available to citizens about issues such as the tax practices of transnational corporations are also very important factors. In some cases, having the debate at all is not easy. In Poland, LLP S.A. tried to shut down the debate by intimidating activists with copyright and libel infringement threats.<sup>72</sup> The same approach was used by the Danish bank, Jyske Bank, towards a civil society representative who said it was immoral that the bank was advising its customers on how to dodge taxes.<sup>73</sup>

Tax practices which can facilitate tax dodging by both transnational corporations and individuals are still being used widely in Europe, in some cases as part of a governmental effort to become "tax competitive". Ironically, there is widespread concern at the same time about losing tax income due to tax dodging facilitated by the tax policies of other countries, and the lack of true intergovernmental cooperation has created a very destructive race to the bottom. One issue that is not receiving much attention is that of ensuring policy coherence for development within global and national tax policies.

European countries generally have a high number of tax treaties, including with developing countries. However, despite several studies proving the risk of negative impacts on developing countries, very few EU governments have carried out, or are planning to carry out a spillover analyses to analyse any potentially negative impacts on developing countries. Among the countries covered by this report, only the Netherlands and Ireland have done – or are working on – a spillover analysis.

## Financial and corporate transparency

When it comes to transparency around the true – or beneficial – owners of companies, trusts and similar legal structures, the regulation varies greatly from one EU country to the other. The situation is also constantly evolving, and new types of structures with anonymous ownership are introduced at the same time as others disappear. Both the Czech Republic and Luxembourg have recently decided to abolish anonymous bearer shares – a construction that has received much international criticism. At the same time, both the Czech Republic and Luxembourg are introducing 'trusts' into their national legislation and are thus providing new options for anonymous ownership that can replace the ones that are disappearing.

This complex situation creates a high number of opportunities for those who are looking for anonymous legal structures to hide or launder dirty money. When it comes to creating transparency around the economic activities and tax payments of transnational corporations, a political commitment from EU governments to introduce country by country reporting for all sectors was never fulfilled and even in the most progressive government – France – the will to move forward seems to be cooling off. Meanwhile, the decision to introduce country by country reporting for banks still stands, and the EU therefore seems to be moving towards a regime where some transnational enterprises, namely banks, will have to adhere to stronger transparency regulation than others.

## Global solutions

A clear finding of this report is that not one of the EU governments covered actively supports the establishment of an intergovernmental body on tax matters under the auspices of the United Nations. Many of the governments are undecided and some are outright against the proposal and find that the OECD should remain the global standard-setter on tax matters.

It is also clear that the OECD Model Convention is viewed as the normal starting point when the governments negotiate bilateral tax agreements, although a few governments are open to considering the use of the UN Model Tax Convention if the co-signing country insists.

## Country findings

See 'Appendix 1' for a key to the following country rating system.

Country	Tax treaties	Ownership transparency	Reporting for transnational corporations	Global solutions
<b>Belgium</b> 	<p>The Belgian tax treaty system has a number of features which are potentially harmful and can have direct negative impacts on the tax revenues of other countries, including developing countries. Although some anti-abuse provisions are in place, their effectiveness is uncertain. On average, Belgium has not been as aggressive as other countries covered in this report in terms of negotiating reductions in tax rates through its treaties with developing countries.</p>	<p>At the EU level, Belgium has not stated a clear position for or against the proposal to introduce publicly accessible registers of beneficial owners of companies, trusts and similar legal structures as part of a new EU Anti-Money Laundering Directive.</p> 	<p>At the EU level, Belgium has not stated a clear position for or against the proposal to introduce public country by country reporting for all sectors. Belgium has also not introduced any domestic legislation that goes beyond the EU requirements</p> 	<p>Belgium does not seem to have a clear position on whether an intergovernmental body on tax matters should be established under the auspices of the UN.</p> 
<b>Czech Republic</b> 	<p>It is not clear whether the Czech government is open to using the UN model when negotiating tax treaties with developing countries. Average rate reductions in treaties with developing countries are significant but below the average for the 15 European countries covered in this report.</p> 	<p>The Czech Republic is generally in favour of transparency but has not yet taken any proactive position as regards the proposal to introduce publicly accessible registers of beneficial owners of companies, trusts and similar legal structures as part of a new EU Anti-Money Laundering Directive.</p>	<p>In the case of country by country reporting, the Czech government is in principle undecided about extending this measure to all sectors, but it prefers a slower approach. The government has, however, not actively blocked progress on the issue.</p>	<p>The Czech government does not support the idea of negotiating global tax policies outside of the OECD, and is therefore supporting the exclusion of the world's poorest countries from the decision-making processes on tax matters.</p>
<b>Denmark</b> 	<p>Denmark includes anti-avoidance clauses in tax treaties when the co-signing state requests it, but does not actively ensure that such provisions are included. Denmark also does not seem to have a clear position for or against negotiating treaties on the basis of the UN model. Of concern, Denmark's treaties with developing countries in general includes reductions in withholding tax rates that are well above the average for the European countries covered in this report.</p> 	<p>Denmark has relatively open national registries of beneficial owners for listed companies accessible both via Central Securities Depository (CSD) and the transnational corporation itself, although verification of this information is not provided. On the issue of the EU Anti-Money Laundering Directive, Denmark supports public access to beneficial ownership information but has not actively championed the issue.</p>	<p>With regard to country by country reporting, the Danish government is supportive of further legislation as a means to combat tax dodging but has not actively championed the issue.</p>	<p>Denmark is clearly and openly opposed to the idea of negotiating global tax standards under the auspices of the UN, and supports the OECD as the leading forum when it comes to making decisions on global tax matters. Denmark is therefore supporting the exclusion of the world's poorest countries from the decision-making processes on tax matters.</p>

Country	Tax treaties	Ownership transparency	Reporting for transnational corporations	Global solutions
<b>France</b> 	<p>France seems reluctant to include provisions which are important for developing countries and prefers the OECD model tax treaty rather than the UN model. Since France has an extremely large treaty network, including a high number of treaties with developing countries that include significant rate reductions, it is important that France actively works to prevent negative spillovers on developing countries.</p>	<p>France has introduced a public registry for the small number of French <i>fiducies</i>, and foreign trusts where French residents participate as trustees, settlors or beneficiaries. France has also been a champion of creating a public administrative registry of beneficial owners as part of the Anti-Money Laundering Directive on the EU level.</p>	<p>France has made significant efforts towards country by country reporting. Firstly, France has adopted specific measures at the French level in the banking sector, with first reports in 2014 and further expansion in 2015. Secondly, France has been proactively working for EU regulation which would subject all sectors to country by country reporting. Recent developments, however, indicate that the government could be back-tracking and there is a real danger that France's leadership on country by country reporting will evaporate.</p> 	<p>France has repeatedly and actively opposed the upgrading of the UN Tax Committee to an intergovernmental body and insists that the intergovernmental negotiations about global tax policies be kept in the OECD. France is therefore supporting the exclusion of the world's poorest countries from the decision making processes on tax matters.</p>
<b>Germany</b> 	<p>Germany has previously pushed for unjust elements, such as narrow definitions on "permanent establishment" and low levels of withholding taxes, when negotiating treaties with developing countries. However, the German government says it has changed its approach and will now use the UN model treaty in negotiations with developing countries.</p> 	<p>Germany does not require reporting of beneficial ownership of Treuhand funds and bearer shares, and therefore support a high level of financial secrecy. The support of EU initiatives has also been weak. The former government blocked further progress in the Council on the establishment of public registries of beneficial owners.</p>	<p>The previous German government hindered negotiations for stricter reporting requirements for companies in the extractive industries on a country by country basis, and was against introducing country reporting information for all sectors.</p>	<p>The previous German government considered that international tax matters should remain at the EU and OECD levels and therefore opposed an upgrade of the Committee of Experts on International Cooperation in Tax Matters to an intergovernmental organ. The former government therefore supported the exclusion of the world's poorest countries from the decision making processes on tax matters. The new government has not yet indicated any change in this position.</p>

Country	Tax treaties	Ownership transparency	Reporting for transnational corporations	Global solutions
<b>Hungary</b> 	<p>It is unclear whether Hungary's treaties in general follow the OECD or UN tax treaty model. Hungary's treaties with developing countries in general contain significant reductions in withholding tax rates, although the reductions fall below the average for the 15 European countries covered in this report.</p> 	<p>Hungary started in 2013 to provide company ownership data, electronically verified, to the public. These are positive steps forward, but beneficial ownership information is still not systematically collected in Hungary according to the latest OECD review. At the EU level, Hungary has not taken a clear position for or against public registries of beneficial owners of companies and trusts.</p>	<p>At the EU level, Hungary has not stated a clear position for or against the proposal to introduce public country by country reporting for all sectors. Hungary has also not introduced any domestic legislation that goes beyond the EU requirements.</p> 	<p>Hungary does not seem to have a position on whether an intergovernmental body on tax matters should be established under the auspices of the UN.</p> 
<b>Ireland</b> 	<p>The Irish government is open to measures which protect the interests of developing countries in tax treaties, but the current practice is that treaties are based predominately on the OECD model and include significant reductions in withholding tax rates above the average for the 15 European countries covered in this report. It is not clear whether Ireland would accept negotiating tax treaties with developing countries on the basis of the UN rather than the OECD Model, but Ireland currently favours the OECD model.</p> 	<p>The Irish government's position has been to support the view that beneficial ownership of companies should be known, and indeed there are already provisions in place which allow for enforcement authorities and company shareholders to identify beneficial owners of companies when required. However, the government has not yet stated whether or not it supports a publicly available register in Ireland nor at the EU level.</p> 	<p>To date, it seems that Ireland will move only when it must move collectively. The Irish government supports the OECD process on Base Erosion and Profit Shifting, which at the moment suggests that information from country by country reporting should not be public.</p>	<p>The Irish government supports the OECD as the lead organisation in international tax policy and has indicated that it supports the OECD in this role, rather than the UN.</p>
<b>Italy</b> 	<p>It is not clear whether Italy would accept negotiating tax treaties with developing countries on the basis of the UN rather than the OECD model. Italy does include anti-abuse provisions in its tax treaties and has not carried out an impact assessment of its treaties on developing countries. The average reduction in withholding tax rates in treaties with developing countries is below the average for the 15 European countries covered in this report.</p> 	<p>Italy has an advanced shareholder transparency system publicly accessible, but there is not adequate verification of this registry at the moment. At the EU level, Italy tolerates the fact that some EU countries would not make their registries of beneficial owners publicly accessible as part of the Anti-Money Laundering Directive.</p>	<p>At the EU level, Italy has not stated a clear position for or against the proposal to introduce public country by country reporting for all sectors. Italy has also not introduced any domestic legislation that goes beyond the EU requirements.</p> 	<p>Italy has taken a position against having an intergovernmental process on tax matters under the UN and instead wants the OECD to continue being the lead organisation in the development of global tax policies. Italy is therefore supporting the exclusion of the world's poorest countries from the decision-making processes on tax matters.</p>

Country	Tax treaties	Ownership transparency	Reporting for transnational corporations	Global solutions
<p><b>Luxembourg</b></p> 	<p>Luxembourg follows the OECD model for negotiation of tax treaties and does not systematically include anti-abuse provisions. Developing countries have previously raised concerns about their tax treaties with Luxembourg, yet despite this Luxembourg does not seem to have plans to do a spillover analysis of its tax treaty system and the potential negative impacts on developing countries. On the positive side, Luxembourg's treaties with developing countries in general only contain minor reductions in withholding tax rates compared to the other European countries covered in this report.</p>	<p>Luxembourg continues to attract international criticism for its failure to ensure the identification of beneficial owners. The government has not stated a clear position for or against the proposal to introduce publicly accessible registers of beneficial owners of companies, trusts and similar legal structures as part of a new EU Anti-Money Laundering Directive.</p>	<p>At the EU level, Luxembourg has not stated a clear position for or against the proposal to introduce public country by country reporting for all sectors. Luxembourg has also not introduced any domestic legislation that goes beyond the EU requirements.</p> 	<p>Luxembourg does not seem to have a clear position on the issue of whether an intergovernmental body on tax matters should be established under the auspices of the UN.</p> 
<p><b>Netherlands</b></p> 	<p>The Netherlands has responded to some of the international criticism of its tax treaty system and has started incorporating anti-abuse clauses. Furthermore, the Netherlands seems open to applying the UN Model in future negotiations with developing countries.</p> 	<p>The Netherlands hosts 12,000 special financial institutions that channel €4000 billion per year. The size of this sector of "mailbox" companies is accompanied by the risk of unknown beneficial owners. However, at the EU level, the Dutch government is not in favour of the establishment of a mandatory publicly accessible register of beneficial owners established as part of the Anti-Money Laundering Directive, but is of the opinion that member states should decide for themselves whether to make this information public or not.</p>	<p>The government is interested in initiatives that promote transparency through country by country reporting and has therefore advocated that the EU Commission investigates the impact of public CBCR for all sectors. However, the Netherlands has not yet worked actively to have country by country reporting introduced for all sectors at EU level. The Netherlands has also not introduced any domestic legislation that goes beyond the EU requirements.</p>	<p>The Netherlands expresses satisfaction with the way both the OECD and the UN currently function, which implies that it does not support intergovernmental negotiations on tax matters taking place under the UN. The Netherlands does, however, not seem to be actively working against this.</p>

Country	Tax treaties	Ownership transparency	Reporting for transnational corporations	Global solutions
<b>Poland</b> 	<p>Poland makes use of provisions from the UN model treaty. Some of the tax treaties, but not all, have specific anti-abuse clauses. In general, Polish tax treaties with developing countries make less use of reduced tax rates than almost all other European countries covered in this report.</p> 	<p>Poland has national registration requirements for keeping records of beneficial owners within the company's own records and notifying the National Court Register. This registration of beneficial ownership does not include the owners of bearer shares. Poland's position as regards the proposal to introduce publicly accessible registers of beneficial owners of companies, trusts and similar legal structures as part of a new EU Anti-Money Laundering Directive is unclear.</p> 	<p>At the EU level, Poland has not stated a clear position for or against the proposal to introduce public country by country reporting for all sectors. Poland has also not introduced any domestic legislation that goes beyond the EU requirements.</p> 	<p>Poland believes the need for establishing a new intergovernmental body under the auspices of the United Nations has to be analysed.</p>
<b>Slovenia</b> 	<p>Slovenia follows the OECD model treaty when negotiating tax treaties. Slovenia includes anti-abuse provisions in its tax treaties, but in some cases also includes very low rates of withholding taxes. On average, however, Slovenia's reduction of withholding tax rates in its treaties with developing countries is comparable with the average for the 15 European countries in this report.</p> 	<p>Slovenia collects data on beneficial ownership, although ownership information is in some cases lacking for foreign companies and foreign partnerships. The information is not publicly available. Indications are that Slovenia supports further EU regulation based on the strong domestic angle on ending tax dodging. Slovenia does not, however, seem to have been actively championing this issue at the EU level.</p>	<p>At the EU level, Slovenia has not stated a clear position for or against the proposal to introduce public country by country reporting for all sectors. Slovenia has also not introduced any domestic legislation that goes beyond the EU requirements.</p> 	<p>It is unclear what the position of the Slovene government is on whether an intergovernmental body on tax matters should be established under the auspices of the UN.</p> 
<b>Spain</b> 	<p>Spain negotiates tax treaties following the OECD Model Convention. The Spanish treaties normally include anti-abuse clauses to avoid "treaty shopping" and "rule-shopping", but it is unclear whether they protect against negative impacts of the Spanish tax policies. On average, Spain has reduced the withholding tax rate with 5.2 percentage points in treaties with developing countries, by far the largest reduction among the 15 European countries covered in this report.</p>	<p>Public information regarding company ownership is available, but only for shareholders above 5 per cent of the company. Spain has previously supported the establishment of a registry of beneficial owners as part of the Anti-Money Laundering Directive. However, Spain has argued against public access to the registry.</p>	<p>Spain has not implemented national measures towards country by country reporting, despite the fact that banks and IBEX35 companies operating in Spain have a high number of subsidiaries in tax havens. Spain supports OECD and EU-level initiatives, but wants the information to be confidential to the public. Spain has however not yet actively blocked progress on public country by country reporting at the EU level. If Spain decides to actively start working against public country by country reporting for all sectors at the EU level, the country would fall to the red light category.</p> 	<p>Spain is against the creation of an intergovernmental body on tax matters under the UN and is therefore supporting the exclusion of the world's poorest countries from the decision making processes on tax matters.</p>

Country	Tax treaties	Ownership transparency	Reporting for transnational corporations	Global solutions
<p><b>Sweden</b></p> 	<p>Swedish tax treaties differ a lot between each other. Some have anti-abuse clauses. It is not clear whether Sweden primarily follows the OECD model or the UN model when negotiating tax treaties with developing countries. Sweden's treaties with developing countries in general contain tax rate reductions that are well above the average for the 15 countries covered in this report. This is of concern.</p>  	<p>Although the information is collected, Sweden does not have a public registry of beneficial owners of companies and trusts. The former Swedish government supported in general terms measures to increase transparency but believed it should be up to each member state to decide how they should be designed and whether they should be public.</p>	<p>The former Swedish government did not support EU regulation introducing an obligation for all transnational enterprises to carry out country by country reporting. Sweden has, however, not yet actively blocked progress on public country by country reporting at the EU level.</p>	<p>Sweden does not seem to have a clear position on whether an intergovernmental body on tax matters should be established under the auspices of the UN.</p> 
<p><b>UK</b></p> 	<p>While the UK does appear to have been receptive to some developing country demands in tax treaty negotiation processes, the default position is to follow the OECD Model and eliminate withholding taxes. Among the 15 European countries covered in this report the UK has negotiated the second highest average reduction in withholding tax rates in its treaties with developing countries - quite alarming given its wide network of treaties with these countries. This goes against the aims that the UK Government claims to have as regards assisting developing countries to increase and improve domestic revenue mobilisation.</p>	<p>Domestically, the UK has decided to introduce a public register for the beneficial owners of companies, which is a major positive sign and a first among the countries covered in this report. Furthermore, the UK has championed the idea of public registers of beneficial owners to be introduced EU-wide. However, when it comes to a public registry for owners of trusts, the UK is a strong opponent. This unwillingness of the UK to move significantly on trusts appears likely to hinder any agreement on public registries of companies at the EU level which would otherwise represent a major breakthrough in transparency across Europe.</p>	<p>When the EU in early 2014 considered introducing country by country reporting for all sectors, the UK was the strongest opponent and in the end managed to block the initiative.</p>	<p>While the UK on several occasions has referred to the need to find global solutions on tax reforms that also work for developing countries it is unclear what the government is willing to do to achieve this. Specifically, it is unclear if the UK supports upgrading of the UN tax committee.</p> 

# Recommendations to EU member states and institutions

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

- Adopt EU-wide rules to establish **publicly accessible registries of the beneficial owners** of companies, trusts and similar legal structures. The EU negotiations over revisions to the Anti-Money Laundering Directive, which are now close to conclusion, provide an important window of opportunity to establish such registries.
- Adopt **full country by country reporting for all large companies and ensure that this information is publicly available**. This reporting should include:
  - 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, purchases and labour costs.
  - The assets i.e. all the property the company owns in that country, its value and cost to maintain.
  - The number of employees in each country where it operates.
  - Tax information i.e. full details of the amounts owed and actually paid for each specific tax.
- Carry out **spillover analyses** of national tax policies, in order to assess the impacts on developing countries and **remove policies and practices that have negative impacts** on developing countries in order to strengthen policy coherence for global development.
- 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 a lack of administrative capacity.
- Undertake a rigorous study jointly with developing countries, on 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.
- 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 existing 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.
- All EU countries should publish an **impact assessment of their special purpose entities** and similar legal constructions, as well as **data showing the flow of investments** through such entities in their countries.
- Ensure that **special purpose entities** and similar legal constructions cannot be abused for tax purposes by introducing sufficiently strong substance requirements for all such entities. The General Anti-Abuse Rule as proposed by the European Commission in its Recommendation on Aggressive Tax Planning in December 2012 could serve as a guideline for defining the right level of substance requirements.
- When negotiating tax treaties with developing countries, EU countries 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.



*Campaign action during the European parliamentary elections urging companies to pay their taxes.*

# Belgium

**‘The only result of this fiscal race to the bottom is the fact that all public spending is paid by the group that is controllable and taxable. It is a problem in our country, but even worse in developing countries where the main revenues are in value added which the government has no hold on.’**

*John Crombez, former state secretary on fraud, 12<sup>th</sup> April 2014<sup>74</sup>*

## General overview

In recent years, following increased international attention, tax evasion and avoidance have risen up the agendas of both the media and policy makers. Policy makers have focused mainly on domestic tax fraud by both individuals and companies. The Belgian government introduced a state secretary to combat tax-related fraud who reports directly to the prime minister’s office, highlighting the importance of this issue.

Since early October 2014, Belgium has a new centre-right government. An initial analysis of the coalition agreement shows that the government retains several tax regimes that could potentially facilitate international tax dodging and proposes measures that may create new possibilities for misuse. These include expanding the leeway for tax rulings and the limitation of the ‘catch all clause’ for non-residents that was introduced to tax payments to entities in countries that have no double taxation agreement with Belgium.<sup>75</sup>

A striking new measure is the introduction of a so-called ‘Caymantax’, meant to tax the virtual income of beneficiaries of offshore entities in tax havens.<sup>76</sup> Although this measure is promoted as a way to increase the tax contribution of those that hold capital offshore, there are concerns it will amount to a sort of amnesty for past and current tax fraud. How the government will position itself in international discussions on measures to enhance financial transparency, and curtail cross-border tax dodging, remains to be seen.

## Tax policies

### Potentially harmful tax practices

The Belgian government boasts of being ‘highly competitive when it comes to company taxes’<sup>77</sup> and, according to the

ministry of economy, one of the top 10 reasons to invest in Belgium is its ‘competitive tax regime’. Numerous corporate tax deductions are available for foreign investors, and this – as well as the tax ruling system – has led to the current situation in which the effective corporate tax rate for transnational companies is 9%. This is significantly lower than the nominal rate of 33% and the effective rate domestic small and medium-sized enterprises (SMEs) are paying (21%).<sup>78</sup> Three aspects of the Belgian corporate tax regime are particularly relevant and potentially facilitate corporate tax dodging:

### Notional interest deduction (NID)

The so-called ‘notional interest deduction’ enables companies subject to Belgian corporate tax to deduct from their taxable income a fictitious interest calculated on the basis of their shareholders’ equity. The rationale behind this measure was to eliminate the fiscal discrimination between debt and equity financing in order to promote capital-intensive investments in Belgium and attract transnationals to allocate activities such as intra-group financing, central procurement and factoring to a Belgian group entity.<sup>79</sup> The system is controversial as its fiscal cost totalled more than €21 billion between 2006 and 2010<sup>80</sup> and mainly attracted corporations without any additional employment in Belgium. The system has been described as a ‘weapon of mass destruction for foreign tax administrations’ as it mainly benefitted French companies using Belgium to avoid taxes.<sup>81</sup> It could be discriminatory to SMEs with difficult access to equity finance. So far the OECD has not regarded the NID system as a ‘harmful tax practice’.<sup>82</sup> Recently, however, international pressure against the system seems to be increasing in the context of discussions about base erosion and profit shifting. A recent study by the European Commission found that “[Belgium’s] indirect reduction of the corporate tax burden through a lax anti-avoidance framework, may have unintended consequences, impairing the performance, the stability and the same acceptability of the system”<sup>83</sup>. Media reports<sup>84</sup> of systemic abuse has convinced the outgoing government to impose a ‘fairness tax’<sup>85</sup>, which means that large corporations are subject, even when they reserve profits, to a tax (5.15%) on distributed dividends. The outgoing government has also made some incremental adjustments to the system such as limiting the transferability of the benefits in time.<sup>86</sup> However, this only partially mediates the negative implications of the NID system, not least since the ‘fairness tax’ is still relatively low. On the positive side, it is an example of a minimum tax for transnational corporations – something which civil society has long been calling for.

### **Definitively taxed income**

When a company holds stock of another company, it may receive compensation in the form of dividends. These revenues are already taxed through corporate tax. To avoid double taxation, 95% of these dividends are exempt. Despite its apparent bonafide objective, the system of 'definitively taxed income' is misused by large corporations and transnational companies in Belgium to artificially cut down their tax bill. Currently, deductions through this system amount to more than €20 billion, meaning the treasury missed out on €6.1 billion in 2010 if these dividends had been taxed at the average rate.<sup>87</sup>

### **The Belgian patent box**

Since 2008 the Belgian government introduced a patent income deduction (PID). The PID grants an 80% 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%. This 6.8% 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 research and development investment deductions or tax credits and the notional interest deduction.<sup>88</sup> The PID is aimed at promoting innovation and skilled labour, but may create incentives for transferring intellectual property portfolios for tax purposes. In recent years, several European governments have repeatedly called upon the EU to curtail such tax breaks.<sup>89</sup>

### **Tax treaties**

Belgium has an extensive network of tax treaties with 90 currently in force, of which 47 are with developing countries.<sup>90</sup> Of the 15 European countries covered in this report only four have more treaties with developing countries than Belgium.<sup>91</sup>

Belgium's model treaty<sup>92</sup> contains at least three features that appear to facilitate aggressive tax planning. Firstly, taxation on movements of dividends are generally limited to 15% (art. 10 of the model treaty) but the rate can be 0% if the beneficiary company controls at least 10% of the distributing company. The model includes an anti-abuse provision, but it is doubtful whether this clause is effective.<sup>93</sup>

Secondly, taxation of movement of interests (art. 11) is limited to 10%, but the maximum rate can be lowered to 0% if both borrower and lender are companies. This may be an incentive for "thin capitalisation", in which taxable profits are lowered by accumulating debt in high-tax jurisdictions and paying off the debt to subsidiaries in low-tax jurisdictions. In this case an additional anti-abuse clause limits tax benefits to interest repayments that are not at "arm's length" (i.e. the level of interest that non-related parties would have accepted. Such a limit aims to cap the amount of profits that can be shifted through intra-company interest payments on loans – a very common profit-shifting method). The effectiveness of this provision can be questioned, particularly for developing countries experiencing difficulties finding "comparables" to determine what is at arm's length and what is not.

Finally, the taxation of movement of royalties (art. 12) is forbidden, which could facilitate tax planning tactics routinely used not only in the IT sector<sup>94</sup>, but also in the consumer goods sector.<sup>95</sup>

No consideration of any kind appears to be officially sanctioned in terms of assessing the potential negative impacts of this on developing countries, nor adapting these policies to avoid such harmful impacts.

While Belgium's model treaty has several problematic aspects it is worth noting that Belgium in general does better than most when it comes to avoiding using tax treaties to negotiate lower withholding tax rates with developing countries. Whereas the 15 countries covered in this report on average have negotiated a reduction of 2.8 percentage points from the withholding tax rates of the developing countries for which they have a treaty with, Belgium has only negotiated an average reduction of 1.5 percentage points, the third lowest among the 15 countries.<sup>96</sup>

## Financial and corporate transparency

### Banking secrecy

Belgium has long defended its banking secrecy.<sup>97</sup> Because of the principle of confidentiality of financial information, Belgium has refused to request or provide information to jurisdictions with which it has signed a tax treaty. In 2005 Belgium – together with Austria and Luxemburg – refused to adopt the exchange of information regime provided by the EU's Tax Savings Directive and preferred to adopt a withholding tax regime. Belgium was authorised to adopt a withholding tax on interest income that is paid to individual savers resident in other EU Member States. Until 2009, Belgium maintained certain reservations to article 26 of the OECD model tax convention requiring exchange of information and was on the 2009 'grey list' of the OECD for not being fully compliant with the standard for exchange of information on request.<sup>98</sup>

This resistance to transparency has become more difficult to sustain as a consequence of international pressure. In January 2010, Belgium decided to stop applying the transitional withholding tax and to exchange information instead.<sup>99</sup> To move to the OECD Global Forum's 'white list' Belgium started signing 'tax information agreements', including with jurisdictions with which it had not signed a tax treaty.

Nevertheless, Belgium still maintains certain provisions in internal law that prevent the effective deconstruction of its banking secrecy. Currently, Belgian law still does not allow tax officials to simply request financial institutions to provide information on account holders for tax purposes, and officials have to go through a very tedious procedure to monitor compliance. Belgium does not have a complete database of its taxpayers' income and does not know how wealth is distributed among its population. Moreover, in light of international agreements on exchange of information, Belgian tax administrators only have access to banking information on behalf of other jurisdictions and not on behalf of the Belgian government. Nor can it put the information exchanged by other jurisdictions to domestic use. This leads to a much criticised situation – including by the Belgian Supreme Administrative Court – whereby the Belgian tax authority has more information on Belgian taxpayers holding accounts abroad than on domestic account holders.<sup>100</sup> To increase financial transparency as a first prerequisite to a fair and equitable tax system that curtails tax dodging by transnational corporations, Belgium should urgently provide a fiscal database of income and capital as it currently stands for wages.

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### Box 2: A clear case of policy coherence: New rules for the Belgian Development Finance Institution (BIO-Invest)

Like most Development Finance Institutions, including the World Bank's IFC and the EU's EIB, the Belgian public agency specialised in commercial investments in developing countries (BIO) routinely invests massive amounts of money in investment funds located in notorious tax havens such as the Cayman Islands and Mauritius.

However, following a major national public debate triggered by research published by 11.11.11<sup>101</sup>, a new law regulating BIO has been adopted.<sup>102</sup> The law excludes investments structured in jurisdictions that a) refuse to negotiate automatic information exchange agreements with Belgium after 2015; b) have not successfully passed phase 1 and 2 peer reviews of the OECD's Global Forum on Transparency and Exchange of Information for Tax Purposes and have been labelled as 'non-cooperative' for more than one year; and c) countries that levy a corporation tax at a nominal rate which is less than 10%.

At this stage, investments in Luxembourg, Switzerland and the Cayman Islands appear to be forbidden, and BIO seems to have a concrete plan to withdraw from these jurisdictions by 2017. Investment funds in Mauritius however, although they are commonly known to specialise in aggressive tax planning in Africa and India, can continue to benefit from BIO's investments.

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## EU solutions

In its new banking law, Belgium has transposed the EU's new Capital Requirements Directive, including the provisions on country by country reporting for the financial sector, into Belgian law.<sup>103</sup> Belgian banking regulation, however, seems to contain a loophole. While the European Directive requires publication of the names of all the banks' entities in third countries, the Belgian law allows banks to report on their most important entities or subsidiaries. Reporting on paid taxes and subsidies received has yet to be transposed into Belgian law.<sup>104</sup>

As regards the EU negotiations around introducing public registries of the real – or beneficial – owners of companies, trusts and similar legal structures, Belgium's position is not very clear. The compromise position favours a central register in each Member State that, 'recognises the importance' of initiatives strengthening public access to these registries while at the same time stressing the need to respect confidentiality.<sup>105</sup> Also when it comes to the question of introducing country by country reporting for all sectors in the EU, Belgium has not publicly expressed a clear position or worked for or against increased transparency.

## Global solutions

As previously mentioned, Belgium has not positioned itself at the forefront of the international political movement to tackle tax dodging by transnational corporations in the wake of the 2009 G20 summit in London. Belgium is, however, changing its position and has joined the automatic tax information exchange system of the EU Savings Tax Directive and is now a part of the group of "early adopters"<sup>106</sup> that have declared their commitment to the implementation of the new OECD standard of automatic exchange. Although these are positive developments, Belgium lacks an explicit commitment and a clear strategy for coordinated and coherent policies to tackle fraud, evasion and aggressive tax planning.

Belgium does not appear to have a specific position on whether and how poor developing countries should be allowed to participate in automatic information exchange. Regarding the question of whether global tax policies should be negotiated within the auspices of the United Nations, Belgium doesn't appear to have taken a clear position.

## Conclusion

In response to international and national criticism, the outgoing government made some laudable changes to Belgium's corporate tax policies. However, when it comes to taxation of transnational corporations, Belgium still has a number of worrying policies in place which could potentially be harmful, not least to developing countries.

On the positive side, as regards Belgium's resistance towards exchange of information for tax purposes, Belgium has responded positively to previous concerns and improved its position. The same goes for the domestic outcry over B10's links to tax havens, which has also led to improvements.

# Czech Republic

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**‘We must create an atmosphere so that people, entrepreneurs and multinationals will be proud to pay taxes in the Czech Republic.’**

*Andrej Babiš, Minister of Finance at a press conference, 19 March 2014<sup>107</sup>*

## General overview

The new government in the Czech Republic appointed in January 2014 has chosen the fight against tax evasion as one of its top priorities. However, the main focus is on tax fraud relating to value added tax and consumption tax, particularly in relation to fuels (i.e. gasoline, diesel and industrial alcohol). Meanwhile, tax evasion relating to corporate and individual income – and the international dimension of tax evasion – have not yet featured prominently on the national agenda.

As far as the tax agenda at EU and global level is concerned, the Czech Republic is open to discussion about public registries of beneficial owners and country by country reporting for companies, but it will not put a lot of weight behind these issues. As far as global tax negotiations are concerned, the Czech government fully supports the OECD as the lead forum and therefore does not believe that the issue should be negotiated at the UN level.

## Tax policies

### Potentially harmful tax practices

Electronic versions of the annual reports of companies are available in the Czech Republic and are freely accessible through the public registry of companies established at commercial courts.<sup>108</sup> A brief analysis of the annual financial reports of major transnational companies operating in the country shows that many of them use so-called ‘deferred tax’ allowances, which allows them to postpone payable taxes. However, unfortunately, real tax payments from companies to the tax authority are not publicly available.

The view of the new (appointed on 29 January 2014) centre-left government on tax dodging is ambiguous. On the one hand the coalition government declares that fighting tax evasion is one of its top priorities. On the other hand the same government considers taxes as one of the key drivers to improve competitiveness.<sup>109</sup>

As well as tax incentives in the form of income tax relief, investors can receive support in the form of transfer of land at favourable prices, job creation grants, training and retraining grants and cash grants on capital investments in cases of strategic investments.<sup>110</sup> Most of these incentives seem to be connected with real business activities in the Czech Republic, and they often create real jobs.<sup>111</sup> Therefore, these incentives do not seem to be purely an issue of tax speculation. However, the Czech government should conduct a closer analysis of the real benefits and costs (not only fiscal) of tax exemptions. The latest analysis prepared by Deloitte is already almost five years old.<sup>112</sup>

In a study published in 2010 by the Ministry of Finance, the annual investment tax incentives for companies were estimated at just over 2 billion Czech Republic Koruna (CZK) (approximately €75 million).<sup>113</sup> The maximum amount of state incentives is limited by EU regulation and, in the case of the Czech Republic, it is 25 per cent of total eligible costs.<sup>114</sup>

### Special purpose entities

The Czech Republic does not have a definition of a Special Purpose Entity (SPE), but the characteristic of a special purpose vehicle is to some extent fulfilled by certain transactions in the property market. As stated in a Czech law firm’s documents from 2012: “Parties often try to avoid real estate tax liability by transferring ownership interests (shares) in a special purpose vehicle (i.e. a limited liability company) holding real estate property rather than transferring the property directly.”<sup>115</sup> However, this example documents the use of SPEs for domestic rather than international tax avoidance purposes.

Czech authorities do track some SPE-related investments. CzechInvest, an investment promotion agency, differentiates in its statistics between expansions, namely re-investments of companies already present in the Czech Republic, and new investments in the Czech Republic, to better understand the impact of foreign direct investment (FDI) in the country.

## Efforts to combat tax dodging

The government is, on the other hand, ready to tighten rules regarding tax havens, as it declares that “payments by legal and natural persons to entities in tax havens shall be subject to special reporting obligations... tax havens (or the relevant jurisdictions) shall be defined by a decree of the Ministry of Finance (a ‘blacklist’)...breach of this obligation shall result, among other things, in the automatic loss of the tax deductibility of the cost paid.”<sup>116</sup> So far no blacklist of tax havens has been released. The Ministry of Finance still defines a tax haven as a jurisdiction that has not concluded a tax treaty or an agreement for the exchange of information on tax issues with the Czech Republic.<sup>117</sup> As explained in the previous chapters, tax treaties can be abused to facilitate tax dodging, and therefore a lack of tax treaties does not seem like an effective approach to identifying secrecy jurisdictions and tax havens.

## Tax treaties

The Czech Republic has 82 tax treaties in force, of which 39 are with developing countries.<sup>118</sup> The Ministry of Finance is clearly interested in collecting better tax information from other countries and has declared the intention of increasing the number of treaties related to the exchange of information with new jurisdictions, especially with those known as “former tax havens”,<sup>119</sup> while at the same time updating older treaties in order to include exchange of information articles according to the OECD model and EU trends.<sup>120</sup>

In the majority of cases, tax treaties allow companies to pay a lower withholding tax rate on dividends, interest and royalties. In several cases the rate is as low as zero.<sup>121</sup>

In general the Czech Republic has reduced the withholding tax with its developing country treaty partners by 2.4 percentage points, slightly below the average reduction for the 15 European countries covered in this report.<sup>122</sup>

## Financial and corporate transparency

The situation in the Czech Republic is ambiguous in terms of financial transparency. On the positive side, one harmful practice – bearer shares<sup>123</sup> – used by some companies to hide real owners, were finally banned by a law that became valid on 1 January 2014. By 1 July, the transitional period during which all bearer shares had to be either transferred to shares “on name” or registered in a central or bank depository, had expired. However, according to estimates, 11,000 companies – or about 44 per cent of the Czech companies that had bearer shares – have not yet arranged their ownership

relations in accordance with the new law.<sup>124</sup> The high number of companies using bearer shares also raises the suspicion that many of these companies were not established for real business purposes, but to hide their owners, which is again an indication that the companies might have been abused for illicit purposes.

## New secrecy initiatives

On the negative side, the New Civil Code, effective from 1 January, introduces trust funds as a new legal entity. They do not have to be registered, the settlors remain anonymous, and they do not have to provide any official domicile. The general public is not engaged in the debate, but the fact that experts have raised critical voices<sup>125</sup> gives hope that the trust fund legislation could eventually be overturned. If the government takes its priorities on transparency and the fight against tax evasion seriously, it should revise the current legislation on trusts, which is clearly in favour of anonymous structures.

## EU solutions

Despite a positive attitude towards stronger regulation in the EU, and the increased attention given to tax evasion, the Czech government does not seem to have become much more proactive over the past year, judging also from the current state of play of negotiations at the EU level. Concerning a public registry, government officials have informally discussed some of the practical details, for instance about updating the registry. They have also discussed political issues, such as inclusion of trusts in the registry, which is opposed by the UK. However, they also tend to say that the position is very likely to evolve during upcoming months, especially during the negotiations to reach a compromise both in the Council and with the European Parliament.<sup>126</sup>

The Czech government sees country by country reporting as a very complex and ambitious project. Therefore, it needs to be based on an analytical and comprehensive approach including evaluation of the results from sectors that are already obliged to report in such a way.<sup>127</sup> This position is problematic because it will in reality be an argument for delaying EU action, and therefore prolong the period of time during which transnational corporations can avoid taxation. This could end up costing societies large sums of money, in the EU as well as in developing countries.

## Global solutions

Regarding international tax negotiations, the Czech government supports the continuation of negotiations led by the OECD, and is not enthusiastic about taking this agenda to the UN level.<sup>128</sup>

It is supportive of one global standard of automatic exchange of information, but the government at the same time insists that information should only be shared with countries that can provide the same type of information in return (reciprocity).<sup>129</sup> This would in reality mean that many developing countries, in particular the poorest countries, will not be able to participate in the exchanging of information, and thus they might not be able to collect the information they need to ensure proper tax collection in their countries.

## Conclusion

Although tax evasion is taken much more seriously by the new government in the Czech Republic, a recognition of the links to the EU and global agenda is still missing. The newly-created trust fund structure under Czech law undermines the current system that until now has tried to clamp down on aggressive tax avoidance or secrecy. This partial approach is also visible in the Czech Republic's approach to the tax agenda within the development context. The ability of developing countries to raise taxes is considered very important but beyond the reach and capacities of Czech foreign policy, which tends to support the leadership of the OECD in this matter. In conclusion, the Czech Republic does not see itself as an international champion on this issue, but considers it increasingly important on the political agenda.

# Denmark

**'In the public sector we have to save every penny we can to be able to afford our bills. That is why I see tax avoidance as a provocation.'**

*Prime Minister Helle Thorning-Schmidt<sup>130</sup>*

## General overview

Tax evasion and avoidance have attracted a huge amount of media attention in Denmark in the past year. A lot of public debate was created by the government's sale of 19 per cent of shares in Denmark's largest and publicly-owned energy company DONG to Goldman Sachs, which had created complex company structures in Luxembourg and the Cayman Islands to avoid paying tax on future passive income on assets from Denmark. This outraged the Danish public<sup>131</sup> and ultimately caused one of the three parties in government to step out of the coalition.

The Danes' strong opinion on tax evasion and avoidance is also reflected in a recent survey commissioned by ActionAid Denmark showing that four out of five Danes believe that it is irresponsible for transnational companies doing business in a developing country to try to avoid paying tax in that country, even if the companies use methods that are completely legal.<sup>132</sup>

At the same time, the eighth Minister of Taxation over a period of just three years has been appointed and the tax authorities have experienced severe cuts in budgets and staff. This has resulted both in a lack of coherence, quality and long-term vision within the tax ministry and tax authorities, and in the fact that it is now easier for corporations to evade taxes in Denmark, as a recent analysis shows.<sup>133</sup> This has fuelled mistrust in public opinion around tax payments, the tax system and tax authorities, which is unusual for Denmark.<sup>134</sup>

## Tax policies

### Taxation of transnational corporations

In public statements, the Danish government has said that fighting tax dodging is a high priority.<sup>135</sup> The Danish tax authorities have also started pursuing legal cases against companies with the same structure as the one that Goldman Sachs set up. The aim of this work is to prevent companies from using Luxembourg-based shell companies to circumvent Denmark's 27 per cent tax on dividends.

### Potentially harmful tax practices

Following another documentary,<sup>136</sup> which showed that Danish Limited Partnerships are being used for tax dodging, the government announced that they would conduct a review of those companies that could be used for harmful purposes.<sup>137</sup>

This environment is not new and has been under scrutiny since the 1990s.<sup>138</sup> The Danish Tax Authorities have introduced rules that have closed some loopholes and have made it more difficult to create special purpose entities (SPEs). According to the Danish Ministry for Growth and Business, Denmark does not in fact have any form of SPEs today, and neither does Denmark allow for the establishment of SPEs or any other special tax regime that provides a reduction to, or exemptions on, passive income such as capital gains, interest, royalties or dividends.<sup>139</sup>

However, even though tax legislation has improved since the 1990s, the denial by the Danish Ministry of Growth and Business of the existence of SPEs should be questioned. According to the Financial Secrecy Index, SPEs are partly allowed in Denmark.<sup>140</sup> Brazil has placed Denmark on its list of privileged fiscal regimes, due to Danish holding companies that "do not exercise a substantive economic activity", meaning that the Brazilian Federal Tax Authority can impose withholding taxes on transactions to Danish holding companies.<sup>141</sup> The UN Conference on Trade and Development (UNCTAD) World Investment Report 2013 also shows that foreign direct investments (FDIs) in Danish holding companies increased considerably from 1996 to 2011.<sup>142</sup>

According to the Danish Tax Authority, Denmark does not have incentive structures or benefits relating to FDIs<sup>143</sup> and does not offer foreign corporations risk-free tax planning opportunities, such as an Advance Pricing Agreement or an Advance Tax Ruling. On the other hand, the Danish Ministry of Foreign Affairs promotes Denmark as the perfect place to do business, and in particular to site regional headquarters. To illustrate this, the Danish Ministry of Foreign Affairs clearly promotes establishing companies with no residency requirement by stating: "No resident requirements for management, including members of the executive Board, Board of Directors or Supervisory Board."<sup>144</sup>

## Tax treaties

Denmark is promoted as a country that has a high number of tax treaties, with 85 tax treaties in force with countries all over the world. Of these, 36 are tax treaties with developing countries.<sup>145</sup> Denmark does not plan to negotiate any further tax treaties with developing countries in the next few years.<sup>146</sup> In a number of tax treaties, it has allowed the co-signing country to levy a withholding tax on dividends, interest and royalties on the condition that this is a part of the general policy of the co-signing country.<sup>147</sup> Denmark also levies a 25 per cent withholding tax on outgoing royalties, interest and 27 per cent on dividends.<sup>148</sup> In general, Denmark seems to be very active in using tax treaties to negotiate lower withholding tax rates with its developing country treaty partners. On average, the withholding tax rates in Denmark's treaties with developing countries are 3.6 percentage points lower than the statutory rates in these developing countries. This is well above the average reduction of 2.8 percentage points for the 15 European countries covered in this report and points to a potential risk of undermining revenue mobilisation in the developing countries that Denmark has treaties with.

As certain types of capital taxation do not exist in Denmark, such as net wealth tax, share transfer tax and capital duties,<sup>149</sup> there is also a risk that the Danish system can be abused to dodge taxes in other countries. It does have anti-abuse clauses in tax treaties,<sup>150</sup> but they have been included because the co-signing country has insisted upon it.

Despite these risks, Denmark has not made any impact assessments of Danish tax policies on development or poverty eradication. However, the Danish Ministry of Taxation says that it ensures tax treaties are aligned with developing countries' priorities, by having negotiations similar to those with any developed country.<sup>151</sup> It might be questioned whether having negotiations between the signatories of a treaty automatically ensures that the agreement is balanced and equal, especially if neither Denmark nor the developing country partner perform an impact assessment of the treaty under negotiation. Furthermore, power relations linked to trade issues or donor-recipient relations might interfere with the negotiations.

## Impacts on developing countries

The Danish government has started to include tax issues in its work on Policy Coherence for Development (PCD).<sup>152</sup> The Ministry of Taxation is therefore now involved in an initiative to ensure that Danish and European tax legislation do not undermine development in the global south. The plan makes it clear that the government will work for better international tax rules through the EU and OECD, and this is a very positive step. Unfortunately, however, the plan is silent on the issue of domestic initiatives, such as spillover analyses of its tax system and tax treaties.

## Financial and corporate transparency

At the Central Business Register, it is possible to find the annual financial report for each corporation operating in Denmark.<sup>153</sup> The information about the value of subsidies is not provided in the register.<sup>154</sup> For listed companies, information at the Central Securities Depositories (CSD) is open to the public under certain conditions, unless the CSD is located outside Danish territory. Also, company headquarters need to provide lists of shareholders to members of the public. However, competent public authorities do not verify this information and foreign shareholders (or Danes hiding behind foreign shell companies) can hold shares via nominee accounts.

The Danish government is not currently collecting information on the beneficial ownership of companies, trusts and other legal structures. However, it does plan to collect information on beneficial ownership of companies and make it available to the public starting from the end of 2014. It is not planning to do this for foundations and similar legal structures.<sup>155</sup>

## EU solutions

Although Denmark is supportive regarding ongoing EU negotiations about the Anti-Money Laundering Directive, the government believes that national governments should be able to decide which kind of mechanism they want to apply. This does not necessarily have to be a registry held by the government. In terms of country by country reporting, the Danish government is supportive of further legislation as a means of combating tax dodging,<sup>156</sup> but does not seem to be championing this proactively.

## Global solutions

The Danish Ministry of Taxation believes that the tax agenda should be kept within the OECD, arguing that the UN Committee of Experts on International Cooperation in Tax Matters lacks the funds to be able to do the job as well as the OECD bodies. By taking this position, Denmark does not seem to recognise that the level of resources available to international bodies is in fact a result of political decisions taken by their member states. Therefore, there is nothing preventing member states from providing more resources to the tax work of the UN.

## Conclusion

The Danish authorities and ministries consulted while preparing this report all seemed positive towards many initiatives taken during the last couple of years to combat tax evasion and avoidance. However, Denmark's large amount of tax treaties and the advantageous tax holding company regime has – in some cases – made it possible for foreign companies to use Denmark as a holding company jurisdiction without incurring withholding taxes at any stage. The Danish Tax Authority must acknowledge this risk of harmful tax practices being promoted by Danish legislation and carry out impact assessments of its tax regime on developing countries.

In general, the perspective of developing countries is not in evidence in Danish tax policies, even though Denmark has recently developed a plan for PCD. Both domestically, internationally and in the EU, Danish politicians should take a proactive role in the fight against tax-related capital flight from developing countries. As part of this fight, Denmark should acknowledge that developing countries have a right to participate as equals in the decisions about global tax standards and policies, and thus there is a need for a more representative and legitimate international body to negotiate such agreements.

Denmark's transparency on company ownership is better than in many other countries. However, the fact that foreign owners can use nominee shareholders is a serious loophole that needs to be closed.

Fortunately, tax dodging is high on the agenda both in the media and politically in Denmark, which is likely to create an impetus for improvements at national and international levels.

# France

**‘French banks will have to publish annually a list of all their subsidiaries around the world, country by country (...) I want this obligation to also be applied at the level of the European Union and, tomorrow, extended to large companies.’**

*François Hollande, President<sup>157</sup>*

## General overview

The public debate concerning tax avoidance and evasion has been very active. Attention has focused on both transnational enterprises such as Google and Amazon – as they have a significant presence in France – and French residents including MPs and members of the government, hiding assets in Switzerland and other offshore jurisdictions. French companies operating in developing countries, especially extractive companies such as Areva and Total, have also featured in the public debate due to civil society campaigning efforts. However, this issue seems to be of less interest to the government, notably because of its concerns about French companies’ competitiveness.

## Tax policies

### Taxation of transnational corporations

In the absence of systematic country by country reporting for transnational corporations, financial information regarding the activities of companies in France has to be found through the corporate registry – the Commercial Company Registry (Registre du Commerce et des Sociétés) or Orbis, a database that compiles information from publicly available accounts. It is difficult to understand the exact financial results and the taxes of large international groups and there are great disparities between different companies.

It is of concern that a recent report by the French Senate has found that the effective tax rates of transnational groups is still much lower than the tax rate paid by small- and medium-sized enterprises.<sup>158</sup> In 2013, a provision was adopted into French Finance Law to reinforce the concept of abuse of rights (abus du droit), which is applied to limit the abuse of existing laws. It allowed challenges to tax planning schemes, not only if these were made exclusively for tax purposes, but also if they were made predominantly for tax purposes. This provision was rejected by the Constitutional Court in December 2013 but will probably be reintroduced this year by parliamentarians.<sup>159</sup>

There is also an interesting legal provision that makes Controlled Foreign Companies rules mandatory in all territories where corporate income tax is less than 50 per cent of the rate in France. It is up to the company to prove it has substantial activities in those low-tax jurisdictions.<sup>160</sup> However, the Government is yet to take the important step of defining those low-tax territories in order to facilitate the administration of this law.

### Potentially harmful tax practices

France is not generally a jurisdiction used in tax planning structures, because its tax system does not permit conduit features that lack economic substance and other clearly harmful tax practices. Also, France does not have any special purpose entities, according to the OECD definition. However, France may be at risk of participating in harmful tax competition as a result of trying to attract more Foreign Direct Investments (FDI). There are some tax incentives that are generous towards domestic and foreign investors. In January 2014, President Hollande announced a further €30 billion in tax exemptions as part of his “Responsibility Pact” with businesses.<sup>161</sup>

Particular examples of tax incentives include the research tax credit, which had a tax expenditure of €5.8 billion in 2014.<sup>162</sup> Some 11 per cent of the 18,000 beneficiary companies from this credit in 2010 were foreign-owned. They are likely to have benefitted more because 29 per cent of research and development expenditure in France is by foreign-owned firms.<sup>163</sup> Another example is the “tax credit in favour of competitiveness and jobs”,<sup>164</sup> which in 2014 had a tax expenditure of €9.8 billion, benefitting 15,000 companies. However, it is not known how many of those are foreign and it was announced there would not be any control of the granting of these incentives.<sup>165</sup>

It would be useful to include in the government’s annual tax expenditure analysis some information about potential spillovers of these tax exemptions, including the number of foreign companies benefitting from any tax exemption and potential foreign company tax expenditure figures.

### Tax treaties

France has one of the world’s largest tax treaty networks, consisting of 125 treaties; 72 of these are with developing countries.<sup>166</sup> No other country covered in this report has as many tax treaties with developing countries as France does. France favours the OECD treaty model in negotiations.<sup>167</sup>

## Impacts on developing countries

France has reduced the withholding tax rate in treaties with developing countries by 3.2 percentage points, on average.<sup>168</sup> This is well above the average for the 15 European countries covered in this report, and is concerning considering the extensive treaty network France has with developing countries.

France is generally paying little attention to specific solutions that will benefit developing countries and has expressed no intention to undertake impact assessments of its international tax policies or its tax treaties to analyse the spillover effects on developing countries.

## EU-level alternative solutions

France has made statements in favour of a harmonisation of tax systems within Europe and a recent government advisors' report recommends beginning with a common tax base for the European banking sector.<sup>169</sup> While France's support for a Common Consolidated Corporate Tax Base in the European Union is an encouraging position, the government will have to be proactive to overcome the opposition of other member states. It appears that this position is driven by the will to respond to tax scandals and tax avoidance by transnational corporations operating in France, rather than a coherent vision and political will to tackle illicit financial flows worldwide.

## Financial and corporate transparency

### Reporting for transnational corporations

France's leadership on country by country reporting is demonstrated by the recent Banking Regulation Law (2013), which requires banks to provide public information concerning the name and number of subsidiaries, nature of activities of each subsidiary, turnover (net banking income) and number of employees on a country by country basis.<sup>170</sup> They were required to do this from 1 July 2014. From 2015 onwards, profit or loss before taxes, tax on profit or loss and public subsidies received will also be reported publicly on a country by country basis. This will cover credit institutions, investment firms, financial holding companies, mixed financial holding companies and certain other companies.<sup>171</sup> This is a strong signal from the French government concerning the feasibility of public country by country reporting in a sector where the public continues to demand additional scrutiny following the financial crisis in 2008.

France has also made a public stand in 2013 in favour of EU regulation to introduce country by country reporting for all sectors. There is a provision in banking regulation law to extend this obligation to all sectors as soon as the European Union takes a similar initiative. In relation to the extractive sector, France has adopted in its Development Law (July 2014) a provision stipulating that, while transposing the Transparency and Accounting Directive, France should not limit reporting to the country where extractive activities take place, but extend it to all jurisdictions where industry companies operate.<sup>172</sup> This is important since subsidiaries of transnational corporations operating in tax havens will normally not include any type of extractive activity. However, they are none the less very important to include in country by country reporting to identify instances of profit shifting and tax avoidance.

Despite these important moves and statements, the government seems to be taking a step back and has recently opposed new country by country reporting proposals. For example, in the case of the extractive sector, the French Treasury has simply ignored the extension of the geographical scope that was called for in the Development Law,<sup>173</sup> and the bill presented to Parliament was even weaker than the Directive since it did not guarantee that the data will be accessible for free to the public. The main argument for this withdrawal is that more transparency would harm the competitiveness of French companies, ignoring the example of French banks.<sup>174</sup>

Since there is not yet agreement at the EU level on country by country reporting for all sectors, France could show some leadership and go further, as it did with the banking sector. For example, the government could require majority state-owned companies, such as France Telecom, to follow similar reporting rules, as the state should provide the widest transparency over the companies it owns. Public sector bodies such as the French Development Agency (AFD) and the French Export Credit Agency (Proparco, Coface) could also include country by country reporting clauses similar to the banking sector in its agreements for companies receiving loan guarantees, grants and concessional loans, as these are forms of state subsidies. The new French development law encourages AFD to do so, but parliamentarians failed to make it compulsory.<sup>175</sup>

## Ownership transparency

In terms of transparency around the beneficial owners of companies and trusts, there has been no substantial change to national legislation since last year.

The anti-fraud law adopted in November 2013 introduces the basis for a public registry for a small number of French fiducies, but also for foreign trusts where French residents participate as trustees, settlors or beneficiaries, which is an improvement. The decree for applying this law has not yet been given, but it is expected during 2014. Foundations are not considered at risk of being abused for tax evasion purposes as France does not have a provision for a private interest foundation.<sup>176</sup>

At the EU level, France has been active in supporting the process of creating a public administrative registry for beneficial ownership as part of the Anti-Money Laundering Directive (AMLD). The text is still being discussed and, considering the so far unprogressive position of the Council, French delegates will have to show strong leadership on the matter to promote the adoption of public centralised registries for both companies and trusts in Europe.

## Global solutions

France opposes a strengthening of the UN tax committee. During debates in the UN regarding the upgrading of this committee to an intergovernmental body, France's delegate has repeatedly emphasised that the UN should remain a body of technical experts, rather than attaining intergovernmental status: "The UN has a major role to play insofar as it is a global forum where tax experts chosen for their technical competences, coming from the world's economies with their many differences, can discuss these subjects."<sup>177</sup> The government working paper, Orientations for French Cooperation in Tax Matters, also cites the EU, World Bank, IMF and OECD as "important partners" for multilateral cooperation, but barely mentions the UN tax committee.<sup>178</sup>

As regards exchange of tax information with other governments, France includes details about the number of requests for information exchange received and sent by France in a specific annex to the national budget. This information is open to the public, and the most recent annual report on exchange of information states that, as of 1 October 2013, France has agreements facilitating exchange with 146 jurisdictions.<sup>179</sup> The government also "vigorously supports" the automatic exchange of tax information in international processes but not on a multilateral basis.<sup>180</sup> France does not take a strong position on forcing tax havens to exchange

information automatically with all countries that have an interest in it. Furthermore, France indicates no plans for agreeing so-called "non-reciprocal" exchange of information with developing countries, which would mean that, in an interim period, developing countries would be able to receive information even though they might not have the resources to collect and send the same type of information back. Especially for the world's poorest countries, non-reciprocity will in reality be the only chance for them to participate in automatic information exchange, and thus there is a risk that they will be shut out of the "global" standard.

## Financing for development

France was a leader on Financing for Development, but has rested on its laurels for some time.<sup>181</sup> Despite announcing it as a priority, technical support to the mobilisation of domestic resources in developing countries remains marginal. Besides giving support to the OECD initiative Tax Inspectors Without Borders (Inspecteurs des impôts sans frontières), no new actions have been taken in the last year.

## Conclusion

France deserves credit for taking the lead on public country by country reporting and supporting a register of the beneficial owners of trusts. However, despite these interesting initiatives, the enthusiasm of the French government for the fight against tax dodging and illicit financial flows seems to be in decline. Surprisingly, it has rejected amendments aimed at extending country by country reporting obligations to companies benefitting from support from concessional soft loans from AFD. Therefore France, with a new Ministry of Finance, must confirm its progressive position at the EU level.

France must also turn more attention to helping developing countries benefit from international initiatives in which it has an important role. This should include pioneering non-reciprocal automatic exchange of tax information with developing countries and promoting real multilateral negotiations on the issue. Furthermore, France must carry out impact assessments of its existing tax policies and treaties and support the development of a real intergovernmental body on tax, established under the auspices of the UN.

# Germany

**‘Sometimes the taxpayer’s fantasy is bigger than the rulemaking power of law makers.’**

*Wolfgang Schäuble, Federal Minister of Finance<sup>182</sup>*

## General overview

Tax evasion by wealthy individuals has attracted significant public attention in recent years. Two prominent cases in particular fuelled discussions and helped to redefine the image of tax evasion as a crime against the common good rather than a trivial offence. The media gave detailed coverage of a tax evasion lawsuit against Uli Hoeneß – one of the most prominent figures in German football – and a public confession of tax evasion by Alice Schwarzer, a leader in the women’s rights movement who repaid 200,000 Euros to the German tax authorities plus default interest over a Swiss bank account she held.<sup>183</sup> On top of these high-profile cases, the government’s purchase of account information from leaked Swiss and Liechtenstein whistleblowers and the failure of the Swiss-German tax agreement meant that the number of voluntary disclosures of tax crimes doubled during the first half of 2014.<sup>184</sup>

The coalition agreement of the government elected in 2013 devotes a section to tax policy goals, which includes fighting tax evasion and curtailing tax avoidance, with a focus on cross-border profit shifting by transnational enterprises rather than tackling deficiencies in the money laundering and tax avoidance structures within Germany.<sup>185</sup>

The public debate is still focused on tax evasion by wealthy individuals and the fact that voluntary disclosure allows tax criminals to escape prosecution – a measure now being revised. Tax evasion and avoidance practices by corporations – as well as the problem of money laundering – does not attract attention to the same degree, despite having potentially far more serious consequences for the German taxpayer. Implications for countries in the global south are virtually absent from the discourse.

## Tax policies

### Taxation of transnational corporations

Tax payments and actual tax rates of transnational corporations are difficult to estimate since companies do not always indicate overall profits and tax payments for all business activities in Germany combined. Furthermore, without country by country reporting, it is not possible to assess whether transnational corporations have shifted parts of their profits before declaring them to the tax authority.

Corporate tax rates in general depend on the legal form of a company. An average tax rate of 29.83 per cent is applied to listed companies (Aktiengesellschaften – or AGs) and companies with limited liability (Gesellschaften mit beschränkter Haftung – GmbHs).<sup>186</sup> The overall income tax rate for corporations includes corporate income tax (Körperschaftsteuer) at a rate of 15 per cent, the so-called solidarity surcharge (Solidaritätszuschlag, introduced to cover the costs of reunification) at a rate of 0.825 per cent (5.5 per cent of the corporate income tax) and local trade tax (Gewerbesteuer), which varies between 7 per cent and 17.15 per cent.<sup>187</sup> Thus, nominal corporate taxes are significantly above the EU average of 22.9 per cent in 2014.<sup>188</sup> Effective tax rates are much lower, as a model company in the second year of operation has an effective tax rate of 23.1 per cent after exemptions and deductions.<sup>189</sup>

### Measures to combat tax dodging

Besides these tax breaks, several loopholes have allowed tax dodging to take place in legal grey areas until recently. One of these loopholes was nicknamed “Goldfinger”, and allowed wealthy Germans to bring down their tax rate to zero by establishing partnerships and buying precious metals (gold). A number of these loopholes, which cost the German tax authority an estimated €12 billion,<sup>190</sup> were closed in 2012.

## Potentially harmful tax practices

The difference between nominal and effective tax rates in Germany can be explained by incentives that can effectively reduce corporate tax rates. These include the possibility of transferring losses of subsidiaries in Germany to the parent company and allowances to carry losses forwards and backwards to reduce their tax liabilities by imputing losses of previous years to current profits.<sup>191</sup>

In principle, domestic and foreign investments are treated equally under German law.<sup>192</sup> Special Purpose Entities (SPEs) set up by German banks abroad played an important role during the financial crisis, as German banks used SPEs to purchase collateralised debt obligations and mortgage-backed securities and outsourced the risks of these financial products.<sup>193</sup> They did not include the SPEs in annual statements.

Currently, SPEs are defined both in banking and commercial policy. The German Commercial Code (Handelsgesetzbuch) speaks of SPEs as companies or certain other legal persons or legally dependent funds that underlie a directly or indirectly controlling influence by a parent company. The German Banking Act (Kreditwesengesetz) defines SPEs as entities whose principal purpose is to raise money by issuing financial instruments or shifting economic risks without entailing a transfer of ownership rights. Despite these regulations being in place, it is not possible to obtain data on the magnitude of SPE assets or investments.

Finally, only 5 per cent of the dividends that companies get from other companies, and profits from the sale of companies, are taxed. These types of income are frequently used for profit shifting purposes, and the low tax rates render Germany especially attractive for holding companies, which can be at the receiving end of profit shifting from other countries.

## Tax treaties

Germany has an extensive network of 92 tax treaties of which 48 are with developing countries.<sup>194</sup> New treaties are currently being negotiated with Costa Rica, Jordan, Qatar, Libya, Oman, Serbia and Turkmenistan, while revisions and supplements are being negotiated with several other states.<sup>195</sup>

On average, Germany has reduced the withholding tax rates with its developing country treaty partners by 2.7 percentage points. This is slightly below the average 2.8 percentage points for the 15 European countries covered in this report.<sup>196</sup>

In 2013, the Federal Ministry of Finance (MoF) released a new template for tax treaties, which serves as a basis for negotiations with other states.<sup>197</sup> This template is based on the OECD model and will be used for negotiations with industrialised countries, according to MoF officials.

Another yet-to-be-published version, which also contains clauses from the UN model, will be used for negotiations with developing countries and will apparently be more equitable towards them.<sup>198</sup>

Notably, the new model now includes not only the objective of preventing double taxation but also double non-taxation and tax avoidance.

## Impacts on developing countries

On average, Germany has negotiated the withholding tax rates down 2.7 percentage point in its treaties with developing countries. While this is problematic, it is below the average of 2.8 percentage points for the EU countries covered in this report. Looking exclusively at more recent tax treaties negotiated with Ghana, Georgia and Kyrgyzstan gives a more worrying picture. On average, treaties negotiated after the year 2000 stipulated withholding taxes on dividends, income and royalties at a low rate of 7.8 per cent.<sup>199</sup> Looking at the different withholding tax categories, Germany has been most active in reducing rates on royalties with its developing country treaty partners, having on average reduced it by 6.8 percentage points, well above the average of the countries covered in this report of 5.8 percentage points.<sup>200</sup>

The German government has also tried to implement a narrow definition of permanent establishment in its treaties with Ghana, Georgia and Kyrgyzstan, which is the concept that determines the point at which third countries hosting German companies will be allowed to tax them. A narrow definition of permanent establishment can award the taxing right to Germany instead of to the third country where the German companies are operating, and thus erode the tax bases of third countries.<sup>201</sup>

The German government is not planning to do an impact assessment of its tax policies to assess the potential spillover effects on developing countries.

## Financial and corporate transparency

Germany is a prime destination for money laundering due to its large finance and banking sector, lax anti-money laundering regulations, and a low public sensibility to organised crime, despite extensive money laundering operations.<sup>202</sup> Estimates

of the amount of money laundered in Germany range from €29-€57 billion annually.<sup>203</sup> In 2010, the Financial Action Task Force (FATF) strongly criticised Germany for insufficient compliance or non-compliance with core recommendations and placed Germany under the regular follow-up process. The German government took several corrective steps that led to its removal from the follow-up process in 2014. However, FATF notes that several shortcomings “remain unaddressed”, including in relation to bearer shares (literally allowing ownership by those bearing them in their hands) and a type of trust called “Treuhand funds”.<sup>204</sup>

Germany does not formally have banking secrecy, but neither does it offer easy access to beneficial ownership information. In 2005, an administrative bank account registry was established that contains information such as the name of the account holder, the date the account was opened and the beneficial owner. It can be used by domestic and foreign authorities in cases of criminal prosecutions. However, foreign authorities do not have access to the registry and therefore have to identify the bank that holds the account in question.<sup>205</sup> Even though Germany is a signatory to the Convention on Mutual Administrative Assistance in Tax Matters and the Amending Protocol, the Protocol has not yet been ratified.<sup>206</sup>

Germany has only recently ratified the UN Convention Against Corruption.<sup>207</sup> Several German banks like Deutsche Bank, Commerzbank and HypoVereinsbank have been charged with assisting money laundering in other countries.<sup>208</sup> These and other deficiencies, as well as Germany’s large share of cross-border financial services, place Germany at eighth place in the Financial Secrecy Index (FSI).<sup>209</sup>

While Germany has procedures in place to exchange information with the jurisdictions it collaborates with, the OECD notes that this is not done in a timely manner, as only 12 per cent of requests for information are answered within 90 days.<sup>210</sup>

## EU solutions

On a few occasions, Chancellor Angela Merkel or the Federal Minister of Finance, Wolfgang Schäuble, have expressed their support for access to beneficial ownership information by authorities, and for stricter rules on money laundering. However, the support of EU initiatives has been very weak. The former government, which was in power until the end of September 2013, blocked further progress in the Council of the EU on the issue of public registries of beneficial owners as part of the Anti-Money Laundering Directive (AMLD). According to German media, the former government took a stance against the disclosure of beneficial ownership with the

rationale that a public register would mean too great an effort for German companies.<sup>211</sup>

Similarly with regard to country by country reporting, the German government hindered the negotiations for stricter reporting requirements for companies in the extractive industries.<sup>212</sup> Additionally, the German government opposed other initiatives to improve corporate transparency, for example, disclosure of country by country reporting information through the Non-Financial Reporting Directive. Hence, it seems unlikely that Germany will support reforms to widen the scope of country by country reporting to all sectors unless the new government ends this obstructive stance and sets out on a new course of action.

## Global solutions

During the former government, Germany clearly believed that international tax matters should remain at EU and OECD levels. Consequently, Germany opposed an upgrade of the Committee of Experts on International Cooperation in Tax Matters to an intergovernmental organ.<sup>213</sup> The new government has not indicated any change in this position.

The government supports an automatic exchange of information mechanism at OECD level, which currently does not include a mechanism for developing countries with low capacity to participate and benefit.<sup>214</sup>

On a bilateral level, Germany signed several treaties to facilitate exchange of information for tax purposes, mainly with jurisdictions known for their high levels of financial secrecy. Developing countries do not seem to be a target group for this type of agreement.<sup>215</sup>

## Conclusion

While Germany does not want to appear to be actively blocking progress towards further transparency and initiatives to fight tax evasion and avoidance on the European level, the powers that be have more than once hidden behind the arguments of others and have certainly not played a very proactive role. This does not fit well with the broader image that Germany has in terms of low levels of public sector corruption and an entrepreneurial culture. However, Germany seems to have adopted a set of secrecy practices such as the trust structure (Treuhand funds), which it seems unwilling to give up. The German position is probably the result of its very large financial sector, which the government is unwilling to regulate. However, this position could change over time and there is hope that the new government will take a different view.

# Hungary

**'It is unacceptable that only the poor and the middle class bear burdens; a more equitable burden sharing system has to be created.'**

*Janos Fonagy, State Secretary<sup>216</sup>*

## General overview

Hungary's economy emerged from recession in 2013<sup>217</sup>, and the Central Bank of Hungary launched a stimulus program - Funding for Growth Scheme (Növekedési Hitelprogram) - in June 2013, while the government kept its budget deficit below 3% of GDP in recent years. This was achieved in part by increasing the weight of indirect taxes in the tax structure (for example, increasing VAT from 25% to 27%, the highest in the EU), and decreasing tax revenue as a percentage of GDP.<sup>218</sup> Hungary introduced windfall taxes in non-tradable sectors like banking, retail, energy, and telecommunications. The windfall tax in the telecom, energy and retail sectors was in force until the end of 2012, and Hungary then introduced new, less distortive turnover taxes to ensure budget stability. Insurance companies have become exempt from the bank levy introduced in 2013. Meanwhile, tax on energy suppliers has been increased to 31% since 2013.<sup>219</sup>

In the run-up to the general parliamentary elections of April 2014, a number of scandals related to tax fraud and evasion erupted involving politicians on both sides of the political spectrum. There have been accusations that these claims were being used for political ends.<sup>220</sup>

In 2013, a whistle-blower from the National Tax and Customs Authority (NAV) made strong claims about the alleged inefficiency of the agency, its alleged systematic habit of favouring large corporations, and its alleged lack of oversight regarding commercial chains and direct suppliers.<sup>221</sup> Following an internal screening, and the regular screening by the State Audit Office which did not verify these allegations, the parliament set up a special investigative committee. However, this has suspended its activity until the ongoing criminal investigations into the matter are concluded.

Hungary's role in international development is still relatively minor. With overall ODA standing at €89 million in 2012<sup>222</sup>, and an ODA/GNI ratio at 0.10%<sup>223</sup>, Hungary is far behind its own target established in the EU Aid Accountability Report of 0.33%<sup>224</sup>, which should be reached by 2015. In

2011, Hungary's bilateral assistance focused mostly on Afghanistan, Bosnia and Herzegovina, Montenegro, Serbia and Ukraine.<sup>225</sup> International development assistance, and Hungary's role in it, is rarely touched upon in public debates. Tax-related capital flight also has a low profile, while its impact on developing economies is almost non-existent in current discourse.

## Tax policies

Corporate income tax is levied at a rate of 20.6%.<sup>226</sup> The revenue collected from business taxes as a percentage of GDP are among the lowest in Europe, while taxes on labour and consumption are among the highest.<sup>227</sup>

In an effort to promote domestic small- and medium-sized enterprises, the government introduced a simplified small taxpayers' lump sum tax (KATA) in 2013 for small businesses to set up a monthly tax fee (75 thousand Hungarian Forints (HUF), or €245) including social security contributions and a small business tax (KIVA).<sup>228</sup> It is designed for small businesses with 25 or less employees, and less than HUF 500 million (€1.63 million) in annual revenue, and offers businesses the option to pay a 16% flat rate on cash-flow profits and payroll.<sup>229</sup>

There was increased attention towards tax evasion and tax fraud issues during 2013 and the first half of 2014 in Hungary.<sup>230</sup> To combat VAT evasion, in 2012 and 2013 the Hungarian government requested on three separate occasions an authorisation from the European Commission for the introduction of a reverse charge mechanism (RCM) for VAT for the supplies of certain cereals and oil seeds, and certain products such as pork and sugar.<sup>231</sup> The request for certain cereals and oil seeds was granted<sup>232</sup>, while in the case of sugar it was rejected. One of the reasons for the rejection was that applying the reverse charge mechanism in relation to goods destined for final consumption, such as sugar, always entails the risk that the fraud is shifted further down the supply chain which could become even more difficult to control, along with citing a lack of effort at making domestic tax evasion monitoring more effective.<sup>233</sup>

Several other measures have been taken against tax fraud, including the domestic recapitulative VAT statement that puts additional documentation requirements on businesses to improve oversight, and the on-line connection of cash registers to the tax authority. New methods and legal rights were introduced for the tax authority, increasing the effectiveness of controls and collection.<sup>234</sup>

## Taxation of Transnational Corporations

A number of tax incentives are offered to investors. These are primarily targeted large-scale investments of over €10 million, as well as investments in Research and Development (R&D).<sup>235</sup> Most transnational companies operate in the more than 200 industrial parks in the country. These parks offer added incentives and, according to the Hungarian Trade and Investment Agency, 30% of Hungary's GDP is produced in these environments.<sup>236</sup>

## Potentially harmful tax practices

Hungary has a large sector of Special Purpose Entities (Speciális Célú Vállalat – SCV), and the amount of foreign direct investment (FDI) flowing through SPEs is relatively high compared with most other European countries.<sup>237</sup> The Central Bank and the Statistical Office have started to differentiate between capital flowing through SPEs in order to provide a more realistic and reliable overview of Hungary's external debts and liabilities, as these figures have an influence on the country's credit rating.<sup>238</sup> The criteria developed jointly by the Central Bank of Hungary (MNB) and the Hungarian Central Statistical Office specifies that an SPE is an enterprise, that:

- 1) *Does not engage in real economic activity in Hungary.*
- 2) *Has foreign ownership, with financial assets and liabilities that pertain to countries other than Hungary.*
- 3) *The weight of assets in its balance sheets is negligible relative to that of their financial assets.*
- 4) *Has a low number of staff (90-95% of SPEs have maximum two employees).*
- 5) *Has negligible material costs.*
- 6) *In some cases, the name of the enterprise indicates the special function of the activity (e.g. group financing company; holding company etc).<sup>239</sup>*

At the end of 2013, FDI stock relating to SPEs accounted for 103% of GDP, and outward FDI for 111%.<sup>240</sup> In comparison with other countries, Hungary receives more FDI as a proportion of GDP than Switzerland, Ireland, and Singapore who are all known to be favourite destinations for FDI.<sup>241</sup> In its assessment, the Central Bank states that the reason for the high number of SPEs in Hungary and the routing of FDI through the country is to 'exploit taxation advantages'.<sup>242</sup>

In recent years, however, significant amounts of financial flows had gone through regular companies and enterprises as well, with Hungarian companies' outward FDI stock reaching €28 billion at the end of 2013, excluding SPEs, due mostly to capital in transit and portfolio restructuring.<sup>243</sup>

Hungary offers Advance Pricing Agreements through which corporate taxpayers can agree with the tax authorities on the given business transaction's transfer pricing.<sup>244</sup> These are not provided on a public record and thus cannot be scrutinised.

## Tax Treaties

Hungary has bilateral tax treaties with over 73 countries in the world, including 30 developing countries.<sup>245</sup> On average, Hungary has reduced the withholding tax rates in its treaties with developing countries by 1.9 percentage point.<sup>246</sup> This is a significant reduction that could potentially undermine revenue mobilisation in these countries, but it should still be noted that the reduction is below the average for the 15 European countries covered in this report.

## Financial and corporate transparency

The Accounting Act of 2000 requires all companies with double-entry bookkeeping to provide and publish their annual reports through the Company Information and Electronic Company Registration Service.<sup>247</sup> On this website, the Ministry of Justice provides public access to basic information about Hungarian business entities free of charge with data on companies' registry number, address, tax number and ownership details. Information regarding the ownership and annual balances of the company are published on another website<sup>248</sup>, also run by the Company Information and Electronic Company Registration Service under the auspices of the Ministry of Justice. In Hungary, foundations can only be established for public purposes, but not for private benefit. Information on the founders and the members of the foundation's council has to be registered.<sup>249</sup>

Hungary has not taken any clear position on country by country reporting or disclosure of beneficial ownership at the EU level.

## Global solutions

Hungary has not taken any clear position as regards whether intergovernmental negotiations on tax matters should be carried out under the auspices of the UN or continue to be handled by the OECD.

## Conclusion

While in recent years FDI inflow to Hungary has been lower than the pre-crisis level, the flows of SPEs, which play little to no role in the country's economy, were very high, especially up until 2011.<sup>250</sup> The high level of transactions through Hungary could indicate that the Hungarian system might be used by companies to escape taxation in other countries.

Hungary's tax treaties contain some provisions which are potentially harmful, including instances of low tax rates. The fact that Hungary offers to provide advance pricing agreements to companies can also potentially be a harmful tax practice.

The recent Hungarian initiatives to promote financial transparency are positive steps forward, but Hungary has not yet become a champion of financial transparency at the EU level.

# Ireland

**‘Ireland has been one of the frontrunners, and will be, in regard to building a new international consensus [on aggressive tax planning and profit shifting].’**

*Enda Kenny, Irish Prime Minister.<sup>251</sup>*

## General overview

Ireland came under serious criticism worldwide for facilitating corporate tax dodging during 2014. For instance, Apple’s Irish operations have been the subject of an investigation both by the US Senate and more recently, as discussed below, by the European Commission.

A European Expert Group report shows that Apple paid just 3.7% tax on non-US profits of \$31bn last year.<sup>252</sup> Recent media reports have suggested that the EC investigation may go beyond Apple.<sup>253</sup> Despite growing critiques of Ireland’s tax regime, and negative media attention both internationally and domestically, the Irish Government has responded to the EC’s preliminary view on the Apple case by strongly defending the country’s tax practices with regard to the company. The government is also emphasising its commitment to international tax transparency, without seeming to recognise the two issues as contradictory.<sup>254</sup> To date, it seems Ireland is changing its corporation taxation policies only within collective EU or OECD actions, or when it comes under serious external pressure to do so.

## Tax policies

### Taxation of transnational corporations

The Industrial Development Agency (IDA) is responsible for the attraction of foreign investment to Ireland.<sup>255</sup> The IDA states that:

“thanks to our attractive tax, regulatory and legal regime, combined with our open and accommodating business environment, Ireland’s status as a world-class location for international business is well established [...] In recent years Ireland has increasingly emerged as a favoured onshore location for [transnational corporations] establishing regional or global headquarters to manage their corporate structure and head office functions associated with their international businesses”.<sup>256</sup>

Part of Ireland’s attractiveness to transnational corporations is the Research and Development (R&D) tax credit - in place since 2004 - which allows companies to receive 25% tax credit for offset against a corporation tax rate of only 12.5%. All new companies setting up an R&D operation can receive the credit on all qualifying R&D expenditure.<sup>257</sup> Furthermore, Ireland has an intellectual property (IP) regime which provides a tax write-off for very broadly defined IP acquisitions.<sup>258</sup> In 2009, an incentive was introduced for expenditure incurred on the acquisition of intangible assets, such as patents, copyright or design right or invention.<sup>259</sup> In the international debate about corporate tax avoidance through profit shifting, such ‘intangibles’ are highlighted as one of the mechanisms corporations use to transfer profits from the countries where the real economic activity takes place into jurisdictions where the profits will be taxed less or not at all.<sup>260</sup>

There are no public estimates of foregone revenue due to these tax exemptions. Ireland has a general anti-abuse rule in national legislation - Section 811 of the Taxes Consolidation Act 1997.<sup>261</sup>

In October 2013, the Finance Bill included an amendment to Irish corporation tax residency rules to ensure that an Irish incorporated company (such as Apple) cannot be ‘stateless’ in terms of its place of tax residence.<sup>262</sup>

Ireland’s much debated corporate tax rate, which is vigorously defended by the government<sup>263</sup>, is 12.5% on active trading income (compared to the EU-28 average of 22.9%<sup>264</sup>); 25% on passive non-trading income, and currently 33% on capital gains.<sup>265</sup> Eurostat estimates that in 2012 the average effective tax rate for corporations in Ireland was as low as 6%<sup>266</sup>, most likely due to Ireland’s significant array of tax breaks and low levels of regulation.

The Irish Revenue Commissioners and the Irish Department of Finance state that they do not encourage transfer pricing abuse in any way. However, the Irish Revenue Commissioners leave the responsibility of proving any misconduct firmly with the country that may be losing revenue, despite the lack of capacity in the Global South to track tax avoidance or evasion.<sup>267</sup>

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### Box 3: The “Double Irish”

The “Double Irish” is a scheme that is used by large companies to channel certain payments through Ireland and onward to lower tax jurisdictions, reducing their overall tax bills enormously. For example, according to the Irish Times, Google’s Irish-based operation had revenues of around €15.5 billion during 2012, but ended up paying corporation tax of just €17 million. This was because it charged “administrative expenses” of almost €11 billion, including royalties paid to other Google entities abroad, partly to low tax jurisdictions such as Bermuda.<sup>268</sup> The government announced in its Budget for 2015 that the ‘Double Irish’ will be phased out by 2020. However, a new range of tax incentives will be introduced for companies, including in the areas of research and development, and intellectual property activity including a ‘Knowledge Development Box’.<sup>269</sup>

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### Potentially harmful tax practices

#### Secret deals?

PricewaterhouseCoopers points out that the Irish tax authorities have, upon request, provided inward investors with Advance Tax Rulings (ATRs) on key issues relevant to the decision to establish operations in Ireland.<sup>270</sup> Indeed, the European Commission’s investigation into Ireland’s tax system is investigating advance opinions to three corporate groups in the Netherlands, Luxemburg and Ireland.<sup>271</sup> Ireland does not systematically publicly disclose either APAs or ATRs provided for transnational corporations, nor any analysis of potential revenue lost due to these rulings. However, the spectre of such ‘secret deals’ is very much in the limelight in 2014, with the Financial Times reporting that ‘Apple rode to riches totalling \$137.7bn in offshore cash with the help of the Irish taxpayer’.<sup>272</sup>

In September 2014, the European Commission (EC) concluded that two tax rulings granted by the Irish government in favour of Apple in 1991 and 2007 constitute state aid which may not be compatible with the internal market.<sup>273</sup> The EC’s ‘opening decision’ letter on this matter shows that Ireland’s tax rulings regarding Apple are contestable on a number of factors, including that: the rulings do not comply with the ‘arm’s length’ principle in the transfer pricing methods used or do not seem to be based on any clear pricing methodology; the profit allocated by Apple to Ireland may be questionable and the tax advantages granted by Ireland were not periodically reviewed as per good practice.<sup>274</sup>

Indeed, the disclosure by the EC of notes of meetings between Irish Revenue and Apple at the time reveal a deeply inappropriate negotiation on the basis of job creation, rather than one based on clear accounting procedures and the tax obligations of the company. The Commission has requested that Ireland submit comments and provide any further information useful to the assessment of the situation by the end of October 2014.<sup>275</sup> This matter may continue into the next 18 months.

At the time of writing the Irish Prime Minister, Taoiseach Enda Kenny, has denied any special treatment for Apple despite

the clear evidence to the contrary, revealed through the EC investigation<sup>276</sup>, and continues to strongly defend Ireland’s overall tax regime.

#### Special Purpose Vehicles

The result of Ireland’s favourable tax regime is that, according to law firm Arthur Cox: “Ireland has... firmly established itself as a location of choice for the establishment of special purpose vehicles (SPVs) for structured finance transactions,”<sup>277</sup> and a favourable tax regime is mentioned as an attractive factor.<sup>278</sup> Meanwhile, the Irish Industrial Development Agency tries to attract foreign direct investment by highlighting key characteristics of special purpose entities: namely a favourable tax regime, no withholding tax on dividends paid to or from relevant treaty countries, and the ability to minimise withholding tax on inbound and outbound royalties and interest payments.<sup>279</sup>

In 2013, one Irish academic reported that 742 Financial Vehicle Corporations (FVC) - a type of special purpose vehicle - are located in Ireland.<sup>280</sup> The Central Bank of Ireland reports that “total FVC assets values reported in Q1 2014 increased to €421.9 billion.”<sup>281</sup>

The Irish Financial Services Centre (IFSC) in Dublin dominates foreign investment in the Irish economy, much of which is suspected to involve SPEs.<sup>282</sup> In 2011, IFSC investment was over 20 times the size of non-IFSC foreign direct investment and over 17 times the size of the gross national product (GNP) of Ireland.<sup>283</sup> Section 110 of the Taxes Consolidation Act 1997 is the cornerstone of Ireland’s securitisation regime, which, according to Arthur Cox, permits qualifying Irish resident SPEs to engage in an extensive range of financial and leasing transactions in a ‘tax neutral’ manner.<sup>284</sup> In 2011, the Minister for Finance stated that as there was no specific statistical code for companies that use Section 110, it was not possible to provide information on any audits carried out on such companies, nor their tax yields. In 2014, the government maintains the position that Ireland does not have a specific definition for a “Special Purpose Entity” (SPEs), and therefore cannot provide a definitive response in respect to questions about SPEs.<sup>285</sup>

## Tax Treaties

Ireland has signed tax treaties with 71 countries, of which 25 are with developing countries.<sup>286</sup> At the time of writing the most recent treaties to come into effect are with Thailand and Botswana<sup>287</sup>, while an agreement with Ukraine still has to go before the Parliament. These treaties cover direct taxes, which in the case of Ireland are income tax, corporation tax and capital gains tax.<sup>288</sup> In all new treaties, Ireland now includes an exchange of information clause.<sup>289</sup> However, it is unclear if any provisions are made to ensure that information can be exchanged on an automatic or spontaneous basis, or what information is available to be exchanged.

The government has stated that there is no general rule on whether Irish tax treaties with developing countries allow those countries to apply withholding tax on outgoing capital flows, but that each tax treaty negotiation is “based on meeting the needs of both sides, and that in some instances Ireland does have tax treaties that apply withholding taxes on royalty payments or... allow source taxation rights for other income arising in a contracting state.”<sup>290</sup>

In general, however, the withholding tax rates applied in its treaties with developing countries have been significantly reduced. On average, the rates have been negotiated down by 3.2 percentage points which is more than the average for the 15 European countries covered in this report.<sup>291</sup>

Ireland’s original tax treaty with Zambia – one of Ireland’s nine key development cooperation partner countries – is a case in point of how Ireland’s treaties can undermine development. According to estimates, this treaty may have deprived Zambia of revenues equivalent to €1 in every €14 of Irish development aid to Zambia, an issue of policy coherence for the Irish government.<sup>292</sup> There is hope, however, that the situation may improve as the Government of Zambia has asked for a renegotiation of its treaty with Ireland.<sup>293</sup> Experts have suggested that Ireland could prioritise the negotiation of transparent and fair treaties following the UN model<sup>294</sup>, and the renegotiation with Zambia could present an opportunity to attempt this for the first time.

The Department of Finance has stated that a list of the developing countries with which treaty negotiations are planned is “not available”.<sup>295</sup> However, data from the International Bureau of Fiscal Documentation (IBFD) shows that negotiations for new treaties are currently taking place with Jordan and Azerbaijan.<sup>296</sup> In its practice, Ireland largely favours the OECD model for tax treaty negotiations, even when they are agreed with developing countries, rather than the UN model.

## Impacts on developing countries

In relation to developing countries and policy coherence for development, the Irish government argues that it is working “both at an international level to combat illicit financial flows and capital flight, and at a national level to strengthen revenue collection and management that can allow them to eventually exit from a dependence on ODA.”<sup>297</sup> In 2014, Ireland commissioned a spillover analysis with the objective of researching what impact, positive or negative, Ireland’s tax system may have on the economies of developing countries.<sup>298</sup> The credibility of the spillover analysis, to be published in November 2014, and any action taken following it, will reveal whether Ireland intends to continue to be a part of a broken international tax system which currently works against the interests of countries in the Global South, or whether it will take a step towards policy coherence and working for global tax justice.

## Financial and corporate transparency

One reason why Ireland is an attractive location for special purpose entities is the lack of financial and company transparency. Ireland’s position is that beneficial ownership of companies should be known and that provisions are already in place when authorities require this knowledge about companies and trusts which are subject to reporting requirements to authorities. However, the government has not committed to a publicly accessible register of this information. The government “is awaiting final agreement of the specific provisions in the text with the European Parliament before commencing with the cross-Departmental transposition work on the proposed 4th Anti-Money Laundering Directive.”<sup>299</sup>

The Irish government does not require transnational corporations in any sector to provide an annual public account of the turnover, number of employees, subsidies received, profits made, and taxes paid. The government has stated support for the OECD’s Action Plan on Base Erosion and Profit Shifting Action Point 13 on the development of rules on transfer pricing documentation to enhance transparency, which includes country by country reporting, and has stated that Ireland “will likely adopt this recommendation when it is finalised, but this will not happen before end of 2014”.<sup>300</sup> It should be noted that the OECD governments have already decided that the information from country by country reporting under the BEPS Action Plan should not be available to the public and thus implementation of the OECD guidelines would be insufficient to ensure proper transparency.<sup>301</sup>

The government does not respond to questions on economic activities of a range of companies in Ireland, including Google, citing “taxpayer confidentiality”. Information can be accessed via the Companies Registry Office, including details of a company’s name and previous name, registered office, company type, incorporation and annual return details, charges secured against it, directors and secretary, but no detailed country by country information or shareholder registries are publicly available.

## Global solutions

### Automatic Information Exchange (AIE)

In relation to Automatic Information Exchange (AIE) on tax matters, the government has stated that data protection structures, confidentiality and data security are the critical elements in any automatic exchange of information, and that “these are typically, although not always, associated with maturity of a tax administration and will be key criteria for Ireland in deciding which partner jurisdictions with whom to exchange information”.<sup>302</sup> The response indicates that the government is open to Automatic Information Exchange, but that it is cautious about exchanging tax information with countries with low levels of resources and weak tax administrations, in other words the poorest countries who are most in need of reliable information on the tax activities of the transnational firms operating within their borders.

### Inclusion of Global South countries

In 2013, the Irish government stated that ‘While a proposal to establish an intergovernmental body on tax matters under the auspices of the United Nations may have merit, solutions need to be developed to BEPS and other issues and the OECD is well placed to develop these solutions’.<sup>303</sup> In 2014, the government did not directly answer this question on the role of the UN, but stated that the UN has a seat at the table of the OECD’s Committee on Fiscal Affairs.<sup>304</sup> It is therefore clear that the Irish government supports the OECD as the leading negotiating forum for decision-making on global tax matters, rather than a more democratic and inclusive forum, such as the UN.

## Conclusion

Ireland’s tax model facilitates a significant presence of Special Purpose Entities (SPEs) that lack real economic substance in the Irish economy. The Irish government sees its low corporate tax rate, set of tax incentives and light regulatory environment as a cornerstone of the country’s economic policy, and a route to attracting high levels of FDI, which implicitly is assumed to have substance in real investments. However, as the significant presence of SPEs shows, this is not always the case. While real and valuable jobs have been created through some multinational companies’ presence in Ireland, the Apple case exposed an instance of highly dubious procedure between it and Irish Revenue, a procedure which allowed Apple to avoid enormous tax payments at the expense of people in Ireland and in other countries. It raises the urgent question of how extensive this kind of practice has been, or continues to be, in the Irish tax system.

Despite international criticism, the Irish Government is unapologetic about promoting Ireland internationally as a low tax location for companies. The ongoing spillover analysis will be one opportunity for the government to analyse the impact of these tax policies on the economies of countries of the Global South and fulfil its commitment to policy coherence for development. As part of this work, the Irish government should follow up on its commitment to fight illicit financial flows at the international level by pro-actively supporting an intergovernmental process on tax matters under the UN. It should further support countries of the Global South by using the UN model treaty. And while the government states that it supports global tax transparency, this can only be proven through its actions. Namely by establishing a public register of beneficial owners of companies and trusts, adopting publicly accessible country by country reporting, and supporting AIE for all countries, including those of the Global South.

# Italy

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## **‘Tax evasion has to be systematically repressed.’**

*Pier Carlo Padoan, Economy and Finance Minister, Italy, 17 June 2014<sup>305</sup>*

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### **General overview**

Tax evasion and avoidance have remained central issues on the Italian political agenda, receiving wide-spread media coverage. In the past, Italian authorities tended to focus mostly on tax evasion by domestic companies and individuals, but the past year has seen a shift in focus towards large transnational companies and Italian corporations abroad. This shift seems to be due to a change in government law enforcement and tax authorities becoming active for the first time in tackling alleged misconduct, in particular in the fashion and IT sectors. These cases received extensive media coverage and sparked public debate, forcing a stronger position on tax abuse. The Italian government included the fight against tax evasion and avoidance amongst its top priorities for the Italian presidency of the EU, starting on 1 July 2014.<sup>312</sup>

### **Tax policies**

#### **Taxation of transnational corporations**

Domestically, the new Italian government has recently proposed reform of the tax authority and is soon adopting a new plan to fight tax evasion and avoidance by large companies.<sup>313</sup> Both the media and the statements made by politicians have focused on the Italian and European contexts and not at all on developing countries. So far, tackling tax evasion and avoidance have not emerged as a priority issue within Italian aid policies, although Italy has substantial experience in dealing with tax abuse by transnational corporations to share with poorer countries, and could become a champion in the international arena.

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#### **Box 4: No Longer in Vogue: Tax Avoidance in Fashion and IT Companies**

At the beginning of 2014, Miuccia Prada was under investigation by Milan magistrates for false tax statements.<sup>306</sup> Allegedly Prada Holding, registered in Amsterdam and Luxembourg, dodged €470 million in taxes. Prada settled the case with the tax agency by paying the entire amount and moving the company back to Italy.

In the IT industry, Google, Apple, Amazon and Facebook were under investigation in Italy for tax dodging in early 2014. In particular, Google Italy is being investigated for €240 million for undeclared income – with a tax liability of €70 million – and €96 million of unpaid VAT between 2002 and 2006. The financial police are also investigating how the company paid just €1.8 million in taxes in 2011 and 2012 despite its income of €52 million.<sup>307</sup> At the end of 2013, Apple Italia was placed under criminal investigation by the Milan magistrates for fraud in fiscal statements.<sup>308</sup> Apple has allegedly not declared €206 million in 2010 and €853 million in 2011. Investigations started at the same time as the Italian parliament introduced a so-called “Google Tax”, which forced all online sales to take place through companies paying VAT in Italy.<sup>309</sup> However, the new government cancelled this law in early 2014.<sup>310</sup> Furthermore, in 2014 tax authorities and the financial police started investigating why Amazon only declared to the Italian tax authorities about €1 million in taxes during the 2012 fiscal year for both of its Italian-controlled companies, as well as Facebook’s declared taxes of just €3 million.<sup>311</sup>

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## Potentially harmful tax practices

A framework policy – named “Destinazione Italia” – to attract more foreign investments in order to boost economic recovery and growth and job creation, was launched in 2008.<sup>314</sup> One of its aims is offering foreign investors tax incentives related to labour costs and tax credits on infrastructure. These are being implemented in the second part of 2014.<sup>315</sup> The government conducted a public survey of all corporate subsidies and incentives in 2012, totalling €10 billion, and recommendations were made to reduce these within a wider spending review process.<sup>316</sup> The review did not mention tax exemptions or subsidies to foreign companies to understand any spillover of these incentives to developing countries.

More worryingly in the “Destinazione Italia” programme, the government wants to “reduce excessive restrictions on business internationalisation, in keeping with EU law, reviewing the taxation of cross-border operations, with particular reference to the laws governing withholdings, the deduction of commercial transaction costs borne in dealings with suppliers located in ‘black listed’ countries, dividends from States with a loose fiscal regime.”<sup>317</sup> All these commitments will have to be operational through the revision of existing fiscal regulation for which the government has been mandated by the Italian parliament.<sup>318</sup>

Italy allows the establishment of some special purpose entities (SPEs) such as “società di comodo” – companies that are not related to a certain productive activity, but that merely own assets. However, since 1994 stricter legislation has been put in place (for instance in the case of entities that systemically produce losses). In particular, the corporate tax has been raised to 38 per cent and the government fixes a certain tax base for these entities based on a minimum foreseen income.<sup>319</sup>

## Tax treaties

Italy has 93 tax treaties in force of which 49 are with developing countries.<sup>320</sup> In addition, negotiations for treaties are ongoing with Peru and Barbados.<sup>321</sup>

Concerning withholding taxes, according to business sources, Italy levies on average a 25 per cent withholding tax on outgoing royalties and interest and 26 per cent on dividends.<sup>322</sup> Interest is subjected to a withholding tax of 12.5-27 per cent (a lower rate can be applied if a tax treaty is in place); royalties of 30 per cent (which can be reduced to 5-15 per cent if a tax treaty is in place);<sup>323</sup> and dividends of 26 per cent<sup>324</sup> (recently increased from 20 per cent by the Italian government). Some exemptions concerning the calculation of the tax base are provided under Italian regulation. Italy does have several anti-abuse clauses in tax treaties. These relate to limitations of tax benefits.<sup>325</sup>

## Impacts on developing countries

Out of the 15 European countries covered in this report, only the UK and France have more treaties with developing countries than Italy.

In general, Italy’s treaties with developing countries include relatively small reductions on withholding tax rates. On average, the rates have been reduced by 1.8 percentage points, which is below the average of 2.8 percentage points for the European countries covered in this report.

Italy has not carried out specific impact assessments of the tax treaties they signed and therefore does not ensure a thorough overview of the potential impacts on development or poverty eradication.

## Financial and corporate transparency

Italian trust laws are inspired by French fiducies, but there are no registries of trusts or private foundations that may be used for private gain. A specific registry of special purpose entities is publicly held by the Bank of Italy.<sup>326</sup>

At the Central Business Register, it is possible to find the annual financial report for each corporation incorporated in Italy.<sup>327</sup> Since 1996 this public registry, regulated by the civil code and other legislations,<sup>328</sup> is managed by the system of Chambers of Commerce, which collects information on beneficial ownership of companies, trusts and other legal structures such as foundations on behalf of the Italian government. Access to the registry is on payment of a limited amount for each company search. However, the Chambers of Commerce have recently acknowledged to civil society how little capacity they have to check the accuracy of information about beneficial owners provided by corporations.<sup>329</sup>

## EU solutions

In the ongoing EU negotiations about the Anti-Money Laundering Directive, Italy supports public access to beneficial ownership information. However, in the role of the rotating Presidency of the EU in the second semester of 2014, the government does not seem determined to move beyond the very weak compromise text reached on this issue at the European Council level last June.<sup>330</sup> With regard to country by country reporting (CBCR), the Italian government does not have a public position in support of further legislation on this issue as a means to combat tax dodging.

## Global solutions

The Italian government believes that the tax agenda should be kept within the OECD. Italy is a member of the current session of the UN Committee of Experts on International Cooperation in Tax Matters, but it has paid little political attention to it so far, since the government believes that OECD bodies are performing well on this matter. Therefore the government engages in the OECD Base Erosion and Profit Shifting (BEPS) process, and its tax inspections in the IT sector are consistent with the BEPS focus on the digital economy.<sup>331</sup>

The current Italian Minister for Economy and Finance is a former chief economist at the OECD.<sup>332</sup>

## Conclusion

Tax dodging is set to stay high on the agenda both in the media and politically in Italy, so hopefully improvements will happen. However, this hope is contradicted by the obsession of several decision-makers with attracting new foreign direct investments (FDIs) at any cost. In the months ahead, Italy will discuss further tax breaks and incentives for foreign investors as well as the relaxation of anti-abuse provisions and tax sanctions. Stipulating ad hoc tax agreements on transfer pricing and advance tax rulings are likely to reduce transparency. As transnational corporations operate worldwide, such incentives and their secrecy may also have harmful effects on developing countries.

Despite the fact that Italy's position on some of the issues covered by this report are moderately positive, there are still concerns about the proper enforcement of existing legislation and verification of public registries of companies held at Chambers of Commerce. At the same time, the Italian government is paying little to no attention to the implication of taxation policy for developing countries, thus undermining European commitments to policy coherence for development (PCD). In this regard the Italian government is primarily engaging in OECD-level processes and is showing very little support for UN engagement. The EU Presidency presents a unique opportunity to push for actions against tax dodging, but so far the government has not taken a proactive stance.

# Luxembourg

**‘The reputation and image of our banking centre is one of my very personal concerns. Honestly, I am fed up with being accused of being a defender of a tax haven and a hotbed of sin. We need to work on our image...’**

*Prime Minister Xavier Bettel, speaking to the Luxembourg Bankers’ Association (ABBL).<sup>333</sup>*

## General overview

The last 12 months have been a period of dramatic change in Luxembourg. In December 2013, a new government took office after 34 years of same party rule and 19 years with the same leader (Jean-Claude Juncker) at the helm.

While others often condemn the country as a tax haven, the government of Luxembourg has long resented the label. Therefore, the government and industry representatives are working on rebranding the country. Banking secrecy is a thing of the past, they say. Now, Luxembourg will attract financial flows because it is home to a transparent, world-class financial hub.<sup>334</sup>

The recent acceptance of EU and US information sharing agreements, as well as increasing compliance with FATF and OECD rules and success in developing renminbi activities<sup>335</sup> and Islamic finance<sup>336</sup>, support the government’s claim that Luxembourg is a “normal” financial centre.

However, simultaneously the country is in the process of diversifying its financial industry, offering new services that would attract the tax averse, including trust vehicles and a “freeport” – a fiscal no-man’s land for storing physical assets. These come on top of a number of existing policies which have not yet been revised despite international criticism.<sup>337</sup> And, in spite of the government’s claims that this is a new age of transparency, leaders use the ‘defence of privacy’ argument when they need it, as the ongoing investigation by the EU Commission into Luxembourg’s tax agreements with Fiat has demonstrated.

Luxembourg’s strategy in international fora has been to invoke the “level playing field” principle, according to which Luxembourg says it will reform just as soon as everyone else does.<sup>338</sup> However, at the same time Luxembourg underlines the importance of maintaining “tax competition”, with Prime Minister Bettel reassuring the nation’s bankers’ association in March 2014 that “even though we are planning a major tax reform, I can assure you that tax competitiveness is high on my government’s agenda”.<sup>339</sup> And domestically, the

debate often becomes hostile towards those who advocate for change, and government ministers who feel compelled to make concessionary noises while abroad risk being pilloried by their political opponents back home.<sup>340</sup>

Worryingly, concerns about potential impacts on developing countries do not seem to be an important issue in the discussion as yet and the potential negative spillovers of Luxembourg’s tax policies have not yet been assessed.

## Tax policies

While Luxembourg has often been highlighted for undermining the corporate tax base in other countries<sup>341</sup>, its own revenue from corporate income tax is among the highest in the EU as measured against the size of the economy.<sup>342</sup> This is not least due to the sizeable financial sector, which accounts for 38% of GDP and contributes 25% of all tax revenue.<sup>343</sup>

Luxembourg’s statutory tax rates are generally in line with the EU area. It taxes top income earners at 43.6% (above the EU average of 39.4%), and has a corporate income tax rate of 29.2% (well above the EU 22.9% average rate).<sup>344</sup> Nonetheless, Luxembourg is a favoured destination for transnational corporations. Nearly 35% of US Fortune 500 companies have subsidiaries in Luxembourg, more than in known secrecy jurisdictions such as Cayman Islands, Switzerland and Bermuda to name but a few.<sup>345</sup> The UK’s FTSE 100 companies hold assets worth more than \$205 billion in Luxembourg, which despite Luxembourg’s small size is only surpassed by four other countries in Europe (France, Italy, Netherlands and the UK itself). Despite the massive assets, FTSE 100 companies employ less than 6,000 people in Luxembourg, approximately the same number as in Finland where assets held by them are a meagre \$3 billion (68 times less than in Luxembourg).<sup>346</sup>

## Potentially harmful tax practices

While Luxembourg’s corporate tax rate is higher than the EU average, a range of incentives and loopholes allow transnational investors to lower the effective tax rate to nearly nothing. For example, according to Time Magazine, the IT giant Amazon has an effective tax rate of 0.009% on its \$12 billion operation in Luxembourg.<sup>347</sup>

Among the tax incentives offered to corporations is a particularly notorious policy which allows companies to offset taxable profits by a fall in their asset values before the assets are sold. This incentive has been effectively used by several large transnationals such as Vodafone, Caterpillar and AOL to wipe out profits made in other countries.<sup>348</sup>

Transnationals also have access to advance pricing agreements for transfer pricing arrangements. It is this type of agreement that has led the European Commission to announce an investigation into a transfer-pricing case involving a subsidiary of the Italian carmaker Fiat in Luxembourg.<sup>349</sup> The Luxembourg authorities have refused to comply with information requests related to the case and are challenging the legality of the investigation.<sup>350</sup> In the course of this tussle, Luxembourg has argued the need to protect the privacy of its investors and has refused to disclose the beneficial owner of the companies mentioned in internal government documents shared with the Commission.<sup>351</sup>

### Special Purpose Entities

Luxembourg is famous for its "letterbox" holding companies. These are only subject to an annual subscription tax of between 0.01-0.05 percent of the company's assets. If dividends are paid from the holding company to foreign investors, it is exempt from withholding tax, and there is no tax on interest or capital gains.<sup>352</sup> This structure makes Luxembourg highly useful for routing FDI and helps explain why more than 10 percent of the world's FDI stocks flow through Luxembourg<sup>353</sup>, a sum over 40 times the nation's GDP.<sup>354</sup>

Several high-profile tax avoidance cases have been linked to holding company structures in Luxembourg, a recent example being the Italian authorities' investigation into the tax matters of Prada.<sup>355</sup>

Tax avoidance opportunities are particularly attractive if a holding company in Luxembourg is combined with a subsidiary in jurisdictions with low rates of corporate income tax, for example in Switzerland, which one observer calls 'its comrade in tax-avoidance arms'<sup>356</sup> due to the many cases of tax avoidance combining subsidiaries in the two countries. Luxembourg's position as a route for FDI is felt all over the world, including in developing countries. For example, the IMF reports that 67 per cent of all FDI inflows to Botswana come from Luxembourg.<sup>357</sup>

### Tax treaties

Luxembourg has 73 tax treaties in force, slightly below the average of 77 for EU members. Twenty-eight of its treaties are with developing countries.<sup>358</sup> Luxembourg tends to follow the OECD model treaty in negotiations<sup>359</sup> and the treaties do not systematically include anti-treaty shopping rules.<sup>360</sup>

As of January 2014, Mongolia cancelled its tax treaty with Luxembourg and three other countries. According to the Vice

Finance Minister of Mongolia they had "started to question why these countries would have greater advantages in Mongolia than [the Mongolians]".<sup>361</sup> Similarly, South Africa was in a tax dispute with Luxembourg in 2010 over a provision in its tax treaty which was seen to grant Luxembourg favourable taxing rights.<sup>362</sup>

One danger of tax treaties for developing countries is that they often include significantly reduced tax rates on withholding tax. While this is the case for some of Luxembourg's treaties, it is worth noting that on average its treaties with developing countries contain the smallest reductions in tax rates of all the 15 European countries covered in this report. While the average is a 2.8 percentage point reduction, Luxembourg has on average only reduced the rates by one percentage point.<sup>363</sup>

### Impact on developing countries

Luxembourg can pride itself on being the most generous nation in the world when it comes to official development assistance as a percentage of national wealth.<sup>364</sup> As part of its efforts to assist developing countries, Luxembourg has for several years targeted capacity building of fiscal authorities in ODA recipient countries.

The new government of Luxembourg has also underlined the importance of policy coherence for development. For example, in the words of Prime Minister Xavier Bettel:

"Policy coherence for development is a valuable asset. It seems to me essential to make sure that one hand doesn't take away what was offered by the other hand. Such an approach would not be efficient, or even honest, towards those who are in need and towards our own citizens...Our choices have implications in developing countries and on their opportunities to take their destiny into their own hands".<sup>365</sup>

However, despite the concerns that its policies around tax and transparency can undermine tax collection in developing countries, Luxembourg has not yet carried out a spillover analysis of its policies or its tax treaties.

Luxembourg's assumption of the EU presidency during the latter half of 2015 coincides not only with the European Year of Development, but also the UN's setting of the Sustainable Development Goals. This is likely to increase attention around the potentially negative impacts of Luxembourg's tax policies on developing countries, but also presents a unique opportunity to show a willingness to transform and lead on development issues, both at the EU and global levels.

## Financial and corporate transparency

### Banking secrecy

In March 2013, then Finance Minister Frieden made history by accepting to apply automatic information exchange in the context of the EU Savings and Tax Directive. Luxembourg then proceeded to block progress until Prime Minister Bettel capitulated, in March 2014, following assurances that neighbouring non-EU jurisdictions, such as Switzerland and Lichtenstein, would not benefit from the move.<sup>366</sup> Having long blocked the directive, which ensures the free flow of tax information within EU member countries, this turn-around signified a major step away from banking secrecy. When in the same month Luxembourg signed the so-called FATCA agreement with the USA for exchange of information, the move was compounded.<sup>367</sup>

These moves towards more exchange of tax information follow a high level of international pressure, the latest example being a report from the OECD's Global Forum on Transparency and Exchange of Information for Tax Purposes, which in 2013 declared that Luxembourg was non-compliant in terms of basic requirements for corporate and tax transparency.<sup>368</sup> Only three other countries out of a total of 50 that were reviewed received the non-compliant status.<sup>369</sup> The OECD report highlighted Luxembourg's on demand tax information exchange system as faulty, stating among other things that "Luxembourg has refused to provide banking information in response to valid requests in a number of cases".<sup>370</sup> As part of the follow-up on the OECD report, the government launched two pieces of legislation that respond to some of the faults pointed out, particularly in relation to the exchange of tax information.<sup>371</sup>

### New secrecy initiatives

However, Luxembourg has recently taken two very concerning steps that increase opportunities for tax avoidance and evasion by private individuals.

Firstly, a bill tabled in Parliament in July 2013<sup>372</sup> proposed the creation of a new type of private wealth trust that will open up new ways to hold wealth in Luxembourg outside the reach of other countries' tax authorities. KPMG notes that a "high level of confidentiality is guaranteed" for the founders of the new trusts, that "the number of requirements to be met to set up a private foundation has been opportunely reduced to a minimum", and importantly that "the tax treatment applicable (...) appears to be particularly attractive".<sup>373</sup>

Secondly, a so-called "Freeport" was opened in September 2014. This facility offers storage space in a tax and duty free environment.<sup>374</sup> The Financial Action Task Force which monitors money laundering has called free ports "a unique money-laundering and terrorist-financing threat" due to the secrecy involved, and The Economist magazine reports that some banks have started to recommend that customers hide assets in free ports as they are not covered by the information exchange agreements that cover most bank account information.<sup>375</sup> The company behind the new Freeport in Luxembourg "firmly rejects" accusations that it could be used for money laundering.<sup>376</sup>

All in all, Luxembourg is still a popular destination for foreigners to hold private wealth. Luxembourg's national statistics office estimates that foreign households hold \$370 billion of wealth in the country's banks, while some believe the real figure could be as high as \$720 billion.<sup>377</sup> This is in a country which has an annual national income of \$35 billion. Estimates also suggest that there has been a massive rise in personal wealth held in Luxembourg, with a 20 per cent increase between 2008 and 2012.<sup>378</sup>

### Oversight

The effectiveness and impartiality of the oversight of transnational corporations, and particularly the banking sector, has been challenged from within the country, too. The Luxembourg investor and consumer protection organisation ProtInvest raised concerns of biased oversight in 2013 and 2014, after a number of individuals with ties to the financial sector were appointed to bodies charged with overseeing this sector.<sup>379</sup> ProtInvest have referred the matter to the EU Commission to look into it. The IMF has also previously noted concerns about the 'operational independence' of the body in charge of overseeing the financial sector.<sup>380</sup>

### Ownership transparency

As regards transparency around ownership, the OECD has pointed to a number of problems with Luxembourg's policies. The OECD noted that bearer securities were allowed in Luxembourg and ownership information was not stored. Also, they found a lack of documentation of ownership information on certain types of holding companies.<sup>381</sup> The Financial Action Task Force (FATF) which combats money laundering and terrorist financing published a scathing assessment of Luxembourg's anti-money laundering regulation in 2010. In 2014, a follow-up assessment was published and, in line with the trends outlined above, a number of improvements

towards more transparency and better safe-guards against money laundering were noted. However, the report also stated that serious problems regarding the identification of beneficial ownership, as pointed to by the OECD, still exist in Luxembourg.<sup>382</sup> In line with the country's commitment to comply with OECD and FATF rules, Luxembourg has taken steps to address these concerns with the 28 July law for the immobilisation of bearer shares and units, which establishes beneficial owner registration for Luxembourgish companies that issue bearer shares.<sup>383</sup>

In spite of the moves, the European Commission's ongoing investigation into the Fiat case has highlighted that, in practice, Luxembourg still favours privacy over transparency, as they have refused to adhere to the Commission's request to disclose the beneficial owners in internal documents handed over for the investigation, claiming that domestic confidentiality laws prevent them from doing so.<sup>384</sup>

## EU solutions

During the negotiations around the EU Anti-Money Laundering Directive, the government of Luxembourg does not seem to have taken a public position as regards the introduction of publicly accessible registers of beneficial owners in the EU. This is despite the recent changes in its own bearer share legislation, which establishes beneficial ownership registration for corporates.

It is unclear what position the government takes on the proposal to introduce EU legislation ensuring country by country reporting for all sectors.

## Global solutions

As regards the question of whether negotiations around global tax standards should happen under the auspices of the UN, it is also unclear what position the government of Luxembourg takes.

The support which the government has shown for automatic information exchange through the Savings Tax Directive and FATCA is unlikely to have any direct benefit for developing countries as these agreements only involve the EU and US. Perhaps it could even mean the contrary. In Luxembourg, government and industry leaders now openly proclaim that with the loss of revenues due to the ending of banking secrecy, the country's future depends in part on the opportunities that exist in markets beyond the reach of these regulations<sup>385</sup>, namely developing countries.

## Conclusion

Luxembourg has on the one hand taken genuine steps towards greater transparency during the last few years, and particularly in 2013 and 2014 with the support for the Savings Tax Directive and FATCA.

However, at the same time as promoting a push towards greater transparency, new tools are also being created which can hide assets such as the so-called "Freeport" and the proposed establishment of a new type of trust vehicle. For Luxembourg's claim that it is committed to transparency to ring true, these initiatives must be abandoned.

The longer the regional and global economy continue to perform poorly, and nations - large and numerous - struggle to balance their books, Luxembourg's practices are likely to continue to attract international criticism, and demands for change are likely to increase in strength and number.

# The Netherlands

**‘By making use of loopholes in tax treaties in combination with differences between national tax rules, internationally operating companies can avoid paying tax. It means that poor countries miss out on tax revenues, funds they desperately need for things like infrastructure and education.’**

*Lilianne Ploumen, Minister for Foreign Trade and Development Cooperation.<sup>386</sup>*

## General overview

The Netherlands is the world’s largest source of global foreign direct investment (FDI), mainly due to the tax treatment of these flows. It is no surprise then that tax issues have been high on the public agenda. The impact of Dutch tax treaties on 28 developing countries resulted in a tax loss of €554 million annually in 2011 alone.<sup>387</sup> Recently the European Commission has started an investigation into whether Dutch tax rulings are in breach of EU State Aid rules.<sup>388</sup>

On other issues, the Dutch official line is highly contradictory. Following a decision in 2013, the Dutch government carries out automatic exchange of information with foreign tax authorities in the context of a tax ruling when it concerns a company whose sole activities are channelling through interest or royalty payments.<sup>389</sup> Meanwhile, the Dutch embassy in the Ukraine co-organised a workshop entitled “Dutch Holding Companies: New Opportunities for Structuring of Ukrainian Business”<sup>390</sup> – which essentially explained how companies can use the Netherlands for aggressive tax planning structures. When similar cases were brought to the public’s attention, it led to a political debate that forced politicians to make public statements on harmful tax practices.<sup>391</sup>

There have been many media stories relating to Dutch tax avoidance structures covered by the international media, including cases involving Google,<sup>392</sup> Uber<sup>393</sup> and Mylan.<sup>394</sup> The developing country angle is still mostly represented by civil society – but the Dutch government has taken certain measures and are in the process of offering 23 developing countries anti-abuse provisions in bilateral tax treaties between them and the Netherlands.<sup>395</sup>

## Tax policies

### Taxation of transnational corporations

A recent report by Citizens for Tax Justice shows that the Netherlands is the most popular tax haven for the 500 largest US companies. Almost 50 per cent of the companies have subsidiaries based in the Netherlands, which together generated a profit of US\$127 billion.<sup>396</sup>

The Netherlands Foreign Investment Agency (NFIA), an operational unit of the Dutch Ministry of Economic Affairs, uses tax incentives to attract foreign investments and says that “the Dutch tax system has a number of features that may be very beneficial in international tax planning”.<sup>397</sup> They include the Dutch Advance Tax Ruling and Advance Pricing Agreement practices; the “innovation box”, which results in an effective corporate tax rate of only 5 per cent; the “participation exemption” where all benefits related to a qualifying shareholding are exempted from Dutch corporate income tax; and advantages in debt and loss structuring.

The Netherlands also has a wide tax treaty network resulting in a reduction of withholding taxes on dividends, interest and royalties in countries that have signed these treaties with the Netherlands.<sup>398</sup> Finally, the Netherlands levies no withholding taxes on outgoing interest, royalties and most dividends – making the Netherlands a conduit haven for FDI flows. It is the combination of these policies and practices that make the Netherlands a popular conduit country.<sup>399</sup>

The Netherlands does not have clear anti-abuse laws, but instead applies a doctrine of “substance over form” (fraus legis) that has been developed in jurisprudence of the Supreme Court. Tax authorities may disregard a legal transaction if: a) the main motive for entering into the transaction is the avoidance of tax; and b) when entering into the transaction, the taxpayer violates the purpose and objective of the tax legislation.<sup>400</sup> However, the abuse of law is only as a so-called ultimate remedy (ultimum remedium), when other legal options are exhausted. The State Secretary of Finance also acknowledged that it is difficult to tackle tax avoidance using fraus legis as it only applies to national tax legislation, whereas most tax avoiding structures make use of the differences between national and international tax rules.<sup>401</sup>

The European Commission has announced that it is investigating the tax system in the Netherlands, Luxembourg and Ireland. Under investigation in the Netherlands is “the individual ruling issued by the Dutch tax authorities on the calculation of the taxable basis in the Netherlands for manufacturing activities of Starbucks Manufacturing EMEA

BV”.<sup>402</sup> The Dutch government maintains that its rules do not constitute harmful practices, and the Commission stated that “in particular, the Commission notes that The Netherlands seem to generally proceed with a thorough assessment based on comprehensive information required from the tax payer. The Commission therefore does not expect to encounter systematic irregularities in tax rulings.”

### Potentially harmful tax practices

Special Purpose Entities (SPEs) create the illusion that foreign direct investment (FDI) flows in and out of the Netherlands are high when compared to GDP. According to the International Monetary Fund (IMF), the FDI figures of the Netherlands – as with other European countries like Luxembourg and Cyprus – cannot be understood “without reference to tax arrangements that make several of these countries well known as advantageous conduits through which to route investments”.<sup>403</sup>

The Dutch Ministry of Finance and the Dutch Central Bank do not use the term SPE, but instead use the term ‘special financial institution’ (SFI, in Dutch: bijzondere financiële instelling), which is similar to an SPE. The Netherlands hosts around 12,000 of these special financial institutions that channel €4,000 billion per year.<sup>404</sup> Although SPEs have to comply with several so-called substance requirements<sup>405</sup> – such as having a registered address in the Netherlands, and ensuring that at least 50 per cent of the statutory (and competent) directors are Dutch residents – these substance requirements can be fulfilled easily by so-called trust offices. Large transnational corporations often manage their own SPEs, but most SPEs are managed by trust offices. The Dutch trust office sector has grown to become statistically important for higher FDI and growth, while due to lack of substance it has little impact on the real economy. However, the statistical weight of the sector, pointed to over and over again by sector lobbyists, makes it politically difficult for Dutch politicians to regulate. Recent research from the Dutch Central Bank found it “alarming”<sup>406</sup> that executive and supervisory functions in trusts’ offices are not sufficiently separated and there is too often a lack of knowledge regarding the beneficial owner. As a result, some trust offices were fined and others had their licenses revoked.<sup>407</sup>

Dutch media attention regarding the harmful effects of its tax system goes back at least as far as 1999, when a Handelsblatt journalist revealed that the former Indonesian dictator Suharto and his family used Dutch letterbox companies to hide corrupt money and evade taxation.<sup>408</sup> More recently, in 2014, the Dutch media reported allegations of money laundering concerning the eldest son, and business friends, of the former Ukrainian president Viktor Yanukovich.<sup>409</sup>

However, the European Commission investigation may turn the debate from corruption to tax dodging, as it has highlighted the role of several EU jurisdictions in facilitating tax dodging.<sup>410</sup>

### Tax treaties

The Netherlands currently has 90 tax treaties in force of which 44 are with developing countries.<sup>411</sup> The treaties with developing countries includes significantly reduced rates of withholding taxes, with an average reduction of 3.1 percentage point compared to the national statutory rates of the developing country treaty partners. Particularly the rates on interests and dividends for qualified companies have been lowered.<sup>412</sup>

In 2012, an IMF Technical Assistance Report on the Mongolian tax treaty model pointed out that that tax treaty network was prone to tax avoidance. The treaty with the Netherlands, in particular, lowered withholding taxes (on dividends) in such a way that it caused international tax avoidance.<sup>413</sup> In October 2012, Mongolia cancelled its tax treaty with the Netherlands (as well as with Luxembourg, Kuwait and United Arab Emirates).<sup>414</sup> Another developing country that cancelled its treaty with the Netherlands is Malawi. In early 2013, Malawi and the Netherlands agreed to renegotiate the existing treaty since it was out of date. However, before negotiations started, Malawi cancelled the treaty in June 2013. Shortly afterwards, the two countries agreed to start negotiations.<sup>415</sup> The reasons for cancellation remain unclear to the public.

As a response to criticism, and an IMF process on international corporate tax spillovers, the Ministry of Foreign Affairs commissioned a report that researched the risk of the unintended negative effects of tax treaties on developing countries – for instance the lack of anti-abuse provisions.<sup>416</sup> The Netherlands now actively supports the inclusion of anti-abuse clauses in its tax treaties and is in the process of approaching 23 developing countries with which it already has tax treaties, or with which negotiations are taking place, with the intention of including anti-abuse clauses.

Although Dutch fiscal policy follows the OECD Model and low withholding tax rates in treaty negotiations, it offers developing countries more room to negotiate higher withholding taxes and follows some elements of the UN Model in negotiations with developing countries.<sup>417</sup>

## Financial and corporate transparency

As regards a public registry of beneficial owners, the Dutch government supports the unprogressive text agreed upon by the Council of Ministers, which “is a carefully balanced text, stating that Member States shall ensure that beneficial ownership information is held in a specified location, for example in the case of companies in a public and central company registry, or in data retrieval systems.”<sup>418</sup> Meanwhile, the Dutch Parliament adopted a resolution that calls upon the government to actively pursue – within the European Council – a public register of beneficial owners.<sup>419</sup>

The Netherlands has adopted a positive stance with respect to corporate transparency and is interested in international initiatives on country by country reporting. It has therefore advocated that the European Commission should investigate the impact of public country by country reporting for all sectors.<sup>420</sup> However, there are no further national plans other than the EU-proposed legislative processes.

## Global solutions

When asked if the Dutch government supports an intergovernmental body on tax matters, established under the auspices of the United Nations (UN), the Ministry of Finance answers that the Netherlands is satisfied with the way both the Organisation for Economic Co-operation and Development (OECD) and the UN currently function.<sup>421</sup> This implies that the Netherlands does not support a UN intergovernmental body, but instead views the OECD as the appropriate forum to address global tax matters. In general terms, the Netherlands is publicly concerned with the lack of tax capacity in developing countries and supports initiatives such as the OECD’s Tax Inspectors without Borders.<sup>422</sup>

The Netherlands is willing to send information to developing countries that are not yet able to send information on an automatic basis in return, but “only on a legal basis and if we are sure that the privacy of our information will be secured”.<sup>423</sup>

## Conclusion

The public debate in the Netherlands brings together diverse opinions on the benefits of the trust sector and other harmful tax practices. Ongoing media attention on major corporations using “mailbox” companies in the Netherlands for tax planning has created significant public awareness, for instance leading parliament to pursue a public registry of beneficial owners in the European context.

The Netherlands does not want to be seen to be blocking EU-wide initiatives, while still trying to keep its own harmful regimes outside of the scope of the EU.

# Poland

## **‘Taxes could be lower if more Polish companies and citizens pay them more fairly.’**

*Mateusz Szczurek, Minister of Finance<sup>424</sup>*

### **General overview**

Tax dodging in Poland did not enter the public debate until late December 2013 when LLP S.A. – a large listed Polish clothing retailing company based in Gdansk – decided to move their brands to subsidiaries in Cyprus and the United Arab Emirates.<sup>425</sup> Their brands include the popular Reserved, Reserved Kids, CroppTown, MOHITO and Sinsay. This led to protests and civil society actions. Immediately, a discussion was underway about the moral aspects of the company’s decision. A Facebook boycott page was created by young socialist activists,<sup>426</sup> but after some time it was removed as LLP warned the page authors of copyright infringement.<sup>427</sup> This incident highlights the difficulty of having a public debate on this issue.

### **Tax policies**

#### **Taxation of transnational corporations**

The Ministry of Finance (MoF) is currently revising Poland’s tax law with the aim of limiting tax dodging by companies. In August 2014, the Parliament accepted some of the amendments to the taxation bill that aims to implement EU law. The amendments relate, among other things, to the terms and conditions of taxation of income of controlled foreign companies.<sup>428</sup>

The most crucial amendment is still to be debated and voted on. It relates to the change of the Tax Ordinance Bill and includes an anti-avoidance clause, recommended by the EU, which allows tax authorities to decide whether a particular financial transaction had business reasons or if it was conducted for tax purposes.<sup>429</sup> The Ministry wants to create a Council for the Avoidance of Taxation, which can issue non-binding opinions in the appeal phase of a tax case, if this is requested by a taxpayer or the tax authority. The service would incur a fee for taxpayers and its members would be appointed by the MoF to serve a four-year term. The board would include representatives of the Supreme Administrative Court and Supreme Court, the university ombudsman, the National Chamber of Tax Advisers, the Attorney General of the Treasury, the Attorney General and the Minister of Finance. The project will be voted upon in Parliament.<sup>430</sup>

In a frank assessment published by the audit house KPMG in 2013, the authors note that they expect the government to increasingly challenge transnational companies’ transfer pricing arrangements in future.<sup>431</sup>

Media reporting on the issue of tax avoidance is still not very common. The topic is covered mainly by newspapers and magazines and the tone of the articles is mostly negative towards a clampdown on tax dodging activities.<sup>432</sup> Some reporting covers issues related to EU regulation, such as Automatic Information Exchange<sup>433</sup> or other EU countries that are trying to fight the problem.<sup>434</sup> None of the reports seen so far have mentioned how Polish or EU tax laws affect developing countries.

#### **Potentially harmful tax practices**

Poland does not discriminate between profits from foreign sources and national sources for tax purposes. The Ministry of Finance lists Special Economic Zones (SEZ) that began operating in 1995 as a significant incentive that impacts on the levels of foreign direct investment (FDI) in Poland. SEZ were set up in order to speed up the development of the Polish regions, developing the potential of industry, building infrastructure, creating new workplaces, among other reasons, and offering exemptions from personal income tax, corporate income tax and property tax.<sup>435</sup> The value of SEZ investments as of 2012 stood at €20.7 billion (85.5 billion Polish zloty – PLN),<sup>436</sup> but there was no assessment of the tax breaks given to these same companies in order to know whether the benefits outweigh the costs.

Outside the SEZ, Poland does not have special tax regimes (such as exemptions, special tax deductions or accelerated depreciation advantages) on passive income such as capital gains, interest, royalties or dividends.

Poland does not have domestic anti-abuse rules to avoid abuse of fiscal benefits by foreign capital. However, the MoF is currently working on the introduction of a General Anti-Avoidance Rule as well as on Controlled Foreign Companies rules. According to the Ministry, Poland does not allow special purpose entities (SPEs) to be established, and thus does not consider it has any SPEs in its economy.<sup>437</sup>

Poland offers transnational companies advanced pricing arrangements related to transfer pricing, and, according to KPMG, actively encourages companies to apply for these.<sup>438</sup> KPMG further writes that they have “noticed a change in [the Government’s] approach in recent years towards taxpayers who want to conclude [Advanced Pricing Agreements], becoming more business-friendly”.<sup>439</sup>

## Tax treaties

Poland has 82 tax treaties in force, of which 38 are with developing countries.<sup>440</sup> Those tax treaties allow developing countries to apply withholding tax on outgoing capital flows – on royalties, dividends and interest. The rates vary between 5 per cent and 15 per cent. Depending on the treaty partner, Polish tax treaties also have provisions drafted according to the UN Model Tax Treaty.<sup>441</sup>

Dividends are taxed at a rate of 19 per cent, unless a tax treaty provides for a lower rate. Meanwhile, interest and royalties paid to a non-resident company are taxed at a rate of 20 per cent, unless, again, a lower rate is provided through a tax treaty. In general, Poland has not used its treaties to significantly lower withholding tax rates with developing countries, with an average reduction of withholding rates of only 1.1 percentage points. Of the 15 European countries covered in this report, only one other country has reduced rates less with developing countries than Poland.<sup>442</sup>

Some of the tax treaties with developing countries – though not all – have specific anti-abuse clauses. Examples include treaties with Luxembourg, the Slovak Republic, Belgium, the United Arab Emirates and India.<sup>443</sup>

Currently, and within the next five years, Poland is planning to conclude or renegotiate treaties with nations such as Ethiopia, South Africa, Thailand, as well as South American countries and former Yugoslav countries.<sup>444</sup>

## Impacts on developing countries

Poland does not plan to carry out impact assessments of tax treaties with developing countries. The overarching principle is to adjust the content and the balance of a tax treaty, taking account of the economic relationship with a treaty partner to ensure they are not harmful.<sup>445</sup>

There is a provision for policy coherence for development in Poland's Development Cooperation Act. The Ministry of Foreign Affairs has taken the first steps to implement the provision,<sup>446</sup> including by creating a Policy Coherence for Development (PCD) contact group from among several government ministries. NGOs expect that PCD will be included in a second Multiannual Development Cooperation Programme and have raised the issue of tax avoidance in the Development Cooperation Policy Council, a multi-stakeholder consultative body functioning alongside the Minister of Foreign Affairs.

## Financial and corporate transparency

Annual accounts, partnership deeds and the number and value of shares of companies are held at the National Court Register.<sup>447</sup> Although it is possible to get these details, it requires personal visits to the National Court Register, where the person who demands the accounts also has to give his/her personal data.<sup>448</sup>

An OECD review of corporate transparency in Poland from 2013 notes several short-comings in the documentation of ownership information. This included the issue that foreign companies in Poland are not in all circumstances obliged to maintain ownership information and that it is not a legal requirement to provide information on foreign trusts with a Polish trustee or administrator.<sup>449</sup>

Bearer shares are allowed in Poland. Companies need to notify the register of the number of bearer shares, but they do not need to be registered in the book of shares.<sup>450</sup>

Poland does not have a clearly defined position towards country by country reporting and disclosure rules for beneficial ownership at EU level.

## Global solutions

Poland has appointed an expert to the UN Committee of Experts on International Cooperation in Tax Matters.<sup>451</sup> Consequently, the country fully supports the UN's aim of helping developing countries. However, it is not clear whether Poland supports a new intergovernmental body under the auspices of the UN.

## Conclusion

Poland is in the process of responding to international tax avoidance and evasion within its own administrative systems by updating its tax laws and practices.

The public outcry in response to the LPP scandal has highlighted the demand for a transparent and equitable tax system, which was also expressed by the young activists who tried to campaign against the Polish fashion giant.

In terms of beneficial ownership information, bearer shares remain a concern. As regards the EU negotiations about public disclosure of beneficial ownership information or country by country reporting, Poland has not yet taken any proactive position.

The role of developing countries does not feature either. However, given Poland's growing economy and the greater reach of its companies – not least in transition economies in Eastern Europe – there is good reason for Poland to conduct a spillover analysis to assess the impacts of its tax policies on poorer countries.

# Slovenia

**‘Tax evasion and fraud are not only an economic problem but one of morality and justice. If citizens pay their share to society we must expect the same from multinationals and rich people who have the knowledge to avoid taxes.’**

*Mojca Kleva Kekus, former Member of the European Parliament.<sup>452</sup>*

The government continues its efforts to tackle money laundering and tax evasion as a criminal offence. The Office for Money Laundering Prevention received 599 new reports of money laundering and concluded 434 cases in 2013.<sup>461</sup> One hundred and seventy notifications of suspicious transactions were sent to the State Prosecutor’s Office (a decrease of 3% from the year before), and most of the reports were made by the Tax Office (108 pieces of information were sent - a 47% increase from 2012).<sup>462</sup>

## General overview

With a sizeable ‘grey economy’ the non-payment of taxes and other criminal offences are still a hot issue in Slovenia, although there are no estimates of losses of tax revenues. Another issue on the political agenda is that of ‘tax debt’ that companies fail to pay to the tax authorities.<sup>453</sup> During the financial and economic crisis, government deficits and government debts increased and the revenues that were received decreased.<sup>454</sup> The consequence has been an increase in the amount of unpaid tax by companies.<sup>455</sup>

The activities of the tax authorities have significantly increased in order to tackle the “grey” economy. In the year 2013, the tax authority performed 10,569 inspections, an increase of 93.2% compared with the previous year.<sup>456</sup> The supervisors established 132,405 irregularities, which was 19.4% more than in the year 2012.<sup>457</sup> On the basis of the supervisor’s appeal, 80,053 statements of account or declaration were delivered.<sup>458</sup> This drive amounted to €160 million of additional tax being settled – 78.9% more than in the year 2012.<sup>459</sup> The purpose of these tax inspections is also to serve as a deterrent to tax evasion activities and are intended to improve tax compliance through the voluntary payment of tax obligations.<sup>460</sup>

## Tax policies

### Taxation of transnational corporations

Corporate tax compliance is an emerging issue, and basic data is hard to obtain due to a lack of company transparency on a country by country basis. Figure 8 shows vast differences in tax payments by transnational corporations in relation to their employees, and profit in their Slovenian subsidiaries. What the chart does not show is whether corporations lowered their official profits in Slovenia by shifting them out of the country before reporting to the tax administration.

As part of a large-scale clamp down on tax dodging, the tax authorities performed 34 tax supervisions of transfer pricing within transnational corporations and additionally established €4.5 million in unpaid taxes.<sup>463</sup> Among other things, the identified irregularities included manipulation of transfer prices as well as the assignment of profit to permanent establishments of foreign companies.<sup>464</sup>

There is no Controlled Foreign Companies regulation in Slovenia.<sup>465</sup>

**Figure 8 Key financial information of subsidiaries of transnational corporations in Slovenia**

Company	Income 2013 in €	No. of employees	Profit in €	Tax paid in €	Tax as a % of profit
McDonalds	27,327,970	275	2,241,314	442,174	19.7%
Shell	175,999,654	15	1,727,778	no data	no data
Siemens	59,290,069	122	800,295	408,672	51%
GlaxoSmithKline	31,515,000	81	1,128,000	377,000	33.4%
Sodexo	24,481,809	557	307,511	43,902	14.2%
G4S	5,036,673	249	172,615	no data	no data
L’Oreal	22,599,043	39	1,024,031	273,252	26.7%
Zara	15,589,404	68	1,199,906	no data	no data
Nestle	11,417,698	no data	811,558	no data	no data

Source: Annual reports published at The Agency of the Republic of Slovenia for Public Legal Records and Related Services (AJPES, [www.ajpes.si](http://www.ajpes.si))

## Measures to combat tax dodging

Slovenian officials have a focus on transactions between Slovenia and low-tax jurisdictions.<sup>466</sup> One hundred and sixty-eight tax inspections were performed and €12.3 million in additional tax was collected from transfers to such jurisdictions in 2013.<sup>467</sup> The administration uses the term “more tax-friendly territories”, which seems to only be used in Slovenia to determine preferential tax treatment by a jurisdiction.<sup>468</sup>

In 2013, Slovenian tax inspectors conducted 804 tax supervisions and €7.3 million in additional tax was collected from special purpose entities.<sup>469</sup> Forged invoices referring to fictitious owners were found to be frequently used.<sup>470</sup>

The Slovenian Tax Authorities also conducted a number of other supervisions, including:

- 47 tax supervisions performed on lawyers, notaries and legal advisors, with €483,780 of unpaid tax obligations found.<sup>471</sup>
- 767 supervisions performed in relation to social security contributions and €12.2 million in unpaid taxes were discovered. In the majority of cases, the salaries were paid to the employees without making the corresponding social security payments.<sup>472</sup>
- Through “goal-oriented” supervision of systematic tax evasion, 1,584 tax inspections were performed and additional tax obligations were settled totalling €24.6 million.<sup>473</sup>

On the issue of tax debt, the Tax Authority publishes a list of tax debtors on its website every month for debts exceeding €5,000. This naming and shaming is believed to pressure businesses.<sup>474</sup> At the end of December 2012, the outstanding “tax debt” was a staggering €1.6 billion - larger than the government deficit. Five hundred and seventy million euros were recovered during the year 2012, but new tax debt was also accumulated. By the end of 2013, the overall balance had reduced to €1.4 billion.<sup>475</sup>

## Potentially harmful tax practices

Since 2006, corporate income tax has been gradually reduced from 25% to 17% in 2014, well below the EU average of 22.9%.<sup>476</sup> Investment funds, pension funds and venture capital companies operate under a special 0% tax rate.<sup>477</sup>

A range of incentives are offered, including on investments in research and development, and investments for certain

types of equipment and intangible assets.<sup>478</sup> Slovenia has also established Special Economic Zones where reduced rates of taxation apply. Among the Special Economic Zones is the important Koper port, where companies who export more than 51% of their goods and services are subject to reduced rates.<sup>479</sup>

Despite the fact that the Slovenian Tax Authorities have discovered tax dodging through the use of special purpose entities (SPEs), Slovenia is still one of the countries where there is the possibility to set up SPEs.<sup>480</sup>

Although the types of tax incentives and special legal structures mentioned above might one day become attractive to companies and individuals trying to dodge taxes, there is little indication that Slovenia is currently being used to route investments, as its foreign direct investments (FDI) stocks compared to GDP are either in line with the general OECD average (for inflows) or far below (on outflows).<sup>481</sup>

While it is not possible to set up a trust under Slovenian law, there are no restrictions for residents to act as a trustee for a trust formed under foreign law.<sup>482</sup>

## Tax treaties

Slovenia has 56 tax treaties in force, of which 19 are with developing countries.<sup>483</sup> Of the 15 countries covered in this report Slovenia has the fewest number of total treaties, as well as the fewest number of treaties with developing countries. When negotiating treaties, the OECD model has been used. Slovenia’s statutory withholding tax rate of 15% on dividends, interests and royalties is generally much lower in the treaties it has negotiated. For example, it only applies a 5% withholding tax in its treaty with Belarus, and its treaty with India has rates of 10% on interests and royalties.<sup>484</sup> Slovenia includes anti-abuse clauses in its treaties.<sup>485</sup>

## Impacts on developing countries

Slovenia’s treaties with developing countries in general contain significant reductions in withholding tax rates. On average, these reductions amount to 2.8 percentage points which is also the average reduction among the 15 European countries covered in this report.<sup>486</sup>

Slovenia does not seem to have any plans to conduct a spillover analysis to assess the impact of its tax policies on developing countries. The principle of policy coherence for development was adopted officially in 2009,<sup>487</sup> but a recent analysis points out that there is low political commitment to the principle.<sup>488</sup> It is not clear whether tax is considered part of the policy coherence agenda in Slovenia.

## Financial and corporate transparency

Financial institutions are obliged to obtain certain data on beneficial owners on the basis of the Act on the Prevention of Money Laundering and Terrorist Financing. They have to obtain data on the identity of the beneficial owner at the conclusion of the business relationship for each transaction exceeding €15,000, and on any transaction where there is a suspicion of money laundering or terrorist financing, or doubts about the veracity and adequacy of previously obtained ownership information.<sup>489</sup>

In 2013, the OECD concluded a review of Slovenia's corporate transparency and exchange of tax information. The review noted that Slovenia has a good track record on exchange of information and that ownership registration in general is strong. One concern the assessment did note was that while foreign companies have to register when setting up in Slovenia, they do not have to provide ownership information.<sup>490</sup> Similarly, ownership information for foreign partnerships was also not consistently available.<sup>491</sup>

Data on legal persons is publicly available on the database held at the Republic of Slovenia Agency for Public Legal Records and Related Services (AJPES). This enables insight into data on companies performing their activities in Slovenia (at the time of writing there are approximately 220,000 companies). No shareholder data is available, but other information is available concerning company identification number, company name, headquarter address, tax identification number, data on representatives and founders. Verification is performed by different institutions including the Bank of Slovenia, Public Payments Administration by their Ministry of Finance, and the Tax Authority. The website includes annual reports of companies, published together with financial data. AJPES should deliver this data to anyone who asks for it, which assures complete, simple, quick and free access. While it would be relatively simple to add beneficial ownership data to such a service, no current plans exist.

Slovenia has bearer shares in circulation, but full ownership information is kept at a central registry.<sup>492</sup>

Transactions exceeding €30,000 to countries with a higher risk of money laundering or terrorist financing are put on a list, which is made available to the public by the Office for Money Laundering Prevention.<sup>493</sup> Finally, data concerning the expenses of public institutions purchasing goods and services are published on the website of the Commission for the Prevention of Corruption.<sup>494</sup> These measures use public scrutiny and transparency as a deterrent for corruption, but it has not been extended to full transparency of beneficial ownership of all companies and legal persons in Slovenia.<sup>495</sup>

While Slovenia generally supports international initiatives that increase transparency<sup>496</sup> it does not seem to have been actively championing the Anti-Money Laundering Directive at the EU level, which could ensure that beneficial ownership information would be stored. Its position on promoting country by country reporting is also unclear.

## Global solutions

In the year 2013, the activities of the Tax Authority were focused on the timely and qualitative exchange of information in the field of direct and indirect taxes as well as administrative assistance at recovery of taxes with foreign authorities.<sup>497</sup> Slovenia's position in relation to whether the UN or OECD should take the lead in reforms of international taxation remains unclear.

## Conclusion

Tax evasion, other criminal offences to the detriment of the state budget, and the "grey economy" remain high on the political agenda in Slovenia. The "goal oriented" inspections have been of high importance as they had positive results in the year 2013 to keep the budget deficit as small as possible, restore public confidence and promote tax compliance. Slovenia has moved towards transparency and public access to much corporate information, but still lacks a public registry on full beneficial ownership of all companies on as well as full country by country reporting of companies operating in Slovenia. Slovenia has not yet taken a proactive stance on promoting disclosure of beneficial ownership at the EU level, and it is unclear whether the government supports country by country reporting.

The focus on policy coherence for development seems low and no spillover analysis is planned to assess whether Slovenia's tax policies have negative impacts on other countries. Slovenia also doesn't seem to have a clear position on the question of whether negotiations about global tax standards should be led by the UN or continue to be led by the OECD.

# Spain

## 'Companies must pay taxes where they obtain benefits.'

Luis de Guindos, Minister of Economy and Competitiveness<sup>498</sup>

### General overview

The Spanish media have brought a series of corruption cases to the public's attention, most of which have included aspects of tax evasion or suspicious use of tax havens involving political parties, government bodies and even the royal family.<sup>499</sup> These cases have created a public perception that there is no commitment from the government towards a fair tax system.<sup>500</sup> In contrast, Spanish citizens are ever more aware of the risks associated with the lack of accountability.<sup>501</sup>

The Spanish government has publicly stated its intention to fight tax evasion and avoidance,<sup>502</sup> and has created an international taxation unit at the Spanish Tax Agency (AEAT) specifically for this purpose. However, it has not increased the number of tax administration staff.<sup>503</sup>

In 2012, the informal economy represented 24.6 per cent of GDP in Spain,<sup>504</sup> and tax evasion is estimated to represent around €59.5 billion – higher than the public health budget of €57 billion.<sup>505</sup> Other estimates put this at €88 billion,<sup>506</sup> almost equal to the total public deficit in 2011.<sup>507</sup> Wealthy individuals and big companies represent 72 per cent of the total estimated cost of tax evasion.<sup>508</sup> These facts are reflected in public opinion, since 82 per cent of Spanish people consider tax dodging to be a serious problem, and 75 per cent regard the Spanish tax system as unfair.<sup>509</sup> The momentum for lasting changes in the tax system is definitely in place.

### Tax policies

#### Taxation of transnational corporations

There is an unfair disparity between the tax contributions of big corporates and smaller companies. The Tax Reform Bill of 2014 will see the statutory tax rate drop from 30 per cent to 25 per cent, while most tax exemptions remain the same. This reform will imply a reduction in tax collection of around €9 billion in the next two years. Small and medium-sized enterprises have benefited from the 25 per cent tax rate since 2007, and contributed up to 66 per cent of corporate income taxes that year, increasing to 76 per cent in 2011. Meanwhile, big companies paid 33 per cent of corporate income taxes in 2007, decreasing to 24 per cent in 2012, while their declared profits were 32 per cent bigger than small- and medium-sized companies.<sup>510</sup>

In other words, the reform will reinforce inequality and the concentration of wealth in the hands of a few.

As regards the effective tax rates, the consolidated groups of big companies paid an average of 3.5 per cent on their profits in 2011,<sup>511</sup> whereas the effective tax rate for non-consolidated groups and small and medium companies was 17 per cent.<sup>512</sup> That same year, if there were no deductions, the ten biggest companies at IBEX35 (Spanish Stock Market Index) should have paid €10.2 billion (30 per cent of €34 billion in profit before tax).<sup>513</sup> However, they only paid €5.8 billion.<sup>514</sup>

**Figure 9** The profit, taxes and effective tax rate of selected IBEX35 companies

Company	Profit	Taxes	Effective Tax Rate
BBVA	N/A	N/A	2.90% (2013)
Santander Bank	€11.2 billion (2008)	€57 million (2008)	0.5% (2008)
Abengoa	€263 million (2010)	- €400,000 (2010)	N/A

Example of available tax information about three IBEX35 companies. Source: Tanto Tienes, Tango Pagas (Based on annual accounts from the companies)

The information given in annual accounts is not homogenous, nor compulsory, and it is not possible to replicate the tax bill from publicly available information. Information is provided to the Tax Administration, but neither the company nor the administration itself provides this information to the public. It is considered confidential.<sup>516</sup>

There are strong indications that tax avoidance practices are common among large companies. Thirty-three of the 35 largest Spanish companies have a presence in tax havens, according to research conducted by Observatorio de RSC – an organisation that analyses corporate social responsibility commitments. Based on public information about companies included in the IBEX35 stock market index in 2012, their research showed that these companies have a total of 467 subsidiaries in offshore centres, 6.8 per cent more than in 2011.<sup>517</sup>

Although these facts should lead to a push for greater transparency and compliance, the June 2014 Tax Reform Bill<sup>518</sup> includes tax reductions for the highest income earners and a reduction of income tax rates in different brackets. This has happened under a context of public sector cutbacks that have already meant a dramatic decrease in spending in essential public services.<sup>519</sup> The tax reform bill is also weakening the fight against tax dodging and tax havens, and side-lining demands for transparency of government activities and those of big companies.<sup>520</sup>

### Potentially harmful tax practices

Investors in Spain can benefit from a series of tax deductions, but they are not specific to foreign or domestic investors. They include wide-ranging deductions for research and development including deducing the use of fixed assets and rent arising from certain intangible assets.<sup>521</sup> Spanish companies benefited from €2.2 billion in tax exemptions in 2012.<sup>522</sup> Eighty per cent of tax exemptions were allocated to the biggest companies.<sup>523</sup> There is no data on how much was given as tax deductions and exemptions to foreign companies, and whether these constitute harmful tax practices.

Since 1995, Spain has had a special tax regime for foreign-securities holding entities (or ETVEs), which are similar to holding companies in the Netherlands and Luxembourg. They are an example of tax competition or “fiscal dumping”, as it is known as in Spain. They were created to attract foreign direct investment (FDI), but risk attracting FDI that has no economic substance in Spain. In an ETVE, capital in- and outflows are exempt from tax payments, as well as dividends, benefits and capital gains coming from foreign companies held by the ETVE. Only investments made to develop their activities in Spain are taxable.<sup>524</sup>

ETVEs can receive grants and tax credits from declared losses. Many major transnational companies have established these kind of structures, including Exxon, General Mills, Pepsi, Morgan Stanley, Foot Locker, Petrobras, American Express, Starbucks, Hewlett-Packard and Toshiba.<sup>525</sup> The Spanish government does not consider that ETVEs fulfil the OECD criteria on Special Purpose Entities (SPEs).<sup>526</sup> Therefore there is no specific monitoring of SPEs in Spain, even though ETVEs fulfil many of the criteria established for SPEs.<sup>527</sup>

There are also tax exemptions on interest paid out to non-resident investors in Spanish public debt and other equity that can be accounted for (the so-called “Bonos Matador”). This constitutes a “ring-fenced” regime whereby foreign residents are treated differently from domestic residents, and it has the characteristic of a harmful practice. It is estimated that in 2014 alone these benefits will cost the Spanish budget €1.4 billion.<sup>528</sup> At the end of 2013 it was estimated that the foreign investment associated with this fiscal benefit would be €288.9 billion.<sup>529</sup> While the total amount of tax exemptions was disclosed through the Budget Bill, there was no impact assessment or transparency around who is the main beneficiary.

### Tax treaties

Spain has 88 tax treaties in force, of which 43 are with developing countries.<sup>530</sup> They are negotiated following the OECD Model Convention and the articles will depend on the negotiation. The Spanish treaties normally include anti-abuse clauses to avoid “treaty shopping” and “rule-shopping”,<sup>531</sup> but it is not known whether Spain offers developing countries safeguards against ETVEs and other harmful tax practices.

Spanish regulation establishes that dividends and other income for non-residents should be taxed at 19 per cent.<sup>532</sup> However, in the reverse situation, bonuses from Spanish residents earned abroad but used in Spain should be taxed at 24 per cent.<sup>533</sup> In other words, Spain is safeguarding its own tax revenue, but at the same time tries to undermine the tax base of third countries by pushing for a lower tax rate for them.

Of the 15 European countries covered in this report Spain is by far the most aggressive in the push for lower tax rates from its developing country treaty partners. On average, these negotiations have resulted in a reduction in withholding tax rates of 5.7 percentage point, compared to the 2.8 percentage points which is the average for the other European countries in this report.<sup>534</sup> The large reductions can potentially lead to a significant tax revenue loss in the developing countries that Spain has treaties with and demonstrates the need for improved policy coherence.

The Spanish law covering the territories considered as tax havens is the Royal Decree 1080/1991 of 5 July. Forty-eight jurisdictions were included according to the definition of a harmful tax practice. However, a later law – Royal Decree 116/2003 of 31 January – stated that those territories that have signed a tax information exchange agreement or a tax treaty with Spain would cease being considered as a tax haven. Spain signed these kinds of agreements with several territories initially included in the list of tax havens, often coinciding with the business interests of Spanish transnational companies. Since 2010, countries like Panama, Bermuda, Monaco and more recently Jersey, Guernsey and the Isle of Man, are no longer on the Spanish tax haven list.<sup>535, 536</sup>

## Financial and corporate transparency

### Ownership transparency

The Spanish Tax Agency says that they have all the information they need to fulfil fiscal regulation, but it is all considered confidential.<sup>537</sup> However, a careful study of the OECD Global Forum concerning the Spanish legal system shows that this only involves certain thresholds of information and they do not have timely and complete information concerning shareholders.<sup>538</sup>

When companies are based in Spain, they need to provide information to the Commercial Register (Registro mercantil) concerning the founders, including the shares that they hold. However, this does not need to be amended when shares are subsequently traded. There is no obligation for companies to identify changes in shareholders, but they do need to identify the name and Taxpayer Identification Number (Numero de Identificación Fiscal) of shareholders owning more than 5 per cent (1 per cent for listed companies) to the tax administration in the annual corporate tax income return.<sup>539</sup> These thresholds are wholly inadequate for the tax authority to have a picture of individual shareholders as no individual owns 1 per cent of a listed company. The tax authority also receives information from financial intermediaries in an annual tax return, covering transfers of all shares of listed companies. Companies also need to keep lists of shareholders, and receive notifications from financial intermediaries upon a change of shares.<sup>540</sup>

This information contained in the ledger of shareholders is not open to the public, but it is available to other shareholders.<sup>541</sup> Listed companies must notify the National Securities Market Commission (Comisión Nacional del Mercado de Valores) when ownership exceeds or undercuts certain thresholds starting from 3 per cent.<sup>542</sup> Therefore, the Spanish tax agency collects information from companies, but this information cannot be considered adequate as no information is provided on the shares owned by domestic and foreign shareholders. This information is not made open to the wider public.

At the EU level, Spain has previously supported the creation of a European register of beneficial ownership of companies, but has spoken against public access to it.<sup>543</sup>

### Reporting for transnational corporations

The position of the Spanish government on country by country reporting of the activities of transnational companies is similar. In other words, it supports this measure at EU level but without taking any concrete steps towards introducing it nationally, and supporting a limit on access to this information to government agencies.<sup>544</sup>

Spain is also participating in the OECD process on Base Erosion and Profit Shifting (BEPS), supporting a template for country by country reporting as part of action point 13. The OECD has already decided that the guidance coming out of the BEPS process will include a recommendation that the information should be kept confidential from the public, a decision that the Spanish government has supported.<sup>545</sup>

## Global solutions

In Spain, the Treasury Ministry thinks that the creation of a multilateral body on tax matters under the United Nations framework would only provide long-term results and it would not be an efficient and effective measure. Thus Spain's negotiating position is not favourable towards the upgrading of the UN Expert Committee on International Cooperation in Tax Matters to an intergovernmental body in the upcoming Financing for Development Process.<sup>546</sup>

The Spanish Ministry of Treasury remarks that the BEPS diagnosis report makes an analysis that takes into account developing countries and relies on OECD public consultations and impact assessments rather than planning to make them on their own.<sup>547</sup>

Finally the Ministry of Finance does not support the idea of non-reciprocal automatic exchange of information in general as proposed by civil society organisations. They would consider specific cases but not support the development of a general mechanism to ensure the involvement of the poorest countries.<sup>548</sup>

## Conclusion

Despite its positive public rhetoric, Spain has recently approved the 2014 Tax Bill that will cause a €9 billion worth of reduction in the tax collection in the next two years, due to tax exemptions, decreases in tax rates and other causes. Spain also and continues to promote the country as a location for activities that have no clear economic substance through the ETVE-regime, which has all the characteristics of an SPE-regime.

Furthermore, the relative lack of transparency of both the government and large companies regarding tax matters creates a lack of accountability to the public and developing country stakeholders. The position of the Spanish government is that measures to collect such information should be introduced, but this information should not be available to the public, either in the case of country by country reporting, or in the case of beneficial owners of companies.

Spain has a high number of tax treaties and this fact, combined with the potentially harmful impacts of Spain's ETVE-regime, are strong arguments for why Spain must conduct a spillover analysis to assess the impacts of Spain's tax policies on developing countries.

# Sweden

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**'It is important that all countries have capacity and political will to counter tax evasion and avoidance. Sweden's national interests and the interests of low income countries are to a large extent joint in this area.'**

*The former Swedish government's latest report on Policy Coherence for Development.<sup>549</sup>*

## General overview

There is an ongoing discussion in Sweden about tax avoidance in publicly financed companies in the welfare sector, particularly health and education. An examination made in 2014 by the largest daily newspaper (Dagens Nyheter) showed that the five largest healthcare provider corporations, with a joint profit of 1.2 billion Swedish Krona (SEK) (€130 million), only paid SEK 26 million in tax. Generally tax is avoided by shifting profits out of the country through interest and dividend payments.<sup>550</sup>

In September 2014, Sweden had a change of government, and there is hope that this can also mean a change for the better as regards the Swedish position on tax and transparency matters.

## Tax policies

Corporate tax rates in Sweden are, at present, average compared with other countries in the EU. A proportionally higher part of the total tax revenue in Sweden, however, comes from labour, while the part that comes from capital is much lower than the average. Thirteen per cent of the total tax revenue comes from capital, while the average in the EU is 20.8%.<sup>551</sup> Unlike most countries, Sweden neither taxes inheritance, gifts nor net wealth.<sup>552</sup>

In an effort to bring money hidden in tax havens back to Sweden, a special "tax amnesty" has meant that the number of people voluntarily reporting wealth hidden in foreign accounts has continued to increase. During 2013 more than 2000 individuals chose to repatriate their wealth to Sweden from various tax havens, more than double the number in 2012. Even though this tax amnesty is estimated to have given some SEK 1.7 billion (€190 million) to the state treasury

since 2010<sup>553</sup>, these measures are not uncontroversial. Many people find it objectionable that rich individuals who have committed tax crimes are released from any penalty while low-income people have to pay their taxes.<sup>554</sup> In May 2014, the debate further heated up when the main TV news broadcast in Sweden ran the headline "Sweden – the new tax haven for the rich"<sup>555</sup> describing how the wealthy are, in general, paying much less tax than ordinary workers.

Sweden has also attracted some wealthy tax exiles from Finland, causing a public outcry on the other side of the Gulf of Bothnia.<sup>556</sup>

## Taxation of transnational corporations

Tax legislation in Sweden does not have any explicit incentives that discriminate between profits from foreign sources and national sources for tax purposes. However, there are regulations that are very favorable for foreign companies, and this has caused leading groups such as Business Sweden – the Swedish Trade and Invest Council – to describe the situation as: "one of Europe's most attractive corporate tax regimes", especially for companies setting up a holding company or a branch in Sweden. This includes: "no license tax or local corporate tax [...] tax exemptions on capital gains and intra-group dividends, no thin-capitalisation rules, no withholding tax on interest payments and no or low withholding tax on dividends [...] No stamp duty or capital duties on share capital, extensive double tax treaty network".<sup>557</sup> Tax exemptions like this are often abused by transnational corporations to shift profits across country borders without having to pay much (or in some cases any) tax. Furthermore, Sweden's "extensive double tax treaty network" means that financial transfers between Sweden and its treaty partners is in some cases taxed more lightly than statutory rates, implying that it can be easy to move money in and out of Sweden. This raises serious concerns that Sweden could become a "conduit haven" for Foreign Direct Investment (FDI), meaning a country where money flows through for tax purposes without being related to any real economic activity in Sweden. However, if this were to happen, Sweden's FDI levels would start increasing dramatically, and this does not seem to be happening at the moment.<sup>558</sup> Furthermore, it is positive that Sweden does not allow for the establishment of Special Purpose Entities, meaning that there are no legal constructions designed to keep foreign investments separate from domestic economic activities.<sup>559</sup> There are anti-abuse rules, and rules for withholding tax on dividends (30%) but exemptions are made for business-related holdings.<sup>560</sup>

## Tax treaties

Sweden has 85 tax treaties in force - 39 of these with developing countries.<sup>561</sup> The Ministry of Finance (MoF) does not give out any information on whether they are planning to negotiate any new treaties in coming years.<sup>562</sup> According to the MoF the existing treaties differ quite a lot between each other, for example when it comes to the amount of withholding tax a developing country is allowed to apply on outgoing capital flow. Most treaties have the limitation of benefit clauses, but again they differ a lot between each other in terms of how specific they are. The MoF has not responded to questions about whether the treaties primarily follow the UN or the OECD model when allocating tax rights, merely stating that all treaties are a result of bilateral negotiations.<sup>563</sup>

In its treaties with developing countries, Sweden has generally negotiated substantial reductions in the withholding tax rates. On average, the reductions amount to 3.9 percentage points of the statutory withholding tax rates of its developing country treaty partners. Of the 15 European countries covered in this report only two others have reduced its rates with developing countries by more than Sweden.<sup>564</sup> This could imply that Sweden has been quite aggressive in negotiations with developing countries and this could result in revenue losses for developing countries.

Despite the potential dangers of Sweden's tax treaties, the former government was not planning to carry out any impact assessment of how existing tax treaties impact on developing countries.<sup>565</sup> Whether the new government will take a more progressive position remains to be seen.

## Development Cooperation

Over the last few years the former Swedish government prioritised participation of the private sector in overseas development assistance (ODA) including financing Swedfund, a bilateral Development Finance Institution (DFI) which co-funds businesses in emerging markets. Swedfund has received approximately SEK 1.8 billion (€200 million) in the period 2009–2013.<sup>566</sup> There has been a lot of debate about whether investments through Swedfund really lead to poverty reduction and sustainable development.<sup>567</sup> The system for follow-up has been quite weak and, according to several previous evaluations,<sup>568</sup> it has been difficult to see clear development results. According to a new report from the Swedish National Audit Office the follow-up system is now slowly improving.<sup>569</sup>

Swedfund has also been criticised for channelling investments through funds in tax havens. This situation is, however, changing since new guidelines stipulate that:

1) *the company shall "ensure that the investments take place in accordance with international norms and principles for sustainable enterprise, and within sound and clear corporate structures which do not contribute to tax evasion, money laundering or financing of terrorism".*<sup>570</sup>

According to the Ministry of Foreign affairs, Swedfund does investigate questions related to beneficial ownership before making an investment, but this information is not made public.<sup>571</sup>

Swedfund has raised its ambitions related to development impact from investments – including an aim to increase taxes paid in the developing countries where the enterprises have their activities. Swedfund has also broadened its reporting. From 2014, it began to include the amount of taxes paid in different countries from the portfolio companies invested in.<sup>572</sup> This reporting was, however, done on an aggregated level in each country and thus it is not possible to relate these figures on taxes paid to profits in the different companies in which investments have been made, and to assess if taxes were paid in the same countries as the profits were made.

## Financial and corporate transparency

In Sweden all companies are responsible for maintaining a publicly available shareholder register, which constitutes the legal basis for the exercise of shareholder rights. Listed companies must keep the shareholder registry at a Central Security Depository (CSD)<sup>573</sup>, and a printout is available to the public for all shareholders holding more than 500 shares. The law, however, allows for nominee shareholders for foreign owners which means that the nominee is entered in the register instead of the real shareholder, who can thus remain anonymous. Information on nominees must be provided upon request to the CSD, but there is no verified or public register of beneficial owners of companies in Sweden.<sup>574</sup>

Swedish law requires all Swedish trustees to keep information identifying the settlor and beneficiaries of foreign trusts for tax purposes. Additionally, a Swedish trustee who acts for business purposes is required to keep accounting records under the law, which identify settlors and beneficiaries. There is, however, no public registry of trust ownership.<sup>575</sup>

Country by country reporting is not required in Sweden, but the Swedish Tax Authority does ask for additional reporting of company structures in relation to transfer pricing and carry

forwards of losses to prevent abuse.<sup>576</sup> This information is, however, not accessible to the public.

The former Swedish government welcomed and supported in very general terms efforts to promote transparency in relation to beneficial ownership information. However, at the same time they opposed an absolute requirement for public registration of beneficial owners on the EU-level as they considered that it should be left to national authorities to decide on and design measures to increase transparency.<sup>577</sup> The former Swedish government's view was that issues about ownership are complex and therefore less suitable for coordinated public registers. Sweden also did not support an EU directive introducing an obligation for all transnational enterprises to carry out country by country reporting for each country in which they operate. They preferred to see the discussion continue within the framework of the OECD's Action Plan on Base Erosion and Profit Shifting (BEPS).<sup>578</sup> It should be noted, however, that it has already been decided within the OECD BEPS process that country by country information should not be available to the public. The former government was of the opinion that until these negotiations were finalised, companies should be encouraged to self-regulate.<sup>579</sup>

## Global solutions

The former Swedish government clearly recognised capital flight and tax dodging as obstacles for global development that need to be countered. This was stressed in the yearly follow-up of the National Policy for Global Development.<sup>580</sup>

Sweden has appointed an expert to the UN committee of Experts on International Cooperation in Tax Matters.<sup>581</sup> However, on the question of whether Sweden supports the establishment of an intergovernmental body under the auspices of UN, the MoF has not yet given a clear answer.

As regards impacts on developing countries, it was the position of the former government that since the OECD is undertaking an analysis of the impact of different policy options there would be no need for an additional specific impact assessment of Swedish policies on tax and transparency.

The former government did not take a standpoint on whether developing countries should be invited to receive information for tax purposes without a condition of reciprocity but believed that this question needed to be further analysed.

## Conclusion

The former Swedish government stated that countering tax dodging was a high political priority. In spite of this they were not supportive of obligatory regulations on the EU level requiring registers of beneficial ownership and country by country reporting.

On the national level, Sweden requires public registers of domestic shareholders but not of country by country reporting. Sweden has worked to collect additional information for tax purposes concerning company structures to limit abuses of transfer pricing and carry forwards of losses. There are, however, also policies that aim to attract foreign investment which are of some concern. The new Swedish government should therefore conduct spillover analysis to assess the impacts of these policies on developing countries.

At the global level the former government clearly recognised tax dodging as a development problem. They did, however, not take a clear position on the issue of whether an intergovernmental body on tax matters should be established within the UN system.

# United Kingdom

**‘The message is very simple – if you’re hiding your money offshore, we are coming to get you and the criminal law is going to come and find you.’**

*Chancellor of the Exchequer George Osborne.<sup>582</sup>*

## General overview

Tax and transparency remain high profile issues in the UK with both parliament and the media taking a significant interest. In parliament the Public Accounts Committee has continued its high profile role, following last year’s investigations into the Big Four accountancy firms<sup>583</sup> and Amazon, Google and Starbucks<sup>584</sup>. This year it has undertaken an inquiry into the way in which tax reliefs and incentives are granted in the UK,<sup>585</sup> finding a “lack of transparency and accountability for tax reliefs, and no adequate system of control, following their introduction.”<sup>586</sup>

The impact of reforms to the tax regime since 2010 remain unclear. The cost of reductions in corporation tax is estimated to be £5.4bn (€6.8bn) and reports say that Treasury modelling estimates do not expect that this cost will be recouped through increased business activity.<sup>587</sup> It is not known what proportion of this is granted to foreign companies, but it is likely to be high. It is claimed that more companies are relocating to the UK,<sup>588</sup> though questions remain on the amount of genuine economic activity that is being moved.<sup>589</sup>

Policies such as the Patent Box, which lowers the tax rates (to only 10%) on the profits from products that incorporate patents, are being questioned as to how such policies can effectively legitimise aggressive tax avoidance,<sup>590</sup> and some question how such policies would sit with commitments to international tax reforms in the Base Erosion and Profit Shifting (BEPS) process.<sup>591</sup>

## Tax policies

### Potentially harmful tax practices

The significance that the UK Government attaches to the tax system for attracting investment is noticeable because of the prominence that has been given to the cutting of the corporate income tax rate gradually from 30% in 2007 to 24% in 2012, as well as the repeated mantra of “the most competitive tax regime in the G20”.<sup>592</sup> This commitment is

repeated in the UK Trade and Investment (UKTI) guide on taxation in the UK<sup>593</sup> which highlights the following aspects of the UK tax system:

- Low corporation tax rate
- CFC rules
- Patent box
- R&D credits
- Tax reliefs for the creative sector (film, video games etc)
- No withholding tax on dividends
- Extensive treaty network, with low withholding taxes on interest and royalties

As most of these aspects are relatively recent it is difficult to track the impact of these changes, and the extent to which they may or may not be harmful for both European and developing countries. However, as will be indicated below, there have been questions surrounding many of them.

While the UK does not appear to have Special Purpose Entities (SPEs) in the manner of the Netherlands,<sup>594</sup> there is concern that the UK does offer some structures and policies that could be viewed as harmful.

The UK introduced Limited Liability Partnerships (LLPs) in 2000. This structure provides the ‘limited liability’ usually associated with a company, but with the tax treatment of a partnership. The LLP itself is not a taxable entity so partners receive dividends gross and pay tax on their dividends. There is increasing evidence that LLPs are being misused. More than 49,000 LLPs are active in the UK, although only around 4,000 appear to belong to the UK accountants and lawyers which they were designed for.<sup>595</sup> Their use has been identified in the laundering of stolen assets from Ukraine by Victor Yanukovich.<sup>596</sup> Having a unique structure which means they are not liable for UK tax, while being a UK corporate entity, has made them subject to only limited scrutiny by UK authorities and they are viewed internationally as “respectable”, but also unlikely to attract overseas authorities’ attention. In the words of Private Eye they are “the international criminal’s corruption vehicle of choice”.<sup>597</sup>

The UK has not reported on the OECD definition<sup>598</sup> concerning SPEs, even though many LLPs and trusts would fulfil the criteria of having little economic links to the local economy, despite having significant foreign transactions and assets.

More recently, the reform of Controlled Foreign Company

(CFC) rules, and the introduction of the patent box have both attracted attention as potentially harmful measures. The CFC reforms have raised questions on their potential impact on developing countries, estimated to be £4bn<sup>599</sup> (€5 billion), and also their impact in the UK, notably with respect to the finance provisions that provide tax on profits from offshore financing at a quarter of the regular rate, and even the Government's own estimates are that they will cost £325 million (€410 million) a year.<sup>600</sup>

It is claimed that the Patent Box scheme is an encouraging innovation, but has been criticised for being too wide in scope, by including patents registered before the scheme came into operation, allowing leased patents to be included and including all the profits on products, rather than just the profits attributable to the patent.<sup>601</sup> Concerns have been raised, most notably by Germany,<sup>602</sup> that the patent box rather than encouraging innovation, will also facilitate the transfer of intangible assets (such as intellectual property) from the position they were genuinely created for - to sit on paper in the UK - depriving other countries of tax from the profits on those intangibles.

## Tax treaties

The UK treaty network has not attracted as much attention as other areas of its tax system. However, it is one of the most extensive in the world. The UK currently has 125<sup>603</sup> tax treaties in force with a 126th treaty with Zambia awaiting legislative approval.<sup>604</sup> Sixty-six of the UK's treaties are with developing countries, which is only surpassed in numbers by France.<sup>605</sup> As already highlighted, the UK does not have withholding taxes on dividends, and in its treaties it has generally agreed to low rates on interest and royalties,<sup>606</sup> under the OECD recommended 10% rate on all three areas. However, on average these are higher in treaties with developing countries, which would appear to be the result of developing countries seeking to preserve higher withholding taxes on outflows from their jurisdictions.<sup>607</sup> Despite these attempts, it is noteworthy that the UK's treaties with developing countries on average include a reduction in withholding tax rates of 4.1 percentage points.<sup>608</sup> Among the 15 European countries covered in this report this is the second highest reduction. Given the UK's high number of treaties with developing countries, this could potentially present a serious problem for revenue mobilisation in developing countries.

The UK does not have a specific policy regarding tax treaties with developing countries, although several have recently been agreed (Zambia being the most recent) and several more are planned (Lesotho, Malawi, Senegal, India, Tajikistan).<sup>609</sup> The UK would not confirm whether they have a policy of following the OECD or UN model of tax treaty;

however others have stated that "Since the publication by the OECD [of its Model Convention] all tax treaties concluded by the UK have been based on that draft and its successors"<sup>610</sup> and that "the UK never takes the initiative in incorporating a provision from the UN Model that diverges from the equivalent provision in the OECD Model....the UN Model and its Commentaries has therefore had little or no impact on the approach of the UK to the drafting of its treaties."<sup>611</sup> It is also notable that the stated policy to reduce withholding taxes on interest and royalties to zero wherever possible<sup>612</sup> suggests an aggressive approach to eliminating withholding taxes. This goes against the aims that the UK Government claims to have as regards assisting developing countries to increase and improve their domestic revenue mobilisation.<sup>613</sup>

## Impacts on developing countries

In relation to the reforms of the controlled foreign company rules, civil society and parliamentarians asked the Government to conduct a spillover analysis of its tax policies. This followed a concern from the parliamentary International Development Committee that the reforms would "incentivise multinational corporations to shift profits into tax havens... [with] significant detrimental impact of tax revenues of developing countries".<sup>614</sup> The government did not accommodate the desire for a spillover analysis,<sup>615</sup> but did acknowledge the UK's potential role in illicit flows from developing countries by stating that "[a]s a leading global centre for financial and legal services, the UK is a significant target for attempts to launder criminal proceeds obtained through corruption overseas... there is little doubt that stemming such flows and tackling the underlying problems is critical for developing countries".<sup>616</sup>

Related to the UK's Development Finance Institution – the Commonwealth Development Corporation (CDC) – the Parliamentary International Development Committee has recommended that "the tax payments made by CDC's fund managers and investee companies should be published annually on a country by country basis".<sup>617</sup> The need for such measures could be seen as high since it has been disclosed that approximately half of the CDC's investment were conducted through offshore jurisdictions.<sup>618</sup> The CDC does provide details of both employees and tax paid at an aggregate level for all countries where investments are made, but claims that confidentiality agreements prevent this being detailed at a company level.<sup>619</sup>

Actions by the government on these recommendations are still lacking and are much needed. A good first place for the UK to start would be to designate a DFID ministerial responsibility for the development impact of tax and fiscal policy, however this recommendation has also been rejected by the government.<sup>620</sup>

## Financial and corporate transparency

The UK, having decided to introduce a public register of the beneficial owners of companies,<sup>621</sup> has been leading calls for the European Union to follow suit, and Prime Minister David Cameron has written to the European Council calling for public registers of beneficial owners to be made an EU-wide requirement as part of the 4th Anti-Money Laundering Directive.<sup>622</sup> Even prior to this announcement, the UK has had a system of notifying major shareholders who cross significant control thresholds, starting from 10%, that they need to be declared to the Financial Services Authority (FSA). Company ownership information is held at a clearing and settlement system called CREST, and details of all individuals are held already for stamp duty purposes. Companies in the UK need to keep a list of registered owners, but this does not include bearer shares or shares held by nominees<sup>623</sup>. Nominee shares are common, and the company will not know its beneficial owners unless it requests that the nominees disclose their identity. Nominee and bearer shareholders can exercise voting rights in UK listed companies, but bearer shares cannot be registered in CREST or traded on the London Stock Exchange (LSE)<sup>624</sup>. None of the information held in CREST or by companies is public, the new public register of beneficial owners will be separate to CREST, and will be part of Companies House.

The UK's lack of progress in improving the transparency of trusts has been identified as a potential stumbling block, with other countries unwilling to move toward public registers unless the position is also improved for trusts. While the UK has agreed to look at trusts, the options that it is willing to consider remain unclear. With many EU Member States appearing more desirous of action on trusts than on a public register of beneficial ownership of companies, the risk appears strong that without the UK agreeing to some significant changes to how UK trusts are administered, a move to a public register of companies will be impossible.

The government supports the country by country reporting being developed as part of the OECD's Action Plan on BEPS. The OECD has already decided that the information from this type of reporting should not be available to the public. When it comes to any further EU regulation on public country by country reporting, the UK government remains strongly against it as they argue it would be an infringement on Member States competences.<sup>625</sup>

The UK is home to a high number of transnational companies and the London Stock Exchange has the highest number of foreign companies listed of all stocks exchanges worldwide.<sup>626</sup> Research conducted by Christian Aid has shown that 14% of all subsidiaries of companies listed on FTSE 100 are placed in highly secretive jurisdictions, and public and free information on these subsidiaries could only be accessed for 24% of all subsidiaries.<sup>627</sup>

## Global solutions

The UK continues to refer to the need to find global solutions on tax reforms that also work for developing countries, for example in relation to the BEPS process where the Treasury highlights the need to 'encourage fairness... between developed and developing countries'.<sup>628</sup> However, the UK has provided no details on how it intends to ensure this outcome. While the UK may be talking of encouraging solutions that work for developing countries, there appears to be less willingness to actually include developing countries in reaching those solutions. While the UK seems unwilling to provide further resources to the UN tax committee, the UK has provided €550,000 in additional funding to the OECD towards the BEPS activities.<sup>629</sup>

The UK has previously taken strides to ensure that developing countries were prominent in the G8, particularly in the Lough Erne declaration of 2013.<sup>630</sup> There are, however, concerns that this momentum has not continued, illustrated by the lack of references to developing countries in relation to tax at this year's G7 communique.<sup>631</sup>

## Conclusion

It is a positive sign that the UK has decided to introduce a public register for the beneficial owners of companies, as well as championed the idea of public registers to be introduced EU-wide. However, the UK's unwillingness to consider significant improvements in transparency of trusts endangers the possible agreement on public registries for companies. In the international arena, this contradiction between its own "competitive" tax policies and its announced ambition to clamp down on abuse is eating away at the credibility of the push towards greater transparency of beneficial owners and the UK's role as a champion on this issue. The strong resistance that the UK has shown against introducing public country by country reporting for all sectors has also undermined the UK's image of being an international champion on transparency, especially in the EU.

While the UK does appear to have been receptive to some developing country demands in tax treaty negotiation processes, the default position is to follow the OECD Model and eliminate withholding taxes. This goes against the aims that the UK Government claims to have as regards assisting developing countries to increase and improve their domestic revenue mobilisation. Thus we see, as with the bigger international picture, some contradictions in the UK position as regards tax and developing countries. Resolving these contradictions will be essential for the UK to improve its own record on ending capital flight. As a first step, the UK should analyse the spillover effects of its tax policies on developing countries.

# Appendices

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## Appendix 1: Methodology for the country rating system

### Category 1: Tax Treaties

- **Green** light: The government applies the UN Model when negotiating tax treaties with developing countries in order to ensure a fair allocation of taxing rights between the two countries. The treaties include anti-abuse clauses. The average rate reduction<sup>632</sup> on withholding taxes in treaties with developing countries are below 1 percentage point.
- **Yellow** light: The position of the government is unclear or the country does not systematically apply anti-abuse clauses or one specific model (UN or OECD). The average rate reduction on withholding taxes in treaties with developing countries is above 1 percentage point but below or equal to the average reduction for the 15 countries covered in the report (2.8 percentage points).
- **Red** light: The government applies the OECD Model when negotiating tax treaties with developing countries and does not ensure effective anti-abuse clauses. The average rate reduction on withholding taxes in treaties with developing countries is above the average for the 15 countries covered in this report.

### Category 2: Ownership Transparency, and Category 3: Reporting for transnational corporations

- **Green** light: The government is a champion and has either actively promoted EU decisions on these issues, or has already gone – or plans to go – further in its national legislation.
- **Yellow** light: The government is neutral at the EU level and doesn't have domestic legislation that stands out. Yellow is also used to categorise countries where the government has a position which is both negative and positive when it comes to progress at the EU level, as well as countries where the position is unclear.
- **Red** light: The government has either actively blocked progress at the EU level or maintains national laws which are particularly harmful on these issues.

### Category 4: Global Solutions

- **Green** light: The government supports the establishment of an intergovernmental body on tax matters under the auspices of the United Nations, with the aim to ensure that all countries are able to participate on an equal footing in the definition of global tax standards.
- **Yellow** light: The position of the government is unclear, or the government has taken a neutral position.
- **Red** light: The government is opposed to the establishment of an intergovernmental body on tax matters under the auspices of the UN, and thus is 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.
- **Blindfold**: 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.

<sup>632</sup> The average rate reduction covers withholding taxes on royalties, interests, dividends on companies and qualified companies but not for services due to the lack of data. The rate reductions between the European country and the developing country refers to the difference between the rate contained in the treaty and the statutory rate in the developing country. The average reduction is calculated from a sizeable sample of 86 per cent of all treaties between developing countries and the 15 European countries covered in this report. The analysis has been conducted based on data accessed from Martin Hearson of the London School of Economics and Political Science and from the International Bureau of Fiscal Documentation (IBFD) Tax Research Platform (<http://online.ibfd.org/kbase/>).

## Appendix 2: Tax Treaties

**Figure 10** **Number of treaties in force**

Country	with all countries	with low income countries <sup>1</sup>	with lower-middle income countries <sup>2</sup>	with upper-middle income countries <sup>3</sup>	with developing countries <sup>4</sup>
Belgium	90	4	19	24	47
Czech Republic	82	3	15	21	39
Denmark	85	4	13	19	36
France	125	14	26	32	72
Germany	92	4	19	25	48
Hungary	73	0	14	16	30
Ireland	71	0	10	15	25
Italy	93	5	19	25	49
Luxembourg	73	1	10	17	28
Netherlands	90	4	17	23	44
Poland	82	3	16	19	38
Slovenia	56	0	7	12	19
Spain	88	1	13	29	43
Sweden	85	5	11	23	39
United Kingdom	125	9	27	30	66

Source: Data compiled from the International Bureau of Fiscal Documentation (IBFD), tax research platform, accessed on 18 September 2014: <http://online.ibfd.org/kbase>  
Data is based on searches for treaties on income/capital that are in force.

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- <sup>116</sup> Policy Statement of The Government of The Czech Republic. 2014. p.29. Available at [http://www.vlada.cz/assets/media-centrum/dulezite-dokumenty/en\\_programove-prohlaseni-komplet.pdf](http://www.vlada.cz/assets/media-centrum/dulezite-dokumenty/en_programove-prohlaseni-komplet.pdf)
- <sup>117</sup> This approach to tax haven definitions comes out from informal discussions and can be also deduced from annual tax guides for the Czech Republic (see for example Deloitte. (2014). *International tax, Czech Republic, Highlights 2014*. Available at <http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-czechrepublichighlights-2014.pdf>, p1). The limitations of such an approach are revealed by the fact that, since January 2013, all dividends, interests and royalty payments to such countries are taxed at 35 per cent withholding tax instead of 15 per cent. However, on transfers to the most popular destinations in relation to tax purposes such as Luxembourg, Cyprus or Malta, the higher rate is not applied.
- <sup>118</sup> Based on data accessed at the IBFD tax research platform. Accessed on 18 September 2014: <http://online.ibfd.org/kbase/>
- <sup>119</sup> Video from a press conference organised by the Ministry of Finance on 19 March 2014. Available at <http://www.mfcr.cz/cs/aktualne/tiskove-zpravy/2014/predstaveni-navrhu-opatreni-v-danove-obl-17367>
- <sup>120</sup> Ibid.
- <sup>121</sup> PKF. (2013). *Czech Republic's Tax Guide 2013*. Available at <http://www.pkf.com/media/1954344/czech%20republic%20pkf%20tax%20guide%202013.pdf>
- <sup>122</sup> Based on analysis of data accessed at the IBFD tax research platform and through Martin Hearson of the London School of Economics and Political Science.
- <sup>123</sup> By 'bearer shares', we mean shares that are not registered. Whoever holds them is the owner of these shares and their transfers (literally from hand to hand) are not recorded anywhere. All of this means that the owner of a company with bearer's shares cannot be tracked at any time. The Czech Republic has banned this type of shares since January 2014. The six month transitional period ended on 1 July 2014.
- <sup>124</sup> CTK. (2014). *Téměř polovina českých podniků stále užívá anonymní akcie. Hrozí jim likvidace*. IHNED, 1 July 2014. Available at <http://byznys.ihned.cz/zpravodajstvi-cesko/c1-62437510-44-percent-spolecnosti-stale-uziva-anonymni-akcie>

- <sup>125</sup> See, for example, Celadník Filip. (2014). *Sverenecký fond jako výsledek českého pokusu o právní transplantaci trustu*. Available at <http://www.epravo.cz/top/clanky/sverensky-fond-jako-vysledek-ceskeho-pokusu-o-pravni-transplantaci-trustu-zklamani-jako-dite-ocekavani-vybrana-zakonna-ustanoveni-z-pohledu-zahranicniho-pravnika-93493.html> or Dlouhá Petra. (2013). *Novinka s potenciálem nahradit anonymní akcie*. Available at <http://www.penize.cz/investice/255357-novinka-s-potenciem-nahradit-anonymni-akcie-sverenske-fondy-brzy-v-cesku>
- <sup>126</sup> Information is based on an interview with a government official who is knowledgeable about the issue.
- <sup>127</sup> Ibid.
- <sup>128</sup> Ibid.
- <sup>129</sup> Ibid.
- <sup>130</sup> *Jyllands Posten* (2013). 'Danmark presser på for skatte-indgreb', 21 May 2013. Accessed 21 September 2014: <http://www.jyllands-posten.dk/premium/indland/ECE5498197/danmark-presser-pa-for-skatte-indgreb/>
- <sup>131</sup> Almost 200,000 citizens signed a petition against the sale, making it one of the largest petitions ever in Denmark. See more at DR. (2014). '200.000 Dong-underskriver på vej mod Corydon på sækkevogn'. Accessed 21 September 2014: <http://www.dr.dk/Nyheder/Politik/2014/01/29/214857.htm>
- <sup>132</sup> MS (2014). 'Danskerne siger nej til lovlig skattespekulation', published 2 June 2014, Accessed 21 October 2014: <http://www.ms.dk/blog/danskerne-siger-nej-til-lovlig-skattespekulation>
- <sup>133</sup> Politiken (2014). 'Skat er sparet i stykker', Published 10 September 2014, Accessed 21 October 2014: <http://politiken.dk/magasinet/feature/ECE2391461/skat-er-sparet-i-stykker/>
- <sup>134</sup> Avisen. (2014). 'Danskerne: Har Skat overhovedet styr paa skatten?' Published 8 September 2014. Accessed 20 October 2014: [http://www.avisen.dk/danskerne-har-skat-overhovedet-styr-paa-skatten\\_284015.aspx](http://www.avisen.dk/danskerne-har-skat-overhovedet-styr-paa-skatten_284015.aspx)
- <sup>135</sup> See <http://www.skm.dk/aktuelt/presse/pressemeddelelser/2013/januar/maaltrettet-indsats-mod-skattely-giver-1-mia-kr-i-statskassen/> and letter from former Danish Minister of Tax Morten Østergaard.
- <sup>136</sup> *Danmark sælges som det perfekte skattely i udlandet*, Danmarks Radio, 9 January 2014. <http://www.dr.dk/Nyheder/Indland/2014/01/08/214516.htm>
- <sup>137</sup> Bech-Bruun. (2012). 'Denmark: New anti-abuse rules aim to protect dividend WHT'. Accessed 21 September 2014: <http://www.bechbruun.com/-/media/Files/Videncenter/Artikler/Corporate/2013/New%20anti-abuse%20rules%20aim%20to%20protect%20dividend%20WHT.pdf>
- <sup>138</sup> Ibid.
- <sup>139</sup> Danish Business Authority, Questionnaire C1.
- <sup>140</sup> Tax Justice Network. (2013). 'Financial Secrecy Index: Denmark', p.4. Accessed 21 September 2014: <http://financialsecrecyindex.com/PDF/Denmark.pdf>
- <sup>141</sup> Ernst & Young. (2011). *Low tax jurisdictions and privileged tax regimes from a Brazilian perspective*, p.9. Accessed 21 September 2014: [http://www.ttn-taxation.net/pdfs/Speeches\\_Miami\\_2011/07-JeromevanStaden.pdf](http://www.ttn-taxation.net/pdfs/Speeches_Miami_2011/07-JeromevanStaden.pdf)
- <sup>142</sup> UNCTAD. (2013). *World Investment Report: Global Value Chains – Investment and Trade for Development*, p.16. Accessed 21 September 2014 : [http://unctad.org/en/publicationslibrary/wir2013\\_en.pdf](http://unctad.org/en/publicationslibrary/wir2013_en.pdf)
- <sup>143</sup> Danish Tax Authority, questionnaire A1.
- <sup>144</sup> Ministry of Foreign Affairs, Facts on Taxation in Denmark, p.3.
- <sup>145</sup> Based on data obtained from the IBFD tax research database: <http://online.ibfd.org/kbase/>
- <sup>146</sup> Danish Ministry of Taxation, questionnaire B3.
- <sup>147</sup> Danish Ministry of Taxation, questionnaire B2.
- <sup>148</sup> Danish Tax Authority, Questionnaire A4.
- <sup>149</sup> Ministry of Foreign Affairs, Facts on Taxation in Denmark, p.3.
- <sup>150</sup> Danish Tax Authority, Questionnaire A6.
- <sup>151</sup> Danish Ministry of Taxation, Questionnaire B5.
- <sup>152</sup> See, for example, Danida. (2014). *A Shared Agenda – Denmark's action plan for policy coherence for development*, p.7. Accessed 21 September 2014: [http://um.dk/da/-/media/UM/Danish-site/Documents/Danida/Nyheder\\_Danida/2013/2%20Handlingsplan%20PCD.PDF](http://um.dk/da/-/media/UM/Danish-site/Documents/Danida/Nyheder_Danida/2013/2%20Handlingsplan%20PCD.PDF)
- <sup>153</sup> OECD. (2011). *Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Denmark 2011*, p.20.
- <sup>154</sup> Danish Ministry of Business and Growth, questionnaire F2 & the Danish Central Business Registry, the CVR at: <http://www.cvr.dk/Site/Forms/CMS/DisplayPage.aspx?pageid=0>
- <sup>155</sup> Danish Ministry of Business and Growth, Questionnaire F1.
- <sup>156</sup> Danish Ministry of Business and Growth, Questionnaire D2.
- <sup>157</sup> *L'Expansion*. (2013). Comment Hollande veut 'éradiquer' les paradis fiscaux et l'évasion fiscale. 10 April 2013, available at: [http://lexpansion.lexpress.fr/actualite-economique/comment-hollande-veut-eradiquer-les-paradis-fiscaux-et-l-evasion-fiscale\\_1422585.html](http://lexpansion.lexpress.fr/actualite-economique/comment-hollande-veut-eradiquer-les-paradis-fiscaux-et-l-evasion-fiscale_1422585.html)
- <sup>158</sup> From 37.4 per cent for micro-enterprises, to 18.6 per cent for large corporations – see *Revue Banque*. (2014). De l'optimisation à l'évasion fiscal: les termes de la controverse, published 2 February 2014, accessed 14 October 2014: <http://www.revue-banque.fr/risques-reglementations/article/optimisation-fiscale-evasion-fiscale-les-termes-co>
- <sup>159</sup> *Les Echos*. (2013). Plusieurs mesures de lutte contre l'optimisation fiscale retoquées, 30 December 2013.
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- <sup>161</sup> Reuters. (2014). Hollande ties business tax relief to investment in France, 21 January 2014, accessed 21 September 2014: <http://uk.reuters.com/article/2014/01/21/uk-france-reforms-idUKBREAO0K0QA20140121>
- <sup>162</sup> République France. (2014). 'Évaluation des voies et moyens': [http://www.performance-publique.budget.gouv.fr/sites/performance\\_publique/files/farandole/ressources/2014/pap/pdf/VMT2-2014.pdf](http://www.performance-publique.budget.gouv.fr/sites/performance_publique/files/farandole/ressources/2014/pap/pdf/VMT2-2014.pdf), 3ème loi de finances rectificative pour 2012, article 66. The region of Sophie Antipolis in Southern France is promoted as an area for establishing foreign Research and Development operations with strong links to French research universities and the aero-spatial industrial base in Toulouse.
- <sup>163</sup> Invest in France. (2013). *France's Research Tax Credit*: <http://www.invest-in-france.org/Medias/Publications/153/France-research-tax-credit-2013.pdf>
- <sup>164</sup> OECD. (2013). 'France – Restoring competitiveness', Better Policies Series, p.46: <http://www.oecd.org/france/2013-11-OECD-Report-on-restoring-competitiveness-in-France.pdf>
- <sup>165</sup> *Les Echos*. (2013). Contrôles fiscaux: les gages donnés aux entreprises, published 3 September 2013, accessed 14 October 2014: [http://www.lesechos.fr/03/09/2013/LesEchos/21513-013-ECH\\_controls-fiscaux---les-gages-donnes-aux-entreprises.htm](http://www.lesechos.fr/03/09/2013/LesEchos/21513-013-ECH_controls-fiscaux---les-gages-donnes-aux-entreprises.htm)
- <sup>166</sup> Based on data collected at the IBFD tax research portal: <http://online.ibfd.org/kbase/>
- <sup>167</sup> Based on communication with Martin Hearson of the London School of Economics and Political Science.
- <sup>168</sup> Based on data collected at the IBFD tax research portal and from Martin Hearson of the London School of Economics and Political Science.
- <sup>169</sup> *EurActiv*. (2014). Common EU tax system should start with the banking sector, French advisors says, 4 July 2014, accessed 21 September 2014: <http://www.euractiv.com/sections/euro-finance/common-eu-tax-system-should-start-banking-sector-french-advisors-say-303300>
- <sup>170</sup> Press Release of Platform Paradis Fiscaux et Judiciaires, 6 June 2014.
- <sup>171</sup> Ernst & Young. (2013). *EU CRD IV Country by Country reporting – Insights and Challenges*, accessed 21 September 2014: [http://www.ey.com/Publication/vwLUAssets/EY-EU-CRD-IV-Country-by-country-reporting/\\$File/EY-EU-CRD-IV-Country-by-country-reporting.pdf](http://www.ey.com/Publication/vwLUAssets/EY-EU-CRD-IV-Country-by-country-reporting/$File/EY-EU-CRD-IV-Country-by-country-reporting.pdf)
- <sup>172</sup> Legifrance. (2014). LOI no. 2014-773 du 7 juillet 2014 d'orientation et de programmation relative à la politique de développement et de solidarité internationale (1), accessed on 14 October 2014: [http://www.legifrance.gouv.fr/affichTexte.do;jsessionid=A8EF7998DCBD05770F5E2933FDFCDBE7.tpdjo1v\\_2?cidTexte=JORFTEXT000029210384&categorieLien=id](http://www.legifrance.gouv.fr/affichTexte.do;jsessionid=A8EF7998DCBD05770F5E2933FDFCDBE7.tpdjo1v_2?cidTexte=JORFTEXT000029210384&categorieLien=id)

- <sup>173</sup> Ibid.
- <sup>174</sup> Assemblée Nationale. (2014). *Assemblée nationale XIVe législature – Deuxième session extraordinaire de 2-13-2014 – Compte rendu intégral – Deuxième séance du jeudi 18 septembre 2014*, accessed 14 October 2014: <http://www.assemblee-nationale.fr/14/cr/2013-2014-extra2/20142014.asp>
- <sup>175</sup> Legifrance. (2014). LOI no. 2014-773 du 7 juillet 2014 d'orientation et de programmation relative à la politique de développement et de solidarité internationale (1), Article 5, Chapter III, accessed on 14 October 2014: [http://www.legifrance.gouv.fr/affichTexte.do;jsessionid=A8EF7998DCBD05770F5E2933FDFCDBE7.tpdjo01v\\_2?cidTexte=JORFTEXT000029210384&categorieLien=id](http://www.legifrance.gouv.fr/affichTexte.do;jsessionid=A8EF7998DCBD05770F5E2933FDFCDBE7.tpdjo01v_2?cidTexte=JORFTEXT000029210384&categorieLien=id)
- <sup>176</sup> Global Forum Peer Review Phase 1 and 2, 2013.
- <sup>177</sup> UN. (2013). *Réunion spéciale du Conseil économique et social sur la coopération internationale en matière fiscale*, accessed 21 September 2014: <http://www.un.org/esa/ffd/tax/2013ITCM/FranceStatement.pdf> and UN. (2014). *Réunion spéciale du Conseil économique et social sur la coopération internationale en matière fiscale*, accessed 21 September 2014: <http://www.un.org/esa/ffd/tax/2014ITCM/StatementFrance.pdf>
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- <sup>179</sup> République Française. (2014). *Rapport annuel du gouvernement portant sur le réseau conventionnel de la France en matière d'échange de renseignements*: [http://www.performance-publique.budget.gouv.fr/sites/performance\\_publiche/files/farandole/ressources/2014/pap/pdf/jaunes/jaune2014\\_renseignements.pdf](http://www.performance-publique.budget.gouv.fr/sites/performance_publiche/files/farandole/ressources/2014/pap/pdf/jaunes/jaune2014_renseignements.pdf)
- <sup>180</sup> Meeting at the French Secretariat of Development on 12 June 2014.
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- <sup>185</sup> Coalition Agreement – Deutschlands Zukunft gestalten, p.65, accessible at [www.bundesregierung.de/Content/DE/\\_Anlagen/2013/2013-12-17-koalitionsvertrag.pdf](http://www.bundesregierung.de/Content/DE/_Anlagen/2013/2013-12-17-koalitionsvertrag.pdf)
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- <sup>192</sup> Ministry of Finance, response to questionnaire.
- <sup>193</sup> For more on the low-touch regulation of German banks use of SPEs, see Thieman, Mathias. (2013). *In the shadow of Basel – How competitive policies bred the crisis*, ESSEC Business School, Cergy Pontoise: <http://www.fepe-europe.eu/assets/38a26954-b259-4f8f-95a6-5431bcdb839/in%20the%20shadow%20of%20basel.pdf>
- <sup>194</sup> Based on data accessed at the IBFD tax research platform: <http://online.ibfd.org/kbase/>
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- <sup>196</sup> Based on analysis of data accessed from the IBFD tax research platform and from Martin Hearson of the London School of Economics and Political Science.
- <sup>197</sup> Bundesministerium der Finanzen. (2013). *Agreement between the Federal Republic of Germany and ..... – for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital, IVB2 – S 1301/13/10009*, accessed 14 October 2014: [http://www.bundesfinanzministerium.de/Content/DE/Standardartikel/Themen/Steuern/Internationales\\_Steuerrrecht/Allgemeine\\_Informationen/2013-08-22-Verhandlungsgrundlage-DBA-englisch.pdf?\\_\\_blob=publicationFile&v=7](http://www.bundesfinanzministerium.de/Content/DE/Standardartikel/Themen/Steuern/Internationales_Steuerrrecht/Allgemeine_Informationen/2013-08-22-Verhandlungsgrundlage-DBA-englisch.pdf?__blob=publicationFile&v=7)
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- <sup>199</sup> Henn et al. (2013). p. 38.
- <sup>200</sup> Information contained in this paragraph is based on data accessed from the IBFD tax research portal and from Martin Hearson of the London School of Economics and Political Science. For more details, see footnote 46 in the chapter 'The Global Perspective' of this report.
- <sup>201</sup> Henn et al. (2013). p. 36.
- <sup>202</sup> Henn et al. (2013). p. 13.
- <sup>203</sup> Henn et al. (2013). p. 6.
- <sup>204</sup> FATF. (2014). *Mutual evaluation of Germany – 3rd follow-up report*, p.36: <http://www.fatf-gafi.org/media/fatf/documents/reports/mer/FUR-Germany-2014.pdf>
- <sup>205</sup> Henn et al. (2013). p. 32f.
- <sup>206</sup> OECD. (2014). *Status of the convention on mutual administrative assistance in tax matters and amending protocol – 28 August 2014*: [www.oecd.org/ctp/exchange-of-tax-information/Status\\_of\\_convention.pdf](http://www.oecd.org/ctp/exchange-of-tax-information/Status_of_convention.pdf)
- <sup>207</sup> A bill to ratify the convention was passed by the Bundestag on the 25 September 2014 but still needs approval by the Bundesrat.
- <sup>208</sup> Henn et al. (2013). p. 15.
- <sup>209</sup> Tax Justice Network. (2013). *Narrative report on Germany – Financial Secrecy Index*: <http://financialsecrecyindex.com/PDF/Germany.pdf>
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This report has been produced with the financial assistance of the European Union and Norad. The contents of this publication are the sole responsibility of Eurodad and the authors of this report, and can in no way be taken to reflect the views of the funders.