



Fifty Shades of Tax Dodging

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

2015



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Glossary

Advance Pricing Agreement (APA) See under Tax ruling.

Anti-Money Laundering Directive (AML)

An EU directive regulating issues related to money laundering and terrorist financing, including public access to information about the beneficial owners of companies, trusts and similar legal structures. The 4th Anti-Money Laundering Directive (Directive 2015/849) was adopted in May 2015.

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 tax-payer has accurately reported their foreign source income.

Base Erosion and Profit Shifting (BEPS)

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 (see also below under 'Transfer mispricing').

Beneficial ownership

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

Common Consolidated Corporate Tax Base (CCCTB)

CCCTB is a proposal that was first launched by the European Commission in 2011. It entails a common EU system for calculating the profits of multinational corporations operating in the EU and dividing this profit among the EU Member States based on a formula to assess the level of business activity in each country. The proposal does not specify what tax rate the Member States should apply to the profit, but simply allocates the profit and leaves it to the Member State to decide what tax to apply.

Controlled Foreign Corporation (CFC) rules

CFC rules allow countries to limit profit shifting by multinational corporations by requesting that the company reports on profits made in other jurisdictions where it 'controls' another corporate structure. There are many different types of CFC rules with different definitions regarding which kind of jurisdictions and incomes are covered.

General Anti-Avoidance Rule (GAAR)

GAAR refers to a broad set of different types of rules aimed at limiting tax avoidance by multinational corporations in cases where the abuse of tax rules has been detected. Whereas GAARs can in some cases be used to prevent tax avoidance by allowing tax administrations to deny multinational corporations tax exemptions, they do not address the general problem of lowering of withholding

taxes through tax treaties, nor do they address the general division of taxing rights between nations.

Harmful tax practices

Harmful tax practices are policies that have negative spillover effects on taxation in other countries, such as 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 used. In a broader sense, illicit financial flows can also be used to describe artificial arrangements that have been put in place with the purpose of circumventing the law or its spirit.

LuxLeaks

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

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.

Patent box

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

Profit shifting See 'Base erosion and profit shifting'.

Public country by country reporting (CBCR)

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

- A global overview of the corporation (or group): The name of each country where it operates and the names of all its subsidiary companies trading in each country of operation.

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

Special purpose entity (SPE)

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

Swiss Leaks

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

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 ruling

A tax ruling is a written interpretation of the law issued by a tax administration to a tax-payer. These can either be binding

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

Tax treaty

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

Transfer Mispricing

This is where different subsidiaries of the same multinational corporation buy and sell goods and services between themselves at manipulated prices with the intention of shifting profits into low tax jurisdictions. Trades between subsidiaries of the same multinational are supposed to take place 'at arms-length' ie based on prices on the open market. Market prices can be difficult to quantify, however, particularly in respect of the sale of intangible assets such as services or intellectual property rights.

Transparency

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

Whistleblower

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

Executive summary

In the past year, scandal after scandal has exposed companies using loopholes in the tax system to avoid taxation. Now more than ever, it is becoming clear that citizens around the world are paying a high price for the crisis in the global tax system, and the discussion about multinational corporations and their tax tricks remains at the top of the agenda. There is also a growing awareness that the world's poorest countries are even harder impacted than the richest countries. In effect, the poorest countries are paying the price for a global tax system they did not create.

A large number of the scandals that emerged over the past year have strong links to the EU and its Member States. Many eyes have therefore turned to the EU leaders, who claim that the problem is being solved and the public need not worry. But what is really going on? What is the role of the EU in the unjust global tax system, and are EU leaders really solving the problem?

This report – the third in a series of reports – scrutinises the role of the EU in the global tax crisis, analyses developments and suggests concrete solutions. It is written by civil society organisations (CSOs) in 14 countries across the EU. Experts in each CSO have examined their national governments' commitments and actions in terms of combating tax dodging and ensuring transparency.

Each country is 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 multinational corporations; and their attitude towards letting the poorest countries have a seat at the table when global tax standards are negotiated. For the first time, this report not only rates the performance of EU Member States, but also turns the spotlight on the European Commission and Parliament too.

This report covers national policies and governments' positions on existing and upcoming EU level laws, as well as global reform proposals.

Overall, the report finds that:

- Although tweaks have been made and some loopholes have been closed, the complex and dysfunctional EU system of corporate tax rulings, treaties, letterbox companies and special corporate tax regimes still remains in place. On some matters, such as the controversial patent boxes, the damaging policies seem to be spreading in Europe. Defence mechanisms against 'harmful tax practices' that have been introduced by governments, only seem partially effective and are not available to most developing countries. They are also undermined by a strong political commitment to continue so-called 'tax competition' between governments trying to attract multinational corporations with lucrative tax reduction opportunities – also known as the 'race to the bottom on corporate taxation'. The result is an EU tax system that still allows a wide range of options for tax dodging by multinational corporations.
- On the question of what multinational corporations pay in taxes and where they do business, EU citizens, parliamentarians and journalists are still left in the dark, as are developing countries. The political promises to introduce 'transparency' turned out to mean that tax administrations in developed countries, through cumbersome and highly secretive processes, will exchange information about multinational corporations that the public is not allowed to see. On a more positive note, some light is now being shed on the question of who actually owns the companies operating in our societies, as more and more countries introduce public or partially public registers of beneficial owners. Unfortunately, this positive development is being somewhat challenged by the emergence of new types of mechanisms to conceal ownership, such as new types of trusts.
- Leaked information has become the key source of public information about tax dodging by multinational corporations. But it comes at a high price for the people involved, as whistleblowers and even a journalist who revealed tax dodging by multinational corporations are now being prosecuted and could face years in prison. The stories of these 'Tax Justice Heroes' are a harsh illustration of the wider social cost of the secretive and opaque corporate tax system that currently prevails.
- More than 100 developing countries still remain excluded from decision-making processes when global tax standards and rules are being decided. In 2015, developing countries made the fight for global tax democracy their key battle during the Financing for Development conference (FfD) in Addis Ababa. But the EU took a hard line against this demand and played a key role in blocking the proposal for a truly global tax body. Not one single EU Member State challenged this approach and, as a result, decision-making on global tax standards and rules remains within a closed 'club of rich countries'.

A direct comparison of the 15 EU countries covered in this report finds that:

- **France**, once a leader in the demand for public access to information about what multinational corporations pay in tax, is no longer pushing the demand for corporate transparency. Contrary to the promises of creating 'transparency', a growing number of EU countries are now proposing strict confidentiality to conceal what multinational corporations pay in taxes.
- **Denmark** and **Slovenia** are playing a leading role when it comes to transparency around the true owners of companies. They have not only announced that they are introducing public registers of company ownership, but have also decided to restrict, or in the case of Slovenia, avoided the temptation of introducing, opaque structures such as trusts, which can offer alternative options for hiding ownership. However, a number of EU countries, including in particular **Luxembourg** and **Germany**, still offer a diverse menu of options for concealing ownership and laundering money.
- Among the 15 countries covered in this report, **Spain** remains by far the most aggressive tax treaty negotiator, and has managed to lower developing country tax rates by an average 5.4 percentage points through its tax treaties with developing countries.
- The **UK** and **France** played the leading role in blocking developing countries' demand for a seat at the table when global tax standards and rules are being decided.



Global overview

When used to their fullest potential and combined with good public expenditure, taxes can build health systems that save lives, fund our children's education and help to create more stable, equal, democratic and prosperous societies. Taxes can also – when they are regressive and punitive – exacerbate poverty and inequality.¹ What is needed then are tax systems that are just and fair. In developing countries, where inequality is high, poverty is widespread and there is an acute lack of basic social services, effective and just tax systems are even more essential. Tax also has an international dimension, given that harmful tax policies in one country can undermine tax collection in other countries.² This report looks at the international aspect of taxation by focusing on how Europe can support and protect tax collection in developing countries by adopting fair and responsible tax policies at home. By doing so Europe will not only help to unlock development for some of the poorest regions in the world, it will also help to address the injustices of tax dodging in Europe. In short, this report is about our shared need for tax justice.

The last few years have brought the tax debate to the boiling point in Europe. A number of scandalous revelations about the lack of tax payments by multinational companies and the role that a number of European countries have played in this made sure that tax dodging stayed in the public limelight throughout the year. While some of the scandals concern tax evasion – which is a type of tax dodging that entails illegal activities – a number of the revelations concern tax avoidance. This is a term used to describe tax dodging that doesn't entail a deliberate violation of tax laws, but rather acting against the spirit of the law through aggressive tax planning, which is in most cases fully legal.³ Despite being legal, the tax avoidance of multinational corporations often occurs at such a large scale that it is considered by many people to be highly immoral and undesirable.⁴

With the public attention came a political promise to tackle the scandals: G20 declarations,⁵ Organisation for Economic Co-operation and Development (OECD) projects,⁶ EU action plans⁷ and government announcements all promised to wage war against the great tax dodging problem that could no longer be ignored. This report analyses whether the promised action was ever delivered, and whether those changes that have been delivered will actually solve the problems.

50.4 per cent

of the population in nine EU Member States surveyed consider taxing the rich and subsidising the poor to be an essential characteristic of democracy.⁸



87.4 per cent

of the population in eight EU Member States surveyed agree that cheating on taxes is never justifiable.⁹

Box 1

Corporate casualties: How tax dodging hurts European businesses

Since multinational companies have access to cross-border tax planning they can lower their tax rates in ways that is not possible for domestic companies. Because of this, domestic companies are often at a competitive disadvantage compared with multinational companies. This is the message from an eye-opening research report published by the European Commission in 2015.¹⁰ The report looked at 20 EU Member States and found that, in all of them, large domestic companies face a higher corporate tax rate than multinational companies that make use of tax planning techniques.

On average, the multinationals can get away with a tax rate that is 3.5 percentage points lower than for similar domestic companies.¹¹ The study also found that in three out of four of the 20 EU Member States, small- and medium-sized enterprises (SMEs) faced a higher tax rate than multinational companies, despite the fact that almost all Member States give sizeable tax subsidies to SMEs to increase their competitiveness.¹² It seems tackling tax dodging is not just good for justice; it's good for European business.



Photo: Uffe Karlsson

1. Global developments 2015: A year of scandals and promises

On 4 November 2014 all seemed well with the EU. A new European Commission had been appointed four days before and the new Commission President Jean-Claude Juncker was off to a good start. However, the political honeymoon was about to be seriously interrupted. On the morning of 5 November, the International Consortium of Investigative Journalists (ICIJ) released a treasure trove of tax secrets from Luxembourg that revealed the evidence of that country's massive undermining effect on the tax base of other countries.¹³ As former Minister of Finance and Prime Minister of Luxembourg, Jean-Claude Juncker was in the eye of the political storm that followed.

Box 2

Under the spotlight: MNCs' tax payments

89 per cent: Share of CEO's of large company concerned about the media's coverage of company tax payment in 2014. This was up from 60 per cent in 2011.

56 per cent: Share of European businesses surveyed that experienced an increase in discussion and scrutiny of corporate tax strategies in 2014. The survey notes large differences across Europe, with more than 80 per cent of businesses in the UK, Luxembourg and France reporting increased scrutiny in the last year, while a comparable increase was not reported by most businesses in Central and Eastern Europe. For example, in the Czech Republic 75 per cent of businesses did not see any change in public scrutiny compared to the previous year.¹⁴

Box 3

Whistleblowers: Tax justice heroes

Behind the renewed interest and outrage over the tax dodging scandals lie stories of personal sacrifice. Whistleblowers have brought some of the most shocking details of harmful tax practices to the wider public. But the price they are paying for acting in the public's interest is grave. Antoine Deltour – the LuxLeaks whistleblower – faces prosecutions in Luxembourg, with the possibility of five years in prison.¹⁵ And he is not alone. Two other sources in the LuxLeaks exposure also face prosecution, as does the SwissLeaks source in Switzerland.¹⁶

In many ways, the revelations – quickly dubbed 'LuxLeaks' – were telling of the year that was to come. It has been a year dominated by tax dodging scandals, many of which have had their epicentre in Europe. It has been a year where the scale of tax dodging has been exposed and where politicians were forced to answer a public cry for action.

133 out of 488

protests (27%) in the world between 2006 and 2013 linked to 'Economic Justice and Austerity', had 'Tax Justice' as one of their main motivations.¹⁷

1.1 The elusive quest for reform of international taxation

On the face of it, recent years have offered many new political initiatives to reform the international tax system. The OECD has come up with recommendations under the project entitled Base Erosion and Profit Shifting (BEPS). The EU has announced two tax packages during 2015 to deal with the cross-border challenges of taxation. And governments all over the world have announced change after change to try to shore up their tax base.

Box 4

The year of scandals: Europe at the epicentre

In just one year there has been a wealth of new revelations about multinational companies' tax payments. Time and again, the companies exposed turned out to have European countries at the heart of their tax planning structures. Here are just a few examples from the past year:

- In November and December 2014, the LuxLeaks dossier exposed tax rulings with hundreds of multinational companies in Luxembourg.¹⁸
- In February 2015, SwissLeaks laid bare the financial information of more than 100,000 bank clients in a Swiss bank.¹⁹
- In February 2015, McDonald's came under the spotlight when a report was released on the fast food giant's tax payments. Among other things, the report showed that McDonald's reported a turnover of more than €3.7 billion in one subsidiary with 13 employees in Luxembourg from 2009–13, leading to tax payments of only €16 million.²⁰
- In June 2015, Walmart hit the news when a report detailed the company's tax practices. The report pointed out that Walmart has subsidiaries in Ireland, the Netherlands, Luxembourg, Spain, Cyprus and Switzerland, despite not having any stores there. The report details some of the tax saving effects achieved through these European subsidiaries.²¹
- Meanwhile, two separate studies on the mining industry published in 2015 showed that the Netherlands had been used to minimise tax payments in Malawi and Greece.²²

1.2 BEPS: Reforming to preserve

Base Erosion and Profit Shifting (BEPS) describes the largely legal techniques multinational companies use to dodge their tax responsibility. The term BEPS has also become synonymous with the OECD-led project to adjust the rules of international taxation. From its inception in 2013, the OECD gave itself two years to come up with recommendations on 15 different issues.²³ The project is a testament to how far up the political agenda international taxation has shot in recent years. However, as BEPS comes to an end in 2015, it is also becoming abundantly clear that it does not provide the solution to the very real problems facing developing countries.

As far back as 2013, when the OECD started its BEPS project, a few warning lights were flashing. BEPS builds on an OECD-developed system of international taxation that generally allocates more taxing rights to the country where multinational organisations are based (which is often in the OECD) and fewer taxing rights to the countries where the multinational corporations do business (into which category most developing countries fall).²⁴ This broadly means that, in cases where multinational companies have internal trade between subsidiaries in developing and developed countries, it is the latter that receives more rights to tax the flows and hence to take more tax revenue.

The fairness of this distribution of taxing rights has long been questioned.²⁵ The OECD acknowledged at the outset of the BEPS project that "a number of countries have expressed a concern about how international standards ... allocate taxing rights."²⁶ Rather than deal with this concern, however, the OECD chose to ignore it, stating in the inaugural programme of BEPS in 2013 that the reforms "are not directly aimed at changing the existing international standards on the allocation of taxing rights on cross-border income."²⁷

This was one of the early indications that the OECD's BEPS initiative was not really about changing the fundamentals of international taxation, but rather about offering reform that "aims to patch up existing rules rather than re-examine their foundation", as civil society representatives expressed it.²⁸

As the BEPS project unfolded, the impression of a reform designed to preserve a system that has served the interests of rich nations for decades was unfortunately only reinforced.

In mid-2014 the OECD itself acknowledged that the BEPS agenda did not have a good overlap with the concerns of developing countries, stating in a report to the G20 that developing countries had "identified a number of issues, such as tax incentives, which are of concern to them, but which are not addressed in the Action Plan [of BEPS]."²⁹

After criticism stating that that BEPS was only a rich-man's club deciding on issues to promote their own interests, the OECD announced towards the end of 2014 that 14 developing countries would be offered closer involvement in the BEPS process in addition to those that were involved as part of the G20. However, this meant that more than 100 developing countries were still excluded. This document that made the announcement was aptly titled "The BEPS project and developing countries: From consultation to participation", which raised the obvious question of what the point was of involving developing countries a year after the BEPS action plan had been decided, and after half of the agenda items had been concluded. All in all, the attempt to counter the criticism and include a small group of developing countries ended up highlighting their very marginalisation in the process.

In September 2015, the G20 finance ministers adopted a communique calling for the OECD to "prepare a framework by early 2016 with the involvement of interested non-G20 countries and jurisdictions, particularly developing economies, on an equal footing." However, it is important to note that this call is not an invitation for all countries to join any decision-making process, but rather to join in following the BEPS rules after they have been adopted.³⁰

Only 4 per cent

of large companies believe that all BEPS recommendations will be implemented in all OECD countries.³¹

1.3 Will BEPS stop tax dodging?

In September 2015, the outcomes of the BEPS process were presented. While the agreement reached included measures on country by country reporting,³² which civil society organisations had long been calling for, the OECD decision to keep the information confidential and only make it available to a very limited number of countries, caused great concern (see Box 5).

But this was not the only problematic part of the package. Instead of reaching agreement on abolishing the controversial 'patent boxes' (see section 3.4), the OECD countries adopted guidelines on how patent boxes should be designed, and furthermore underlined that all existing arrangements could continue with business as usual until 2021.³³ This decision caused civil society representatives to point out that "The OECD approach will simply legitimise 'innovation box' regimes and hence supply a legal mechanism for profit shifting, encouraging states to provide such benefits to companies. It will be particularly damaging to developing countries, which may be used as manufacturing platforms, while their tax base will be drained by this legitimised profit-shifting. Such measures should simply be condemned and eliminated."³⁴ Even before the end of the project, a number of new OECD countries had announced that they have started establishing patent boxes (see section 4 on Report Findings).

On the issue of anti-abuse provisions, the BEPS process managed to reach a welcome agreement.³⁵ Unfortunately, the concern remains that developing countries will not be able to use these provisions to prevent tax avoidance unless also given access to sufficient information about the multinational corporations operating in their countries.³⁶ The agreement also doesn't address the lowering of withholding tax rates, which is a major concern regarding tax treaties (see section 3.5 on Tax Treaties).

At the overall level, civil society expressed strong concern that BEPS still sticks to the principle of 'arm's length approach', which means that subsidiaries of multinational corporations are treated as independent companies rather than one big company.³⁷ It is this approach that allows a multinational corporation to claim it has no profits in a given country, while at the same time having very large and untaxed profits in low tax jurisdictions.

Only 5 per cent

of businesses plan to become more conservative in their tax planning as a result of the BEPS project.³⁸

Box 5

How BEPS turned good ideas into bad decisions: The case of country by country reporting

Country by country reporting (CBCR) asks multinational companies to report on key financial data for each country it operates in. It is one of the oldest demands from tax justice campaigners. So when the OECD announced under BEPS that it would recommend CBCR, it seemed a real testament to how far the idea had come since it was first proposed.

However, the fine print of the recommendations on CBCR offered an example of how the OECD BEPS project has been able to turn good ideas into bad decisions. There are at least three big problems with the BEPS recommendations in this area:

1. Size of companies: The BEPS recommends that only companies with an annual turnover higher than €750 million should be required to comply with this type of reporting. According to the OECD's own estimates, this would exclude 85–90 per cent of all multinational companies.³⁹ This very high threshold is particularly problematic for developing countries, which typically host many junior multinational companies that nonetheless can have enormous impact on the national economy. For example, in Sierra Leone in 2013 the mining companies Sierra Rutile and London Mining accounted for 3 and 10 per cent of national Gross Domestic Product (GDP) respectively.⁴⁰ However, with annual turnovers of €93 million and €226 million respectively, both companies would have fallen far below the proposed BEPS threshold of €750 million and would therefore not have to prepare country by country reports, according to the OECD.⁴¹ Citizens of developing countries might often be interested in seeing such reports, as questions about the low tax payments from the extractive sector are often being raised.

2. Access to the public: It was decided that the country by country reports should not be made public, but instead should only be made available to selected tax administrations.⁴² This defies the point of CBCR, which was always meant to be a transparency measure that would spur behavioural change among multinational companies based on their fear of reputational risk, as well as being a tool for the public, journalists and parliamentarians to hold companies and governments to account. It would also mean a step backwards in the EU, where fully public CBCR for the banking sector has already been introduced by law.⁴³

3. Sharing of report: BEPS recommends that the country by country report should only be filed in the country where the multinational company is headquartered, which should then share the report with other countries.⁴⁴ Because most developing countries are not yet at a stage where they have enough capacity to participate in the current plans for the automatic exchange of information, and have great difficulties complying with the general confidentiality requirements, they are unlikely to be able to receive the report in this way. This means that a country such as Sierra Leone will not be able to access information explaining how the multinational corporations operating in their country have structured themselves, including whether the company has subsidiaries in low tax jurisdictions and whether the company is claiming to make large profits in countries where they have very little real activity. In the words of Richard Murphy, who conceived the concept of public country by country reporting: "in that case it is quite clearly the case that the OECD will be failing to deliver country by country reporting for developing countries, who were always intended to be one of its main beneficiaries."⁴⁵

Another concerning point is that BEPS seems to be moving the global tax system in a direction of increased complexity, with a high number of very technical and in some cases contradictory guidelines.⁴⁶ This leads to the worry that the use of secretive tax rulings – which was the core element of the LuxLeaks scandal – will increase.⁴⁷ These agreements – also known as sweetheart deals – are currently the commonly used way for tax administrations and businesses to clarify what the rules will mean in reality for the individual company.

This means that a number of critical decisions about what multinational corporations will pay in tax will be reached in secret bilateral negotiations between the multinational corporation and the individual tax administration. Although the OECD and G20 countries will work towards automatic exchange of information about tax rulings,⁴⁸ many developing countries will not be able to comply with the confidentiality requirements, and thus will not be able to access the information. Similarly, citizens, parliamentarians and journalists will not know how the new complex tax system is being applied, and what multinational corporations are really paying in taxes.



1.4 A global representative reform of international taxation

A genuine solution for developing countries would be to initiate a truly global reform process of international taxation where they have full right to equal participation. A proposal for such a process was brought up in the United Nations (UN) as far back as 2001, when a UN High-Level Panel on Financing for Development proposed the establishment of an 'International Tax Organization'.⁴⁹ Since then, it has been a reoccurring conflict in the UN, where developing countries have continuously pushed for the establishment of a global tax body, which could give them an equal seat at the table when global tax standards are decided.⁵⁰

However, the proposal has been rejected by developed countries, and in particular by the OECD Member States, which have argued that the global decision making should only take place at the OECD.⁵¹ Instead of an intergovernmental body, it was decided to keep the UN's work on tax matters restricted to a UN expert committee on tax, which can provide advice on tax matters but not make intergovernmental decisions.⁵²

In the negotiations leading up to the 3rd Financing for Development conference in Addis Ababa, the Group of 77 (G77), which is a negotiating group representing 134 developing countries, once again highlighted the issue. Their negotiator stated: "the fact remains that there is still no global inclusive norm setting body for international tax cooperation at the intergovernmental level. There is also not enough focus on the development dimension of these issues. The group reiterates its call [...for] an intergovernmental subsidiary body [...] to allow all member states, including developing countries, to have an equal say on issues related to tax matters."⁵³

This call was supported by UN Secretary-General Ban Ki Moon, who recommended that an intergovernmental body on tax matters should be established under the auspices of the UN.⁵⁴

The discussion about the global tax body became the biggest issue of debate during the Third Financing for Development conference in Addis Ababa. However, in the end, the developed countries ensured that the proposal to establish an intergovernmental UN tax body was not included in the outcome document – the Addis Ababa Action Agenda.⁵⁵ This led to strong criticism from leading academics. Nobel laureate Joseph Stiglitz criticised that "countries from which the politically powerful tax evaders and avoiders come are supposed to design a system to reduce tax evasion",⁵⁶ and Professor José Antonio Ocampo, former Finance Minister of Colombia, highlighted that "the domination of a select group of countries over tax norms has meant that, in reality, the global governance architecture for taxation has not kept pace with globalization."⁵⁷

But the Addis Ababa conference is unlikely to be the last chapter of this story. In their closing statement, the developing countries, through G77, underlined that they have not changed their position and remain firmly committed to pursuing the upgrade of the UN expert committee into an intergovernmental tax committee.⁵⁸

2. Why international tax matters for developing countries

There is increasing recognition, not least from developing countries, that taxation is a key part of the answer to how development could be financed.⁵⁹ Several developing countries are increasingly recognising the need not only to attract foreign investors, but also to make sure that investors pay taxes and contribute to development.

The 54 heads of state of the African Union sent an important signal of this stance early in 2015 when they adopted a report on illicit financial flows, along with strong recommendations⁶⁰ that identified profit shifting by multinational companies as “by far the biggest culprits of illicit outflows.”⁶¹

But the challenge is not only an African one – it concerns developing countries in general. In new estimates of the scale of the tax dodging problem in 2015, the United Nations Conference on Trade and Development (UNCTAD) estimated that one tax avoidance method alone is costing developing countries between \$70 billion and \$120 billion per year.⁶²

The significance of this loss is evident in comparison with the sum of approximately €193 billion⁶⁴ that multinational companies do pay in corporate income taxes in developing countries.⁶⁵

Perhaps most shocking, an IMF study found that on average and as a share of national income, the revenue loss to developing countries was in the long run roughly 30 per cent higher than for OECD countries. This suggests in the words of the IMF that “the issues at stake may well be more pressing for developing countries than for advanced.”⁶⁶

Box 6

Tax dodging in Latin America, Africa and Europe

During the last year three new reports showed how development and social justice in both developed and, especially, developing countries are undermined by multinational companies' tax dodging.

In Latin America, LATINDADD has analysed the accounts of the Yanacocha gold mine in Peru, the most important gold mine in South America, which is also the third biggest and the most profitable one in the world, according to its owners.⁶⁷ The report estimates that as much as €893.4 million⁶⁸ in taxes could have been avoided during the 20-year period from 1993–2013 due to profit-shifting.⁶⁹

In Africa, research by ActionAid reported how one Australian uranium mine has potentially avoided millions in tax revenues in Malawi – one of the poorest countries in the world.⁷⁰ Rather than funding its operations in Malawi through its headquarters in Australia, the mining company chose to fund it through the Netherlands with a large loan. This generated payments of €138.2 million⁷¹ in interest and management fees back to the Netherlands.⁷² Due to the Double Tax Treaty between the Netherlands and Malawi, the withholding tax on interest payments and management fees was reduced from 15 per cent to 0 per cent.⁷³

This routing from Malawi to Australia via the Netherlands reduced the withholding tax by more than an estimated €20.7 million⁷⁴ over six years.⁷⁵ A company spokesman later rejected the allegations as ‘fundamentally unsound’.⁷⁶ Malawi cancelled its tax treaty with the Netherlands in 2014 and a new one was signed in April 2015.⁷⁷ Although the new treaty includes anti-abuse provisions, the concern remains that these provisions will not be effective unless Malawi also gets access to adequate information about the multinational corporations operating in Malawi.⁷⁸

Continued poverty and inequality is not just the outcome of tax dodging in developing countries. In Europe, research by SOMO showed how Canadian firm Eldorado Gold – that operates various mines in Greece – set up a complicated financing structure to shift its income. The company uses a complex web of Dutch and Barbados-based mailbox companies to avoid paying taxes in Greece and the Netherlands, a structure that is enabled by EU and Dutch legislation.⁷⁹ According to SOMO's estimations, the Greek government lost around €1.7 million in corporate income taxes in just two years.⁸⁰ At the same time Greece faces harsh austerity measures imposed on the country by the Troika, of which the Eurogroup – chaired by the Netherlands – is part.

Developing countries are more prone to the negative effects of tax dodging than developed countries in many ways. For example, while only 3 per cent of corporate investments in developed countries originate from 'tax havens',⁸¹ the comparable figure for developing countries is 21 per cent and the proportion rises to a full 41 per cent for transition economies.⁸² Similarly, while 10 per cent of European wealth is held offshore, the comparable figure in Africa is three times higher at 30 per cent.⁸³

Facing these challenges, some developing countries are pushing back. As of 2014, the Kenyan tax administration had successfully reclaimed approximately €210 million by challenging multinational companies' internal trading that shifted profits out of the country,⁸⁴ while in Bangladesh, a newly established office will police the tax payments of multinational companies.⁸⁵ Late in 2014, China won its first major tax claim against a multinational company, taking in €103 million,⁸⁶ and has subsequently promised "shock and awe" tactics against tax avoiders.⁸⁷

However, developing countries risk coming under immense pressure for targeting multinational companies. Standing up to the threat of reduced investments and being branded a hostile investment destination can be difficult for most developing countries to withstand.

And it is not just a matter of standing up to the pressure. Even with the best of intentions, developing countries are learning the same lesson as many rich countries are learning – that making sure that multinational companies do not dodge taxes requires international cooperation. This is particularly the case for developing countries, which often find that the decisions affecting them most on taxing transnational investors are taken where the companies are based – and very often that means Europe.

3. Europe's role in upholding an unjust international tax system

"The Union shall take account of the objectives of development cooperation in the policies that it implements which are likely to affect developing countries."

The Lisbon Treaty, Article 208⁸⁸

As the world's biggest economy that is home to many multinational companies and has close ties to developing countries, Europe plays a central role in any discussion on international tax justice. Europe has taken the lead in the past, adopting policies that were pioneering such as public country by country reporting for the financial sector. However, as the many scandals of the last year have shown (see Box 6), European policies are in some instances also used to dodge taxes. Below we look at a number of aspects of the international tax policies of Europe and their effect on developing countries.

3.1 Bank secrecy and the lack of exchange of information

The leak of banking information from the Swiss branch of HSBC – Europe's biggest bank – caused a major uproar in 2015 and brought banking secrecy back into the public spotlight.

What the so-called 'SwissLeaks' revelations exposed was a banking system built on concealing money, with few questions asked and a maximum amount of secrecy. Table 1 shows that more than €51 billion⁸⁹ was stashed away in 50,000 bank accounts that were connected to developing countries. Reacting to the SwissLeaks scandal, an economist from Swaziland said: "It's shocking how huge banks such as HSBC have created a system for enormously profiteering at the expense of impoverished ordinary people, worse by assisting numerous millionaires from Africa in particular to evade tax payment, disadvantaging the already poor."⁹⁰

Table 1: SwissLeaks and developing countries – the numbers

	Total amount in billion € ⁹¹	No. of bank accounts	No. of clients
Total developing countries	51,573	50,071	37,845

Source: Eurodad calculations based on ICIJ data.⁹² The data is based on the leaks of bank accounts from the Swiss branch of HSBC dating primarily from the period 2006–2007. Please note that there are 33 developing countries that are not covered in the SwissLeaks database.

30 per cent:

Share of financial wealth in Africa held offshore, corresponding to €370 billion.⁹³

10 per cent:

Share of financial wealth held offshore in Europe corresponding to almost €2 trillion.⁹⁴

The information revealed in SwissLeaks only concerns one bank in one country, and again just hints at the scale of a much bigger story. An estimated €1.85 trillion⁹⁵ in wealth is held offshore by individuals from Asia, Latin America and Africa, resulting in tax revenue losses of more than €52 billion.⁹⁶ There are strong indications that the problem is bigger for developing countries than for developed countries,⁹⁷ with estimates suggesting that while 10 per cent of financial wealth is held offshore in Europe, the proportion is 30 per cent for the financial wealth of Africa.⁹⁸

To deal with the negative effects of banking secrecy on their own tax bases, developed countries have reached an agreement to begin to exchange banking information. In the EU, this will happen through the so-called Directive on Administrative Cooperation (DAC), with EU countries set to exchange banking information from 2017.⁹⁹ A similar system is being developed by the OECD and G20 globally.¹⁰⁰

These developments will drastically improve the current situation, making it much more difficult to conceal funds in bank accounts in these countries in the future. However, due to the way the system is designed, most developing countries will most likely not be able to benefit from it.¹⁰¹

In mid-2014, the OECD developed a roadmap that will eventually include developing countries in this system of exchange of banking information. However, serious concerns persist about whether developing countries will become part of the system in the foreseeable future because the G20 insists on reciprocity: i.e. that countries will only exchange information with other countries that can send the same type of information back.

€1.85 trillion:

Funds held offshore originating from Asia, Latin America and Africa, corresponding to an estimated tax revenue loss of €52.6 billion.¹⁰²

Fulfilling this requirement is not possible for developing countries with low capacity, nor would the exchanges that resulted be of any great interest since the amounts of concealed funds held by foreigners in most developing countries is likely to be miniscule.¹⁰³ Even if developing countries did invest in the systems and capacity needed for automatic information exchange, they are unlikely to receive information from the world's major offshore centre, Switzerland. The Swiss government has already announced it will not exchange information with everyone, and will prioritise exchanging information with countries that Switzerland has "close economic and political ties, and which provide their taxpayers with sufficient scope for regularisation, and which are considered to be important and promising in terms of their market potential for Switzerland's financial industry."¹⁰⁴

Since it is becoming clear to developing countries that the EU and other developed countries are not going to let them be part of the solutions on offer against tax avoidance, some are considering ways they can have a share of the benefits of being an offshore jurisdiction instead. Kenya announced in April 2015 that it is close to finalising legislation that could turn it into an international financial centre, modelled after the City of London.¹⁰⁵

3.2 Keeping financial accounts secret from developing countries

At the root of many tax dodging scandals involving multinational companies is a basic lack of transparency that allows companies to shift their profits around the globe without accountability. This situation stems from the fact that multinational companies report on a consolidated basis, meaning that they add up their figures for turnover, taxes, profits and other key information for many or all of the jurisdictions in which they operate. As useful as these aggregated figures can be to get an overview of a company, they make it close to impossible to spot any potential tax planning and profit shifting behind the numbers.

The financial reporting of McDonald's provides an example of how opaque the current financial reporting is in terms of allowing the public an insight into multinational companies' operations. In 2015, a coalition of non-governmental organisations (NGOs) and trade unions suggested that the fast food chain could have dodged as much as €1 billion in taxes in Europe in the period 2009–2013.¹⁰⁶ This was done by routing more than €3.7 billion through a subsidiary in Luxembourg with just 13 employees. Only €16 million was paid in taxes on the €3.7 billion turnover in Luxembourg. This information was extracted through extensive research since none of this information was contained in the financial statements published by McDonald's. In these statements, there is not a single mention of their subsidiary in Luxembourg, despite its crucial role in the company's operations.¹⁰⁷

The problem is even more pronounced for developing countries, as the often relatively small size of their markets means that they get lumped together with other countries or even regions. For example, a citizen in any African country will find it very difficult to get any meaningful information from Coca Cola's financial statements as the company does not report on any individual African country. In fact it does not even report separately on Africa as a continent, preferring instead to lump it together with Eurasia in the company's financial reports.¹⁰⁸ This example is far from unique and the fact that a company consolidates its accounts is not as such an indicator of tax dodging, but simply makes it impossible to see where companies are doing business and where they pay taxes.

Public country by country reporting would greatly help to counter the problem of consolidated reporting, as multinational companies would have to provide a view of their activities in each of the countries in which they operate.

Under an EU directive passed in 2013, banks will have to report publicly on country by country information in 2015 for the first time (see Box 7). Such public reporting formats support developing countries much better than the OECD's plans for confidential CBCR, since both citizens and tax authorities in developing countries would be guaranteed access to the data when it is in the public domain.

The European Commission is currently conducting an impact assessment that will feed into its decision making on whether to adopt public CBCR for all industries, not just the banking sector. However, in the past there has been strong resistance to public country by country reporting from some Member States, which risks blocking progress for developing countries.¹⁰⁹

If country by country reporting information is only filed in the country where the multinational company is headquartered, as the OECD BEPS initiative proposes, it is unlikely to be shared widely – especially among developing countries, which particularly need to see this information (see section 3.1 – automatic exchange of information – for the problems with developing countries' participation in tax information exchange).

€3.7 billion:

The turnover of McDonald's subsidiary in Luxembourg (2009–2013).

0:

Number of times the Luxembourg subsidiary is mentioned in McDonald's financial statements.

Box 7

Public country by country reporting in the EU: Lessons from the financial sector

The EU Capital Requirements Directive IV¹¹⁰ introduced the obligation of making country by country reporting public for banks based in the EU. In an analysis of the data available for 26 EU-based banks,¹¹¹ chartered accountant Richard Murphy finds that public data makes it possible to conduct a rudimentary risk analysis of possible profit shifting and base erosion by the banks. Two important findings emerge from the risk analysis.

First, shifting of profits in low-tax and offshore jurisdictions seems to be happening¹¹² thus potentially generating an erosion of other countries' tax base; and secondly, the main jurisdictions allowing this are – in general – what he terms the 'usual suspects'. The top five jurisdictions where there are indications of over-reporting of profits are the US, Belgium, Luxembourg, Ireland and Singapore.¹¹³

The analysis of the newly published information also shows how the published country by country reporting helps shed light on what goes on in developing countries. For example, back in 2012 Barclays published its accounts on a consolidated basis thus making it impossible to know much about its operations in developing countries. Nowadays, the accounts that the bank publishes allows readers to determine that, in 2014 – as two random examples – 30 employees generated a turnover of €744.36 million¹¹⁴ in Luxembourg, where the company paid €4.9million¹¹⁵ in taxes, whereas in Kenya 2,853 employees generated a turnover of almost £200 million, and the company paid only €37 million¹¹⁶ in taxes.¹¹⁷

Table 2: Number of listed companies that would report on a country by country basis using the OECD BEPS threshold and the proposed threshold of the European Parliament

Country	No. of listed companies, OECD BEPS threshold	No. of listed companies, European Parliament proposed threshold
Belgium	28	85
Czech Republic	3	6
Denmark	26	72
France	154	418
Germany	138	442
Hungary	3	14
Ireland	36	61
Italy	69	195
Luxembourg	26	54
Netherlands	61	110
Poland	29	237
Slovenia	6	27
Spain	48	108
Sweden	57	223
United Kingdom	262	778
EU 28	1,053	3,396

Source: Eurodad calculations¹¹⁸

The OECD BEPS recommendations for country by country reporting has a further shortcoming in that it only applies to very large companies with an annual consolidated turnover of more than €750 million. A current proposal from the European Parliament¹¹⁹ would extend country by country reporting to all 'large undertakings' as defined in an existing EU directive.¹²⁰ As Table 2 illustrates, the BEPS threshold would only apply to a relatively small number of companies while the threshold proposed by the European Parliament would apply to significantly more companies. As the figures in Table 2 only show listed companies they are merely illustrative as both thresholds would also apply to non-listed companies. They nonetheless show the large difference in coverage with almost four times more listed companies covered by the threshold suggested by the European Parliament compared to the OECD BEPS threshold.

With the BEPS process jeopardising progress on country by country reporting for developing countries, it is now up to the EU and its Member States to push back, reaffirm that its decision to make country by country reporting public for banks was correct, and insist that public country by country reporting should apply for all economic sectors and for a wider group of companies than those under the high BEPS threshold, for the benefit of all countries in the world.

3.3 Letterbox companies

Letterbox companies, or special purpose entities (SPEs), are legal entities constructed to fulfill a narrow and specific purpose. They usually have few or no employees and little economic substance but they are often able to handle large amounts of funds due to the favourable tax treatment granted them in many countries. While the corporate income tax rate is around 29 per cent in Luxembourg, for example, their popular letterbox companies are only subject to a tax of between 0.01 per cent and 0.05 per cent of the company's assets.¹²¹ As UNCTAD highlighted in 2013: "...international efforts ... have focused mostly on [offshore financial centres], but SPEs are a far larger phenomenon."¹²² Letterbox companies can be managed by so-called trust and corporate service providers. Financial Action Task Force (FATF) defines such providers as "all those persons and entities that, on a professional basis, participate in the creation, administration and management of trusts and corporate vehicles."¹²³ Research by authorities and journalists has shown that such corporate service providers help companies to avoid and evade taxes.¹²⁴ They can even be used for money laundering activities,¹²⁵ and at least in the Netherlands many have not collected sufficient information about the risks associated with their clients.¹²⁶

Europe is a major centre for routing investments through letterbox companies. Luxembourg and the Netherlands are particularly important in this respect, accounting together for approximately a quarter of all the world's FDI stocks. Luxembourg alone accounts for 54 per cent of all investments going out of Europe.¹²⁷ Other European countries such as Austria, Cyprus, Hungary and Spain also have attractive SPE regimes.¹²⁸

As Table 3 (Share of corporate investment stocks from SPEs) shows, 19 per cent of corporate investments globally pass through SPEs. Europe is the region of the world where most investments flow through SPEs. These letterbox companies are also an important part of the mix of investments to developing countries, although the share is lower for this group of countries, with 9 per cent of investments flowing through SPEs, than it is for developed countries.

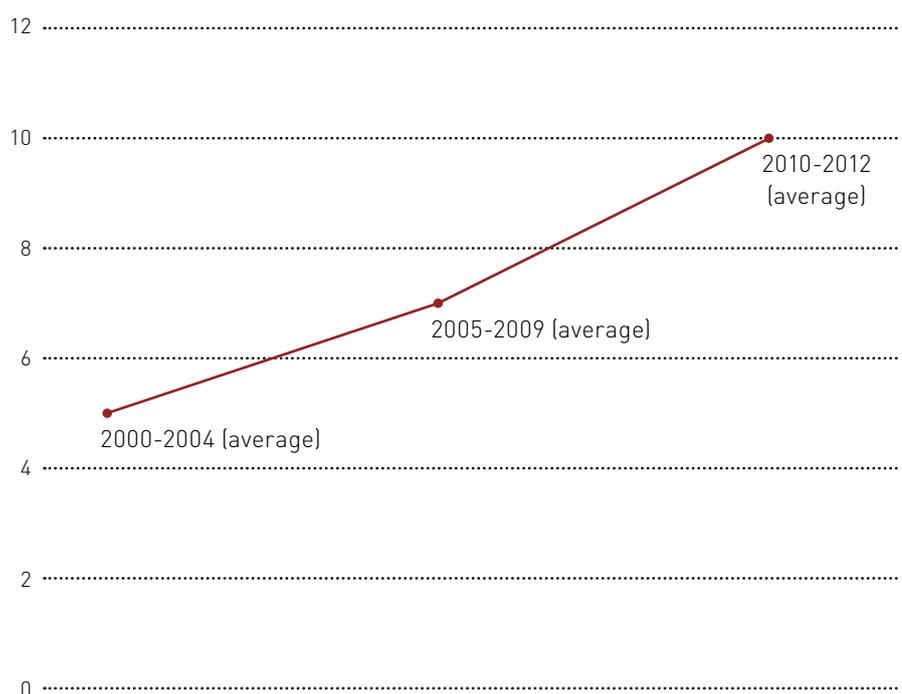
However, worryingly, the percentage of investments to developing countries that passes through SPEs has been rapidly increasing since year 2000 (see Figure 1). Since Europe is a world centre of SPE-related investments, and SPEs are frequently used to dodge taxes,¹²⁹ the European Union has a special responsibility in addressing the negative effects on developing countries' tax base.

Table 3: Share of corporate investment stocks from special purpose entities (SPEs)

	Share of corporate investment stocks from SPEs (%)
Global	19
Developed economies	26
- Europe	32
Developing economies	9
- Africa	12
- Developing Asia ¹³⁰	6
- Latin America & Caribbean	19
Transition economies¹³¹	19

Source: UNCTAD (2015) *World Investment Report 2015*¹³²

Figure 1: Share of corporate investments in developing economies through special purpose entities (SPEs) (in per cent), 2000–2012



Source: UNCTAD (2015) *World Investment Report*¹³³

3.4 Patent boxes

A patent box is a form of tax incentive for corporates that grants preferential tax treatment to revenue from intellectual property (IP).¹³⁴ Patent boxes are increasingly becoming popular in the EU, with the United Kingdom, Belgium, Spain, Portugal, France, Ireland, Italy, the Netherlands, Luxembourg, Malta, Cyprus and Hungary having relatively recently adopted or announced this form of tax incentive.¹³⁵ In a recent study, the European Commission notes that patent boxes “offer a large scope for tax planning for firms” since it is easy for companies to allocate a high portion of their profits to their patents, thereby moving profits across borders, away from where production takes place and into the low-tax patent box.

In a statistical analysis of the effects of patent boxes in the EU published in 2015, the Commission finds that patent boxes do not spur innovation but rather the numbers show that “in the majority of cases, the existence of a patent box regime incentivizes multinationals to shift the location of their patents without a corresponding growth in the number of inventors or a shift of research activities.” This leads to the obvious conclusion that this tendency “suggests that the effects of patent boxes are mainly of a tax nature.”¹³⁶

12:

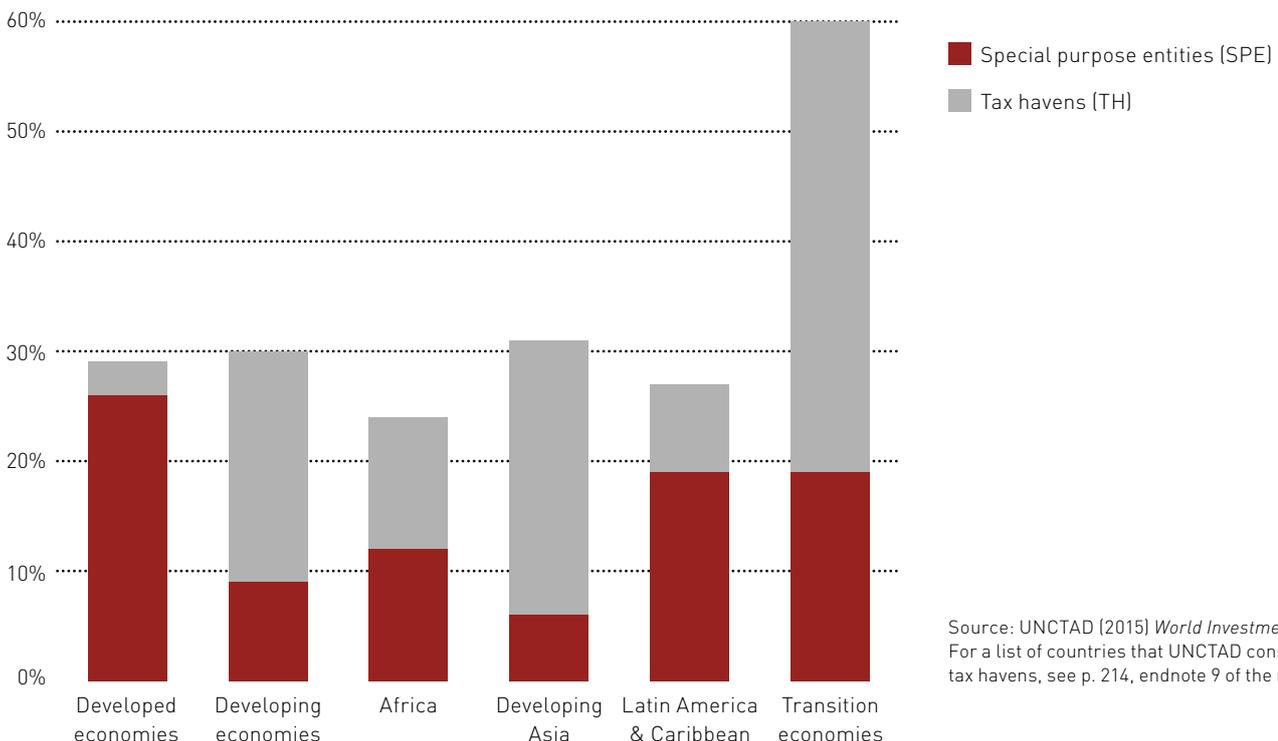
Number of EU countries with a patent box or plans to introduce one.

6:

Number of these patent boxes that have been introduced in the past five years.¹³⁷

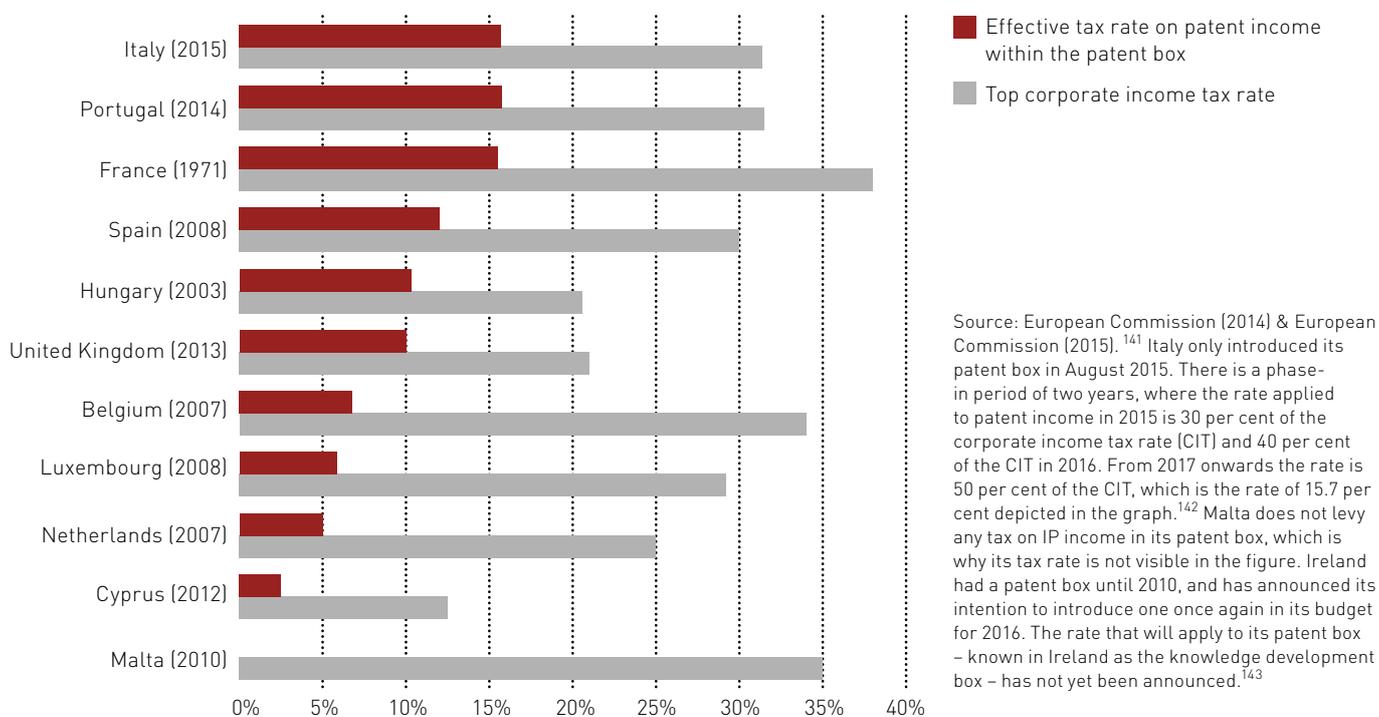
Meanwhile, the proliferation of patent boxes in Europe is being noticed abroad. A contributor to the influential magazine *Forbes* highlighted, under the title “Patent boxes come to Ireland and UK, why not US?”, that patent boxes can “significantly reduce a company’s effective tax rate”, providing a “bonanza” for companies. He then recommends that US policy-makers copy Europe’s lead on patent boxes and ends the article by asking: “what’s not to like?”¹³⁸ It seems the calls have been heard, as bi-partisan support for the measure was reached in the US Congress in May 2015.¹³⁹ From a tax justice perspective, however, patent boxes raise a number of serious concerns.

Figure 2: Investment flows through tax havens (TH) and special purpose entities (SPE) by region, 2012



Source: UNCTAD (2015) *World Investment Report*. For a list of countries that UNCTAD considers to be tax havens, see p. 214, endnote 9 of the report.¹⁴⁰

Figure 3: Corporate tax rates vs. patent box rate (year of adopting a patent box)



“Patent boxes seem more likely to relocate corporate income than to stimulate innovation.”

The European Commission¹⁴⁴

With patent boxes there is a danger that developing countries will be used as manufacturing platforms, while profits are diverted to the patent boxes located in developed countries.¹⁴⁵ The agreement reached under the BEPS project in 2015 failed to abolish patent boxes (see section 1.3) and thus these concerns remain ever relevant.

3.5 Tax treaties

The UN in 2015 warned that while tax treaties are “designed to avoid or to mitigate the effect of double taxation” they have instead “resulted in many instances of double nontaxation.”¹⁴⁶ That this real danger to developing countries was reaffirmed when ActionAid in 2015 released a report that showed how an Australian mining company operating in Malawi was able to reduce its tax contributions by financing its investments through the Netherlands and thereby benefit from a zero rate withholding tax contained in a tax treaty between Malawi and the Netherlands (see more in box 6).¹⁴⁷ In order to avoid companies setting up subsidiaries in jurisdictions with the sole purpose of reaping a treaty benefit (so-called treaty shopping) it is vital that treaties with developing countries include an anti-abuse clause.¹⁴⁸ However, the ActionAid report shows the harmful impact of reduced withholding tax rates, which indicates that merely adopting anti-abuse measures is insufficient to protect a country’s tax base.

Many treaties are based on the OECD model, which increases the problems with tax treaties for developing countries.¹⁴⁹ The challenge for developing countries is that by signing an OECD treaty they also sign away part of their rights to tax foreign investments at the source, e.g. in their country. The UN model generally distributes more tax rights to developing countries.¹⁵⁰

“...the initiative for negotiating a DTA (Double Tax Agreement) comes from the multinationals.”

Official at the Common Market for Eastern and Southern Africa (COMESA)¹⁵¹

Table 4: The difference in withholding tax (WHT) rates in the OECD and UN model tax treaties

	Maximum WHT on dividends	Maximum WHT on interests	Maximum WHT on royalties
OECD model treaty	5 to 15 per cent*	10 per cent	Exempt from WHT
UN model treaty	No maximum limit	No maximum limit	No maximum limit

Source: ActionAid¹⁵²

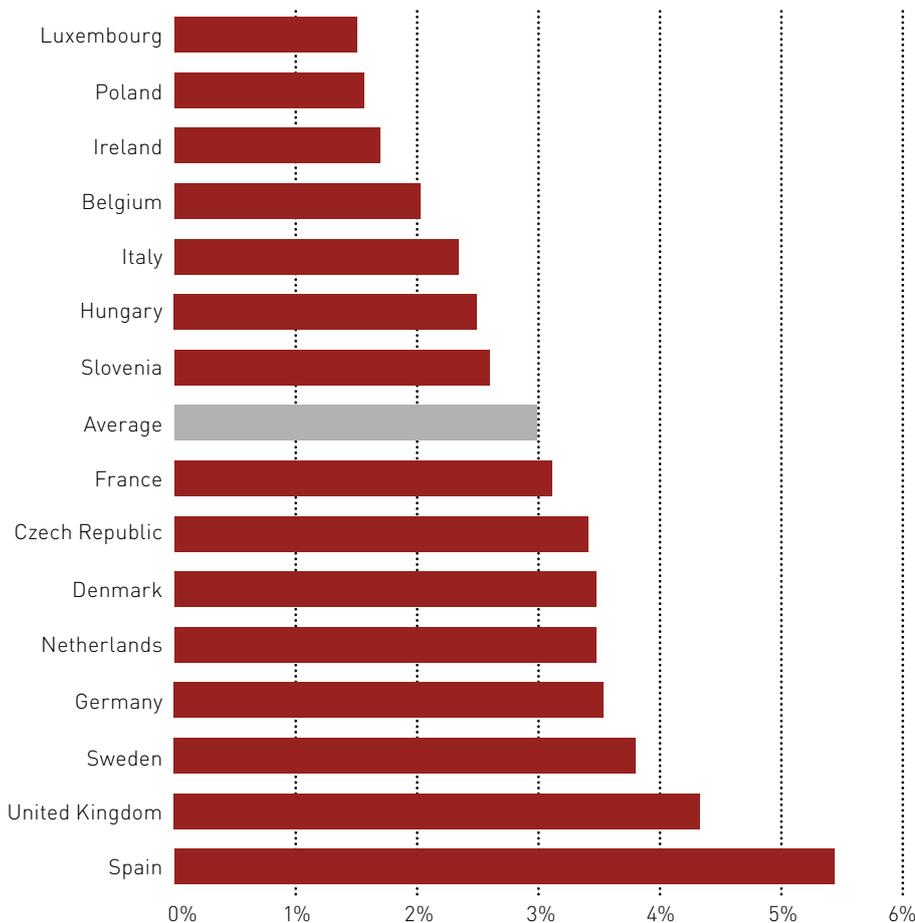
*the lower rate of withholding tax applies to dividends paid to a foreign company from a subsidiary in the source country in which it owns more than 25 per cent.

Table 5: Number of tax treaties in force between 15 EU Member States and developing countries

Country	Low Income	Lower Middle Income	Upper Middle Income	Total
Ireland	0	7	14	21
Slovenia	0	7	14	21
Luxembourg	1	10	15	26
Hungary	0	12	18	30
Czech Republic	2	13	22	37
Denmark	5	12	20	37
Poland	3	14	20	37
Average				41
Sweden	6	11	25	42
Netherlands	4	17	23	44
Belgium	3	18	26	47
Spain	1	17	29	47
Germany	5	17	26	48
Italy	6	17	26	49
France	11	18	33	62
United Kingdom	9	26	28	63
	56	216	339	652

Source: See Figure 4

Figure 4: Average rate reductions (%) in treaties between 15 EU Member States and developing countries



Source: Eurodad calculations.¹⁵³ The average rate reduction covers withholding taxes on four income categories: Royalties, interests, dividends on companies and qualified companies. It does not cover tax rates on services or management fees due to the lack of data. The average rate reductions between the European countries covered in this report and the developing countries refers to the difference between the rates contained in the treaty and the statutory rates in the developing country for all four income categories. The figure for the overall average reduction is an un-weighted average for all of the 15 European countries covered in this report.

Beyond challenges with treaty shopping and the distribution of taxing rights, tax treaties can further undermine the revenue base of developing countries through reduction of withholding tax rates. These often get reduced in negotiations between governments.

The UN in a 2015 report notes that “many developing countries with weak tax collection capabilities have seen limits imposed on the use of a relatively effective tax collection mechanism (withholding taxes)” through treaties due to these reductions in rates.¹⁵⁴ Table 4 shows that this problem is again also related to the OECD model, which generally imposes low maximum rates of withholding taxes, while the UN model does not set such limits.

Analysis of the 15 EU countries covered in this report show that most are quite active in reducing the withholding tax rates in their treaties with developing countries (see Figure 4).

“...if you look at all these (treaties) that have been signed, you can probably link to a very major company that came into this country.”

African Ministry of Finance official¹⁵⁵

3.6 Tax rulings

The international rules for taxation of multinational corporations remain uncertain and complex, and concerns have been raised that the outcome of the OECD's BEPS process (see section 1.3) will only increase this problem.¹⁵⁶ In order to have legal clarity, tax administrations can offer companies or individuals tax rulings, including advance pricing agreements (APAs), that make their tax position clear and assures that the tax administration will not challenge the tax practices agreed on. These types of agreements can be effective ways to make the tax system more efficient by bringing certainty to corporations. However, they can also be misused to legitimise significant tax avoidance, and so their use needs to be transparent and accountable. Currently, these agreements are often negotiated bilaterally between the multinational corporation and the national tax administration, and are kept in secrecy.

The secret world of tax rulings for multinational corporations became better known after the LuxLeaks revelations in November 2014.¹⁵⁷ A law professor has described these tax rulings in the following way: "It's like taking your tax plan to the government and getting it blessed ahead of time."¹⁵⁸ Such tax rulings have now become a key tool in corporate tax avoidance. With provision for tax rates lower than 1 per cent in some cases,¹⁵⁹ multinational companies flocked to Luxembourg's tax department to get a ruling. The audit company PwC that brokered the tax rulings has since been accused in the UK's Public Accounts Committee of promoting tax avoidance on an industrial scale.¹⁶⁰ Along with other EU Member States, Luxembourg is currently under investigation by the European Commission for using tax rulings as a form of illegal state aid. The Commission's investigation was expanded in March 2015 to include tax deals with McDonald's.¹⁶¹

Shocking as the revelations from Luxembourg were, the really disturbing thing about these leaks was that they only involved one country and the tax rulings brokered by one audit company. It is safe to say that LuxLeaks revealed only the tip of the iceberg: underneath is a much wider and deeper problem, since 22 of Europe's Member States make use of tax rulings and we can only guess at the provision for lower corporate taxes that they involve. While Luxembourg is one of the most active Member States in issuing tax rulings, it is certainly not the only one. Figure 5 illustrates this, showing only one type of tax ruling – the so-called Advance Pricing Agreements (APAs).

The European Commission announced in March 2015 that the details of tax rulings would be automatically exchanged between Member States within the EU in an attempt to discourage excessive rulings.¹⁶²

Important as this step may be, it does nothing to assist developing countries or the citizens of Europe in accessing the tax rulings, and doesn't address the underlying problem of a complex, uncertain and very opaque tax system, where governments often engage in 'tax competition' to attract multinational corporations with opportunities to lower their taxes, rather than work together to ensure a solid and coherent tax system.¹⁶³ Data from the Commission shows that, out of the 547 APAs in force in EU Member States by the end of 2013, 178 were with non-EU countries.¹⁶⁴

The Commission is conducting an impact assessment to look into the pros and cons of making parts of the tax rulings public. This is expected to be ready by the beginning of 2016. However, as is the usual case with the Commission's impact assessments, it will most likely not consider the interests of developing countries when weighing up the pros and cons.

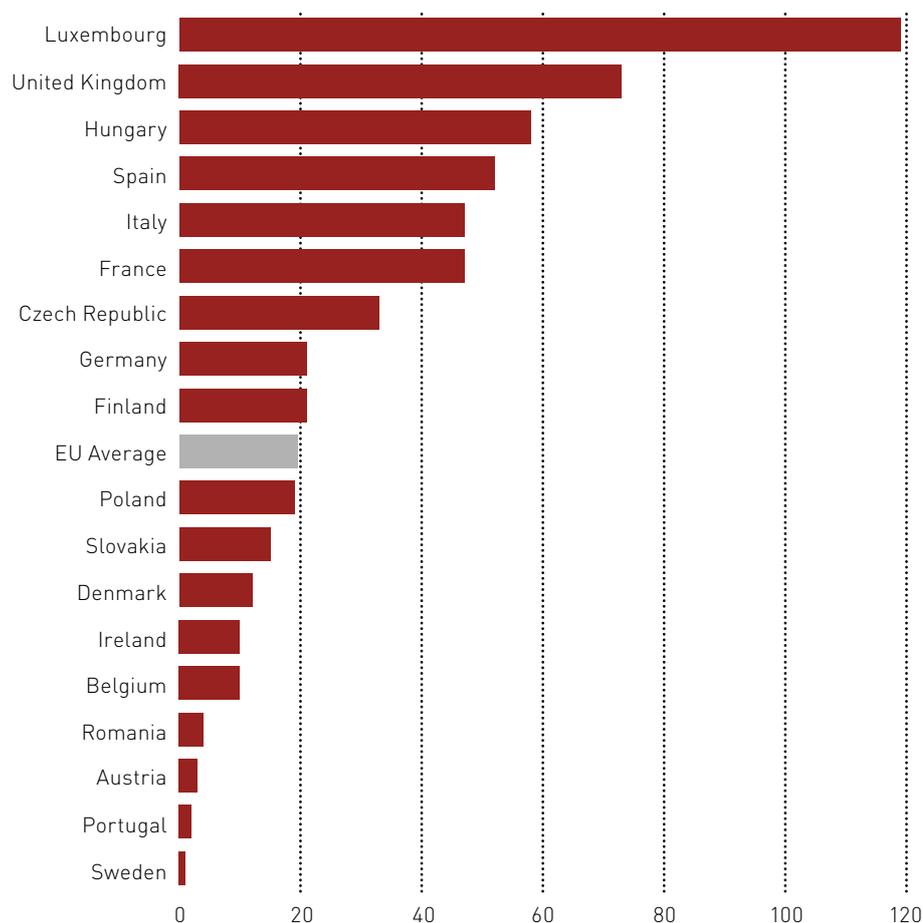
3.7 Excluding developing countries from decision making

As has been highlighted above, the OECD BEPS reforms have systematically been biased against the interests of developing countries.

Europe plays a key role in upholding the current system, which dictates that international taxation reform is discussed and progressed through OECD and G20 forums, where more than 100 developing countries are not represented. For years, developing countries have been calling for the UN to take over the international taxation reform process, as this would allow all countries in the world to have a seat at the table when decisions are to be taken. The EU played an active role in blocking this proposal in the July Financing for Development conference in Addis Ababa, where the question of the global tax body was a key sticking point between developed and developing countries.

In the early stages of the negotiations, the EU seemed to indicate some openness to discussing the proposal, calling for a cost-benefit analysis, more clarity of what the mandate would be and reflections on the potential interlinkages with between different bodies to avoid 'wasteful duplication'.¹⁶⁵ However, the EU's line then changed to opposing the intergovernmental tax body with a reference to the problem of 'institutional proliferation' and their preference for keeping the decision making at the OECD.¹⁶⁶ The proposal was also opposed by other developed countries, including the United States¹⁶⁷ and in the end it was not adopted.

Figure 5: Total number of Advance Pricing Agreements (APAs) in force by the end of 2013 in selected EU Member States



Source: European Commission 2014.¹⁶⁸

The data on APAs in force at the end of 2013 is incomplete for Austria and missing for the Netherlands (although data shows that the Netherlands granted 228 APAs in 2013 alone). The EU countries that do not currently have APA programmes are: Bulgaria, Estonia, Croatia, Cyprus, Malta and Slovenia. Greece has an APA programme, but did not have any APAs in force by the end of 2013. As there is no EU-wide definition of APAs or when an APA is entered into force there may be discrepancies in how the figures were arrived at for each country.

3.8 Building capacity or consensus?

Amid the accusations that the OECD is an unrepresentative body for discussing international tax reform, and that is not a disinterested 'honest broker' as it is sometimes represented,¹⁶⁹ the OECD has stressed the need to build the capacities of developing countries' tax administrations in order for them to be able to implement global tax standards.

However, reducing the question of how developing countries can raise more tax revenues to one of capacity misses the inherently political nature of the problem and shifts the onus onto developing countries and away from developed countries. This was captured in a report adopted by the 54 African Union heads of state, which states: "it is somewhat contradictory for developed countries to continue to provide technical assistance and development aid (though at lower levels) to Africa while at the same time maintaining tax rules that enable the bleeding of the continent's resources through illicit financial outflows."¹⁷⁰

Despite this contradiction, the need for capacity building on taxation is undeniable in most developing countries: it is estimated that African countries would have to hire an additional 650,000 tax officials to have the same ratio of tax officials to population as in OECD countries.¹⁷¹

However, capacity building can also be used to promote the OECD's policies in developing countries, and to increase the pressure on developing countries to implement these, regardless of whether they serve developing country interests or not. This includes policies that have proven to be difficult to operationalise in developing countries – such as the OECD's arm's length principle to address transfer mispricing.¹⁷²

Box 8

Tax inspectors without borders – a model for capacity building?

According to the OECD, the Tax Inspectors Without Borders initiative is to be used as a tool to build developing country capacity to implement BEPS solutions.¹⁷³ As the OECD itself announces, it is a 'dating agency' in which retired or in-service tax officials – both from developed and developing administrations – are deployed in developing countries to instruct them how to audit multinational companies.¹⁷⁴ The initiative complements the programmes on capacity building on transfer pricing in developing countries that the OECD Task Force on Tax and Development has been carrying out jointly with the World Bank and the European Commission in 14 countries.¹⁷⁵

Until now only pilot deployments have been in place, with four EU countries involved: France in Senegal, Italy in Albania, the Netherlands in Ghana and the UK in Rwanda. It thus seems clear that EU countries will take on a big part of the capacity building under this initiative. Eurodad has analysed the pilot deployments in Ghana and Rwanda and two main concerns have arisen.

First, the probability of conflicts of interests and the involvement of the private sector. For example, in the case of Rwanda, the programme, including the deployment of UK inspectors, was managed by PwC – a company that among other things played a very central role in the LuxLeaks tax scandal.¹⁷⁶

Second, the potential conflicts of interests between the country deploying the experts and the host country. In the case of Ghana, for example, the partner country, the Netherlands, is also home country to several large multinational corporations operating in Ghana.¹⁷⁷

During the Third UN Financing for Development Conference held in Addis Ababa in July, the initiative was officially launched with the support of the UN Development Programme (UNDP).¹⁷⁸ Time will determine whether the initiative will benefit developing countries, or whether it will end up becoming a way to promote other interests and export a failed approach to international taxation.

3.9 Hidden ownership of companies and trusts

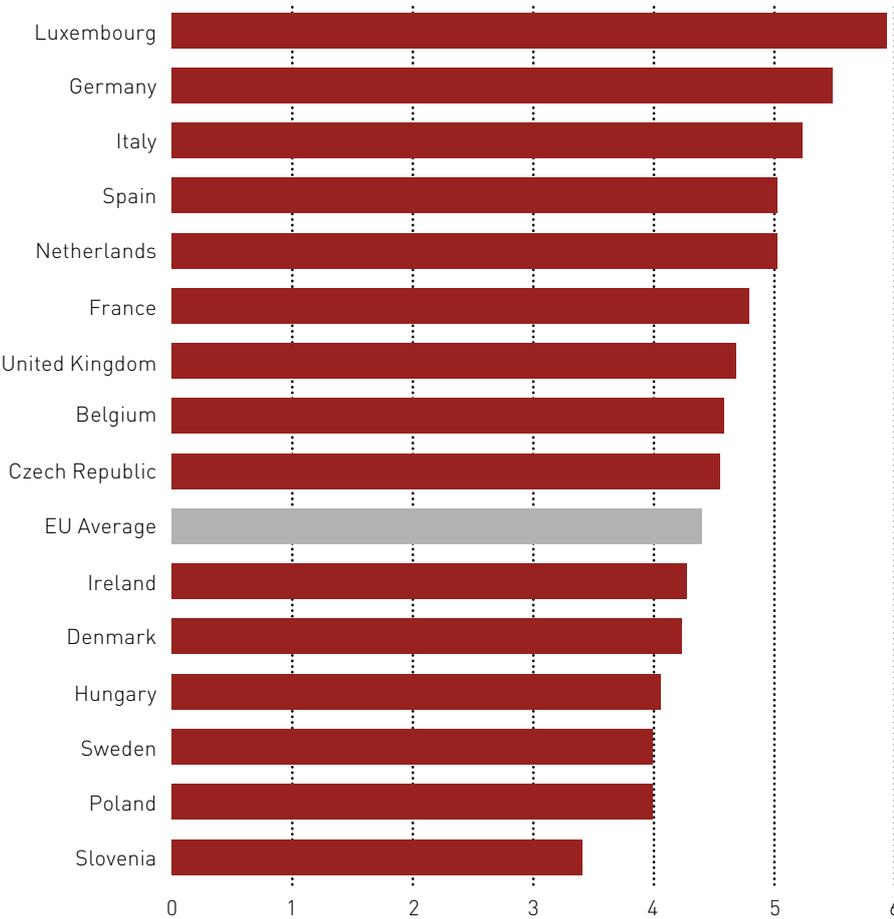
A key challenge in the fight against tax evasion is that it is so easy to hide money. Traditionally secret bank accounts were the preferred choice for hiding wealth. However, with the trend towards increased information exchange between countries on bank account information (see section 3.1 above), tax evaders, the corrupt and criminal are increasingly turning to other sources of secrecy. "Offshore banking is ... becoming more sophisticated. Wealthy individuals increasingly use shell companies, trusts, holdings, and foundations as nominal owners of their assets,"¹⁷⁹ as noted by tax expert Gabriel Zucman.

These structures allow individuals to hold money anonymously: instead of the person or group of people who actually controls the funds being listed as the owner, the apparent owner is a company or nominee director of that company. Zucman notes that this leads to the worrying phenomenon that more than 60 per cent of all foreign-held deposits in Swiss banks belong to entities in the British Virgin Islands, Jersey and Panama, all renowned jurisdictions for setting up shell companies.¹⁸⁰

The SwissLeaks revelations showed a similar pattern, with 20 per cent of bank accounts associated with Viet Nam being held by offshore companies, and 30 per cent of those associated with Kazakhstan.¹⁸¹ According to *The Guardian*, the HSBC files shows that the bank actively advised some of its wealthy clients to hide behind such shell companies to avoid their bank information being subject to the new EU rules on automatic information exchange.¹⁸² Some of these shell companies and trusts are used for legitimate purposes; the problem is that the secrecy they offer tends to attract those with secrets to keep. And when it comes to finances, this includes the world's tax dodgers, money launderers, corrupt dictators and the like. A World Bank review of more than 150 grand corruption scandals in developing countries found that anonymous companies were used in more than 70 per cent of the cases.¹⁸³

To counter the widespread misuse of corporate secrecy through shell companies and trusts, the EU adopted new regulations on money laundering in 2015, which provides that all EU Member States will have to create registers of the real owner of shell companies and some trusts. This is a major step forward as it will mean that individuals will no longer be able to hide behind obscure lines of ownership. However, the EU law-makers missed a huge opportunity for transparency by deciding that only members of the public who can demonstrate a 'legitimate interest' should have access to the registers of real owners.¹⁸⁴

Figure 6: Money-laundering risks in 15 EU countries, 2015



Source: Based on the Basel Institute of Governance's Anti-Money Laundering Index 2015.¹⁸⁵ The index ranges from 0 (low risk of money laundering) to 10 (high risk of money laundering). The EU average includes all 28 Member States and is not weighted according to population or other factors.

Although it seems obvious that all citizens have a legitimate interest in knowing who owns the companies that operate in our society, particular interpretations of 'legitimate interest' could be used by some Member States to exclude the public's access to this information. It is as yet unclear whether tax administrations in developing countries, let alone the public, will be allowed access to this information under the EU regulation. Member States are, however, free to go beyond the minimum requirements in the directive and adopt fully public registers.

78 per cent
of citizens in 18 EU Member States agree that their government should require companies to publish the real names of their shareholders and owners.¹⁸⁶

Report findings

4.1 Tax policies

Tax rulingsⁱ

Tax rulings are common in most of the countries covered in this report, although more so in a few countries (most notably in the Netherlands and Luxembourg). In all except one of the 15 countries covered in the report (Slovenia), the governments allow for the granting of Advance Pricing Agreements (APAs) to multinational corporations.ⁱⁱ Several of the countries covered are currently subject to European Commission state aid investigations in relation to their tax rulings (Luxembourg, the Netherlands, Ireland and Belgium).

Shell companiesⁱⁱⁱ

In relation to shell companies, one of the biggest changes of the year was that a number of countries covered in this report for the first time started to report separately on the foreign direct investment (FDI) flows going through their special purpose entities (SPEs). Of the countries covered in this report, the available data shows that routing of FDI through SPEs is commonplace in almost half of them (Luxembourg, the Netherlands, Hungary, Denmark, Spain and Ireland).

Patent boxes^{iv}

The harmful tax practice commonly known as 'patent boxes' continues to spread in the EU. Out of the 28 EU Member States, 12 countries have either already introduced or are in the process of setting up a patent box, while Germany is still considering the option. Despite the tough rhetoric against tax dodging from many governments, it is noteworthy that half of the EU's patent boxes have been introduced within the last five years, dispelling the notion that the EU has effectively halted the implementation of new harmful tax measures. Several of the countries covered in this report are either adopting (Italy) or preparing legislation to adopt a patent box (Ireland) in 2015. Despite the newly adopted OECD BEPS package, which includes new guidelines on patent boxes, existing patent boxes can – in accordance with the guidelines – continue business as usual until 2021.

Tax treaties^v

The number of tax treaties with developing countries continues to increase, but the increase is higher in some countries (such as in Luxembourg) than others (for example, in Sweden where no new treaties with developing countries came into force in the period covered in this report). Other countries (such as Hungary, Slovenia and Belgium) are expanding their treaty network with low-tax jurisdictions.

In the past year, more of the 15 countries covered in this report are beginning to include anti-abuse clauses in their treaties with developing countries (for example, in the Netherlands, Denmark, France and Poland). In other countries, governments are increasingly pressured to acknowledge the potential negative impact of their treaties with developing countries (such as in Ireland, where the government conducted a spillover analysis and in Denmark where a Parliamentary hearing was held on the topic). Some treaties with developing countries were also renegotiated (as was the case in the Netherlands and Ireland) with some improvements.

On average, Spain tends to be the worst among the 15 countries in terms of lowering withholding tax rates in its treaties with developing countries. Spain's new treaties with Senegal (2014) and Nigeria (2015) cemented this trend.

4.2 Financial and corporate transparency

Banking scandals in some countries (notably Germany and Sweden) turned the spotlight on the role of the financial sector in Europe as far as facilitating tax dodging and money laundering is concerned.^{vi}

Ownership transparency^{vii}

During the EU negotiations on the anti-money laundering directive towards the end of 2014, some countries played a constructive role (including France and Italy), while others played a more negative role (such as Germany, Spain and Poland). However, as the directive is being implemented by the EU Member States, it is becoming clear that countries that took the most ambitious stand in the negotiations are not the ones showing leadership in implementation. Both France and Italy have rejected the idea of establishing a public register for beneficial owners of companies, for example. The UK is in advanced stages of introducing a public register of the beneficial owners of companies but regrettably not for trusts. It seems they will be joined by Slovenia and Denmark, which both state that they plan to implement registers that will be available to the public without any qualifying criteria. Unlike the UK, Slovenia and Denmark are either in the process of restricting, or in the case of Slovenia have refrained from offering, alternative opportunities for concealing ownership, such as trusts, for example.

Some of the most troubling countries are still Luxembourg and Germany, which together offer a diverse set of options for concealing ownership and laundering money. However, a significant number of countries have not yet formed a position and will hopefully decide to implement fully public registers in the year to come.



Public reporting for multinational corporations^{viii}

Large movements have been seen on country by country reporting over the past year. Of the 15 countries covered in the report, nine governments state that they intend to implement the OECD BEPS recommendations (France, Germany, Ireland, Luxembourg, Poland, Slovenia, Spain, Sweden and the UK), which will keep the reporting confidential and only apply to very large companies. The former champion, France, is no longer pushing this demand and has instead joined the group of countries introducing confidential country by country reporting. However, some governments (the Netherlands, Belgium and the UK) have indicated varying degrees of willingness to look into the possibility of making the information public.

4.3 Global solutions^{ix}

None of the 15 countries covered in this report broke with the official EU line at the July 2015 Financing for Development conference, which regrettably opposed and successfully blocked the establishment of an intergovernmental body on taxation under the auspices of the UN. Among all of the 28 EU Member States, the UK and France played the leading role in blocking the demand from developing countries to have a seat at the table when global tax standards and policies are being decided. Today, only the Slovenian government is prepared to state that it supports the establishment of such a body.

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- i. For more information, see section 3.6 on 'Tax rulings' as well as the national chapters
 - ii. For more information, see figure 5 in section 3.6 on 'Tax Rulings'
 - iii. For more information, see section 3.3 on 'Letterbox companies' as well as the national chapters
 - iv. For more information, see section 3.4 on 'Patent boxes' as well as the national chapters
 - v. For more information, see section 3.5 on 'Tax treaties' as well as the national chapters
 - vi. For more information, see the national chapters of Germany and Sweden
 - vii. For more information, see section 3.9 on 'Hidden ownership of companies and trusts' as well as the national chapters
 - viii. For more information, see section 1.3 on 'Will BEPS stop tax dodging' as well as the chapters on the European Parliament, the European Commission and the national chapters
 - ix. For more information, see section 3.7 on 'Excluding developing countries from decision making' as well as the national chapters

See Appendix, p102, for a key to the following country rating system.

Specific findings

	Tax treaties	Transparency	Reporting	Global solutions
European Commission 	<p>The Commission does not seem to have a public position on EU Member States' use of tax treaties with developing countries.</p>	<p>The Commission proposal for the new EU anti-money laundering directive did not initially include public access to beneficial ownership information. At a late stage of the negotiations on the directive the Commission suggested having some public access, but only among those who can demonstrate a so-called 'legitimate interest', without specifying what this would mean in practice.</p>	<p>The Commissioner in charge of taxation has on several occasions voiced his personal support for public country by country reporting, but the Commission does not as yet have a unified position on the issue. The Commission has been openly hostile to the European Parliament's attempt to push for public country by country reporting through the review of the Shareholders Rights Directive. The Commission is currently conducting an impact assessment on public corporate reporting and will present its findings in early 2016 after which it is expected to develop a more clear position on public country by country reporting.</p>	<p>A Communication issued in 2015 by the Commission supported the view that developing countries should implement decisions made by the OECD and G20 on tax. At the July 2015 Financing for Development conference the Commission rejected the establishment of an intergovernmental UN body on tax.</p>
European Parliament	<p>The European Parliament stresses that EU Member States should use the UN model when negotiating tax treaties with developing countries and stresses the need for policy coherence for development in these treaties. The Parliament has also called for an EU-wide standard on tax treaties, and has called on Member States to conduct spillover analyses of their tax treaties with developing countries.</p>	<p>The European Parliament stood firm on the principle that the public should have access to beneficial ownership information in the negotiations on the new EU anti-money laundering directive towards the end of 2014. It has since urged Member States to go beyond the minimum requirements of the new directive by allowing unrestricted public access to basic information in the beneficial ownership register.</p>	<p>The European Parliament in 2015 discussed amendments to a directive to introduce public country by country reporting. A comfortable majority voted for the proposal and it has thus become the position of the Parliament. Negotiations on the directive are thought to be scheduled towards the end of 2015.</p>	<p>The European Parliament has repeatedly voiced its support for the creation of an intergovernmental UN body on tax, last repeated shortly before the 2015 Financing for Development conference.</p>
Belgium 	<p>Belgium's model treaty contains many aspects that are not suitable for developing countries, but it does include an anti-abuse clause. Belgium has more treaties with developing countries than the average among the countries considered in this report, but Belgium's treaties with developing countries on average reduce the tax rates less than the average among the countries covered in this report.</p>	<p>A 2015 FATF review found considerable shortcomings in Belgium's anti-money laundering framework, but not in relation to the registration and storing of beneficial ownership information. A taskforce yet to be set up will consider whether Belgium should adopt a public register of beneficial owners. Trusts are not allowed under Belgian law.</p>	<p>The Belgian government is officially still awaiting the outcome of the European Commission impact assessment on country by country reporting and will also conduct its own national assessment before forming its own position.</p>	<p>The Belgian government does not support the establishment of an intergovernmental UN tax body.</p>

<p>Czech Republic</p> 	<p>Tax treaties</p>	<p>↓</p>	<p>Transparency</p>	<p>↓</p>	<p>Reporting</p>	<p>Global solutions</p>
	<p>The Czech model treaty is based on the OECD model, but its treaties contain a mix of the UN and OECD model provisions. The Czech Republic has less tax treaties with developing countries than the average among the countries covered in this report, but the Czech treaties with developing countries on average reduce the withholding tax rates more than the average among the countries covered in this report.</p>		<p>The government plans to present amendments to existing legislation in October 2015 to implement the new EU anti-money laundering directive, and expects the new law to be effective from 1 July 2016. Whether the mandatory register of beneficial owners contained in the directive will be made public or not is still being considered by the government. Trusts were introduced in 2014 and currently no registration is required.</p>		<p>The Czech government's position on country by country reporting is not known.</p>	<p>The official position of the Czech government is not supportive of an intergovernmental UN body on tax.</p>
<p>Denmark</p> 	<p>Tax treaties</p>	<p>↓</p>	<p>Transparency</p>	<p>Reporting</p>	<p>↓</p>	<p>Global solutions</p>
	<p>Denmark's treaties with developing countries were, until the mid-1990s, largely based on the UN model, but have since then been based on the OECD model. A controversial treaty with Ghana sparked a Parliamentary hearing in April 2015 on Denmark's treaties with developing countries but did not seem to bring any significant acknowledgement from the government of the need to change negotiation practices. The government does not plan to conduct a spillover analysis of its treaties. New legislation introduced in 2015 means that all of Denmark's tax treaties now include an anti-abuse clause. Denmark has fewer treaties with developing countries than the average among the countries covered in this report, but Denmark's treaties with developing countries on average reduce withholding tax rates more than the average among the countries covered in this report.</p>		<p>Following a number of scandals relating to shell companies set up in Denmark the government announced in late 2014 that it intended to set up a fully public register of beneficial owners of companies. The register is expected to be implemented by late spring 2016. The new government that took office in June 2015 has not announced any changes to these plans. In 2015 it was also decided that bearer shares are to be phased out and a public register of shareholders was introduced in June.</p>		<p>The government position on country by country reporting remains unclear. However, with elections in June 2015 a majority against Denmark's public list of tax payments by big companies emerged, although a legal proposal to remove the lists has not yet been put forth. With this development the prospects for a Parliamentary majority for public country by country reporting seem less likely than before.</p>	<p>The official position of the Danish government is not supportive of an intergovernmental UN body on tax.</p>

France	Tax treaties	Transparency	Reporting	Global solutions
 <p>France is only surpassed by the UK in the number of treaties it has with developing countries. The treaties are exclusively based on the OECD model. The Ministry of Finance recently changed position and says it now supports the introduction of anti-abuse provision in France's treaties. On the other hand, France's treaties on average reduce the withholding rate by 3.11 per cent, which is more than the average among the countries covered in this report. A 2014 treaty with China showed that France continues to press for lower rates in its treaties with developing countries.</p>	<p>France is reported to have played a constructive role by promoting beneficial ownership transparency as a priority during the EU negotiation on a new anti-money laundering directive. In a disappointing move, the French authorities in 2015 said they do not plan to go beyond the minimum requirements of the directive in allowing access to beneficial ownership information, but will instead limit it to those with a 'legitimate interest'. However, the authorities say they intend to apply as wide an interpretation of 'legitimate interest' as possible, but have not yet provided an official definition. A law drawn up in 2013 would create a public register on trusts, but the decree implementing the law has still not been issued.</p>	<p>Having for years been an advocate for more corporate transparency by multinational companies, the French government disappointingly said in 2015 that it will not unilaterally adopt public country by country reporting and instead plans to follow the OECD BEPS recommendations. Following the launch of the BEPS plan in October, the French government confirmed in a communiqué its intention to adopt the confidential country by country model by the end of the year as part of its budget bill.</p>	<p>France warmly supports the Paris-based OECD and its BEPS process. The French government has repeatedly made clear that it does not support the creation of an intergovernmental tax body under the UN and was one of the most active blockers of this proposal during the July 2015 Financing for Development conference.</p>	
Germany	Tax treaties	Transparency	Reporting	Global solutions
 <p>Only three countries among those covered in this report have more treaties with developing countries than Germany. In its negotiations with developing countries, Germany relies on its 2013 model tax treaty which generally draws on the OECD model, but says it also allows for the inclusion of elements from the UN model. A recent revision of its treaty with the Philippines – one among a sizable number of new treaties with developing countries – includes significant reductions in the withholding tax rates. This is in line with the general trend, which shows that on average Germany has reduced withholding rates by more than 3.5 percentage points in its treaties with developing countries, well above the average among the countries covered in this report.</p>	<p>Germany is reported to have played a negative role during EU negotiations on a new directive on anti-money laundering at the end of 2014, objecting to the establishment of centralised registers of beneficial owners and to public access to such information. However, since the implementation of the directive is not yet completed, an official government position on whether the public will be allowed access to beneficial ownership information in Germany is still awaited. FATF in a 2014 review noted shortcomings in Germany's current system of storing beneficial ownership information, and also noted with concern the lack of transparency of Germany's "treuhand funds", a form of trust. Of the 15 countries covered in this report, Germany is estimated to have the second highest money laundering risk.</p>	<p>The German government plans to introduce confidential country by country reporting in line with the OECD BEPS recommendations. The government expects this requirement to be approved by the end of 2015 and for it to take effect from 2016. Germany does not appear to be considering public country by country reporting.</p>	<p>Despite stating that close collaboration with developing countries is of "utmost importance" to fight illicit financial flows, the German government has for years opposed the establishment of an intergovernmental UN body on tax, and reaffirmed this position in the July 2015 Financing for Development negotiations.</p>	

<p>Hungary</p> 	<p>Tax treaties </p> <p>Hungary has less than the average number of treaties with developing countries, and none with low-income countries. It is not clear whether its treaties with developing countries generally follow the UN or OECD model. In the last few years Hungary has been very active in negotiating treaties with low-tax jurisdictions. Hungary has on average reduced the withholding tax rates in its treaties with developing countries less than the average among the countries covered in this report.</p>	<p>Transparency  ↓</p> <p>A 2015 OECD review noted that Hungary does not require foreign companies trading in the country to provide ownership details or proof of the identity of those involved, and noted that the same was also the case with ownership information on partners in foreign partnerships. This is all the more concerning since Hungary has an extensive number of SPEs with data showing large flows of FDI through these. The government's position on making beneficial ownership information publicly available is not known.</p>	<p>Reporting </p> <p>The government's position on country by country reporting is not known.</p>	<p>Global solutions </p> <p>The government's position on the establishment of an intergovernmental body on tax is not known, but Hungary did not deviate from the official EU line during the Third Financing for Development conference in Addis Ababa. The official EU line was against the establishment of an intergovernmental UN tax body.</p>
<p>Ireland</p> 	<p>Tax treaties</p> <p>Ireland generally follows the OECD model in negotiations but states that it is willing to consider other countries' model treaties when negotiating with developing countries. Together with Slovenia, Ireland has the lowest number of treaties with developing countries covered in this report. A treaty with Zambia was renegotiated in 2015 and showed some improvements on what was originally a treaty unfavourable to Zambia. Publication of a spillover analysis, expected in early 2015, came with the Budget 2016 in October 2015 (too late for detailed analysis in this report). Ireland has generally negotiated lower tax rate reductions in its treaties with developing countries than the average among the countries covered in this report.</p>	<p>Transparency ↓</p> <p>A 2015 review by the Central Bank revealed some challenges in the Irish financial sector in terms of customer and beneficial owner verification. The government plans for a relatively quick implementation of the new EU anti-money laundering directive by 2016, but has not yet stated whether or not to give the public unrestricted access to the register of beneficial owners.</p>	<p>Reporting</p> <p>The Irish government says it supports the OECD BEPS recommendations for country by country reporting, stressing the need for "taxpayer confidentiality" and for keeping the information with tax administrations only. Ireland also supports the OECD recommendation that only companies with an annual turnover above €750 million should be subject to the reporting requirements.</p>	<p>Global solutions</p> <p>Despite an ambition of playing "a strong role in global efforts to bring about a fairer and more transparent international tax system", the Irish government does not support the establishment of an intergovernmental UN body on tax, as witnessed during the July 2015 Financing for Development conference, where "institutional proliferation" was cited as a concern by the government.</p>

Italy	Tax treaties	↓	Transparency	Reporting	Global solutions
 <p>The government says Italy's treaties are primarily based on the OECD model but that the UN model is another source of reference. Among the countries in this report, Italy is only surpassed by the UK and France in terms of the number of treaties with developing countries. A 2014 treaty signed with the Republic of the Congo coincided with the announcement of a major expansion in the country by Italian oil giant ENI. No new treaties with developing countries were concluded in 2015. On average, Italy has negotiated lower tax rate reductions in its treaties with developing countries than the average among the countries covered in this report.</p>	<p>As late as the end of 2014, the Italian government expressed support for public registers of beneficial ownership. But following the EU compromise on the anti-money laundering directive, which it helped form as holders of the EU presidency at the time, the government disappointingly says it now plans to restrict access to the register to those with a 'legitimate interest'. Italy is estimated as having the third highest money laundering risk out of the 15 countries covered in this report.</p>			<p>The government's position on country by country reporting is not known.</p>	<p>The official position of the Italian government is not supportive of an intergovernmental UN body on tax.</p>
Luxembourg	Tax treaties	Transparency	Reporting	Global solutions	
 <p>Luxembourg has a relatively low number of tax treaties with developing countries but is rapidly expanding its treaty network in 2015, including with a large number of developing countries. Two of the most recent treaties – with Laos and Sri Lanka – include reduced tax rates on dividends. The government states that all of Luxembourg's treaties follow the OECD model. Among the 15 countries covered in this report, Luxembourg has on average the least reduced tax rates in its treaties with developing countries.</p>	<p>A 2014 review of the anti-money laundering compliance in Luxembourg notes improvements, but also found that the Luxembourg business register does not record the beneficial owner in all cases. New structures such as the so-called 'Freeport' and 'the patrimonial fund' could further worsen the situation on beneficial owner transparency. Of the 15 countries covered in this report, Luxembourg is estimated as having the highest money laundering risk. It is not yet known how and when the Luxembourg government will implement the new EU anti-money laundering directive or whether it will adopt a public register of beneficial owners.</p>	<p>The Luxembourg government has drawn up new transfer pricing legislation that includes country by country reporting along the lines of the OECD BEPS recommendation, meaning that the information will be confidential and that the reporting standard will only apply to companies with a turnover above €750 million. The Minister of Finance in March confirmed that Luxembourg does not support making the country by country reporting information public.</p>	<p>Luxembourg often argues that neither Luxembourg nor the EU can go too far in reforming their tax systems due to the need for a global level playing field. Nonetheless, the Luxembourg government does not support the establishment of an intergovernmental UN body on tax, which could decide on global standards.</p>		

<p>Netherlands</p> 	<p>Tax treaties</p> <p>In general, the Netherlands uses the OECD model but states that it is willing also draw on the UN model in negotiations with developing countries. The Dutch government is now taking steps to include anti-abuse provisions in its treaties with developing countries. The government states that it is willing to accept higher tax rates in its treaties with developing countries than otherwise, but data shows that the Netherlands is generally more aggressive in negotiating lower rates in its treaties with developing countries than the average among the countries covered in this report. The Netherlands also has more treaties with developing countries than the average among the countries covered in this report.</p>	<p>Transparency</p> <p>A recent review by the Dutch Central Bank noted failings in collecting beneficial ownership information among the important trust offices that manage many of the country's letterbox companies. According to estimates, the Netherlands has a relatively high risk of money laundering – the fifth highest among the countries covered in this report. The Dutch government says it does not support public access to beneficial ownership information.</p>	<p>Reporting</p> <p>The Dutch Parliament in 2015 passed a resolution calling for public country by country reporting and the government has expressed its support for the same in a letter to the European Commission. Nevertheless, the Dutch government announced in its September 2015 budget that it will be implementing the OECD BEPS recommendations on country by country reporting, which would keep the information confidential and would apply to companies with a turnover above €750 million. The government can, however, still make good on its promise to support public country by country reporting during negotiations over the Shareholders Rights Directive, in which case the Netherlands would receive a green rating.</p>	<p>Global solutions</p> <p>Ahead of the July 2015 Financing for Development conference, the Dutch government identified the fight against tax dodging as one of its top three priorities. Nonetheless, the government did not support the establishment of an intergovernmental UN body on tax.</p>
<p>Poland</p> 	<p>Tax treaties</p> <p>According to the Polish government, as a rule it follows the OECD model but also allows for elements from the UN model. However, the government states that it would not use the UN model as a starting point in negotiations with developing countries. Poland recently started including an anti-abuse clause in its treaties with developing countries and has the second lowest average reduction of tax rates in treaties with developing countries among the 15 countries covered in this report. Poland also has fewer treaties with developing countries than the average among the countries covered in this report.</p>	<p>Transparency</p> <p>A 2015 OECD review of corporate transparency in Poland found serious shortcomings in the availability of identity and ownership information of foreign companies, on bearer shares, and in relation to people who administer trusts. The Polish government is reported to have been against public registers of beneficial ownership during the EU negotiations on the anti-money laundering directive, but as of now it has not communicated officially its plans for a national register or whether the public will have full access or not. According to estimates, Poland has the second lowest risk of money laundering among the 15 countries covered in this report.</p>	<p>Reporting</p> <p>Poland is one of the EU's first adopters of the OECD BEPS recommendations on confidential country by country reporting, while being one of the latest adopters of the EU requirements for public country by country reporting for banks, which it has still not implemented. Poland does not appear to be considering the possibility of public country by country reporting.</p>	<p>Global solutions</p> <p>The Polish government has stated that it needs to analyse the establishment of an intergovernmental UN tax body before deciding. However, Poland did not deviate from the official EU line during the Third Financing for Development conference in Addis Ababa. The official EU line was against the establishment of an intergovernmental UN tax body.</p>

<p>Slovenia</p> 	<p>Tax treaties</p> <p>The government says its treaties with developing countries are not based solely on either the UN or OECD model. Together with Ireland, Slovenia has the fewest treaties with developing countries among the countries covered in this report. Slovenia falls just below the average tax rate reduction in its treaties with developing countries compared with the 15 countries covered in this report.</p>	<p>Transparency</p> <p>The Slovene government says it plans to implement a register where the general public will have access to basic information on beneficial owners without any qualifying criteria. Those that can demonstrate a 'legitimate interest' will have access to a wider set of information. The government has not yet defined 'legitimate interest' but plans to have a legislative proposal developed and passed by the end of 2015. The upcoming decisions on how much information to publish and how to define 'legitimate interest' will determine whether Slovenia will have a truly public register of beneficial owners, but the announcements show a positive intention. In addition, Slovenia is estimated as having the lowest risk of money laundering among the 15 countries covered in this report.</p>	<p>Reporting</p> <p>The government has not yet put forth a legislative proposal for country by country reporting but says it supports the OECD BEPS model and stresses that the information should be kept confidential. The government implemented the capital requirements directive in 2015, but has still not implemented the article containing the public country by country reporting requirement for banks, but says the Bank of Slovenia will clarify what is required to the country's banks.</p>	<p>Global solutions</p> <p>The government says it supports the call to establish an intergovernmental body on taxation under the auspices of the UN. However, Slovenia did not deviate from the EU line during the July 2015 Financing for Development conference, where the EU blocked such a measure.</p>	↑
<p>Spain</p> 	<p>Tax treaties</p> <p>Spain primarily follows the OECD model in tax treaty negotiations, but does include an anti-abuse clause. Treaties concluded with Senegal and Nigeria in 2014-15 showed significant reductions in withholding tax rates, and this follows a general pattern as Spain is by far the most aggressive negotiator of the 15 countries covered in this report when it comes to reducing withholding tax rates in its treaties with developing countries. On average the withholding rates in these treaties have been reduced by 5.4 percentage points. Spain also has more treaties with developing countries than the average among the countries covered in this report.</p>	<p>Transparency ⓧ</p> <p>The government has not yet decided the level of access it will grant to the public when implementing the new EU anti-money laundering directive. However, the government says it was strongly against including a provision for public beneficial ownership registers in the directive when it was negotiated, which makes it likely that the government will not grant public access to a register of beneficial owners. Spain is estimated as having the fourth highest risk of money laundering among the countries covered in this report.</p>	<p>Reporting</p> <p>Spain will implement country by country reporting in line with the OECD BEPS recommendations, the government announced in 2015. It does not appear to be considering the possibility of public country by country reporting. This implies that it will not make the information publicly available and that it will only apply to companies with a turnover above €750 million.</p>	<p>Global solutions</p> <p>Spain followed the EU line of opposing an intergovernmental UN body on tax during the July 2015 Financing for Development negotiations. However, the government says the establishment should be studied prior to any decision, and considers it necessary to at least reinforce the current UN tax expert committee.</p>	↑

Sweden	Tax treaties	Transparency	Reporting	Global solutions
	<p>According to the government, Swedish treaties with developing countries differ and do in general primarily follow the OECD or UN model. Among the 15 countries covered in this report, only two others have on average reduced the tax rates in their treaties with developing countries more. Sweden also has more tax treaties with developing countries than the average among the countries covered by this report. The government does not plan to conduct a spillover analysis of its tax treaties.</p>	<p>The government is still undecided on whether to allow wide public access to beneficial ownership information. A public inquiry was appointed at the end of 2014 to prepare a proposal on how to implement the new EU anti-money laundering directive in Sweden and will include an assessment on whether the register of beneficial owners should be public. The inquiry has been delayed and has still not presented its findings. Despite two prominent Swedish banks coming under scrutiny for money laundering in 2015, Sweden is overall estimated as having the third lowest money laundering risk among the countries covered in this report.</p>	<p>Although a legislative proposal has not yet been put forth, the Swedish government has said that it intends to follow the recommendations on country by country reporting under the OECD BEPS project, and does not appear to be considering the possibility of public country by country reporting. This would keep the reporting confidential and would only cover companies with a turnover above €750 million.</p>	<p>Sweden does not support the establishment of an intergovernmental UN body on tax, preferring instead to see a stronger involvement of developing countries in the OECD BEPS process.</p>
United Kingdom	Tax treaties	Transparency	Reporting	Global solutions
	<p>The UK has one of the largest treaty networks in the world and is still expanding, with new treaty negotiations with developing countries in 2015. Worryingly, the UK is only surpassed by one country out of the 15 covered in this report when it comes to the average reduction of tax rates in its treaties with developing countries. On the positive side, there appears to be some minor recognition of the link between development and tax treaties as DfID is now consulted annually, and development objectives are now part of the HMRC strategic plan. However, this has not yet resulted in any noticeable change. The government continues to oppose the idea of conducting spillover analysis of its tax system on developing countries.</p>	<p>The UK was the first EU country to pass legislation to require a public register of beneficial owners and thereby provided crucial credence to this idea during EU negotiations on a new anti-money laundering directive. However, in the same negotiations the UK is reported to have played a negative role by pushing for a weak compromise on trusts. The UK allows the establishment of trusts, and these are not covered by the country's public beneficial ownership register. Among the UK's Overseas Territories and Crown Dependencies, there are so far no signs of any substantial moves towards public registers.</p>	<p>The UK has been one of the first countries to commit to implementing the OECD BEPS country by country reporting recommendations, with the March 2015 budget creating the legal powers for the Treasury to introduce legislation along these lines. The debate on whether the information should be public has been ongoing and most parties addressed it in their election manifestos ahead of the May 2015 General Elections. The Conservative Party that formed the government following elections has committed to considering the case for making country by country reporting public on a multilateral basis, and it therefore remains to be seen whether the UK will support this or not.</p>	<p>The UK government was one of the key blockers of an intergovernmental UN body on taxation during the July 2015 Financing for Development conference.</p>

Recommendations

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:

1. Adopt **unqualified publicly accessible registries of the beneficial owners** of companies, trusts and similar legal structures. The transposition of the EU anti-money laundering directive provides an important opportunity to do so, and governments must make sure to go beyond the minimum requirements of the directive by introducing full public access.
2. Adopt **full country by country reporting for all large companies and ensure that this information is publicly available in an open data format that is machine readable and centralised in a public registry**. This reporting should be at least as comprehensive as suggested in the OECD BEPS reporting template,¹⁸⁷ but crucially should be made public and should cover all companies that meet two or all of the following three criteria: 1) balance sheet total of €20 million or more, 2) net turnover of €40 million or more, 3) average number of employees during the financial year of 250 or more. At EU level, governments should support the adoption of public country by country reporting for all sectors through the negotiations on the Shareholders Rights Directive.
3. Carry out and publish **spillover analyses** of all national and EU level tax policies, including special purpose entities, tax treaties and incentives for multinational corporations, in order to assess the impacts on developing countries and **remove policies and practices that have negative impacts** on developing countries.
4. Ensure that the new OECD-developed “**Global Standard on Automatic Information Exchange**” includes a **transition period for developing countries** that cannot currently meet reciprocal automatic information exchange requirements due to lack of administrative capacity. This transition period should allow developing countries to receive information automatically, even though they might not have capacity to share information from their own countries.
5. Undertake a rigorous study jointly with developing countries, of the merits, risks and feasibility of more fundamental **alternatives to the current international tax system**, such as unitary taxation, with special attention to the likely impact of these alternatives on developing countries.
6. Establish an intergovernmental **tax body under the auspices of the UN** with the aim of ensuring that developing countries can participate equally in the global reform of international tax rules. This forum should take over the role currently played by the OECD to become the main forum for international cooperation in tax matters and related transparency issues.
7. All EU countries should publish **data showing the flow of investments through special purpose entities** in their countries.
8. Remove and stop the spread of existing **patent boxes** and similar harmful structures
9. Publish the basic elements of all **tax rulings** granted to multinational companies and move towards a clear and less complex system for taxing multinational corporations, which can make the excessive use of tax rulings redundant.
10. Adopt effective **whistleblower protection** to protect those that act in the public’s interest by disclosing tax dodging practices.
11. Support a proposal on a **Common Consolidated Corporate Tax Base (CCCTB)** at the EU that includes consolidation and apportionment of profits, and avoid introducing new mechanisms that can be abused by multinational corporations to dodge taxes, including mechanisms to offset cross-border losses without consolidation (also known as the common corporate tax base (CCTB) proposal).
12. 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.
 - Desist from reducing withholding tax rates.
 - Ensure transparency around treaty negotiations, including related policies and position of the government, to allow stakeholders, including civil society and parliamentarians, to scrutinise and follow every negotiation process from the inception phase until finalisation, including the intermediate steps in the process.

European Parliament

“What worries me most is the fact that the reported practices (revealed in LuxLeaks) were manifestly legally possible in some countries. This reality means that we need to urge the Member States to work with us to end systematic tax evasion practices in Europe, be it in Luxembourg or any other country.”

Martin Schulz, President of the European Parliament¹⁸⁸

General overview

With the European Parliament traditionally an ally to tax justice campaigners, new MEPs had to quickly define their position on the subject after taking up office in 2014. Almost immediately after starting their electoral term, the MEPs had to decide whether or not to use their powers to remove European Commission President Jean-Claude Juncker following the troubling LuxLeaks revelations, which date back to the period when he was Prime Minister of Luxembourg. Through a messy compromise between the largest political groups, Juncker was spared,¹⁸⁹ but tax justice remained on the agenda. Over the course of just one year, the European Parliament (EP) has finalised the negotiation of an important directive on beneficial ownership transparency,¹⁹⁰ adopted two key reports on taxation with two more expected before the end of 2015,¹⁹¹ amended a Commission proposal for a directive to include public country by country reporting and publication of tax rulings,¹⁹² and established a special committee to look into tax rulings and other harmful tax practices.¹⁹³

However, the EP does not always present such a united front. While all party groupings in the Parliament strongly condemned the revelations of the LuxLeaks scandal and demanded tough actions, several of the biggest political groups ended up opposing a proposal to set up a strong inquiry committee to investigate harmful tax practices. Instead, the Parliament found consensus on setting up a weaker special committee.¹⁹⁴

Rather uniquely among the European institutions and Member States, the EP continues to be a champion of the developing countries' perspective on tax justice. In 2015, the EP cemented this impression by passing a progressive report on tax and development that, among other things, called on the Commission to put forth “an ambitious action plan ... to support developing countries fighting tax evasion and tax avoidance and to help them set up fair, well-balanced, efficient and transparent tax systems.”¹⁹⁵ Such calls unfortunately often go unheard due to the relatively weak powers granted to the Parliament under the EU treaties when it comes to tax. This is unfortunate because, in spite of its occasional shortcomings, the Member States and Commission could still learn a lot from what the only directly elected and most transparent of the EU institutions has to say on tax.

Tax policies

Special purpose entities (SPEs)

In its Annual Tax Report 2015, the EP made a number of important recommendations on special purpose entities (SPEs). Member States were asked to “publish an impact assessment of their Special Purpose Entities and similar legal constructs.”¹⁹⁶ This could be highly useful as it would make clear what the impact of SPEs would be on other countries' tax base. Unfortunately, the EP report did not make clear if the impact assessment should focus only on other Member States' tax base or whether it should also focus on non-EU Member States, including developing countries. Secondly, the report asked Member States to publish “data showing the flow of investments through such entities in their countries.” Such disaggregated data only exists for a small number of Member States and would make it easier to identify SPE structures that are being abused to circumvent tax legislation. Lastly, and perhaps most importantly, the EP called on Member States to “introduce sufficiently strong substance requirements for all such entities to ensure that they cannot be abused for tax purposes.”¹⁹⁷ Substance requirements ensure that SPEs have some amount of economic activity in the country of operation, as opposed to shell companies or letterbox companies. These substance requirements can, for example, take the form of a minimum number of employees. Taken together, these three recommendations for Member States on SPEs formed a good first step for assessing and addressing the harmful effects that SPEs have on tax collection in both developing and developed countries.

Patent boxes

The EP addressed the issue of patent boxes in its 2015 Annual Tax Report, calling for “urgent action and binding measures to counter the harmful aspects of tax incentives offered on the income generated by intellectual property or ‘patent boxes’.”¹⁹⁸ While this is a welcome step, the implications of this call are not clear, since the proposal does not specify exactly what type of binding measures could be used.

Tax rulings

The EP called for all tax rulings to be made public as far back as 2013, long before the LuxLeaks scandal broke.¹⁹⁹ Along the same lines, during the EP's revision of the Shareholders' Rights Directive, an amendment was added that would require big multinational companies to "publicly disclose essential elements of and information regarding tax rulings."²⁰⁰ The amendment passed comfortably, with the support of 408 MEPs. Further recommendations on the tax rulings are expected to emerge from the special committee set up after LuxLeaks.²⁰¹

Tax treaties

In its June 2015 report on tax and development, the EP pointed out that tax treaties "have become a key tool for transnational enterprises shifting their profits out of the countries where the profits have been earned, to jurisdictions where Multinational Companies can pay little or no taxes."²⁰² In relation to tax treaties with developing countries, the Parliament included the following sound recommendation: "when negotiating tax and investment treaties with developing countries, income or profits resulting from cross-border activities should be taxed in the source country where value is extracted or created."²⁰³ For this purpose, the report stressed that the UN model makes sure this happens by giving "a fair distribution of taxing rights between source and residence countries", and finally highlighting the obligation EU Member States have to comply with the principle of policy coherence for development when negotiating treaties with developing countries.²⁰⁴ With these recommendations, the EP demonstrates a sound understanding of the challenges that tax treaties pose to developing countries, and rightly identifies the UN model as a better option compared to the OECD model.

A 2013 EP report on taxation encouraged the Commission to work on common standards for tax treaties between Member States and developing countries with the purpose of "avoiding tax base erosion for these countries."²⁰⁵ The Parliament's special committee, set up after LuxLeaks, is currently considering echoing this call, recommending in its draft report from July 2015 "a common EU framework for bilateral tax treaties" and "the progressive substitution of the huge number of bilateral individual tax treaties by EU/ third jurisdiction treaties."²⁰⁶ In addition to these progressive ideas, the EP has also strongly supported the need for spillover analysis of "Member States' corporate tax regimes and their bilateral tax treaties with developing countries."²⁰⁷

Financial and corporate transparency

Beneficial ownership

The Parliament has stood strong on the principle that the beneficial owners of companies and trusts should not be secret. In a landmark vote in March 2014, 643 MEPs voted for this simple principle (with only 30 voting against).²⁰⁸ In December 2014, the Parliament, Commission and Council reached a compromise on the EU's Fourth Anti-Money Laundering Directive (AMLD). The Parliament must be commended for their role in pushing both for centralised registers and especially for public access to the registers throughout the negotiations. The Parliament was quite alone in pushing for public access, but by standing united across political parties and insisting on the need for public scrutiny in the fight against financial crime, progress was made, however imperfect the deal might be in many ways. The Parliament showed its continued resolve for public access when, a few months after the deal on the AMLD, it urged Member States "to use the available flexibility, provided for in particular in the AMLD, towards the use of unrestricted public registers with access to beneficial ownership information for companies, trusts, foundations and other legal entities."²⁰⁹

Public country by country reporting

In relation to country by country reporting, the Parliament has also taken on the role as a promoter of public access. The Parliament played a key role in pushing through public country by country reporting for banks in the Capital Requirements Directive in 2013 and has since then repeated its call for public country by country reporting across all sectors in its annual tax report and its report on tax and development, both in 2015.²¹⁰ However, when push came to shove, when a number of parties tried to table amendments to introduce public country by country reporting for all sectors in the so-called Shareholders' Rights Directive later in 2015, the apparent consensus showed cracks. Despite being passed at the committee stage by a narrow majority in May 2015,²¹¹ several of the biggest parties on the right argued against the public's access to country by country reporting and forced through a plenary vote on the draft directive.

After intense pressure and negotiations ahead of the plenary vote, the amendment for public country by country reporting managed to get a comfortable majority, with 404 MEPs voting in favour and 127 against, while 174 abstained.²¹² The vote was praised by civil society,²¹³ and by the rapporteur for the file, MEP Sergio Cofferati who stated that "we cannot miss this opportunity [to introduce public country by country reporting], in particular after Luxleaks and other scandals."²¹⁴ With the EP's position on the directive in place, the next step will now be for the Commission, Council and Parliament to negotiate until agreement can be reached.

Automatic exchange of information

In relation to automatic exchange of information, the EP Annual Report on Taxation 2015 included a strong and progressive recommendation for the inclusion of developing countries through “pilot projects ... with developing countries to be implemented for a transitional and non-reciprocal period when implementing the new global standard.”²¹⁵ The 2015 tax and development report passed by the EP in June reaffirmed this recommendation²¹⁶ and added that “continuing support in terms of finance, technical expertise and time is needed to allow developing countries to build the required capacity to send and process information.” It was important to stress, the report added, that “the new OECD Global Standard on Automatic Exchange of Information includes a transition period for developing countries, recognising that by making this standard reciprocal, those countries that do not have the resources and capacity to set up the necessary infrastructure to collect, manage and share the required information may effectively be excluded.”²¹⁷ With these recommendations, the EP has shown itself as leader in the EU when it comes to the inclusion of developing countries in the automatic exchange of information.

EU solutions

Although there are several groups in the EP that are sceptical of the EU, a broad majority of MEPs are still in favour of more EU involvement on tax. The EP has repeatedly encouraged the European Commission to take a more proactive role on tax justice, not least exemplified in the hearings of various Commissioners in the special committee on tax rulings in 2015.²¹⁸ The EP has also long been a strong supporter of the CCCTB proposal for tax coordination across the EU, a position reiterated in 2015.²¹⁹ The Parliament’s 2015 Annual Tax Report also stresses that “coordinated action at EU level ... is necessary to pursue the application of standards of transparency with regard to third countries.”²²⁰

However, the EP has also been critical of the current way that tax coordination takes place in the EU, in particular with the secretive Code of Conduct Group on Business Taxation that meet under the EU Council. In 2015, the EP called for a review of the group’s mandate “in order to improve its effectiveness and provide ambitious results, for example by introducing the obligation to publish tax breaks and subsidies for corporations” and also asked the group to be more transparent by publishing “an oversight of the extent to which countries meet the recommendations set out by the group in its six-monthly progress report to the finance ministers.”²²¹ These proposals would all be welcomed corrections to the largely ineffective Code of Conduct Group.

Global solutions

The EP has strongly signalled its support for the creation of an intergovernmental UN body on tax. This has been done through its 2015 Annual Tax Report and through the development committee’s report on taxation.²²² In the latter, the EP “urges the EU and the Member States to ensure that the UN taxation committee is transformed into a genuine intergovernmental body, better equipped and with sufficient additional resources, inside the framework of the UN Economic and Social Council, ensuring that all countries can participate on an equal footing in the formulation and reform of global tax policies.”²²³ Coming a month before the Financing for Development summit in Addis Ababa, the recommendation was an important signal. However, as with many of the EP’s progressive recommendations on tax, the EU’s Member States are not bound by it in any way and unfortunately chose to ignore it.

Conclusion

Despite the broad political representation and diversity in the European Parliament, it is noteworthy that MEPs have been able to agree on a number of very progressive recommendations for Member States and the Commission when it comes to tax. What is particularly encouraging is that the EP has shown its commitment to addressing how the EU’s tax policies affect developing countries and have proposed several useful policy solutions. The EP has not only put forth policy ideas, it has also fought for real legislative victories on tax justice, most notably perhaps on the Anti-Money Laundering Directive and most recently in its review of the Shareholders’ Rights Directive. Where the EP has been most effective so far is in pushing for corporate transparency measures, where it has co-decision powers. However, on issues directly linked to tax policies, the EU treaties grant the EP few legislative powers and they are often left on the sidelines issuing non-binding recommendations.²²⁴ This is unfortunate as the EU and its Member States could learn a lot from listening to the Parliament’s continued support for tax justice.

Cynics will say that powerful groups within the EP prefer issuing non-binding reports rather than fighting for real influence, as exemplified in 2015 by the hesitation first to topple Juncker over the LuxLeaks revelations, followed by the failure to set up a strong inquiry committee to investigate the leaks. Then finally some groups hesitated to support public country by country reporting in a legislative proposal, despite having supported non-binding calls for such a legislative initiative for years. In spite of its shortcomings in terms of legislative powers and some political groups’ unwillingness to fight when it matters, the EP nevertheless remains one of the strongest allies for developing countries and for tax justice.

European Commission

“Tolerance has reached rock-bottom for companies that avoid paying their fair share of taxes, and for the regimes that enable them to do this. We have to rebuild the link between where companies really make their profits and where they are taxed.”

Pierre Moscovici, Commissioner for Economic and Financial Affairs, Taxation and Customs²²⁵

General overview

Ahead of the European Parliament approving his appointment, European Commission (EC) President Jean-Claude Juncker made it clear that he considers this Commission to be the “last chance Commission”, stating that “either we succeed in bringing the European citizens closer to Europe, or we will fail.”²²⁶ Shortly after getting the backing of MEPs, the LuxLeaks scandal broke and Juncker later had to admit that it had left him “weakened” since “LuxLeaks suggests that I took part in operations that did not follow basic ethical and moral rules.”²²⁷

Amidst these controversies, the Commission has tried hard to demonstrate its commitment to fighting tax dodging. This has happened through two tax packages in 2015 – an emphasis on tax in the EC work programme, and by pursuing and expanding a number of high-profile state aid investigations initiated by the previous Commission into Member States and their tax deals with some of the largest multinational companies in the world. (The term ‘state aid’ is used here to describe tax deals given by a government, which confer a selective benefit to a company not available to others).

However, as the content of the tax packages have become clear – and as we get further and further away from LuxLeaks – there is increasingly a sense that the tough rhetoric and new initiatives have not translated into action that is commensurate with the challenges faced, especially when it comes to presenting new legislative initiatives that would effectively tackle tax dodging. Even more worryingly, the few policy initiatives that have been presented under the new EC fail to consider the interests of developing countries.

Tax policies

In line with the idea of the internal market, the EC has long promoted the free flow of capital within the EU. The Parent Subsidiary Directive and Interest and Royalties Directive have been key in this regard, as they have removed the withholding tax on cross-border flows within the EU.²²⁸ While the basic idea of the free flow of capital has not been challenged, the Commission is increasingly recognising that some multinational companies have misused these directives to avoid being taxed at all.²²⁹ As a result, the Commission has developed an anti-abuse provision for the Parent Subsidiary Directive, which was adopted by the Council in January 2015.²³⁰ It is currently working on a similar provision for the Interest and Royalties Directive, although it is proving difficult to get support for such a review among the Member States.²³¹ Such anti-abuse provisions allow Member States to deny the tax benefits under the directives to companies if their structures serve the “main purpose or one of the main purposes of obtaining a tax advantage.”²³²

In June 2015, the Commission launched a package to promote fair and efficient corporate taxation within the EU.²³³ The measures in the package promised to “offer a more coordinated corporate tax environment within the EU, leading to fairer taxation, more stable revenues and a better environment for businesses.”²³⁴ However, the package was light on new legal initiatives. Perhaps the most significant measure in the package was the announcement that the CCCTB proposal²³⁵ for a coordinated approach to corporate taxation in the EU would be revived. While the Commission only expects to put forth a fully developed proposal in 2016,²³⁶ it has already indicated that the new proposal would allow multinational companies to move freely losses from one EU Member State to another, allowing them to lower their official profits and thereby their tax payments.

At the same time, the Commission has also postponed indefinitely the deadline for when the EU will consider introducing a system that consolidates all the profits and losses that a multinational corporation has made in the different EU Member States.²³⁷ Civil society has pointed out that these plans could open up new loopholes in the EU tax system and thereby lead to more aggressive tax planning and lower tax payments from multinational companies.²³⁸ The Commission argues that at present it sees these changes as necessary to get support for the proposal in the Council.²³⁹

The package also announced a new list of 30 non-cooperative jurisdictions, otherwise known as ‘tax havens’ or ‘secrecy jurisdictions’.²⁴⁰ The Commission decided to use a relatively arbitrary criteria to compile the list, only including those jurisdictions that were blacklisted by at least ten Member States.²⁴¹ There were no sanctions announced for being on the list, with the Commission merely stating that it would be willing “to coordinate possible counter-measures,” without specifying what these measures might be.²⁴² Perhaps most critically, the list did not include any of the many jurisdictions in the EU that play an essential role for multinational companies’ tax planning strategies. On the other hand, the list did include developing countries such as Liberia, which only plays a marginal role in the international financial and offshore system.²⁴³ Similarly, as The Guardian pointed out, the list “includes the tiny Polynesian island of Niue, where 1,400 people live in semi-subsistence — but does not include Luxembourg, the EU’s wealthy tax avoidance hub.” The Guardian also noted that “Jersey and Switzerland, for example, were not named.”²⁴⁴

Patent boxes

A study published by the Commission in November 2014 seriously questioned the effectiveness of patent boxes, noting that they are prone to aggressive tax planning and that instead of spurring innovation they “seem more likely to relocate corporate income.”²⁴⁵ Reflecting these concerns, the Commission has previously sought to challenge the UK patent box, and had been leading an investigation into Member States’ use of patent boxes. However, following a deal struck between Germany and the UK on the future use of patent boxes in the EU, a Commission official in February 2015 indicated that the enquiries into patent boxes in Member States had been called off.²⁴⁶ Reflecting the compromise reached between the UK and Germany, the Commission’s June corporate tax package announced that it would guide Member States to implement their patent boxes in line with the OECD’s recommendations developed under Base Erosion and Profit Shifting (BEPS). It further warned Member States that, if progress was not made within 12 months on aligning their patent boxes with these recommendations, the Commission would consider putting forward a legislative proposal to force through change.²⁴⁷ While the Commission’s focus on the problems associated with patent boxes are much warranted, it is troubling that it is relying on the OECD recommendations to solve the problems, as this approach has been criticised for failing to limit the profit-shifting opportunities inherent in patent boxes.²⁴⁸

Tax rulings

The Commission has used the powers of its state aid investigations to challenge several Member States’ tax rulings (see more below in the section on EU solutions). In addition, it announced a legislative proposal for the automatic exchange of tax rulings in March 2015.²⁴⁹ The new proposal would – if adopted – grant the Commission an oversight role on the number and type of tax rulings issued by Member States. Apart from failing to disclose any new information to the public, this proposal also fails developing countries, as only countries within the EU would receive tax rulings through exchange, despite what effects the rulings might have on the tax base of countries outside the EU.

Previous EU-wide guidelines on Advance Pricing Agreements (APAs) were developed by an expert group and approved by the Commission in 2007.²⁵⁰ Civil society has criticised these guidelines for failing to deal with the potential misuse of rulings for aggressive tax planning purposes.²⁵¹ It also criticised the fact that the group that had written the guidelines was dominated by multinational companies and audit firms with a history of questionable tax practices.²⁵²

In a minor improvement, the Commission opened up for a slightly more balanced composition of the group when three civil society organisations were added as members in 2015.²⁵³ Whether there are any plans for the group to update the Commission’s guidelines on APAs is yet unknown. An investigation in early 2015 was launched by the European Ombudsman to make Commission expert groups more balanced and transparent. This could potentially put an end to the past practices of asking companies and advisers embroiled in tax controversies for advice on tax policies.²⁵⁴

Financial and corporate transparency

The Commission identified the lack of transparency as one of the key drivers of aggressive tax planning in its March 2015 Tax Transparency package, stating that “lack of transparency is ... an incentive for enterprises to apply aggressive tax planning.”²⁵⁵ Having got the diagnosis right, it was surprising that the Commission failed to propose to make any new information public.²⁵⁶

Public country by country reporting

The March 2015 tax transparency package announced plans to conduct an impact assessment of public country by country reporting in the EU.²⁵⁷ While some had expected the launch of an initiative on public country by country reporting in its follow-up package on corporate taxation in June 2015, the Commission instead re-announced its plans for an impact assessment and also added a public consultation to the process. The Commission expects to have the impact assessment concluded at the latest by the first quarter of 2016.²⁵⁸ It is unclear why a completely new consultation and impact assessment on public country by country reporting was needed, since the Commission conducted one for the financial sector as late as 2014. This found that public country by country reporting would have “no significant negative effects” on the economy, noting instead the possibility of “some limited positive impact.”²⁵⁹ Some have therefore raised concerns that the impact assessment is a way to delay action.²⁶⁰

The Commission has voiced scepticism towards the European Parliament’s attempt to introduce public country by country reporting in the shareholders’ rights directive. For example, while not rejecting the idea of this type of reporting, the Commissioner for Justice, Consumer and Gender Equality has made it clear that she considers the shareholders’ rights directive the wrong process to discuss this type of reporting standard for multinational companies.²⁶¹

On a positive note, the Commissioner in charge of taxation has openly voiced support for public country by country reporting, stating “personally, I am in favour of full tax transparency.”²⁶² However, it remains to be seen whether the Commission as a whole can get behind public country by country reporting.

Beneficial ownership

While the European Parliament stood firm on the need for public registers of the beneficial owners in negotiations on the Anti-Money Laundering Directive, the Commission proposal did not originally include access for the public.²⁶³ When pressed during negotiations on the directive in late 2014, the Commission proposed a confusing compromise whereby only those members of the public who could demonstrate a ‘legitimate interest’ would be allowed to access the information, without specifying who would qualify as having such ‘legitimate interest’.²⁶⁴

Automatic exchange of information

The Commission’s flagship initiative against tax evasion remains the crack-down on banking secrecy through the system of automatic exchange of information between tax authorities. Towards the end of 2014, a Commission proposal on this received backing from all Member States.²⁶⁵ Since then important third countries such as Switzerland have also been brought on board.²⁶⁶ Important as this is for Europe, it delivers little benefits for developing countries, because their inclusion in the system is not currently considered. An expert group on automatic exchange of information presented a report to the Commission in March 2015, recommending the Commission to adopt a phased-in approach for developing countries that would allow them to reap the benefits of receiving the information of national account holders abroad, while initially relaxing the requirements for them to be able to exchange information themselves.²⁶⁷ However, there is still little indication that the Commission will consider this recommendation, raising the fear that developing countries will not benefit from the EU’s attempt to make banking secrecy a thing of the past.

EU solutions

After several years of inactivity, the Commission has in recent years tried to revive the use of state aid investigations to challenge harmful tax practices in Member States. The current cases follow on from the Commission’s decision in June 2013 to look into the tax rulings practices in seven Member States,²⁶⁸ which was later expanded to all Member States in December 2014.²⁶⁹ This has so far resulted in six formal investigations being opened.²⁷⁰ The cases have already been subject to major delays, partly reflecting non-cooperation from the Member States under investigation,²⁷¹ and perhaps also reflecting that reportedly only nine Commission staff members are assigned to the highly technical cases.²⁷² The Commissioner in charge of the investigations has tried to caution that “there are limitations to what state aid tools can do.”²⁷³ The Commissioner notes that they cannot look into all problematic cases and cannot redo tax rulings, and at best the investigations can hopefully “inspire Member States to change their legislation.”²⁷⁴ However, such changes have so far been few and far between.

According to information disclosed by the Commission to the European Parliament's special committee on tax rulings, the Commission initiated 65 state aid cases in relation to taxation in the period 1994 to 2012. The least active period in these 19 years was the five years leading up to 2012, when only two cases were initiated.²⁷⁵ This compares to the 45 cases that were initiated in the five-year period of 1998 to 2002, the five most active years during this period.²⁷⁶ Against this backdrop, it is clear that the pursuit of the current six active state aid investigations on tax are a welcome improvement. However, neither represents a particularly unique or ambitious level, when seen in a historical perspective.

The Commission has always been the main driving force behind the proposal for more coordinated corporate tax enforcement in the EU in the form of the CCCTB proposal. However, as explained, the current plans to re-launch a watered down version of the CCCTB proposal has made some wary of whether or not the proposal will actually succeed in achieving more than opening up new doors for even lower rates of taxation for multinational companies.²⁷⁷

Global solutions

On the issue of an intergovernmental body on tax matters under the UN, the Commission has not put forward its own public position. However, it has published a communication²⁷⁸ on the broader issues around financing for development, including tax matters. Rather than responding to the call to give developing countries a seat at the table when global tax standards are decided, the communication underlined that all countries must implement the global standards that are being developed by the OECD and G20. This quite regressive position was fortunately not picked up by the EU ministers, when they adopted their position on the matter in May 2015.²⁷⁹ However, at the same time, the EU Member States and the Commission, speaking with one voice in the UN negotiations on Financing for Development, argued strongly against the proposal to grant developing countries a seat at the table.

Conclusion

Immediately after LuxLeaks, the Finance Ministers of Germany, France and Italy wrote a letter to the Commission calling on it to develop a "comprehensive" directive to tackle tax dodging to be supported by Member States by the end of 2015.²⁸⁰ While the Commission has been active in the area of state aid investigations, it is becoming clear as we approach the deadline set by the three Finance Ministers that the Commission has not been able to deliver a comprehensive legislative response to the tax dodging challenge. The Commission justifies the lack of progress by pointing to the need for consensus within the Council. However, in the context of a massive public outcry against tax dodging and Juncker's warning that this would be the last-chance Commission, such an approach of aiming for the lowest common denominator in the Council seems remarkably unambitious.

The transparency measures pursued by the Commission so far have also been less than impressive. However, a major opportunity for the Commission to deliver remains in upcoming negotiations about the shareholders' rights directive, where the European Parliament has introduced the proposal of having public country by country reporting and making tax rulings public.

In a recent technical analysis, the Commission noted that "there is evidence that tax base spill-overs are particularly marked, when it comes to developing countries."²⁸¹ However, whether it is the proposals on how to exchange tax rulings, how to exchange banking information or the need for public disclosure, the Commission has unfortunately done little to reflect this insight in its policies, and seems instead to be systematically ignoring the interests of developing countries.

Nonetheless, despite these serious shortcomings, the Commission – with its strong powers to initiate new legislative proposals and to coordinate Member States' policies – remains Europe's best hope for addressing the tax dodging scandal and stopping the endless race to the bottom on tax. The citizens of Europe and abroad have yet to experience a Commission that fully realises this responsibility.

Belgium

“As a member of the European Union, Belgium has very little space to pursue its own economic policy. We must, therefore, be very careful with tax harmonisation. Giving up our niche policy would be inappropriate.”

Johan Van Overtveldt, Belgium’s Finance Minister in December 2014²⁸²

General overview

As in a number of other European countries, tax dodging has been the subject of heated debate in Belgium following a global coordinated effort by investigative journalists to unveil various mechanisms of aggressive tax planning by multinationals (LuxLeaks) and tax evasion using banking secrecy provisions in secrecy jurisdictions (SwissLeaks).²⁸³ Revelations of secret sweetheart deals between the Luxemburg authorities and more than 26 major Belgian corporations²⁸⁴ increased pressure for a clear political response to cross-border tax evasion and avoidance. In March 2015 more than 20,000 people gathered in Brussels to demand ‘fair taxation’.²⁸⁵

Following the formation of a new centre-right government in September 2014, the political debate mainly focused on the domestic tax agenda dominated by discussion of a ‘tax shift’ from labour to other economic activities such as consumption, pollution and capital. In July 2015 the government reached an agreement.²⁸⁶ A significant drop in employer contributions to social security would be mainly offset by increasing the tax burden on consumption. As the government’s agreement would only marginally affect capital (only a marginal tax on speculative share trading was agreed) and potentially harmful tax regimes such as the Notional Interest Deduction-scheme (NID) were left intact, the reform was criticised by civil society, which had expected a substantial contribution from capital through a fully fledged capital gains tax.²⁸⁷

Tax policies

According to the Ministry of Economy one of the top ten reasons for investing in Belgium is its ‘competitive tax regime’.²⁸⁸ Numerous corporate tax deductions are available to foreign investors, including the ‘notional interest deduction’ scheme,²⁸⁹ deductions for patent income,²⁹⁰ and broad exemptions on capital gains from shares.²⁹¹

Responding to LuxLeaks, the newly formed centre-right Belgian government referred to a number of measures it had already included in its coalition agreement, most notably a ‘see-through tax’ or ‘Cayman Tax’. The initiative aims to prevent Belgian residents from shifting assets to offshore structures in order to avoid taxation in Belgium. The new regime, fixed by law in August 2015,²⁹² does not prohibit setting up ‘offshore structures’ such as trusts and foundations in low-tax jurisdictions, but allows the Belgian tax authorities to ignore them for tax purposes (e.g. ‘see through’ them) and collect tax from Belgian owners of such structures as if the income in the offshore structure had come directly to the owner.²⁹³ Critics argued the benefits of this particular regime – initially estimated at €460 million annually²⁹⁴ – will be marginal as a consequence of its complexity.²⁹⁵ This criticism was backed by the Court of Accounts stating real budgetary impacts would be much lower.²⁹⁶ Others were critical that the Cayman Tax only affects physical persons and not corporations and cannot be considered as a solution to aggressive corporate tax planning and harmful tax competition between sovereign states.²⁹⁷ Furthermore, the Cayman Tax regime may open a loophole because taxpayers subject to the regime may be exempt from additional audits into the origins of the assets in offshore structures.

Another notable example of Belgian tax particularism is a new scheme for the diamond sector. The so-called ‘Carat Tax’ allows the taxable result of companies in the sizeable diamond sector – mainly based in and around Antwerp – to be determined on a lump-sum basis being 0.55 per cent of the turnover rather than on profits.²⁹⁸ The argument for this niche is to ensure better compliance of the diamond sector, which is said to be particularly vulnerable to fraud while simultaneously sustaining competitiveness of the sector in Belgium. The regime is set to take effect from 2016 and is estimated to increase the tax contribution of the sector by 250 per cent.²⁹⁹

Because there have been concerns that the Carat Tax scheme could constitute a form of illegal state aid under the EU rules, the introduction of the new tax is subject to the prior approval of the European Commission.³⁰⁰ A last example is the reaction of the finance minister Van Overtveldt to the news of a possible merger between brewing giants AB Inbev and SAB Miller, and related rumors that AB Inbev was considering moving its headquarters out of Belgium. In response, the finance minister announced a reduction of the Belgian withholding tax rate on dividend flows to shareholders in treaty partner countries to less than 2%.³⁰¹

Tax rulings

Following the LuxLeaks revelations, the Belgian newspaper *De Standaard* revealed a particular type of ruling promoted by Belgian tax authorities to attract the investment of multinational companies.³⁰² Group companies can substantially reduce their tax liability in Belgium on the basis of so-called 'excess profit' tax rulings. In essence, the rulings allow multinational entities in Belgium to reduce their corporate tax liability by 'excess profits' that allegedly result from the advantage of being part of a multinational group. Article 185 of the Belgian revenue tax code, modified by the Law of 21 June 2004, allows for a reduction of taxable company profits resulting from 'profit shifting' from a related company abroad. This measure appears to be a form of legally sanctioned 'base erosion and profit shifting', the OECD official wording for corporate tax avoidance. The irony is that this law was presented as the implementation in Belgian tax law of Article 9 of the OECD model tax convention on income and capital, which contains the main anti-abuse provision of the OECD in matters of tax avoidance through manipulation of transfer pricing, the so-called "arms-length pricing principle". The Belgian law actually achieves the opposite result, that of endorsing profit shifting.³⁰³

In February 2015, the European Commission initiated an investigation into this type of ruling. Commissioner Vestager, in charge of competition policy, said: "this generalised scheme would be a serious distortion of competition unduly benefitting a selected number of multinationals".³⁰⁴ Pending the Commission's conclusions, the Belgian ruling commission decided to suspend all requests for this type of ruling.³⁰⁵

Tax rulings in Belgium are made public in an anonymised format, and the Minister of Finance sends a report each year to the Parliament regarding tax rulings.³⁰⁶

Special Purpose Entities (SPEs)

Apparently, the role of Special Purpose Entities (SPEs) in the Belgian economy is limited and the legal framework is restrictive. SPE structures exist in order to allow for the securitisation of receivables and the establishment of pan-European pension funds.

Patent box

Since 2008, the Belgian government has introduced a patent income deduction (PID). The PID grants an 80 per cent deduction for patent income applied on a gross basis, which allows the effective tax rate on this income to be reduced to a maximum of 6.8 per cent. This rate can be further decreased with other deductions and combined with other tax incentives such as notional interest deduction.³⁰⁷ According to the European Commission, the patent box is relatively narrow in scope compared to other countries, as it primarily covers income from patents only.³⁰⁸ In 2014, it was reported that medical giant GlaxoSmithKline (GSK) moved its vaccine patents to Belgium for fiscal reasons,³⁰⁹ and in 2015 GSK expanded its patent portfolio in Belgium to an approximate €2.4 billion.³¹⁰ In an interview, the Director of Public Affairs for GSK's vaccines stressed that the company considers the patent box to be "necessary to promote innovation" and encouraged the government to sustain the policy.³¹¹

Tax treaties

Belgium has negotiated double taxation agreements with 92 countries, while treaties with 29 additional countries are signed but not yet in operation.³¹² Outside the European Union, 38 per cent of tax treaties are with high-income countries, 29 per cent and 28 per cent with upper and lower middle-income countries respectively and 5 per cent with low-income countries.³¹³ Belgium's model treaty³¹⁴ contains several features that can be very harmful for developing countries, including low levels of taxation on dividends.³¹⁵ The model includes an anti-abuse provision but it is uncertain whether it is effective.³¹⁶

In 2015, Belgian DTAs were subject to public debate after the government asked parliament to ratify a new DTA with the Seychelles,³¹⁷ a jurisdiction that has often been associated with aggressive tax planning and money laundering.³¹⁸ The treaty aimed to enhance economic integration with the small island states even though current levels of mutual trade and investment are quite modest. Although the treaty contains an anti-abuse clause and limits tax benefits in Belgium in cases where the effective tax rate on a certain type of income in the Seychelles is below 15 per cent, it contains several problematic aspects. First, if a Belgian company receives dividends from a subsidiary in a third country, that dividend is not liable to taxation, unless this subsidiary is located in a low-tax jurisdiction. A company could use the Belgian treaty network to protect its untaxed profits from all Belgian and EU tax claims, turning Belgium effectively into a conduit country. In this particular case, we would not advise signing fully fledged DTAs with a low tax jurisdiction such as the Seychelles but would recommend engaging instead in negotiating agreements allowing for exchange of information.

With Rwanda, Bermuda and Turkey, Belgium did finalise negotiations aimed at aligning existing tax treaties to include information exchange based on the OECD model convention.³²⁰ This was clearly a good step, but it also represented a missed opportunity to debate Belgium's tax treaty policy more broadly, taking into account the need for an independent spillover analysis of current tax treaties on developing countries' tax base.

Financial and corporate transparency

Financial and corporate transparency is absent in the new government's coalition agreement.³²¹ Although Finance Minister Johan Van Overtveldt (Nieuw-Vlaamse Alliantie (N-VA)) emphasises that transparency is a key priority,³²² the level of ambition from the Belgian government on this front seems to be limited.

Public reporting for multinational corporations

Belgium has implemented the EU provision for public country by country reporting for the financial sector.³²³ Belgium has not yet defined its position on country by country reporting for all sectors.³²⁴ Instead it is waiting for the results of the EU impact assessment of country by country reporting and plans to carry out its own assessment to see what this would mean for the national tax administration. The main concerns for the government seem to be additional administrative burdens and costs for companies. According to the global audit firm EY, it is expected that Belgium will implement country by country reporting along the lines of the OECD's Base Erosion and Profit Shifting (BEPS) recommendation,³²⁵ which seems to support the impression of civil society: that the government prefers this option with its confidential reporting format.

Ownership transparency

A review of Belgium's anti-money laundering framework by the intergovernmental Financial Action Task Force (FATF) in early 2015 noted considerable shortcomings. However, in general it assessed Belgium to be compliant with standards related to transparency and beneficial ownership information registration.³²⁶ Trusts cannot be created under Belgian law.³²¹

Based on information provided by the relevant authorities, many aspects with regard to the implementation of the new EU anti-money laundering directive remain undecided. This is particularly the case on the question of public access to the register of beneficial ownership information, which according to the officials depend on "whether this is considered OK from a privacy law perspective", and that it "still needs to be debated and legally analysed".³²⁸ A task force on the implementation of the directive deciding on these issues is yet to be set up.³²⁹ On a more positive note, however, there seems to be a clear commitment to a register that will be technically as accessible and user friendly as possible (online, in English, easily searchable and Excel exportable).³³⁰

EU solutions

Belgium is rarely a first mover on tax and transparency issues at the EU level, as demonstrated by its lack of firm positions on beneficial ownership transparency and public country by country reporting. However, the government does want to be seen as a loyal partner in implementing common regulations.

Belgium supports the Commission's proposal for a directive on the automatic exchange of tax rulings and in June 2015, announced that it will start exchanging its tax rulings already from October 2015.³³¹ The Finance Minister has stated that Belgium is less supportive of tax harmonisation than of coordination in the EU, and also that the government supports the Commission's plans to revive the proposal for a Common Consolidated Corporate Tax Base in the EU (the so-called CCCTB proposal).³³²

Global solutions

The Belgian Policy Coherence for Development framework does not explicitly mention tax as one of its priorities, but Development Minister Alexander De Croo sees the issue as an important aspect of policy coherence for development.³³³ Following the Financing for Development summit in July 2015 in Addis Ababa, Belgium joined the so-called Addis Tax Initiative³³⁴ and included the IMF administered Tax Policy and Administration Topical Trust Fund as one of its multilateral development partners.³³⁵ However, there is a sense among civil society that these developments have not yet resulted in stronger actual coordination between the Ministry of Finance and Belgium's development ministry. The Belgian position in Addis Ababa following the EU line on the issue of the intergovernmental tax body was disappointing and there is virtually no interest in carrying out spillover analysis of Belgian tax policies on third countries, such as the impact of tax treaties on developing countries.³³⁶

Conclusion

Tax justice remains a contentious issue as far as Belgian public debate is concerned. Current reform within the framework of the so-called tax shift leaves calls for a fair sharing of the tax burden unanswered. In the meantime, Belgium maintains its international tax policy based on particular tax schemes that are designed to attract investment in certain sectors with high added value. There is a broad consensus in government that a small, open economy is better off without a more harmonised tax system at the EU level that would create a level playing field for all EU businesses and citizens. This 'fiscal particularism' – such as the Belgian patent box and other schemes – reduces the corporate tax burden from the official rate of 33.99 per cent to 17 per cent.³³⁷ This policy doctrine explains to a large extent the wait-and-see attitude at the EU level and in other international fora where measures to combat tax dodging and increase transparency are discussed.

Czech Republic

"It is not possible that an honest businessman pays taxes and his competitor does not, that is – he has a competitive advantage."

Andrej Babiš, Vice Prime Minister and Minister of Finance, Czech Republic³³⁸

General overview

The Czech Minister of Finance likes to say that the Czech Republic is among the leaders setting the tax agenda in Brussels.³³⁹ In reality, however, although the Czech Republic is not blocking a progressive tax agenda, it is very far from being a 'leader'. On a positive note, the Czech Republic signed the Multilateral Agreement on Automatic Exchange of Financial Account Information and fully implemented the EU provision for public country by country reporting for banks. On the other hand, the Czech government is displaying little enthusiasm for including developing countries in the negotiation of global tax rules and standards. On the contrary, the Czech Ministry of Finance is championing the OECD Base Erosion Profit Shifting (BEPS) process and speaks against an upgrade of the UN Committee of Tax Experts to an intergovernmental tax body.

Tax policies

As noted by the European Commission, the Czech Republic "continues to suffer from a relatively high level of tax evasion, although efforts are being made to counter this."³⁴⁰ These efforts are mostly focused on value added tax (VAT) and consumption tax. A special unit called "Tax Cobra" – which is a joint team of the state police, financial directorate and directorate of customs – has so far prevented financial loss totalling CZK 1.9 billion (€70.3 million) according to its own estimates.³⁴¹ Although the government's Specialised Tax Office has undertaken a large nationwide control of the transfer pricing procedures of large Czech companies,³⁴² tax losses related to tax avoidance of big multinational companies remains outside the main agenda of the government.

However, this does not mean that the Czech Republic is not negatively influenced by tax havens. According to estimates by the General Financial Directorate, savings related to Czech citizens in just three countries – Switzerland, Liechtenstein and Austria – amount to CZK 100 billion (€3.7 billion), generating CZK 1.7 billion (€62.8 million) every year in interest that is not taxed.³⁴³ If the capital gains were properly taxed, this would generate about CZK 300 million (€11.1 million). This is exactly the amount that Czech NGOs are demanding from the government in terms of increasing the level of Czech Official Development Assistance.³⁴⁴

In April 2015 the government approved a new Criminal Code. This included a tightening of the legal definition of tax evasion/fraud, implying that tax crimes that had not yet been carried out but were still in the planning stage would nonetheless be considered an offence.³⁴⁵ In case of tax fraud that is prepared in an "organised group/manner", the crime could be punished with between five to ten years of prison. The main focus of this change is to tighten the criminal response to VAT carousel fraud, which is usually prepared and committed in an organised manner. However, in theory this could mean that tax planning by multinational companies and wealthy individuals would also be considered as a tax fraud.

Since 2014, the Czech Republic has been obliged to publish an analysis of tax allowances. According to the latest available figures obtained from the Ministry of Finance, tax allowances connected to corporate income tax and investment incentives were estimated for 2012 at CZK 5.5 billion (€203 million).³⁴⁶ However, the Ministry warns that, "Due to lack of reliable data, the estimates do not include exemption for incomes from profit share between subsidiary and parent companies. We estimate the amount of this allowance to be tens of billions of CZK..."³⁴⁷ This could mean that the Czech Republic is providing much higher tax incentives to multinational companies than is officially recorded.

Tax rulings

The Czech Republic has allowed tax rulings since 2006. According to data from the European Commission, it had 34 Advance Pricing Agreements (APAs) in force at the end of 2013, which is a significantly higher number than in big Member States such as Germany and Poland.³⁴⁸ There are indications that the number is likely to be higher today since the Czech Republic received 30 requests for APAs in 2013 alone.³⁴⁹

The Czech Republic was criticised in May 2014 by the European Commission for delays in providing information about companies that may have preferential tax deals.³⁵⁰ In a letter from 9 June 2015, the Czech Minister of Finance informed the Chair of the European Parliament's special committee on tax rulings (TAXE) that "all necessary steps [to share information about the tax ruling practice of the Czech Republic with the European Commission]... should be finalised in upcoming days."³⁵¹ Nevertheless, according to the Ministry of Finance letter the "number of acts similar to rulings issued in the Czech Republic is rather insignificant and their nature fully corresponds to general standards."³⁵² In the letter the Czech Minister of Finance states that, "the Commission's legislative proposal of 18 March 2015, which aims at improvement of the tax rulings' transparency, was strongly welcomed..."³⁵³

Special Purpose Entities (SPEs)

According to the OECD, SPEs are not significant in the Czech Republic.³⁵⁴ Despite this overall assessment, a conference held in June 2015 entitled "Slovakia and Czech Republic as Tax Planning and Asset Protection Alternative for Ukrainian Businesses" focused on the use of "special purpose vehicles for international tax planning and asset protection."³⁵⁵

Patent box

The Czech Republic does not have a patent box.³⁵⁶ However, there are various research and development (R&D) tax incentives that seem to be quite generous. According to a Deloitte survey, the Czech Republic offers a super deduction for costs incurred for qualified research activities. Deduction for the costs incurred during the implementation of R&D projects could be up to 200 per cent and tax relief of corporate income for investments in technological centres and strategic service centres could be up to ten years.³⁵⁷

Tax treaties

Regarding tax treaties with developing countries, according to information from the Ministry of Finance one new tax treaty with Colombia came into force³⁵⁸ and one older one with Kazakhstan was updated (the new protocol has not yet been ratified).³⁵⁹ Another tax treaty with Ghana is in process. According to available information, the bilateral tax treaty has already been approved by the Czech government.³⁶⁰ No detailed information about the treaty itself or when it is going to be approved by the Czech Parliament could be found. A revised treaty with Luxembourg took effect from January 2015, replacing a treaty from 1991. The new treaty includes lower withholding tax on several income categories, including a zero per cent rate on dividends under certain conditions.³⁶¹

In general, the Czech Republic uses a combination of the UN and OECD models in its treaties. Before 1989 treaties with some countries (i.e. China, Nigeria and Tunisia) were negotiated using the UN model. Since joining the OECD, the Czech Republic uses its own template based on the OECD model.³⁶²

Financial and corporate transparency

Public reporting for multinational corporations

The Czech Republic implemented into Czech legislation the exact wording of the Article 89 of the Capital requirements directive (CRD IV), which includes country by country reporting for banks with public access to these reports.³⁶³ Whether the Czech government would be willing to support extending this reporting public requirement to other sectors remains unknown.

Ownership transparency

At an EU Council meeting in January where the anti-money laundering directive was approved, the Czech government issued a statement that welcomed the deal. However, it also criticised the directive for including a ten-year limit for keeping records for criminal proceedings in relation to money laundering, which it considered to be too short and stated its preference for a minimum threshold instead of a limit.³⁶⁴ The implementation of the directive is set to begin this year. According to information provided by the Ministry of Finance, an amendment to the current legislation will be submitted to the government by the end of October 2015.³⁶⁵ The amendment would include two options for a register of beneficial owners. The first version with a register that is not accessible to the public, and a second version would propose partly public access (part of which would be publicly accessible, including the following information: name, date of birth, country of residence and nationality of beneficial owner).³⁶⁶ A final decision about which version will be implemented will be made by the government during the fall. The Ministry assumes the new law to be effective from 1 July 2016.³⁶⁷

Trusts – one of the most opaque instruments that allows beneficial owners to be hidden – were introduced only recently in the Czech Republic, in 2014.³⁶⁸ During the last year, the General Financial Directorate specified the level of information that trusts need to report regarding taxation.³⁶⁹ However, officials from the Ministry of Finance and Financial Directorate admit in informal discussions that the current form of trusts create very opaque structures.³⁷⁰ The Ministry of Justice has indicated that trusts should be registered in the register of trusts once it is established (currently no registration is required). However, the new proposal has not yet been discussed by the government.³⁷¹

EU solutions

According to the recently published Strategy of the Czech Republic in the EU, the Czech government “considers the existence of tax havens within the EU a political problem, a manifestation of improper behaviour and unfair competition...” and “will seek the maximal information access and overall global restrictions of tax havens”. The Czech Minister of Finance likes to say that “after many years Czech Republic is again the leader of tax agenda in Brussels.”³⁷³

However, the Czech Republic was reportedly among the opponents of the attempt to introduce a Common Consolidated Corporate Tax Base (CCCTB) in the EU when the proposal was first put forward in 2011.³⁷⁴ The current position of the Czech government is not known.

Global solutions

The Ministry of Foreign Affairs conducted a very open consultation process in February 2015, which included representatives of development NGOs regarding the Czech Republic’s framework position to the post-2015 development agenda. The final document was approved by the government and provided the basis for the Czech Republic’s position on the Financing for Development process as well as the Sustainable Development Goals negotiation of the outcome documents.

In the Framework Position, the Czech government “welcome[s] the reform of the global tax rules and standards which significantly affect the ability of governments to collect taxes, and which should stop purposeful profit shifting to countries with more favourable taxation.”³⁷⁵ Although the Czech Republic is in favour of developing countries’ involvement in the tax negotiations, unfortunately it does not “support up-grading the current mandate of the UN Committee of Tax Experts” to an intergovernmental tax body.³⁷⁶

According to unofficial information, it is mainly the Ministry of Finance that insists on keeping the agenda of global tax rules and standards purely within the OECD. The Ministry of Foreign Affairs is more open to the idea of taking this agenda to the global level, which was documented by the official statement at the third Financing for Development (FfD) conference in Addis Ababa this year.³⁷⁷ However, it is the Ministry of Finance that outlines the position of the Czech Republic. How much attention the Ministry of Finance pays to this agenda is illustrated by the fact that it did not send a single representative to the FfD conference in July.

Although the Ministry of Finance supports the adoption of Automatic Exchange of Financial Account Information with “as many jurisdiction[s] as possible,”³⁷⁸ no explicit reference to the inclusion of developing countries is made.

It should be highlighted that the department of the Ministry of Finance responsible for development cooperation never responded to the questionnaire sent to them as part of the research for this chapter. The MFA’s Development Cooperation and Humanitarian Aid Department did not feel it was suitable for them to respond. In the MFA’s case, there is a need to increase capacity if more attention is to be given to the policy coherence agenda (not only in relation to tax). On the other hand, the main problem at the Ministry of Finance is lack of political will and awareness of the developmental dimension of tax agenda.

Conclusion

The Czech Republic does not block progressive initiatives on tax transparency, but on the other hand it is definitely not a leader in this agenda. Although the fight against tax evasion is one of the priorities of the government, there is still very little focus given to corporate tax avoidance. The Czech Republic prefers the OECD instead of the UN as the arena for negotiating global tax rules and standards. The acknowledgement and understanding of the developmental impacts of tax policies remains very weak, which is mostly due to a lack of capacity at the Ministry of Foreign Affairs on the one hand and a lack of interest from the Ministry of Finance on the other.

Denmark

“There has been a tendency towards a pronounced mistrust of businesses and way too much focus on their tax dodging. I promise to change that rhetoric.”

Karsten Lauritzen, newly appointed Minister of Taxation, September 2015³⁷⁹

General overview

Over the past year, tax dodging has been a topic of heated debate in Denmark. In particular, the leaks from Switzerland and Luxembourg caused outrage and calls for political action.³⁸⁰ The pressure for a political response became particularly urgent when a Danish newspaper revealed that the national tax authorities had ignored the now infamous HSBC list for more than five years,³⁸¹ despite the fact it contained more than 300 secret bank accounts held by Danish citizens in Switzerland.³⁸²

As a response, a so-called “Tax Haven package” was adopted in December 2014 by the government and all political parties except the relatively small right-wing party Liberal Alliance.³⁸³ The agreement included commitments to improving corporate transparency and tightening fiscal loopholes.³⁸⁴ A second package, which included further measures to stop tax dodging, was passed in April 2015, albeit this time with a smaller majority.³⁸⁵ Thus, the past year has been important in fighting tax dodging in Denmark, with increased public awareness of the issue, and new fiscal regulation and agreements to tackle the problems across a wide political spectrum.

Discussions about Denmark’s role in supporting developing countries’ revenue mobilisation have been less prominent, but have nonetheless been taking place. One example was a Parliamentary hearing on Danish tax treaties with developing countries in April 2015.³⁸⁶

Elections in June brought in a new government and, although there has been no announcement about any official changes in the government’s position on the fight against tax dodging, visible cracks are already emerging in the governing coalition’s support for corporate transparency.³⁸⁷ It is unclear whether certain provisions in the second tax haven package will be rolled back as the now governing party abstained from voting for them before the elections.³⁸⁸

Tax policies

The increased awareness and focus on tax policies has resulted in a number of new tax laws and initiatives to combat tax dodging. Among these initiatives has been the introduction of a ‘super’ General Anti-Abuse Rule (GAAR), which came into force on 1 May 2015.³⁸⁹ The Danish ‘super GAAR’ is noteworthy by going further than current EU recommendations for anti-avoidance rules, which only cover the Parent-Subsidiary Directive. On the other hand, the Danish rules also cover the Interest & Royalties Directive and the Merger Directive, as well as all of Denmark’s tax treaties. This means that none of the tax benefits contained in these directives or treaties can be acquired if one of the main purposes of any arrangement or transaction was to reap these benefits.³⁹⁰

Tax rulings

Denmark does grant tax rulings, including Advance Pricing Agreements (APAs).³⁹¹ According to the European Commission, Denmark had 12 APAs in force at the end of 2013, of which ten were with non-EU member states.³⁹² Denmark has in recent years increased the focus on transfer pricing,³⁹³ and has changed the APA procedures as of 1 July 2015, stating that a ruling can be disregarded if the value of an asset transferred subsequently deviates significantly from the value approved in a ruling.³⁹⁴ The previous Minister of Taxation justified this change with reference to the difficulties of pricing intellectual property correctly.³⁹⁵ The change follows several high-profile transfer pricing cases including for Danish household names such as Pandora³⁹⁶ and Novo Nordisk.³⁹⁷ According to the tax authorities, they had 76 cases of re-evaluation of transfer price amounting to €2.72 billion in 2014 alone.³⁹⁸ The current ruling party did not support the changes to the APA procedure,³⁹⁹ but since assuming power in June 2015 they have not indicated any plans to roll back the changes.

Special Purpose Entities (SPEs)

Denmark has a certain type of shell company structure called 'kommandit' companies and it is possible to set up trusts. As part of the December tax haven package, a law was passed in April 2015 to ensure that the creator of a trust is taxed in a manner that makes it more difficult to use these structures to dodge taxes.⁴⁰⁰ The government has also initiated investigations to outline the use of the kommandit structures in tax dodging. The full investigation is set to finish by the end of 2015. However, preliminary conclusions have already resulted in the government planning to set up a new register for the owners of kommandit companies, to avoid these companies being used by foreigners to dodge taxes.⁴⁰¹

Patent box

Denmark does not have a patent box and has no plans to introduce one.⁴⁰²

Tax treaties

Denmark has 87 tax treaties with different countries around the world, of which 37 are with developing countries.⁴⁰³ The negotiations of treaties are conducted by the Ministry of Taxation with no involvement of other ministries or external actors – including the Foreign Ministry.⁴⁰⁴ The tax treaties with developing countries were, until the mid-1990s, largely based on the United Nations (UN) model, while subsequent treaties are primarily based on the Organisation for Economic Co-operation and Development (OECD) model. Asked if the Ministry would consider once again using the UN model as a starting point for negotiations with developing countries today, the answer is no. Officials state that they prefer to “present the same draft irrespective of the country we negotiate with.”⁴⁰⁵ However, a small step forward in Denmark’s treaties came in 2015, with the adoption of the ‘super GAAR’ (see above). This means that all Danish treaties now include an anti-abuse clause, which was not the case before.⁴⁰⁶

It is problematic that the Danish tax treaties are negotiated without the involvement of the Ministry of Foreign Affairs as it results in a lack of policy coherence. This became very clear in the autumn of 2014, when the government negotiated a tax treaty with Ghana. The treaty has been highly criticised by non-governmental organisations (NGOs) and left-wing parties for being unfavourable towards Ghana. It has a tax rate of only 5 per cent on transferred assets to Danish subsidiaries, which is lower than the 8 per cent stated in Ghanaian legislation.⁴⁰⁷ The treaty stands in sharp contrast to the Danish development policy in Ghana, which has an explicit focus on strengthening the Ghanaian tax system and domestic resource mobilisation.⁴⁰⁸ Thus there is lack of coherence between Danish tax policies and Danish development policies. This misalignment still happens despite the Danish Government’s Policy Coherence for Development (PCD) plan, which is clearly not being implemented by the Ministry of Taxation.⁴⁰⁹

A Parliamentary hearing was held in April 2015 on the effect of Danish tax treaties with developing countries. Responding to the critics of the Danish treaty with Ghana, the then Minister of Taxation sought to offer reassurance that the deal did not cheat Ghana of revenue, but at the same time he also stated that “Denmark does not give development assistance through tax treaties”, a statement that reaffirms the government’s position that tax treaties should not be crafted in a way that is more favourable to developing countries.⁴¹⁰

The tax focus in the Danish PCD plan is on strengthening and implementing fair tax systems, and creating synergies between the fight against tax fraud and the promotion of good governance within taxation.⁴¹¹ Furthermore, the Ministry of Development and Trade in April presented a plan on ‘tax and development’, which added extra funds of €1.34 million to the Danish development work on tax.⁴¹² The ministry focuses on advocacy and capacity building, with a special focus on civil society, regional and international organisations.⁴¹³ The total value of the current and new Danish tax and development agenda amounts to €75 million until 2019.⁴¹⁴ These are all welcomed initiatives, but it is worrying that they are happening without coordination with the Ministry of Taxation, which allows for the kind of inconsistencies that the treaty with Ghana demonstrates. A powerful tool to become aware and to better avoid these inconsistencies would be for Denmark to carry out a spill-over analysis of its tax practices on developing countries and to ensure that, when Ministries’ objectives collide, then the objective that overrules is the one in favour of development. Unfortunately, the Tax Ministry has no plans to conduct a spill-over analysis,⁴¹⁵ nor to implement the PCD, which it considers to belong under the Ministry of Foreign Affairs.⁴¹⁶

Financial and corporate transparency

Seemingly inspired by a British model, the previous government encouraged relevant stakeholders to establish a ‘Fair Tax mark’, a label that companies that live up to certain standards can put on their products to show consumers their commitment to fair and transparent taxation.⁴¹⁷ The government hopes that “...a fair tax-brand will bring the transparency all the way to the counter, all the way to consumers.”⁴¹⁸ It remains to be seen whether these plans will progress under the newly formed government.

Public reporting for multinational corporations

Denmark has implemented the EU provision for country by country reporting for the financial sector, and has made it mandatory for financial institutions to publish this information in their annual report.⁴¹⁹ The previous government declined to make their position on country by country reporting for other sectors clear, but have expressed objections about the inclusion of public country by country reporting in the Shareholders Rights Directive, according to one of Denmark's business associations.⁴²⁰

Rather unique in the EU, the Danish tax authorities have disclosed 'open tax payments list' since 2012, where the public can see what companies, associations and funds pay in corporation tax in Denmark.⁴²¹ In December 2014, it was decided to eventually expand the scope of these lists to include corporate tax payments made in the last five years.⁴²² In a highly troubling development, the largest party in the coalition (that supports the new government formed after June 2015) has stated that they no longer support these public lists.⁴²³ As the party of the current government has previously been sceptical of the lists,⁴²⁴ their future is uncertain. The prospects for a parliamentary majority in favour of public country by country reporting seems less favourable than for a long time.

Ownership transparency

Denmark took a major step forward on corporate transparency when it announced in late 2014 that it would create a public register of beneficial owners, being one of only a handful of European countries having committed to this important measure of transparency.⁴²⁵ The move followed stories in the press showing that Denmark was being marketed in Russia and Eastern Europe as the ideal place to incorporate for tax purposes due to its secrecy around the kommandit companies (see above). Among the companies that decided to make use of this opaque company structure was an Uzbek oil company that had routed more than €1.3 billion through Denmark as well as a Ukrainian pharmaceutical company that allegedly used the structure to dodge €34 million in taxes.⁴²⁶ The public register is expected to be implemented by late spring 2016.⁴²⁷ Further transparency was secured when it was decided in 2015 that bearer shares should be phased out, and that a public register of shareholders was introduced as of the 15 June 2015.⁴²⁸

EU solutions

With the implementation of the Capital Requirements Directive IV, a strong support for the EU's proposal for the automatic exchange of tax rulings,⁴²⁹ and a plan to implement the Anti-Money Laundering Directive during the autumn of 2015, Denmark is one of the countries at the forefront of implementing EU policies on tax. Denmark has recently shown resolve to go beyond the minimum recommendations of EU regulation, going for a much more comprehensive General Anti Avoidance Rule (GAAR) than suggested by the Commission and signalling a will to make their register of beneficial owners publicly available. At the same time, Denmark rarely takes the lead when these issues are negotiated at the EU level. Furthermore, the change of government in June 2015 suggests that we may see a change in the way that Denmark implements EU regulation as the new coalition agreement states that the government will take a more conservative approach to the adoption of directives on corporate matters to limit 'restrictive measures' for the business environment, and also plan to give the corporate sector a bigger say on how Denmark adopts directives related to corporate matters in future.⁴³⁰ If this corporate advice is taken from multinational corporations rather than small- and medium-sized enterprises, it could mean that Denmark will become less progressive in the future.

In terms of the introduction of a Common Consolidated Corporate Tax Base (CCCTB) at EU level, Denmark supports the idea in principle, but stresses that any agreement should not dilute the tax base, and it has not been a topic that Denmark has pushed at the EU level.⁴³¹

Global solutions

The Danish Minister of Taxation until June 2015 was adamant that Denmark should be in the lead globally on promoting tax justice, stating in one interview that: "It is essential that we place Denmark in a leading role in the fight against tax havens [...] We need to [...] inspire other countries in the fight against aggressive tax planning."⁴³²

The former Danish government acknowledged the need to find a global solution on international tax challenges in order to finance the Sustainable Development Goals, and it recognised that harmful tax practices are especially damaging for developing countries.⁴³³ However, both the former and the current Danish government strongly support the OECD BEPS project, and believe that the global issues should be solved within OECD as well as at the EU level. Thus, Denmark does not support the establishment of an intergovernmental body on tax under the UN where all countries can be represented equally.⁴³⁴ This disappointing position was further established at the conference for financing for development, held in Addis Ababa in July 2015.⁴³⁵

Conclusion

Denmark has seen great improvement in national financial and corporate tax transparency and has introduced new measures through broad political agreement to fight tax evasion and aggressive tax planning. The commitment to a public accessible register of beneficial owners must be especially commended, although a legislative proposal is still being awaited. The next logical step for Denmark would be to support public country by country reporting. However, there are worrying signs that this type of transparency is being resisted, not least since the change in government.

When it comes to implementing EU policies on taxation, Denmark is one of the European countries taking a lead. However, it rarely pushes an agenda forward during the actual negotiations at the EU level. While the issue of tax dodging has received increased attention over the recent year, there is still very little focus on how Denmark's own tax policies impact on developing countries. Despite having a Policy Coherence for Development plan with explicit reference to taxation and the Danish government's highly commendable focus on taxation and good governance in their development programmes, there is still very little actual coordination with the Ministry of Taxation and seemingly no interest in pushing for spill-over analysis or an intergovernmental body on tax, where developing countries would have a seat at the negotiating table.

France

"Taxes must be paid by individuals or business and no one has the right – even legally – to place themselves beyond this obligation."

Michel Sapin, French Finance Minister⁴³⁶

General overview

France has been at the centre of both the LuxLeaks and SwissLeaks tax scandals. LuxLeaks was broken by the French whistleblower Antoine Deltour, a former PwC auditor, and French journalist Edouard Perrin. They are now both standing trial in Luxembourg for revealing the dark secrets of the Duchy.⁴³⁷ Of the companies exposed in LuxLeaks, 56 were connected with France.⁴³⁸ The French government had already secured much of the SwissLeaks information as far back as 2009 when French police raided the home of whistleblower Hervé Falciani, a former employee HSBC's Swiss branch, and obtained a list of secret account holders in Switzerland. Since then, this information has been exchanged with a select number of countries. Of all the countries covered in the SwissLeaks data, France had the second highest number of clients, with €12.5 billion stashed away in 9,187 clients' accounts.⁴³⁹ While other countries struggled to find a suitable response to the leaked HSBC data, France showed resolve by so far reclaiming more than €200 million in taxes and fines from the HSBC information,⁴⁴⁰ successfully convicting high-profile evaders,⁴⁴¹ and taking legal action against the HSBC branch in Switzerland.⁴⁴² France has also showed some willingness in helping developing countries reclaim some of its lost tax revenue by sharing information from the Falciani list with India.⁴⁴³

Political scandals related to taxation continued to shock the French public as the former leader of the National Front, Jean-Marie Le Pen, was linked with a trust owning an HSBC account in Switzerland,⁴⁴⁴ and former Interior Minister Claude Guéant was accused of tax evasion.⁴⁴⁵ Several multinational corporations, including the state-owned companies EDF⁴⁴⁶ and Aéroport de Paris,⁴⁴⁷ as well as Total⁴⁴⁸ and McDonald's,⁴⁴⁹ also came under fire for building tax schemes to evade taxes.

Against this backdrop of numerous scandals, a groundbreaking report published by the French central bank in May 2015 outlined that just one form of tax dodging by multinationals had reduced the French corporate tax base by \$8.4 billion in 2008. This corresponds to a loss of 10 per cent of all the corporate income tax paid by multinational companies.⁴⁵⁰

For a long time, the French government has been vocal on the international stage in condemning tax dodging and calling for swift action, whether directed at Luxembourg or at the European Commission.⁴⁵¹ Landmark policies have also been passed, including France's pioneering country by country reporting obligation for banks, which became fully operational in 2015. Despite this, there is a growing feeling that France's days as a moral leader against tax dodging are quickly fading. Instead of pushing for increased tax justice and transparency, the government is adopting an increasingly pro-business approach: boosting tax credits and promoting special corporate tax agreements behind closed doors. This has coincided with the finalisation of the OECD's Base Erosion and Profit Shifting (BEPS) project, which the French government supports warmly, and its unwillingness to go beyond the recommendations emerging from this process. France's unconditional support of the OECD was also noted during the Addis Ababa conference where it became clear that France was one of the countries most strongly opposed to the establishment of a universal tax body.

Tax policies

On paper France has the highest corporate income tax rate in the EU. Unlike many other member states, this has remained remarkably stable over the last decade.⁴⁵² However, behind the seeming stability of the headline rates, France is taking part in the same tax competition for lower effective tax rates as its European neighbours through a range of tax incentives. According to the 2015 Finance Bill, these have an annual cost of more than 84 billion to the public,⁴⁵³ nearly outstripping the entire education budget of €88 billion.⁴⁵⁴ The largest revenue loss comes from an incentive dedicated to creating competitiveness and jobs (Crédit d'impôt Compétitivité et Emploi – CICE), which leads to a revenue loss of €12.5 billion,⁴⁵⁵ nearly enough to cover the French Social Security Deficit.⁴⁵⁶ Although the CICE monitoring committee argues it is too early to outline the impact of these tax credits on growth and jobs,⁴⁵⁷ the government has already reinforced the regulatory framework to fight increased tax fraud. Companies seeking the CICE incentive are now required to disclose a narrative report projecting how the money will be spent.⁴⁵⁸ According to Bercy itself, the CICE is one of the main causes of the decline in tax revenue collected from companies in 2014. Over a year, France's corporate tax revenue decreased by 36.7%. Meanwhile, revenues derived from value added tax (VAT) and income tax jumped by €5 billion.⁴⁵⁹

France also offers large incentives on Research and Development (R&D), with many of these being targeted at small- and medium-sized enterprises (SMEs).⁴⁶⁰ One of the most important incentives, which is one of the largest R&D tax credits in the world⁴⁶¹ – the *Crédit Impôt Recherche* (CIR) – benefits as many as 2,000 foreign companies operating in France.⁴⁶² For 2015, the cost of the CIR incentive will amount to €5.34 billion,⁴⁶³ more than 1.5 times the budget of €3.23 billion granted to the largest governmental research agency (*Centre nationale de la recherche scientifique – CNRS*).⁴⁶⁴ Officially, the government argues that the CIR contributes to boosting the R&D's share in France's total Gross Domestic Product (GDP).⁴⁶⁵

A 2015 report commissioned by the French Senate outlined large abuses in the allocation of the CIR.⁴⁶⁶ According to the report, multinational companies are more likely to take advantage of the CIR, using large networks of suppliers and subsidiaries to siphon off money rather than recruiting researchers.⁴⁶⁷ In 2014 and 2015, the world's third largest pharmaceutical company Sanofi, and the top French automaker Renault came under fire. It was discovered that they had both benefitted enormously from the incentive while hiring few researchers or even, in Renault's case, slashing their R&D staff and budget.^{468,469} Faced with such blatant abuses, the French Senate launched a parliamentary investigation of the CIR in December 2014.⁴⁷⁰ The investigations were gathered in a report entitled "Investigation on the misappropriation of the CIR", which a majority in the Senate refused to publish due to allegations that it was unfair and unbalanced. Excerpts leaked in the press revealed that the report tackled both the lack of monitoring capacities of the under-staffed fiscal administration and the unwillingness of the government to alter the R&D tax regime.⁴⁷¹

In order to become more attractive for multinational corporations, France is increasingly resorting to tax credits and thereby fueling a European race to the bottom in terms of corporate tax revenues. Another recent example of this is the planned expansion of a tax credit system for the cinema industry, which is currently being discussed as part of the finance bill. This would allow blockbusters based in France to reduce their tax bill by 30%.⁴⁷²

France has taken multiple initiatives in order to tackle corporate tax dodging, especially following Luxleaks. The government signed a performance clause with tax authorities to focus on the biggest tax dodgers and to secure at least 20 per cent of files ending up with penalties.⁴⁷³

Worried about the tax schemes of tech giants such as Google or Facebook, France is currently assessing the opportunity to tax their revenue based on bandwidth rather than their reported profits in France, although the powers that be seem more willing to push such an option at the EU level.⁴⁷⁴

Additional scandals related to the tax schemes of publicly owned companies such as EDF and *Aéroport de Paris* pushed the Finance Minister Michel Sapin to state that public companies had to be "exemplary". He sent a letter to all state representatives on the boards of these companies urging them to ask for a complete list of subsidiaries and their location to be published.⁴⁷⁵ The Minister also stated that all the subsidiaries that seemed to have been set up in countries for tax purposes only would be closed down. Despite a public row, a compulsory application of the comprehensive country-by-country reporting to public companies does not seem to be on the government's agenda.⁴⁷⁶

Tax rulings

France offers multinational companies Advanced Pricing Agreements (APAs). Although such agreements are not necessarily problematic in themselves, the LuxLeaks revelations demonstrated that they can be used to facilitate tax dodging. France had 47 APAs in force at the end of 2013. This made it the European country with the fourth most APAs (on revealed statistics – excluding Austria and the Netherlands).⁴⁷⁷ The content of these APAs is legally kept under the secret of tax administration. The Ministry of Finance states that it does not support making the rulings public.⁴⁷⁸

Patent box

In 2000, the French Parliament passed a bill decreasing taxation on the licensing of patents from 33 per cent to 15 per cent.⁴⁷⁹ According to 2014 figures, 200 companies benefitted from the patent box system for a total cost of €400 million,⁴⁸⁰ the equivalent of the French public hospital deficit in 2013.⁴⁸¹

Tax treaties

France remains one of the EU countries with the most tax treaties signed with developing countries (62),⁴⁸² including the ten developing countries it does most trade with. According to the French Finance Ministry, the tax treaties used by France are exclusively based on the OECD model.⁴⁸³ This raises concerns that the taxing rights arising from this trade is primarily granted to France rather than the developing countries in question. Ministry officials also state that they support the introduction of a new anti-abuse clause in their treaties.⁴⁸⁴ As explained in section 3.5 on tax treaties, such clauses can in some instances help prevent treaty abuse, but do not address the primary concern with tax treaties, namely the lowering of withholding tax rates in developing countries.

In December 2014, France signed a new tax treaty with China to replace a previous treaty from 1984. The new treaty shows both positive and negative aspects of the French government's approach to negotiating treaties. On the positive side, the new treaty includes an anti-abuse clause, in line with France's new-found support for this provision.⁴⁸⁵ On the negative side, the withholding tax rate on dividends has been lowered from the previous rate of 10 per cent, which is also the statutory rate in China, to a new reduced rate of 5 per cent.⁴⁸⁶ Highlighting the problematic avenues that such tax reductions can open up in terms of tax planning, the accounting firm EY notes, in an analysis of the new treaty, that "with the reduction of the withholding tax rate for dividends under the New Treaty, France may be considered as one of the preferred jurisdictions in Europe, both for investments into China and for investments into Europe."⁴⁸⁷

Financial and corporate transparency

Public reporting for multinational corporations

France has a history as perhaps the strongest advocate among EU member states for public country by country reporting. In 2013, France was the first European country to adopt a provision for public country by country reporting for its banking institutions. This pushed the EU to adopt a similar provision shortly afterwards. In 2014, for the first time, banks and credit institutions publicly disclosed a list of their subsidiaries, revenues and number of employees on a country by country basis. In 2015, financial institutions also had to disclose their profits and losses before tax, the taxes they pay and the public subsidies they receive. An analysis of the data released in 2014 showed that French banks generate a quarter of their international revenue from low tax jurisdictions, with more than one third of their subsidiaries abroad located in these kind of jurisdictions.⁴⁸⁸

Having led the way on public country by country reporting (CBCR) for the financial sector, it had been hoped that France would take the lead on extending this reporting requirement to other sectors. Disappointingly, the Minister of Finance dashed this hope in June 2015, stating that France will not unilaterally adopt public country by country reporting for other sectors, and that it supports the current OECD work on CBCR, which would keep the information away from the public.⁴⁸⁹ However, the Ministry is also following the work of the impact assessment on public CBCR assessment conducted by the European Commission and indicates some willingness to follow the results of the assessment.⁴⁹⁰

In December 2014, France was the first country to implement the European directives to increase transparency in the extractive and forestry industries.⁴⁹¹ Yet the bill was described as a missed opportunity by NGOs that were expecting the government to seize the opportunity of the directives to apply a more complete public country by country requirement along the lines of what exists for the banks. Disappointingly, the government chose to follow the minimum requirements of the directive and to apply extremely low sanctions.⁴⁹² As of October 2015, the implementation decree is still pending.

Against a backdrop of increased pressure for transparency, top French oil company Total decided to publicly disclose a list of their 903 subsidiaries worldwide.⁴⁹³ Although Total publicly stated that the company was currently implementing exit strategies for nine of its subsidiaries operating in "countries considered to be tax havens",⁴⁹⁴ it did nothing to justify the presence of 169 additional subsidiaries in countries that have also been flagged by the Tax Justice Network as countries that should be considered 'tax havens'.^{495,496} It also emerged that the company had left as many as an additional 30 subsidiaries located in the Netherlands off its list.⁴⁹⁷

Ownership transparency

As the European Council approved the Anti-Money Laundering Directive, the French government encouraged all EU member states to speed up the implementation of the new directive.⁴⁹⁸ France is reported to have played a constructive role during the negotiations on the directive, being one of a small handful of member states that had signalled support for implementing public registers of beneficial owners.⁴⁹⁹ France appears to be willing to adopt this directive through a 'transparency package', which was announced for summer 2015 but has still not been discussed in Parliament. Regarding trusts, the anti-fraud law adopted in November 2013 introduces the basis for a public register for a small number of French fiducies, but also for foreign trusts where French residents participate as trustees, settlors or beneficiaries. The decree implementing the law is nevertheless still expected.⁵⁰⁰ While at the time when the deal was reached on the anti-money laundering directive it was expected that France would fully implement public registers of beneficial owners,⁵⁰¹ officials at the Finance Ministry have since stated that the register will not be fully public. However, they have guaranteed that virtually anyone requiring access to the register will fall into the 'legitimate interest' category.⁵⁰²

EU solutions

France has the long-standing position as a champion of the EU proposal on a Common Consolidated Corporate Tax Base (CCCTB). Even before the many tax scandals hit France, President François Hollande publicly pledged to push for a European CCCTB by 2020.⁵⁰³ Research published in July 2014 by the French Conseil d'Analyse Economique (CAE) outlined the feasibility of a CCCTB starting with a harmonisation of the banking sector in a reduced number of EU countries.⁵⁰⁴ Finance Minister Michel Sapin also sent a letter co-signed by his German and Italian counterparts, pushing for further EU harmonisation.⁵⁰⁵ Yet as the European Commission introduced a watered-down version of CCCTB as part of their package on fairer corporate taxation – lacking the core measure of consolidation – Sapin praised the EU for taking ambitious steps to reform the tax system.⁵⁰⁶

Following the Luxleaks scandal, the French government supported a first EU package on transparency allowing for the automatic exchange of tax rulings. Sapin was very vocal regarding the tax rulings granted by Luxembourg to companies, stating that “aggressive tax planning [was] not acceptable anymore” and the tax dodging was to be “tackled at the global stage.”⁵⁰⁷ French authorities consider the EU package as sufficient proof of transparency,⁵⁰⁸ despite the fact that only tax authorities would have access to the information, which would not entail any public transparency. The government has not indicated any willingness to push for further transparency or to go beyond EU initiatives.⁵⁰⁹

Global solutions

Whether within the EU or on the international stage, in a few years France has changed from often taking unilateral actions to lead the way against tax dodging to becoming more passive. This has coincided with the OECD BEPS reform project, which France is warmly in favour of and which officials insist is the right forum for discussing tax issues. As such, France has been repeatedly pledging its support to the OECD and its BEPS action plan⁵¹⁰ and has expressed its intention to implement part of the BEPS outcome (including confidential country by country reporting) into law by the end of the year.⁵¹¹

Consequently, France is opposed to any UN initiative regarding tax and transparency, such as the creation of a UN intergovernmental tax body. This position has been repeatedly expressed during the international rounds of negotiations.

Although the public explanation for such a position is that a UN initiative would be inefficient and would embody an “institutional proliferation”,⁵¹² the actual reason seems to lie elsewhere: the creation of a UN tax body would shift the decision-making agenda away from the restricted OECD countries’ club, thus diminishing their power to shape the tax agenda. Furthermore, it might mean that decision making will no longer happen in Paris, where the OECD is based. During the Financing for Development Conference last July in Addis Ababa, France was one of the most active rich countries to block this proposition, and, curiously, seemed to be questioning multilateralism. Reflecting France’s view on the central role of the OECD when it comes to taxation and developing countries, the government remains one of the top funders of the OECD initiative Tax Inspectors without Borders (TIWB).⁵¹³

Conclusion

Numerous tax scandals involving multinational companies doing business in France were followed by sweeping declarations from the French Government. The time of tax dodging was “over”⁵¹⁴ for multinational companies that could not now “place themselves beyond this obligation.”⁵¹³

Yet despite ambitious speeches, France showed little determination to tackle tax dodging at home and refused to push any legislation outside the EU and the OECD. This strategy often ended up in delaying – if not killing – the application of a fairer tax system, as exemplified by France’s attitude in the FfD negotiations around the UN tax body.

The government’s argument for such a position has consistently fallen on protecting business interests. Any tax justice measure considered as harmful to the French business environment has been delayed. And in terms of the business environment, France is no amateur, granting large tax incentives to businesses – particularly for R&D. Despite large abuses of R&D tax incentives by multinational companies revealed by several institutional reports and investigations, the government seems unwilling to restrict access to R&D tax credits and flags R&D as one of the criteria of French attractiveness – at the potential expense of other countries.

Once a leader in terms of promoting tax transparency in the EU, France has definitely taken a much more conservative approach over the recent year. Disappointingly, the Ministry of Finance has stated that it will neither implement fully public registers of beneficial owners nor support public country by country reporting unless other countries push for this. By taking such positions, there is a real sense that France is quickly losing its previous reputation as a champion of positive change on tax.

Germany

“Just because something is legal, does not mean it is fair in tax terms. Multinationals must contribute their fair share to public budgets – just like any other company has to.”

Wolfgang Schäuble, Minister of Finance, Germany⁵¹⁶

General overview

Tax dodging has featured as a prominent media and policy issue in Germany over the last year. The government has continued its aggressive pursuit of tax evaders, securing convictions of prominent public figures and purchasing account information from Liechtenstein and Swiss whistleblowers.⁵¹⁷ These efforts have caused the number of voluntary disclosures by Germans of previously hidden offshore wealth to sky rocket, with an all-time record of about 40,000 disclosures in 2014, and a further 10,000 in the first half of 2015.⁵¹⁸ Amidst a growing number of scandals showing the role that the German financial industry has played in facilitating tax dodging,⁵¹⁹ the German authorities have also pursued a number of investigations against some of the biggest banks in the country.⁵²⁰

As the EU’s biggest Member State, Germany has a unique opportunity to influence the tax agenda in the EU and globally. The German government in some instances uses this influence for good, actively encouraging more coordination of tax issues in the EU and speaking out against harmful tax practices such as patent boxes.⁵²¹ Despite this constructive role on coordination, the German government plays a decidedly more negative role when it comes to corporate transparency, where it is often a powerful stumbling block against more progressive action in the EU. The same unconstructive role is apparent when it comes to supporting solutions that would help developing countries and not only the EU.

Tax policies

According to an assessment in mid-2014 by the audit company KPMG “never before has the topic [of tax avoidance] been discussed so widely both in the press and by the German public.”⁵²² Despite this high level attention, 2015 has not brought major reforms to Germany’s corporate tax system.

In December 2014 the Federal government and the Länder governments set up a special working group to discuss policy measures to address base erosion and profit shifting (BEPS).⁵²³ However, by May 2015 the group had reportedly only met once since January, leading the auditing firm EY to note that they “do not expect more than first steps towards BEPS implementation by the end of this year [2015].”⁵²⁴

The regulatory authorities have been active in trying to pursue cases against tax dodging. In the process they have exposed the important role of the sizeable German financial sector in facilitating these practices. In February 2015, 150 tax agents raided Germany’s second largest bank – Commerzbank – in relation to investigations into the bank’s possible facilitating of clients’ tax evasion through Luxembourg.⁵²⁵ The move is said to have led to a number of other banks revisiting their practices in Luxembourg, and resulted in one bank reportedly settling with the German authorities for €22 million over their role in helping to set up shell companies to hide funds in Luxembourg.⁵²⁶ Other investigations into at least three more banks are ongoing.⁵²⁷

There has also been progress on what Der Spiegel has called “one of the biggest tax scandals in postwar history”⁵²⁸ in Germany – a structure that was reportedly set up by several banks including Deutsche Bank and HypoVereinsbank. According to the allegations, the banks helped taxpayers to exploit loopholes in tax law that enabled taxpayers to get two tax payment certificates for only one real tax payment on the same share transaction. The problem stretches back decades and the German authorities have tried to close the loophole several times. While banks now state that their advice was still legal (backed by at least one higher court ruling, which was however largely annulled by the highest German tax court, the Bundesfinanzhof, in 2014),⁵²⁹ the German authorities insist that it was illegal. In July 2015, HypoVereinsbank agreed to pay a fine of €20 million and also to help the tax authorities with further investigations – the first time ever that a large German bank has done so in this kind of case.⁵³⁰

Meanwhile, the investigation has been expanding as the offices of Deutsche Bank were raided in June 2015 in relation to the case.⁵³¹ The UK tax authorities also became involved in the case in 2014 at the behest of the German authorities.⁵³²

A trial against eight former Deutsche Bank employees started after years of investigations into their possible involvement in a massive value added tax (VAT) carousel fraud with carbon emission certificates for which several carbon traders had been sentenced already.⁵³³

The voluntary disclosure law was revised at the end of 2014. Tax evaders, among others, will in the future only be free from prosecution if they pay additional fees of 10-20 per cent of the taxes dodged, and the threshold to be eligible for the special favourable treatment was lowered from €50,000 to €25,000.⁵³⁴

Relatively strict regulation – such as its controlled foreign corporation (CFC) rules⁵³⁵ – means that German companies are perhaps to some degree less engaged in the most aggressive forms of tax planning than multinational companies headquartered in other countries. However, German companies also have many subsidiaries in countries known to play a significant role in tax avoidance such as the Netherlands or Luxembourg⁵³⁶ and have been part of conflicts with foreign tax authorities on transfer pricing issues such as Argentina⁵³⁷ and Vietnam.⁵³⁸ Research also indicates that tax avoidance might add up to a tax base loss of €92 billion a year in Germany.⁵³⁹

Tax rulings

Tax authorities provide ‘opinions’ on tax matters to multinational corporations, and the European Commission is at present investigating whether big business has enjoyed an unfair advantage of this.⁵⁴⁰ Officially, Germany is not totally opposed to any tax ruling but only to the ones they regard as harmful,⁵⁴¹ particularly if they favour one single firm beyond the general tax law.

Germany offers Advance Pricing Agreements (APAs), and had 21 of these at the end of 2013, of which 12 were with companies based in unknown non-EU countries.⁵⁴² In contrast to many other Member States that offer APAs, Germany charges a relatively high fee of €20,000 for companies seeking such rulings,⁵⁴³ which might partly explain the relatively low number of rulings.

In July 2015, Germany reached an agreement on exchanging APAs and tax rulings related to patent boxes with the Netherlands, and it has been a strong proponent of the automatic exchange of rulings within the EU.⁵⁴⁴

Special Purpose Entities (SPEs)

According to the OECD, the amount of foreign direct investment (FDI) flowing through resident Special Purpose Entities (SPEs) in Germany is not significant.⁵⁴⁶ Currently, SPEs are defined both in the German Commercial Code (Handelsgesetzbuch) and the German Banking Act (Kreditwesengesetz). According to an analysis of the tax treatment of the German holding company regime by a website specialising in tax planning advice, Germany is “a relatively attractive jurisdiction in which to set up a holding company although not the most attractive.”⁵⁴⁷

Patent box

Germany does not have any special tax rates for interest or royalty income in the form of a patent or licence box. The only notable special tax regime is for ships, which are taxed by size.⁵⁴⁷

In 2013, the German Minister of Finance called for a ban on patent boxes and accused EU Member States that had implemented such policies of going against the “European spirit” and saying that “you could get the idea they are doing it just to attract companies.”⁵⁴⁸ The German campaign against patent boxes culminated in November 2014 when a compromise was reached between the UK and Germany on the acceptable use of patent boxes in the EU. The compromise stressed, among other things, that the users of patent boxes needed a certain degree of economic substance in the country where they benefitted from these.⁵⁴⁹ The compromise has subsequently been criticised for not solving the basic problems associated with patent boxes.⁵⁵⁰

Amid the German government’s support for a compromise, pressure from German industry mounted on the government to also adopt a patent box.⁵⁵¹ According to *Der Spiegel*, the German Finance Ministry did consider significantly reducing the rates of taxation on income from patents or licences to 10 or 15 per cent in 2014,⁵⁵² but as of yet, no legislative proposal has been put forward. Should Germany – previously the most vocal critical voice of patent boxes – choose to adopt one itself, it would signify a capitulation to the harmful tax competition of this type in the EU.

Tax treaties

Germany has an extensive network of 48 tax treaties with developing countries.⁵⁵³ New treaties are currently being negotiated with Jordan, Qatar, Libya, Oman, Serbia and Turkmenistan, while revisions and supplements are being negotiated with several other states.⁵⁵⁴ A new treaty with Costa Rica was finalised in 2014.⁵⁵⁵

In a recent revision of its treaty with the Philippines, the maximum withholding tax rates in the source country on outgoing interest and royalty payments were significantly lowered.⁵⁵⁶

As evident from a 2013 template for tax treaties released by the Federal Ministry of Finance, Germany's treaties generally draw on the OECD model, although elements of the UN model can be included.⁵⁵⁷ According to the Ministry, the template is used for negotiations with all countries,⁵⁵⁸ regardless of whether they fall into the categories of developed or developing nations, even though there can be certain modifications with the latter. Notably, the 2013 template includes not only the objective of preventing double taxation but also double non-taxation and tax avoidance. It also includes various counter measures against tax avoidance. The German government in 2014 reported that it was not planning to carry out an impact assessment of its tax policies to calculate the potential spillover effects on developing countries.⁵⁵⁹ There are no indications that this position has changed.

Financial and corporate transparency

Due to its large financial and banking sector, Germany has for some time been a key location for money-laundering.⁵⁶⁰ Rough estimates put the scale of laundered money in Germany within the range of €29 billion to €57 billion annually.⁵⁶¹ News headlines related to German banks and money laundering have been frequent, and 2015 has been no exception. In February, Deutsche Bank was issued with a fine from regulators in South Africa for not complying with anti-money laundering laws.⁵⁶² In March just one German bank, Commerzbank, was facing settlements of \$1.45 billion for violations of sanctions and various accusations of money laundering.⁵⁶³ In June, Deutsche Bank and authorities in the UK and US started an investigation into possible money laundering for Russian clients, which reportedly involved looking into transfers of about \$6 billion over more than a four-year period.⁵⁶⁴

Public reporting by multinational corporations

In mid-2015 the Government announced its intention to implement country by country reporting along the lines of the OECD's Base Erosion and Profit Shifting (BEPS) recommendations.⁵⁶⁵ This would imply that the information would not be made publicly available, and that only the very largest companies with an annual consolidated turnover of more than €750 million would be included. The government further announced that it was its intention that a law should pass parliamentary approval by the end of 2015, in order for the reporting requirement to take effect from 2016.⁵⁶⁶

Ownership transparency

In June 2014 the inter-governmental body the Financial Action Task Force (FATF) reviewed Germany's follow-up on its recommendations from 2010, and found that the government had not yet sufficiently addressed shortcomings on documenting and storing beneficial ownership information.⁵⁶⁷ The report also criticised the lack of transparency in relation to a type of trust allowed under German law called "Treuhand funds".⁵⁶⁸

During negotiations at the EU level on the Anti-Money Laundering Directive (AML) towards the end of 2014, it was reported that Germany was against the creation of a centralised register of beneficial owners due to a preference for its existing system, where data on owners of bank accounts are to be held by the banks (and can be accessed by the authorities) but not stored centrally.⁵⁶⁹ Luckily, the German position did not prevail as civil society organisations have pointed out that this system had shortcomings.⁵⁷⁰ It was also reported that Germany led a group of countries that tried to restrict the information stored on beneficial owners,⁵⁷¹ as well as being against making beneficial ownership information available to the public.⁵⁷² With these positions, the prospects for an ambitious implementation of the AMLD that delivers fully public registers seem bleak, but at the time of writing the government's plans are not yet confirmed on this matter.

Automatic exchange of information

Germany passed legislation in July 2015 to allow for automatic exchange of information from 2017.⁵⁷³ Germany's approach is consistent with the international agreement on automatic exchange of information, to which it is a signatory. However, the German government has taken additional steps by reportedly developing plans to "deposit a special privacy policy with the OECD, to ensure that all countries that operate the automatic exchange of tax information in the future on the basis of the agreement with Germany comply with the strict German privacy standard for the transmission of personal and company-related data."⁵⁷⁴ Whether this is an indication that Germany will be more reluctant to share information with developing countries is not yet known.

EU solutions

Together with the governments of France and Italy, the German government sent a letter to the European Commission at the end of 2014, urging it to prioritise the fight against tax dodging and to come up with a legislative proposal to counter the erosion of tax bases across Europe.⁵⁷⁵

In Council discussions, the German government has reportedly been very supportive of a speedy implementation of the automatic exchange of tax rulings in the EU, and has also stressed the need for a reform of the Code of Conduct on Business Taxation.⁵⁷⁶ As noted, the government has also played a strong role in trying to stem the negative effects of patent boxes in the EU.

Despite these positive efforts, Germany has often played a less constructive role when it comes to corporate transparency measures at the EU level. As noted, Germany reportedly did not play a progressive role during the negotiations of the EU AMLD. Similarly with regard to country by country reporting, the German government has previously hindered EU action in the negotiations for stricter reporting requirements for companies in the extractive industries.⁵⁷⁷ It was (unsuccessful) against the reporting for banks, and in discussions seems reluctant to extend the reporting to all sectors such as through the Shareholders Rights Directive.

The German government's position on the introduction of an EU-wide Common Consolidated Corporate Tax Base (CCCTB) is not easy to assess. While it openly rejected this proposal some years ago,⁵⁷⁸ the government now might be more open to the concept and have at least committed to the "Common Tax Base" as a first step in the coalition treaty.⁵⁷⁹ However, in talks with the government, reservations about the consolidation have been expressed (e.g. regarding depreciation of pensions) and particularly on the formula apportionment, arguing that it is very difficult to reach agreement on.

Global solutions

In a response to the European Commission, the government states that the fight against illicit financial flows is one of its three priorities in relation to Policy Coherence for Development. The government further states that, in order to be successful in the fight against these flows, there is need for "a close cooperation between different governmental departments as well as between developing, emerging and developed countries."⁵⁸⁰ Despite this, Germany clearly believes that standard setting or regulation of international tax matters should remain at EU and OECD levels. Consequently, Germany has been opposing the upgrade of the Committee of Experts on International Cooperation in Tax Matters – which it has been supporting financially beyond its assessed contributions to the regular budget of the UN – to an intergovernmental body for some years,⁵⁸¹ including during the Financing for Development negotiations in July 2015.

Conclusion

Germany is publicly committed to fighting tax fraud and avoidance. As a strong supporter of EU coordination against what it perceives as harmful tax practices, Germany has been quite active relative to other EU Member States. However, on further transparency and some initiatives to fight tax dodging at the EU level, the government has played a less constructive role. Germany also upholds secrecy practices such as the trust structure (Treuhand funds).

As developments in 2015 once again revealed, the fight against tax dodging in Germany is intrinsically linked to its large financial sector, which the government seems reluctant to regulate properly. On the positive side, 2015 seems to have brought increased pressure on the banks from regulators, which have initiated new investigations and have had an important victory on a long-running case on tax dodging. Overall, the government seems more engaged in terms of tackling the tax avoidance of companies after the Luxembourg Leaks (LuxLeaks). However, judging by its reluctance to support an inclusive global process for international tax reform and its embracing of solutions that exclude developing countries such as in its move towards the OECD BEPS recommendations on country by country reporting and non-public registers of beneficial owners, the German government seems to ignore the interests of developing countries.

Hungary

"We can say to Spar and to Philip Morris that if you won't pay this tax [the sector specific tax on tobacco and retail], then you'll pay another, but one way or another, you'll pay ... You can go complain to the EU, but then you'll just pay more."

Janos Lazar, Minister of Prime Minister's Office, Hungary⁵⁸²

General overview

Hungary's tax regime, although rarely discussed, offers a number of opportunities that make it ideal for international tax planning. Among these are the lack of withholding taxes, a flexible and tax neutral regime for Special Purpose Entities (SPEs), a patent box⁵⁸³ and limited registration requirements for owners of foreign companies and partnerships.⁵⁸⁴

According to an international tax consultancy firm, while Hungary has none of the harmful connotations of an offshore tax haven, it can be a safe harbour for investors seeking the most tax optimal structure without the risks to their brand or heat from tax administrations in other countries.⁵⁸⁵ The relatively high flow of foreign direct investment (FDI) through Hungary's sizeable sector of SPEs⁵⁸⁶ suggests that Hungary does indeed play a role in international tax planning.

In recent years, Hungary has been through large rounds of budget cuts on social security, social protection and education.⁵⁸⁷ In an effort to cut its widening budget deficit, Hungary has introduced nine different sector-specific taxes (some of which have since been modified) over the past five years, including a tax on advertisement, telecommunications and financial institutions.⁵⁸⁸ These new taxes were heavily criticised for placing extra burdens on banks, multinational companies or individual actors, in the case of the advertisement tax, and also for the manner in which they were introduced – often in an ad hoc manner, according to critics both in Hungary and the EU.⁵⁸⁹

Hungary's National Tax and Customs Authority (NAV) itself was at the centre of a scandal. The US Chargé d'Affaires in Hungary announced that government officials, including the then president of NAV, Ildikó Vida, had been banned from entering the US due to allegations of involvement in corruption.⁵⁹⁰ This diplomatic scandal came after claims in 2013 from former NAV employee and whistleblower András Horváth about systemic deficiencies in NAV's oversight, which had resulted in as much as HUF 1 trillion (€3.4 billion⁵⁹¹) being lost to value added tax (VAT) fraud annually.⁵⁹² While an internal audit at NAV (supervised by Ildikó Vida herself) found no systemic malpractice in the organisation,⁵⁹³ an unrelated investigation by the State Audit Office – which looked into activities of the Tax Authority from 2009 to 2013 – revealed a number of deficiencies in the rules and regulations of the organisation and pointed out that, in several instances, NAV had not adhered to its own policies on oversight.⁵⁹⁴

Tax policies

In certain respects, Hungary's tax system is quite unique in the EU. While most European countries have in place a progressive personal income tax system combined with a flat-rate corporate income tax, Hungary has the reverse. It has a flat-rate personal income tax rate of 16 per cent, the third lowest rate in the EU.⁵⁹⁵ Its corporate income tax is progressive, with a low 10 per cent rate applied to the tax base up until €1.62 million and a 19 per cent rate above this threshold, with an additional local business tax of up to 2 per cent.⁵⁹⁶ Not surprisingly, in 2012, corporate income taxes contributed only 1.3 per cent of GDP (€1.2 billion), with only Greece capturing less (1.1 per cent of GDP) in the EU.⁵⁹⁷

Hungary has introduced special tax schemes for micro-, small- and medium-sized enterprises, offering lump-sum tax options, depending on the number of employees and annual revenue: these are EVA (simplified enterprise tax); KATA (small taxpayers' lump sum tax); and KIVA (small business tax).⁵⁹⁸ In stark contrast to the relatively low corporate income tax, Hungary has the highest VAT rate in the EU at 27 per cent.⁵⁹⁹

The Hungarian government offers various tax incentives for investment and R&D; it provides so-called VIP cash grants to large investments, obtained through a discretionary government decision⁶⁰⁰ that varies across regions, and depends on the amount of the investment and the number of jobs created.⁶⁰¹ Other types of incentives include the development tax allowance,⁶⁰² which is a tax credit that is available for up to ten years to decrease corporate income tax liability.⁶⁰³ Cash grants and super deduction, corporate tax credit, reduction in social security contributions and up to 50 per cent corporate tax exemption on income from royalties are offered specifically for R&D activity.⁶⁰⁴

After 2010, Hungary implemented a range of sector-specific taxes, targeting advertisement, tobacco, finance, energy, telecommunications and retail. These sector-specific taxes are expected to bring in a projected boost to government revenue of 1.9 per cent of GDP in 2015, with 1.2 per cent of this being accounted for by the new taxes on financial institutions.⁶⁰⁵

In June 2015, the Hungarian Parliament approved the annual budget, which included an amendment on the tobacco tax becoming permanent, and a reduction in the controversial tax on credit institutions to 0.31 per cent in 2016, and 0.21 per cent in 2017 and 2018.⁶⁰⁶ The reductions are expected to reduce revenue from the financial sector by \$219 million.⁶⁰⁷ The Advertisement Tax was also amended and will levy a 5.3 per cent flat tax on revenue over €318,000⁶⁰⁸ on media companies instead of the originally planned progressive tax, which was criticised by the EU.⁶⁰⁹

Tax rulings

Hungary offers tax rulings, including rulings related to corporate income tax, which are binding for two years, irrespective of any changes to the corporate tax regime.⁶¹⁰ Hungary introduced an Advance Pricing Agreement (APA) system in 2007 that can be applied to tangible or intangible property, goods and services, as well as transfers, cost sharing and intra-group loans.⁶¹¹ Hungary is notable in the EU for being one of the Member States that grants most APAs. According to data from the Commission, only Luxembourg, the Netherlands and the UK had more APAs in force at the end of 2013 than Hungary. Almost one in four of these agreements were with companies based in non-EU Member States.⁶¹²

The rise in APAs is closely related to the setting up of a separate Department for Market Price Determination and Transfer Price Audit (Szokásos Piaci Ár-Megállapítási és Transzferár Ellenőrzési Főosztály) within the Priority Affairs and Large Taxpayers General Directorate⁶¹³ in October 2010. After this department was set up, the number in APA requests has grown significantly: from its introduction in 2007 to 1 January 2009, there were only six requests filed, while by the end of 2013, there were 80 separate APA requests, according to the Large Taxpayers Tax and Customs General Directorate of the National Tax and Customs Administration (KAVFIG).⁶¹⁴

Special Purpose Entities (SPEs)

Hungary is one of only four countries that, for many years, have been reporting on the flows of FDI through Special Purposes Entities (SPEs). The data has consistently shown that a significant share of FDI in and out of Hungary goes through SPEs. In 2013, 57 per cent of the total FDI flows into Hungary went to SPEs, and 80 per cent of flows out of the country originated from SPEs.⁶¹⁵ At the end of 2014, Hungary had the third largest share of FDI flows into SPEs (Speciális Célú Vállalat – SCV) versus non-SPEs, after Luxembourg and the Netherlands.⁶¹⁶

Unlike most EU countries, Hungary levies no withholding taxes on any income categories (dividends, interests, royalties).⁶¹⁷ Furthermore, capital gains realised by foreign nationals are exempt from corporate income tax (except if related to Hungarian real estate companies).⁶¹⁸ The holding regime is particularly attractive for foreigners, as Hungary's rules on controlled foreign companies only apply in cases where a Hungarian holds 10 per cent or more control of the company, or in cases where 50 per cent or more of the revenue arises from Hungary.⁶¹⁹ This suggests that the relatively high portion of FDI flowing through the country's SPEs is part of tax planning techniques. The origin of the FDI flows point to a similar conclusion, with 59 per cent of all FDI flows into the country's SPEs coming from the tax favourable jurisdictions of Ireland, Luxembourg, Cayman Islands, Bermuda, the British Virgin Islands and Jersey.⁶²⁰ It is a similar story for the FDI outflows from Hungary's SPEs, where 70 per cent has Luxembourg and Switzerland as its destination.⁶²¹ Most of these jurisdictions provide little or no FDI to Hungary when excluding SPEs.⁶²²

Patent box

Hungary has adopted a patent box scheme offering a tax incentive with reduced corporate income tax rate for patents.⁶²³ According to the European Commission, the effective corporate tax rate for income derived from patents is 10.3 per cent, which makes the Hungarian patent box as favourable as the much-discussed and controversial UK patent box.⁶²⁴ Other sources estimate that the effective rate on the use of intellectual property can be lower than 5 per cent in some instances, and note that – compared to other countries with patent boxes – the scope of intellectual property (IP) covered in Hungary is “extremely wide”.⁶²⁵ Moreover, Hungary exempts the income from sales of IP from capital gains taxation.⁶²⁶ Thus, it is no understatement when a tax lawyer company states that Hungary offers a “very attractive IP regime”.⁶²⁷

Tax treaties

Hungary has tax treaties with a number of developing countries, and there is significant trade with these jurisdictions. More than 15 per cent of Hungary's exports and more than 13 per cent of its imports come from just ten developing countries with which Hungary has a tax treaty.⁶²⁸ Most of the treaties with these countries were negotiated in the 1990s, with the exception of Serbia (2003), India (2005) and Mexico (2011). While Hungary has several treaties with developing countries, it does not have any with low-income countries. It is not clear whether Hungary in general bases its tax treaties with developing countries on the OECD or UN model.

In 2014, the Hungarian Ministry of Economics announced that it would launch tax agreement negotiations with Andorra, the British Virgin Islands, Liechtenstein and Panama, to conclude double tax agreements with the latter two and tax information exchange agreements with all the others.⁶²⁹ Recently, several other new tax treaties entered into force, including treaties in October and November of 2014 with the United Arab Emirates, Bahrain and Saudi Arabia, effective from 1 January 2015.⁶³⁰

Hungary also has new tax treaties with some of Europe's most contentious tax jurisdictions: a tax agreement was signed with Jersey in January 2014;⁶³¹ a tax agreement with Switzerland, negotiated in 2013, entered into force in November 2014; a treaty with Liechtenstein, negotiated in 2014, was concluded in June 2015; and the double tax agreement with Luxembourg, negotiated since 2011 and concluded in March, will enter into force in 2016.⁶³² According to one source, the treaties with Liechtenstein and Luxembourg follow the OECD model.⁶³³ The treaty with Switzerland completely exempts dividends paid between banks in the two countries,⁶³⁴ thereby incentivising the integration with the Swiss banking sector. These developments are troubling as they imply that the government is prioritising increasing the cross-border tax planning opportunities in Hungary.

Tax and development

Hungary considers illicit financial flows and taxation to be an integral part of the Policy Coherence for Development agenda, but does not have a specific development policy on these issues, according to the Department for International Development of the Hungarian Ministry of Foreign Affairs and Trade.⁶³⁵

In 2014, Hungary spent €8,900 on technical assistance for developing countries on taxation, focusing mostly on training and knowledge management in the international taxation field, according to the Ministry of Foreign Affairs and Trade.⁶³⁶

Financial and corporate transparency

The SwissLeaks scandal exposed €106 million of funds with ties to Hungary in the HSBC branch in Switzerland.⁶³⁷ However, according to estimates by the financial consultancy Blochamps, this is only the tip of the iceberg, with over €2.2 billion held by Hungarians in Austrian, Swiss and Luxembourg accounts in 2014.⁶³⁸ In order to reclaim some of these funds, the Hungarian government in 2013 set up accounts where holders of offshore funds could place their funds and invest them in government securities. According to the government, this has so far brought €158 million back from offshore locations into Hungary.⁶³⁹ Funds can be withdrawn from the accounts with a tax rate of 10 per cent after one year or tax-free after five years, with no set deadline for the scheme, possibly hindering tax collection.⁶⁴⁰

Public reporting by multinational corporations

The Hungarian Central Bank writes about the EU Capital Requirements Directive on its website, and states that the text of the directive entered into relevant Hungarian legislation on 1 January 2014.⁶⁴¹ The government's position on extending country by country reporting to other sectors and whether or not to make the information public is not known.

In a 2013 study on the transparency of corporate reporting in Hungary conducted by Transparency International Hungary, only one out of the nine large corporations headquartered in Hungary and with subsidiaries abroad published all relevant information on their subsidiaries' annual financial disclosure.⁶⁴²

In June 2015, the Hungarian Parliament passed legislation concerning corporate reporting using International Financial Reporting Standards (IFRS), making IFRS reporting compulsory from 2017 for all companies traded on a regulated market of a Member State of the European Economic Area, and for credit institutions, and financial enterprises that are subject to the same prudential requirements as credit institutions, as well as – from 2018 – for cooperative credit institutions.⁶⁴³

Ownership transparency

The government's position on the public's access to beneficial ownership information is not known, and likewise its plans for the implementation of the EU's new anti-money laundering directive is not clear yet.

In 2015, the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes assessed Hungary for its corporate and financial transparency, and rated it "largely compliant", noting several shortcomings.⁶⁴⁴ Among these, the OECD highlights that while ownership information on domestic companies is stored, there is "no requirement for foreign companies having their place of management in Hungary to keep ownership and identity information in Hungary."⁶⁴⁵ Furthermore, ownership information on partners of foreign partnerships in Hungary is not kept either. Given the fact that Hungary is a significant routing destination of FDI, these are serious drawbacks.

Hungary introduced legislation in March 2014, which for the first time allowed trust structures to be established.⁶⁴⁶ While the legislation mandates authorities to keep information on the identity of the trust's settlors, the trustee and beneficiaries, the OECD review recommends that, because of a lack of prior experience with this practice in Hungary, the government should closely monitor it.⁶⁴⁷ As the EU's new anti-money laundering directive exempts trusts from transparency requirements applied to companies, this new trust sector may attract illicit financial flows, if no stringent transparency and monitoring measures are introduced by the government.

It is worth noting that, in some other respects, Hungary is ahead in corporate transparency. According to the 2011 Act on National Assets, any company seeking grants has to be able to present a clear ownership structure, with similar requirements for public procurement.⁶⁴⁸ Companies owned through non-EU, non-EEC and non-OECD countries that Hungary does not have a tax treaty with are automatically regarded as non-transparent and are therefore barred from public procurement contracts and grants.⁶⁴⁹

EU solutions

The large number of recently introduced sector-specific taxes have come under scrutiny by the European Commission. In October 2014, the Commission criticised the government's plan to introduce a new tax on internet data transfers, while domestically, large protests and criticism from a number of professional organisations followed the announcement of the plan.⁶⁵⁰

In March 2015, the European Commission opened an in-depth investigation into the country's Advertisement Tax Act introduced in 2014. In July 2015 it initiated two separate in-depth investigations into the tax on large tobacco companies introduced in December 2014 with the Act XCIV of 2014 on the health contribution of tobacco industry businesses, and into the Hungarian Food Chain Act, amended in 2014.⁶⁵¹

The Commission challenged the tobacco and advertisement tax on the basis that they could provide state aid to smaller operators, as the taxes apply progressive bands according to turnover rather than profits, and issued injunctions in both cases, prohibiting the use of progressive rates in these taxes until the Commission's investigation is concluded.⁶⁵² Some large multinational companies that were affected by the legislation criticised the taxes, claiming that they are "openly and clearly" targeting foreign companies.⁶⁵³ In response to such complaints, the Minister of the Prime Minister's Office said, "You can go complain to the EU, but then you'll just pay more."⁶⁵⁴

Needless to say, the many investigations from the Commission and the government's resolve to set its own tax policies have resulted in a tense relationship between Hungary and the EU when it comes to taxation.

While relevant Hungarian ministries have declined to elaborate on the government's position on the Common Consolidated Corporate Tax Base or CCCTB (EU directive in Hungarian *Közös konszolidált társaságiadó-alap KKTA*⁶⁵⁵), comments from the Prime Minister suggest that the Hungarian government does not support it. On 25 March 2011, concerning the CCCTB and the Euro Plus Pact of March 2011, the still sitting Prime Minister Viktor Orbán said, "Hungary will not join the pact that the euro zone's heads of state and governments had agreed upon". This was because, as Orbán explained, it would eventually lead to the harmonisation of the corporate tax base. He also said that the acceptance of a harmonised corporate tax base across Europe would mean a significant blow to economic growth in Hungary, and the country would lose the independence of its tax policy.⁶⁵⁶

It is not known whether the government would be open to the new revised version of the CCCTB that the Commission has announced in 2015.

Global solutions

Hungary's position on whether or not to establish an intergovernmental body on taxation remains unclear.

At the Financing for Development conference in June 2015 the government sent a delegation consisting of the Ministry of Foreign Affairs deputy state secretary responsible for international cooperation and the head of the Department for Development Cooperation and Humanitarian Aid. Officials from the Hungarian Ministry for National Economy did not travel to Addis Ababa. However, the ministry organised a Central European regional conference on development finance and private sector development for the week after the conference. Representatives from ministries of foreign affairs, ministries of finance, and development agencies from Austria, the Czech Republic, Poland, Slovakia and Slovenia attended, and participants discussed possible directions of post-2015 development finance and development cooperation for the countries of Central Europe.⁶⁵⁷

Conclusion

Hungary still offers very attractive corporate income tax regimes in the EU, despite the sector-specific taxes introduced from 2010 onwards, which target mostly foreign-owned large corporations.⁶⁵⁸ Originally introduced as extraordinary measures, sector-specific taxes have generated over 5 per cent of the central budget revenue in 2014,⁶⁵⁹ making them an attractive tool for the government to balance its budget. This past year has seen the Hungarian government come under scrutiny by the EU a number of times for the alleged discriminative nature of some of the sector-specific taxes.

Hungary's system of SPEs and its favourable holding regime make it an attractive destination for tax planning purposes, which is also reflected in the high rate of capital in transit in the country.

On a positive note, there has been some improvement in corporate transparency reporting, and recently adopted legislation will introduce mandatory IFSB reporting from 2016 for domestic companies.

Ireland

"The 12.5% [corporation] tax rate never has been and never will be up for discussion ... The Road Map⁶⁶⁰ responds to a changing international environment and ensures that we continue to attract and retain companies of real substance offering real jobs. The Road Map will improve Ireland's R&D regime ... enhance Ireland's existing intangible asset tax provisions to make Ireland an even more attractive location for companies to develop intellectual property."

Irish Finance Minister Michael Noonan, Budget Speech 2015⁶⁶¹

General overview

A September 2015 poll showed that 70 per cent of Irish respondents believe tax avoidance by multinationals is morally wrong, even if legal.⁶⁶² The past year has seen Ireland take one significant step forward in tackling the loophole that allowed the 'Double Irish' tax avoidance mechanism as a result of international pressure, but also a few steps back – expanding generous corporate R&D incentives and introducing a patent box tax offering in 2015.

Ireland expanded its network of double taxation treaties, including a somewhat improved one with Zambia; it continued to be a location of choice for Special Purpose Entities; and kept a watchful eye on EU and OECD initiatives to advance the reform of international corporate taxation standards. As the European Commission continues to investigate Ireland's tax arrangements with Apple in 2015, the government insists that Ireland has broken no EU 'state aid' rules in terms of the advisory tax opinions issued to the corporation.

The Revenue Commissioners have been given enhanced resources to address transfer pricing – but not to inquire into transfer pricing transactions that may artificially boost Irish profits; rather "to defend its tax base" in the face of "international transfer pricing disputes... likely to grow in number."⁶⁶³

The publication date for a government spillover analysis on the effect of Ireland's tax system on developing countries has been repeatedly pushed back through spring into autumn 2015. Even before publication in October (too late for analysis in this report), the study appears not to have gone into the depth and detail that tax justice campaigners were calling for.⁶⁶⁴

In a year of ongoing investigations of tax rulings by the European Commission and European Parliament, when the UN rapporteur on extreme poverty and human rights stated that "nobody believes Ireland is not a tax haven" while decrying the effects of the country's tax system on developing countries,⁶⁶⁵ and with the planned introduction of a patent box, it is difficult to shake off the impression that Ireland is still among those jurisdictions in the EU that are most problematic when it comes to cross-border tax avoidance.

Tax policies

The government's Finance Bill 2015 (introduced in October 2014) sought to put an end to the 'Double Irish' scheme used by Google, Apple and others,⁶⁶⁶ by establishing "a default rule that all companies incorporated in Ireland are tax resident in Ireland,"⁶⁶⁷ unless otherwise determined under a bilateral tax treaty. The change came into effect for new companies from 1 January 2015, but a long transition period to January 2021 will apply for existing companies.⁶⁶⁸

Together with Budget 2015, the government published its Road Map for Ireland's Tax Competitiveness in which it identified ten specific commitments and actions to enhance its tax competitiveness.⁶⁶⁹ The road map provided for "enhanced" incentives for R&D and internationally mobile staff members, a Foreign Earnings Deduction tax scheme, expansion of Ireland's tax treaty network and increases in tax authority resources "to defend its tax base" during anticipated transfer pricing disputes. The Finance Bill also included changes to strengthen the general anti-avoidance and Mandatory Disclosure regimes.⁶⁷⁰

There is an increasing focus by the Revenue, through transfer pricing law and practice, "on ensuring that multinational profits are not understated," Finance Minister Michael Noonan stated in response to a written Parliamentary Question in June 2015.⁶⁷¹ From 2012 to the end of January 2014, "a number of transfer pricing interventions were opened," the Department of Finance has stated, but "to date, none of these have given rise to additional tax revenues."⁶⁷²

Tax rulings

Ireland states that it does not have a statutorily binding tax ruling system but that the Revenue Commissioners, "in certain limited circumstances, operate a system of non-binding advance opinions where companies can seek advice on the correct application of the law in their self-assessed tax filings."⁶⁷³ The European Commission is investigating two advance opinions to Apple subsidiaries over a possible breach of state aid rules. The Commission missed its June 2015 deadline for publishing its findings, citing delays from some Member States among those under investigation (Ireland, Luxembourg and the Netherlands), though not specifying Ireland, as the reason for the delay.⁶⁷⁴

The Revenue's statutory requirement to protect the confidentiality of taxpayer information means that it does not publish details of tax opinions issued to taxpayers, Finance Minister Noonan stated in June 2015.⁶⁷⁵ Opinions may be made available on a 'no-names' basis by request under the Freedom of Information Act.⁶⁷⁶ From information compiled to respond to European Commission enquiries on tax rulings, Minister Noonan disclosed that the Revenue had identified 99 advance opinions relating to corporation tax matters in 2010, 128 in 2011 and 108 in 2012.⁶⁷⁷ Ireland also had ten Advance Pricing Agreements (APAs) in force by the end of 2013, according to data compiled by a European Commission expert group.⁶⁷⁸ In accordance with its guidelines, the Revenue "refuses to provide opinions whenever it considers transactions would facilitate tax avoidance"; however, "it does not record the number of such refusals."⁶⁷⁹

Special Purpose Entities (SPEs)

Although Ireland does not collect statistics on SPEs in general,⁶⁸⁰ it does so for Financial Vehicle Corporations (FVCs) – a special type of SPE that deals in securitisation transactions. These statistics show that Ireland holds close to 23 per cent (more than €400 billion) of all assets held by FVCs in the EU, making it the biggest FVC centre in the EU.⁶⁸¹ Ireland's position as a preferred jurisdiction for structured finance is related to Section 110 of the tax law, which gives SPEs "a neutral tax position."⁶⁸² The favourable tax treatment of Section 110 companies is responsible for what one tax advisor calls "Ireland's world renowned big-ticket leasing industry", with favourable treatment for aircraft and shipping leasing.⁶⁸³

Despite the importance of SPEs in Ireland, the government states that Ireland does not have a specific definition for SPEs, and therefore cannot provide a definitive response in relation to questions about them.⁶⁸⁴

Patent box

On the same day that the government announced the phasing out of the 'Double Irish' tax avoidance structure, it also announced the planned introduction of a Knowledge Development Box, or patent box,⁶⁸⁵ having had one from the 1970s until 2010.⁶⁸⁶ The new Knowledge Development Box scheme would be "best in class and at a low, competitive and sustainable tax rate", Minister Michael Noonan said in his 2015 Budget speech.⁶⁸⁷

Ireland states that the Knowledge Development Box (details of which were announced too late for analysis in this report) will comply with the so-called 'modified nexus' approach⁶⁸⁸ and holds that "there should be no unfavourable impact on the tax base of any jurisdiction" if this approach was adhered to by all countries.⁶⁸⁹ Ireland previously worried "whether patent boxes might amount to a harmful tax regime", but welcomed EU and OECD examination of patent boxes.⁶⁹⁰

The results of the government's consultation on the patent box were released in July 2015.⁶⁹¹ Legislation for the knowledge development box will be included with the Finance Bill in autumn 2015 and corporate income that qualifies will be subject to a reduced rate of corporation tax of 6.25 per cent.⁶⁹²

Tax treaties

Ireland has signed double taxation agreements with 72 countries (68 of those are currently in effect).⁶⁹³ Work to expand this "will be accelerated where possible," according to the government.⁶⁹⁴ The latest treaties signed with developing countries were renegotiations of existing treaties with Zambia (March 2015) and Pakistan (April 2015),⁶⁹⁵ as well as a treaty with Ukraine that entered into force in August 2015.⁶⁹⁶

The government sees its expansion of tax treaties with African countries as part of its work towards policy coherence for development, highlighting recent treaties with Botswana (2013) and Ethiopia (2014) as positive steps forward.⁶⁹⁷ This is despite research having shown that Ireland's former treaty with Zambia could have deprived the country of tax revenues equivalent to €1 in every €14 of Irish development aid to the country.⁶⁹⁸ Ireland has largely favoured the OECD rather than UN model for tax treaty negotiations with developing countries, but the government states that it is happy to consider another country's model as the basis for negotiations.⁶⁹⁹ More recent treaties, such as those with Zambia and Pakistan, reference elements of both models. Analysis of the renegotiated Ireland-Zambia treaty in 2015 shows that it is substantially better than the 1971 one it replaces and is generally more pro-development than the OECD treaty model. However, there are still some concerns,⁷⁰⁰ including the absence of an anti-abuse clause.

Financial and corporate transparency

Ireland is “maintaining its commitment to ensuring an open and transparent tax regime,” according to the government’s 2014 Road Map for Ireland’s Tax Competitiveness.⁷⁰¹ A September 2015 poll showed that 76 per cent of Irish respondents thought that more detailed reporting by multinational companies would show whether companies were paying the correct amount of tax.⁷⁰²

In June 2015, the Central Bank warned that a 2016 review of Ireland’s anti-money laundering practices by the international Financial Action Task Force (FATF) would be “quite a challenge”.⁷⁰³ That warning followed a February 2015 Central Bank review of the financial sector’s anti-money laundering compliance, which found evidence of “incomplete risk assessment” that lacked “thorough analysis”, “non-adherence” to the bank’s own anti-money laundering policies and other shortcomings.⁷⁰⁴ The report noted that “the number and nature of issues identified suggests that more work is required by banks in Ireland to effectively manage Money Laundering and Terrorist Financing risk.”⁷⁰⁵

Public reporting by multinational corporations

The Department of Finance states that Ireland “supports the OECD approach of Country by Country Reporting to Revenue authorities only” in line with Ireland’s “legal commitment to taxpayer confidentiality.”⁷⁰⁶ This means that there will be no public access to the information from country by country reporting, and that only companies exceeding a threshold of €750m in annual consolidated group revenues will be included.

Ownership transparency

A 2015 Central Bank review of the financial sector’s anti-money laundering compliance found that a “sufficient review of customer and beneficial owner verification documentation is not completed or evidenced by branch managers.”⁷⁰⁷ A similar review of credit unions found “lack of documented procedures to identify and verify beneficial owners where warranted.”⁷⁰⁸ Despite these shortcomings, it is the government’s position that beneficial ownership of companies should be known, and that provisions are already in place (under information exchange agreements) when authorities require this knowledge about companies and trusts.⁷⁰⁹ It has not yet been decided within government, at political or public service levels, how it will establish the register required under the 4th EU Anti-Money Laundering Directive, which government department or agency will host the register, or whether the register will be public.⁷¹⁰ Government officials state that Ireland is working towards implementing the Directive into Irish law ahead of the scheduled FATF assessment of the country in 2016.

Automatic exchange of information

Since 2001, Ireland has had a dedicated unit for “uncovering and confronting the use of offshore accounts by Irish resident individuals.”⁷¹¹ According to the Revenue Commissioners, the unit has brought in more than €1 billion in additional revenue.⁷¹²

Following SwissLeaks, which revealed more than €3.5 billion related to Ireland,⁷¹³ in February 2014 the Revenue reported to Ireland’s Public Accounts Committee on its follow-up inquiries.⁷¹⁴ The Revenue stated that it had assessed the risk profiles of 270 corporations in the SwissLeaks files with regard to possible tax evasion, resulting in 33 investigations; and had recovered €4.6m in settlements, including from one corporate case. There were no prosecutions concerning corporate taxpayers.⁷¹⁵ The Department of Finance stated in June 2015 that it would further evaluate the HSBC Bank data to possibly open more investigations.⁷¹⁶

Ireland’s Department of Finance stated in June 2015 that it considers data protection and confidentiality critical to the automatic exchange of information. These, it said, “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.”⁷¹⁷ Ireland is, therefore, likely to provide information to a very select number of developing countries, if any, in the near future.

EU solutions

Ireland is “committed to the ongoing work at EU level to deal with tax evasion and avoidance,” the Department of Finance states,⁷¹⁸ but that should take into account the OECD work programme on base erosion and profit-shifting, to avoid a “conflicting approach”.⁷¹⁹

Irish media often depict measures by the EU institutions to curb tax dodging as a threat to the country’s 12.5 per cent corporate income tax rate.⁷²⁰ Opposition to any EU-wide harmonisation of that lies at the core of Irish government antipathy towards a coordinated corporate tax system, such as the Commission’s proposal for a Common Consolidated Corporate Tax Base (CCCTB). Head of Government and Taoiseach Enda Kenny stated in March 2015: “Ireland has always objected to the proposal that was on the table in respect of CCCTB... If the Commission comes forward with a new set of proposals we will engage with that constructively... but in respect of the proposal that was there, we’ve always said from the very beginning that this is not workable and we object to it.”⁷²¹

Meanwhile, the Commission's state aid investigation as to whether Ireland's tax rulings to two Apple subsidiaries constitute state aid that contravenes competition rules continues into the latter half of 2015. The government has said it will do everything it can to "ensure that they [the Commission] have the full information they require,"⁷²² but that it is confident that there is no state aid rule breach in this case. Finance Minister Michael Noonan stated in June 2015, replying to a Parliamentary Question, that "in the event that the Commission forms the view that there was state aid... Ireland will challenge this decision in the European Courts, to continue to vigorously defend the Irish position."⁷²³

Global solutions

The Department of Finance states that Ireland has taken an active role in the OECD's Base Erosion and Profit Shifting (BEPS) project and, despite reservations, considers that "the reports are a big step towards addressing problems in the international tax environment."⁷²⁴

The government considers the fight against tax avoidance and evasion as a key component of its policy coherence for development strategy, and states that the government intends to play "a strong role in global efforts to bring about a fairer and more transparent international taxation system"⁷²⁵ Despite this, the Irish government does not favour the establishment of an intergovernmental body on tax, stating that "the current format of the UN Tax Committee, a committee of independent experts, chosen on a broad international basis, is appropriate."⁷²⁶ Before the Financing for Development summit in July 2015, Irish Aid stated that the summit "should not lead to institutional proliferation, but rather focus on improving cooperation among existing bodies and ensure that all countries are in a position to fully benefit from increased transparency at international level."⁷²⁷

Conclusions

Ireland has tackled the loophole that allowed for the 'Double Irish' scam, while insisting that the scheme was never Irish but "came about due to mismatches caused by the interaction between the domestic tax rules of Ireland and other countries."⁷²⁸ The government is engaging with the OECD and EU on the shape of global corporate tax reform, while striving "to reposition Ireland so as to be best able to reap the benefits, in terms of sustainable foreign direct investment, of a changed international tax landscape."⁷²⁹

The government emphasises, as a core national interest, Ireland's corporate tax competitiveness as a means of winning foreign direct investment (FDI) in a global economy. It has prioritised an Intellectual Property regime for corporations (through a patent box, expanded capital and R&D allowances, a growing tax treaty network) to take advantage of opportunities in the digital economy, while also strengthening its capacity to defend Ireland's tax base in expected transfer pricing disputes.

In February 2015, UN Special Rapporteur on Extreme Poverty and Human Rights Philip Alston, expressed concerns at Ireland's "range of schemes that look to all the world to be designed to facilitate tax avoidance by huge multinationals in return for a pittance of a reward to Ireland." Such "policies that give large multinationals a free pass on tax are especially damaging to developing countries" and raise serious human rights concerns: tax policy and fiscal policy are human rights policy, he added. Yet there seems little urgency around the Irish government's Spillover Analysis (conducted in 2014-15) of any possible impact of Ireland's tax policy on developing countries, or any meaningful attempts to address developing countries' call for a truly global tax boy.

As things stand, there remains the clear risk identified by tax experts⁷³⁰ that, without Ireland closing gaps in its corporate taxation and incentives systems, along with its transfer pricing regime, multinational corporations will continue to create or operate aggressive tax dodging schemes from Ireland that reduce their global liabilities and deny much-needed tax revenues to low-income countries.

Italy

“Gone are the days of thinking that those who consider themselves cunning will prevail.”

Matteo Renzi, Italian Prime Minister, November 2014⁷³¹

General overview

Over the last 12 months tax issues have been high on the political agenda in Italy. In March 2014, the Italian government got a legislative mandate from the Parliament to reform the taxation system.⁷³² Legislation on tax expenditure, sanctions, patent boxes and international tax rulings, among others, has since been reviewed. At the same time, in July 2015 Italian Prime Minister Matteo Renzi announced what he called a “Copernican Revolution” for the Italian tax system, in which the country’s taxes will be reduced over the next three years by €45 billion – a goal that is difficult to meet without major expenditure cuts against the country’s still high budget deficit.⁷³³

Italian prosecutors and tax authorities have continued to investigate relevant cases of tax avoidance, including cases widely reported in national media and involving well-known individuals (such as singers Umberto Tozzi⁷³⁴ and Gino Paoli⁷³⁵). Entrepreneur Flavio Briatore⁷³⁶ was this year sentenced to 23 months probation for a €3.6 million tax scam involving his super yacht – he says he will appeal – while Italy’s World Cup winning football captain Fabio Cannavaro⁷³⁷ has had property seized while the authorities investigate his tax affairs.

Major corporations, including companies in the football and IT sectors, have been subject to investigation while in March 2015, Italian prosecutors reportedly wrapped up investigations into €879 million of taxes thought to be saved by Apple in Italy by structuring its investment through Ireland, a move that could open up for a formal court case.⁷³⁸ More generally, the Italian government claimed that its action against tax dodging managed to detect €14.2 billion in 2014.⁷³⁹

Nevertheless it should be pointed out that very few people are imprisoned in Italy for economic and financial crimes, including tax crimes. In 2011, just 156 people were jailed for these crimes in Italy, which is 0.4% of the population, compared to the average of the 4.1% in Europe.⁷⁴⁰

Media attention on tax dodging issues further increased due to the SwissLeaks and LuxLeaks scandals. Almost 7,500 clients associated with Italy were revealed in the SwissLeaks database. Well-known entrepreneurs, such as Flavio Briatore and Valentino Garavani (better known just as Valentino), figured prominently in the list and Italy ranked seventh among the countries with the largest dollar amount in terms of files.⁷⁴¹ Dozens of major Italian companies and banks and financial intermediaries were also among the companies exposed in the LuxLeaks documents.⁷⁴²

While domestic taxation has been the focus of much attention in Italy, there has been little attention paid by the Italian media and the public to tax justice and development issues, including key international processes such as the UN Financing for Development conference.

Tax policies

A working paper by Istat, Italy’s National Statistical Office, has found that the tax burden on businesses in Italy fell by 9.9 per cent in 2014, providing savings to businesses of €2.6 billion. Istat found that, while 57.3 per cent of companies benefited from the lower tax burden, the government’s measures had little effect on reducing taxes for commercial businesses and small- and medium-sized enterprises, for which tax burdens are said to remain relatively high.⁷⁴³

Changes in 2015 in the taxation law have significantly limited the definition of tax crimes by raising the threshold below which tax evasion is not regarded as a crime any longer. According to the government such a troubling development is necessary to better align with the principle of proportionality in punishment.⁷⁴⁴

More troubling still, in April 2015 new legislation on tax avoidance was introduced by the government – and approved by the Parliament in June 2015. It defines tax avoidance as an “abuse of right”, which means it can only give rise to administrative sanctions.⁷⁴⁵ This is a change compared to previously, where certain cases of tax avoidance could be a criminal offence in Italy. Furthermore, the statute of limitations concerning cases of alleged tax avoidance has been shortened, raising concerns that it will not be possible to bring to justice those behind a number of past violations. The government strongly supported these changes, arguing that it would strengthen the rule of law. The decision triggered several critiques by opposition forces as well as leading magistrates in the country.⁷⁴⁶

Italy has a so-called black list of tax havens, and to discourage trade with these it does not recognise costs related to transfers with these jurisdictions as deductible.⁷⁴⁷ However, over the course of this year, this tool against companies' tax dodging has come under increasing pressure. First, the government introduced a draft decree in 2015 – approved by the Parliament in June⁷⁴⁸ – which seeks to soften this approach by limiting the non-deductible part of the cost of the transfer to that which is above any market price.⁷⁴⁹ Second, after signing information exchange agreements, a long list of problematic jurisdictions have been removed from Italy's blacklist in 2015, including Switzerland, Guernsey, Isle of Man, Monaco and Mauritius.⁷⁵⁰

At the end of 2014 the government introduced a voluntary disclosure procedure to incentivise capital repatriation by 30 September 2015. Several questions still remain about the effectiveness and adequacy of this proposal given that only a small number of requests have been filed so far.⁷⁵¹

Italy provides tax incentives for research and development (R&D), which primarily consists of tax credits and accelerated depreciation, benefiting both small- and medium-sized enterprises as well as large corporations. Overall, the support as a percentage of Gross Domestic Product (GDP) is lower than in most other EU countries.⁷⁵²

It should be noted that, in a recent review covering 12 EU Member States, Italy is by far the country with largest reduction in government revenue through tax incentives (tax expenditure) as a share of GDP (8.1%). The bulk of this is related to tax expenditures from personal income tax and value added tax (VAT), while less than 1 percentage point is from corporate income taxation.⁷⁵³ Tax expenditures have been reviewed by the government at the end of 2014 and further adjustments are in the making to comply with the annual budget law.

Tax rulings

A unilateral Advance Pricing Agreement (APA) procedure is provided for by Italian law since 2003.⁷⁵⁴ According to the European Commission, Italy had 47 APAs in force at the end of 2013, with 18 of these granted alone in 2013, indicating an increase in use.⁷⁵⁵

In April 2015, the Italian government issued an implementing decree of its "investment package", including a review of the international tax ruling legislation in order to allow ad hoc and ex-ante agreements between foreign companies willing to invest in Italy and the government on specific investments above €30 million.⁷⁵⁶ The decree "for the growth and internationalisation of companies" was approved by the Parliament in June 2015.⁷⁵⁷

The new rulings will help to give certainty to foreign investors by assuring them that they will be able to avoid tax audits and challenges by tax authorities and, according to a tax advisor at a major international law firm, they could become "a very interesting means of enhancing the attractiveness of investing in Italy."⁷⁵⁸ The decree also covers new expanded opportunities for multinational companies already based in Italy on a range of issues, including the use of tax treaties.

It is a paradox that Italian authorities are on the one hand quite active in challenging multinational companies on their tax payments, while at the same time promoting this new regulation, which limits the possibility of the tax administration to challenge these in the future.

Special Purpose Entities (SPEs)

Trusts are hardly incorporated in Italy, given that specific legislation to establish trusts does not exist and only international conventions apply in that regard, as well as fiscal procedures by the national tax authority.⁷⁵⁹ Special Purpose Entities (SPEs) follow under the supervision of the Italian Central Bank. As a matter of fact, these entities are primarily used in securitisation operations by financial intermediaries (better known in these cases as special purpose vehicles). According to the OECD, SPEs are neither present nor significant in Italy.⁷⁶⁰

Patent box

Italy is the most recent EU member to implement a patent box, with the decree to implement the tax reductions signed in August 2015.⁷⁶¹ The Italian government has already aligned its practice to OECD Base Erosion and Profit Shifting (BEPS) requirements under action point 5 (the so-called "modified nexus approach").⁷⁶² In March 2015, the government introduced a new law on the matter.⁷⁶³ New provisions allow up to 50 per cent of income related to intellectual property (IP) to be excluded for five years from the tax basis if a tax treaty is in place between Italy and the company's home country.⁷⁶⁴ This could make it significantly easier for multinational companies to lower their tax bill in Italy and abroad and represents a worrying development.

Tax treaties

Italy has a relatively high number of tax treaties with developing countries (49).⁷⁶⁵ The Ministry of Finance reports that Italy's treaties are based primarily on the OECD model, but that the UN model is another source of reference.⁷⁶⁶

The latest treaty with a developing country was entered into with the Republic of Congo in mid-2014.⁷⁶⁷ Italy's oil giant ENI is a major investor in the Congo and, during a state visit from Prime Minister Renzi one month after the signing of the tax treaty, he oversaw the signing of a new expansion agreement between ENI and the government of the Congo.⁷⁶⁸

In 2015, Italy has not negotiated any treaties with developing countries, but have finalised a treaty with Hong Kong, a jurisdiction known for its problematic role in facilitating tax planning.⁷⁶⁹

Financial and corporate transparency

Italy received the Swissleaks list of account holders in 2010 and has since been cracking down on tax evaders and banking secrecy. In 2015 the Supreme Court upheld that the revenue authority could use the Swissleaks list in its investigation.⁷⁷⁰ Italy has made a strong effort in 2015 to sign information exchange agreements with a number of jurisdictions known for banking secrecy or for facilitating aggressive tax planning. This includes an agreement with Switzerland signed in February 2015 for the automatic exchange of tax information starting from 2018.⁷⁷¹ This agreement followed the public pressure on the heels of the SwissLeaks scandal.

Public reporting for multinational corporations

The Italian government's position on country by country reporting for all sectors is not yet clear as no public statements or legislative proposals have made clear whether the government intends to follow the OECD BEPS recommendations, or whether they will implement a more ambitious public reporting requirement.

The Capital Requirements Directive IV, which contains a public country by country reporting requirement for the financial sector, was finally fully adopted into Italian law in May 2015.⁷⁷² Despite this, the Italian Central Bank has already issued guidelines for the financial sector since the end of 2013 on how to implement the country by country reporting provisions of the directive.⁷⁷³ A specific consultation on the implementation of article 89, which contains the country by country reporting provision, was held in mid-2014.⁷⁷⁴ The text of article 89 has been fully inserted in Italian law without relevant modifications.⁷⁷⁵ In early 2015 several Italian banks – including some of the major ones – and several financial intermediaries publicly disclosed on their website country by country reporting data, including income, profits and tax paid – while nothing got reported on public subsidies received. The published data was often in open and workable formats (such as .xls).⁷⁷⁶

Ownership transparency

The Bank of Italy released a stern warning in mid-2015 that money laundering and tax evasion were widening, with the number of suspicious bank transactions monitored in 2014 at 71,700. This was up by nearly 7,000 from 2013 and nearly seven times more than reported in 2007.⁷⁷⁷ The concealment of the real owners of laundered money is key for criminal activity to flourish, which is why the issue of beneficial ownership transparency has strong relevance for the Italian economy.

Since the mid-1990s, Italy has had a publicly accessible register of companies.⁷⁷⁸ According to the Italian civil code, information in the public register is checked by a judge appointed by the provincial court.⁷⁷⁹ In general terms, the Italian government has previously supported the establishment of public and centralised registers of beneficial ownership information as a tool to fight tax avoidance.⁷⁸⁰ However, the recent compromised agreement in the anti-money laundering directive at the European level seems to have softened the government's position in this regard.

Today the government is committed to a quick implementation of the directive, possibly by the end of the year or early 2016. However, it does not intend to move beyond the compromise text reached in the European negotiations, which requests to make central registers accessible just to stakeholders with a "legitimate interest".⁷⁸¹ Based on a preliminary interpretation of the new directive, the government would recognise as having a legitimate interest those entities that have in their statute or mandate the fight against money laundering, corruption and tax avoidance, as well as journalists and media with an extensive track record of investigating these matters, and possibly economic actors engaged in direct relationships with those specific companies being screened.⁷⁸² It is still unclear how the legal construct of the legitimate interest definition will be inserted in the text of the implemented directive in order to match existing jurisprudence in the country.

EU solutions

The appointment of former Luxembourg Prime Minister Jean-Claude Juncker as head of the European Commission received a lot of media attention in Italy.⁷⁸³ In the second semester of 2014, Italy held the rotating presidency of the EU and in that period led negotiations on behalf of the European Council on the revision of the anti-money laundering directive, including significant tax-related provisions. Tense negotiations prompted the Italian government to back down in the end and to accept restrictions on the public's access to registers of beneficial owners of companies and no access to information on trust owners.

At the same time the Italian government did not take any specific public position on investigations by the European Commission on state aid related to transfer pricing arrangements, despite one of the cases involving the Italian car-maker Fiat in Luxembourg.⁷⁸⁴

As a response to the LuxLeaks scandal, at the end of November 2014 the Italian Finance Minister, together with his colleagues from France and Germany, wrote to the Commissioner for taxation calling for "common, binding rules on corporate taxation to curb tax competition and fight aggressive tax planning" at the EU level.⁷⁸⁵

Global solutions

The Italian government kept a low profile concerning the July 2015 UN Financing for Development conference, in particular as concerns taxation issues. More specifically, the Italian government has always supported the OECD's Global Forum process on tax and development as an important way to include developing countries in the OECD-led work on this matter and has been critical of the strengthening of a UN tax committee on taxation matters.⁷⁸⁶

More generally, the strategic guidelines for international development cooperation of Italy in 2013-2015 do not include any reference to tax and development issues and little attention is paid to domestic resource mobilisation.⁷⁸⁷

The Italian government is strongly supportive of the OECD BEPS process and reports that it is satisfied overall with its outcomes so far.⁷⁸⁸

Conclusion

Significant changes have taken place in Italian tax policies over the last 12 months. Several developments are quite troubling because they will allow more tax incentives for multinational companies operating in Italy, not least through the newly adopted patent box. This raises deep concerns about the Italian government's commitment to fighting tax dodging in an effective manner.

While new European directives have been implemented into the Italian law – including new requirements on the disclosure of beneficial ownership of companies and country by country reporting by multinational companies in the financial sector – Italy tends to follow international consensus around OECD BEPS. It has not advanced any further improvements of the legislation, in particular on public country by country reporting and tax rulings.

Disappointingly the Italian government has shown very little interest in connecting the tax matter with development and resists the establishment of a more effective body on tax matters under the auspices of the UN.

Luxembourg

"If you have a situation where some companies pay zero taxes, this is terrible towards the middle class, towards the traders or towards the taxpayer – to tell him, you pay your taxes and others don't. Therefore it is important to talk about the tax base [...] The fact to pay taxes nowhere is something Luxembourg is not endorsing."

Prime Minister of Luxembourg Xavier Bettel, December 2014⁷⁸⁹

General overview

Luxembourg has long resented the label of 'tax haven' that is so often applied to it. Repeated claims by the government that they follow international standards and "have nothing to hide",⁷⁹⁰ however, found a limited receptive audience in a year where Luxembourg became the centre of attention with headline-grabbing tax dodging scandals time and again.⁷⁹¹ Most prominent of these were the LuxLeaks exposures in November 2014 when hundreds of tax rulings were leaked. The leak, considered a 'Tsunami' by the Minister of Finance himself,⁷⁹² brought condemnation from a wide number of EU Member States⁷⁹³ with the German Economics Minister calling the practices exposed "an axe to European solidarity"⁷⁹⁴ and the French, German and Italian Ministers of Finance demanding action from the European Commission, stating that the exposures had contributed to irreversibly shifting "the limits of permissible tax competition" in the EU.⁷⁹⁵

The whistleblower who leaked the information that led to the LuxLeaks scandal has been charged by the Luxembourg courts and could face several years in prison.⁷⁹⁶ The prosecution led to a broad coalition of politicians, campaigners, academics and journalists speaking out in protest.⁷⁹⁷ Later, similar charges were brought against two other individuals, one of them a French journalist who helped expose the story.⁷⁹⁸

The scandal surrounding Luxembourg's tax regime deepened further when new research published in February and June 2015 alleged that both McDonald's and Walmart had used structures in Luxembourg to lower their tax bills.⁷⁹⁹

Amid the scandals, the Minister of Finance reassured the international community that the Luxembourg government is working towards "more transparency and tax justice" and that they are "on a train of reforms which is really a bullet train."⁸⁰⁰ And some steps forward can be seen in relation to an easing of the previous strict banking secrecy, and by putting in place for the first time a firm legal framework for the country's transfer pricing and tax rulings practices.

As LuxLeaks reaches its one-year anniversary, there is however a sense that the government's reform programme has been characterised more by foot dragging than by the promised bullet train, with the main features of the Luxembourg model remaining intact.

The scandals have brought public awareness not only outside but more importantly in the country itself, critical voices have arisen⁸⁰¹ and it has slowly created a controversial but constructive debate between stakeholders from civil society, politics and the private sector.

Tax policies

Apart from the LuxLeaks revelations, several well-documented case studies in 2015 showed how big multinational companies were apparently able to use the tax policies offered in Luxembourg to their advantage. For example, one report showed that, despite not having any shops in the Duchy, Walmart had 22 shell companies there, holding assets of \$64.2 billion. Through a number of accounting operations, Walmart paid less than one per cent tax on reported profits of \$1.3 billion between 2010 and 2013.⁸⁰² Similarly, another report documented how McDonald's made use of a shell company in Luxembourg that employed only 13 people yet handled a turnover of €3.7 billion over the period 2009 to 2013, while paying only €16 million in taxes in Luxembourg.⁸⁰³

Despite such revelations, perhaps the biggest change in the Luxembourg tax system in the last year did not focus on closing loopholes in the corporate tax system, but was instead a 2 per cent hike in its value added tax (VAT) rate, which took effect in January 2015.⁸⁰⁴ The increase was to make up for the expected shortfall in government revenue as new EU rules on e-commerce took effect. The change concerned Luxembourg's 3 per cent VAT rate on e-commerce – the lowest in the EU – which had led IT giants such as Amazon and iTunes to set up their EU sales hubs there.⁸⁰⁵

From January 2015, new EU rules meant that VAT on e-commerce would be charged at the point of purchase rather than at the point of sale, which meant that companies based in Luxembourg could no longer sell e-products to other EU countries and pay the low 3 per cent VAT rate in Luxembourg.⁸⁰⁶ Together with a ruling in March 2015 from the European Court of Justice, which successfully challenged the low VAT rate on e-books,⁸⁰⁷ this meant that Luxembourg stood to lose tax revenue at an estimated 1.8 per cent of GDP in just two years.⁸⁰⁸ While Luxembourg loses out massively from the changes, other European governments stand to benefit from an increase in their tax base of approximately €700 million.⁸⁰⁹

A bill tabled in August 2015 would implement a general anti-avoidance rule in Luxembourg as well as an anti-hybrid provision contained in the EU's revised Parent-Subsidiary Directive.⁸¹⁰ This seeks to ensure that double non-taxation does not take place, and that withholding tax exemption is not granted to companies that structure themselves for the sole or main purpose of reaping a tax benefit otherwise granted under the directive.

As of January 2015, a new transfer pricing regime entered into force in Luxembourg that brought Luxembourg's rules more closely in line with the OECD arm's length principle, and increased the documentation requirements for multinational companies.⁸¹¹

Tax rulings

The LuxLeaks scandal brought global awareness to the tax rulings of Luxembourg. However, the rulings practice of Luxembourg had already been under scrutiny for some time, following a decision by the European Commission to launch two state aid investigations.⁸¹² Data revealed that by the end of 2013 only the Netherlands had more rulings in force than Luxembourg.⁸¹³

Whether Luxembourg followed the arm's length principle in its tax rulings with a number of multinational companies is at the heart of the European Commission state aid investigations.⁸¹⁴ This is a question that only gained relevance when the inspector who had signed off most of Luxembourg's tax rulings in an interview declared that he determined the arm's length price by sticking his thumb in the air, claiming "there was no other way to determine it."⁸¹⁵ He has since done something of a vanishing act, not appearing in public since the interview and failing to accept invitations to testify in front of the European Parliament's special committee on tax rulings (TAXE).⁸¹⁶

A month ahead of the leaks, the Luxembourg government tabled a new legal framework for its rulings in Parliament. The new law largely codified the existing tax ruling practices, but also brought some welcome changes. These included an improved review process for tax ruling requests, limiting the validity of rulings to five years (with the possibility of renewal), implementing a fee (from €3,000 to €10,000) for rulings, and committing for the first time to publish summarised and anonymised data annually on its rulings.⁸¹⁷ The new legal framework also clearly specifies that a ruling cannot provide an exemption from taxes, or a reduction.⁸¹⁸

Special Purpose Entities (SPEs)

The scale of FDI flowing in and out of Luxembourg, standing respectively at 5,000 to 6,000 per cent of GDP, is dizzying.⁸¹⁹ According to OECD figures, around 95 per cent of all Luxembourg FDI stock is handled by SPEs.⁸²⁰ These 'letterbox' companies abound in Luxembourg, with one address hosting more than 1,600 of these companies alone, for example.⁸²¹

The attractiveness of the Luxembourg SPE regime stems mainly from their tax treatment. As noted by the global audit company PwC, "Luxembourg investment funds are essentially tax-exempt vehicles, with the exception of registration duty and the annual subscription tax."⁸²² The annual subscription tax is between 0.01-0.05 per cent of net assets paid quarterly.⁸²³ 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.⁸²⁴ Due to these benefits the European Commission notes that "Luxembourg is frequently used by multinational companies to channel tax-driven financial flows to other jurisdictions."⁸²⁵ While these holding companies can erode tax bases abroad, they bring in sizeable revenues for the Luxembourg government, with an estimated 6 per cent of the government's revenues coming from one of these popular holding company types (the so-called Soparfis).⁸²⁶

Luxembourg's SPEs impact the flows in and out of developing and emerging economies. For example, for the so-called BRICs countries, Luxembourg is the largest European investor to two (Brazil and Russia), and the second largest to China. Eurostat notes that the reason why Luxembourg appears to be such a major investor to the BRICs is "due to the activity of Special Purpose Entities (SPEs)."⁸²⁷

Patent box

Luxembourg introduced a patent box in 2008 with an effective tax rate of 5.84 per cent on patent and other qualifying income.⁸²⁸ The policy was immediately a hit, as later in the same year McDonald's moved its European intellectual property and franchising rights to a subsidiary in Luxembourg, which in 2013 alone received €833.8 million in royalty payments from branches of McDonald's in other countries.⁸²⁹

In March 2015, in response to a question from the Parliament, the Minister of Finance reported that legislative moves were to be expected in 2015 to align the patent box with the OECD Base Erosion and Profit Shifting (BEPS) recommendation for patent boxes (the so-called modified nexus approach).⁸³⁰ Although not yet confirmed by a legislative proposal, the Minister has reported that the plans will not have immediate effects for those already benefitting from the patent box due to a phase-in period until June 2021 before the new proposed rules would take effect for them.⁸³¹

Tax treaties

Luxembourg has 75 tax treaties in force.⁸³² This is below the average for the countries covered in this report. However, Luxembourg has been rapidly expanding its treaty network in recent years. In the first quarter of 2015 alone, seven new treaties entered into force with countries that Luxembourg did not previously have a treaty with.⁸³³ Equally telling, Luxembourg had 19 pending treaties waiting to enter into force in January 2015.⁸³⁴ Many of the new treaties are with developing countries, including Laos, Botswana, Egypt, Sri Lanka, Pakistan, Senegal, Uruguay.⁸³⁵

Looking at two of the most recent treaties with developing countries, there is evidence that Luxembourg is negotiating for lower withholding tax rates. For example, while the statutory withholding tax rate on dividends in Laos is 10 per cent, the rate in the treaty between Luxembourg and Laos is 5 per cent.⁸³⁶ Similarly, for Sri Lanka the domestic statutory rate on dividends is also 10 per cent, while the rate in their treaty with Luxembourg is 7.5 per cent.⁸³⁷

According to the Minister of Finance, all of Luxembourg's treaties follow the OECD model and analysis of two of the most recent treaties show that this is indeed the case.⁸³⁹ In the 2010 commentaries to the OECD model tax convention, the Luxembourg Government made it clear that it applies a restrictive interpretation of the OECD model when it comes to the application of domestic anti-abuse provisions and controlled foreign corporation (CFC) rules of its treaty partners.⁸⁴⁰ The Minister of Finance in 2015 stated that Luxembourg's treaty format could be updated and that the ministry would be ready to bring existing treaties in line with OECD BEPS recommendations.⁸⁴¹ As such, there seems to be no plans for using the UN model.

Financial and corporate transparency

A 2010 review by the Financial Action Task Force found Luxembourg to be 'non-compliant' or 'partially compliant' on 12 factors related to the international standards on anti-money laundering, and a 2013 OECD review similarly rated Luxembourg as 'non-compliant' on corporate transparency and exchange of tax information.⁸⁴² Since then, the Luxembourg government has been busy trying to ensure that the country's compliance improves. A follow-up review in 2014 found that the country was now 'largely compliant' on anti-money laundering standards.⁸⁴³ Following moves to abandon the country's banking secrecy laws that had become "a handicap", according to the Minister of Finance,⁸⁴⁴ and its support for automatic exchange of information,⁸⁴⁵ a 2015 OECD review is expected to improve the country's rating on transparency and tax information exchange.⁸⁴⁶

Public reporting for multinational corporations

The power of country by country reporting is becoming clearer as banks across Europe have started publishing this information in line with EU requirements. Using the newly published information, journalists at the UK's Guardian newspaper noticed that Barclay's Bank had booked £593 million in profits in their Luxembourg branch, which employed just 30 people and paid only £4 million in tax, giving them an effective tax rate of less than 0.7 per cent in the Duchy.⁸⁴⁷ It is perhaps due to stories such as these that Luxembourg has been less than excited about the prospects of having public country by country reporting. The Minister of Finance in March 2015 stated that, while Luxembourg was in favour of country by country reporting, the government did not support making the information public.⁸⁴⁸

New transfer pricing legislation in 2015 confirmed this stance as it introduces country by country reporting based on OECD's BEPS recommendations. This would imply that the reporting is for tax administrations only, and only covers very large multinational groups.⁸⁴⁹

Ownership transparency

With anonymity no longer guaranteed for banking clients due to international efforts to reduce banking secrecy, some are increasingly seeking to shield their wealth from the tax authorities by using corporate vehicles such as trusts or similar structures that can help conceal the identity of the real owner. This is also reported to be the case in Luxembourg, where it is noted that assets are moving to family wealth-holding companies⁸⁵⁰ and into the country's so-called Freeport, a giant vault where high-value assets can be stored.⁸⁵¹ In light of these changes, it is troubling that Luxembourg's business register does not capture the beneficial owner in all cases, according to a 2014 review.⁸⁵²

In 2013, Luxembourg introduced a draft bill to adopt a new type of wealth fund (the patrimonial fund – also known as the 'Luxembourg trust'⁸⁵³) that offers a high level of confidentiality and low tax treatment.⁸⁵⁴ The bill was supposed to have been passed in 2014 but was delayed in order to bring it further in line with the content of the EU's anti-money laundering directive and is pending finalisation.⁸⁵⁵

The government's position on allowing public access to beneficial ownership information remains unknown.

EU solutions

When it comes to taxation, the relationship between Luxembourg and the EU has been tense over the past year. As mentioned above, the European Commission initiated two state aid investigations in 2014 and in March 2015 it started looking into the Duchy's tax dealings McDonald's.⁸⁵⁶ Concurrently, and in response to the LuxLeaks scandal, the European Parliament set up its TAXE committee, which brought a delegation of MEPs to Luxembourg in March 2015.⁸⁵⁷

Luxembourg has been reluctant to collaborate with both processes. In relation to the state aid investigations, the government first refused to confirm the identity of the companies referred to in documents handed over to the Commission in relation to the state aid investigations. Then it threatened to drag the Commission to court over its information request on tax rulings, which was only abandoned after the request was extended to all Member States.⁸⁵⁹ In relation to the European Parliament's TAXE committee, the Luxembourg Parliament in April 2015 voted down a motion calling on the government to support and cooperate with the committee, encouraged by a speech from the Minister of Finance who argued that the motion was unnecessary and would not provide any added value.⁸⁶⁰

In the second half of 2015, Luxembourg took up the rotating EU Presidency for a six-month period. The government stated that "fair taxation in the Union is an absolute priority" during the presidency.⁸⁶¹ However, reflecting a common argument invoked by the government, it was also made clear that a global level playing field would be preferred, and that as a consequence the EU should only pioneer improvements in tax and transparency if it could "ensure that others follow."⁸⁶²

The government has expressed some support for a more coordinated approach to corporate taxation by demonstrating some support for the Commission's plan to revive the so-called Common Consolidated Corporate Tax Base (CCCTB) proposal. The Luxembourg Finance Committee has similarly expressed support for the CCCTB proposal.⁸⁶³

Global solutions

Despite insisting on the need for a global level playing field and concerted action,⁸⁶⁴ it is noteworthy that the Luxembourg government did not support the establishment of a global intergovernmental body on taxation at the Financing for Development conference in July 2015.

The government focuses on capacity building for tax administrations in its official development assistance and was a signatory to the so-called Addis Tax Initiative, which sought to bring together governments to commit to increase support for developing countries' tax systems.⁸⁶⁵ Despite this, a Parliamentary resolution to commission an independent study on the impact of the Luxembourg financial centre on developing countries was voted down by 56 to 2 votes in April 2015.⁸⁶⁶

Conclusion

2015 was a crucial year for Luxembourg. After the LuxLeaks scandals the weight of the international community's condemnation weighed heavily on the Luxembourg government. As the Luxembourg courts proceed with the charges against the LuxLeaks whistleblower and one of the key journalists behind the story, the public feeling of injustice is only likely to grow.

With the one year anniversary of LuxLeaks approaching, the question of whether the problems have been solved becomes ever more pressing. Unfortunately, it seems that the Luxembourg government chose to promise fundamental reform, while continuing most of its old ways. Thus, the basic outline of the Luxembourg tax model – with its letterbox companies, tax rulings and patent box – remain intact. While some modest, albeit important, improvements have been implemented or promised, for example, in relation to its tax ruling regime, other moves such as the establishment of a Freeport and the plans to introduce a new type of foundation seem to be opening up for new tax planning opportunities.

The lack of cooperation with the EU on taxation matters confirm an impression that Luxembourg still has some way to go. Perhaps most telling, the rejection of an intergovernmental body on taxation in June 2015 while insisting on the need for global concerted action on tax before the government will reform further stresses the lack of consistency in the government's stance on tax.

Some of the steps taken during the last year can have a direct impact on developing countries. These include the decision to adopt confidential country by country reporting and a rapid expansion of rate-reducing tax treaties with developing countries. In addition, the unwillingness of the Luxembourg Parliament to investigate the effect of its financial centre on developing countries while the government pursues a strategy to increase its financial sector's market share in emerging markets again point to inconsistencies.⁸⁶⁷

The Netherlands

"It is essential for developing countries that businesses pay tax for their services. Ultimately, the business community will also benefit from the extra investment that is funded in this way."

Lilianne Ploumen, Minister for Foreign Trade and Development Cooperation, The Netherlands⁸⁶⁸

General overview

There is no gold to be found in the Netherlands. However, Canadian mining company Eldorado Gold has 12 subsidiaries in Amsterdam all the same.⁸⁶⁹ The company has several mines currently operating or in development in Greece. Channelled through the Netherlands, interest income from financing one of these mines ends up in Barbados, where profits are barely taxed.⁸⁷⁰ This is just one of the cases of the past year that revealed the ongoing significance of the Netherlands in international tax planning. And it is not just austerity-ridden societies like Greece that are impacted by Dutch tax policies. ActionAid recently reported how Australian mining company Paladin minimised tax payments in Malawi - one of the world's poorest countries - by using a Dutch letterbox company that reaped the benefits of a tax treaty between Malawi and the Netherlands.⁸⁷¹ (A company spokesperson rejected the report as 'fundamentally unsound').⁸⁷²

LuxLeaks exposed several more cases,⁸⁷³ and a TV show⁸⁷⁴ on the role of the Netherlands in international tax planning spurred Parliamentary questions.⁸⁷⁵ Eldorado Gold's CEO could, with some justification, argue that "Regarding our tax planning and the use of Dutch companies, we do what most corporations do and it's entirely legal."⁸⁷⁶ In the midst of such developments - and an ongoing investigation into a tax ruling of the Netherlands by the European Commission and its general tax practices by the European Parliament - the Dutch government has shown some welcome signs of embracing minor reform. However, it has not yet shown any intention of fundamentally changing the country's status as one of Europe's most important countries for international tax planning.⁸⁷⁷

Tax policies

Tax rulings

At the Dutch tax authority, companies can request a tax ruling - an Advanced Pricing Agreement (APA) or an Advanced Tax Ruling (ATR) - which, according to the government, provides companies with "certainty beforehand" on the application of the law on their facts and circumstances in the Netherlands.⁸⁷⁸ The number of ATRs and APAs concluded in 2012, 2013 and 2014 are depicted in Table 6.⁸⁷⁹

Table 6: Advanced Pricing Agreements (APAs) and Advanced Tax Rulings (ATRs) in the Netherlands

	2012	2013	2014
ATR	468	441	429
APA	247	228	203

According to the limited data that is publicly available on APAs, no other EU member state comes close to issuing as many of these agreements as the Netherlands. Luxembourg, which comes in at second, issued 117 APAs in 2013 compared to 228 in the Netherlands.⁸⁸⁰ Since 1991 the Netherlands has issued no less than 14,619 rulings.⁸⁸¹ However, information regarding the companies and the content of tax rulings is not published or otherwise publicly shared.⁸⁸² After much debate, the Dutch Parliament received details about two individual rulings (Starbucks and KPN), in a technical, closed setting. Ahead of EU agreement on the automatic exchange of tax rulings within the EU, the Netherlands and Germany entered into a bilateral agreement in July 2015 to exchange tax rulings between them.⁸⁸³

Currently, the European Commission is investigating the ruling (APA) between Starbucks Manufacturing EMEA BV and the Dutch tax authority. Even though the Commission "has doubts about the compatibility of such aid with the internal market",⁸⁸⁴ the Dutch government is confident that the ruling is not a form of illegal state aid.⁸⁸⁵

Special Purpose Entities (SPEs)

The beneficial tax policies attract many Special Purpose Entities (SPEs) in the Netherlands, and are part of the reason why there are major inflows and outflows and related stocks of foreign direct investment (FDI) in the Netherlands. Around 80 per cent of the Dutch outward investment position (Dutch FDI stock abroad) is attributable to Dutch SPEs.⁸⁸⁶ Largely due to SPEs, the Netherlands is the largest investor worldwide.⁸⁸⁷ The routing of investments is especially favourable through the so-called Special Financial Institutions (SFIs). The Dutch Central Bank reports there were approximately 14,400 of these in 2013. The Central Bank estimates that the balance sheets of SPEs, which consist mainly of foreign assets and liabilities, continued to grow to a total of €3,545 billion in 2013.⁸⁸⁸

Patent box

According to a European Commission report, the Netherlands makes use of tax credits, enhanced allowance and a patent box.⁸⁸⁹ The lost tax revenue associated with the patent box – or ‘Innovatiebox’, as it is known in the Netherlands – was approximately €625 million in 2012.⁸⁹⁰ The patent box offers a reduced tax rate of 5 per cent, compared to the statutory rate of 20-25 per cent, on profits of which at least 30% has been derived from patents.⁸⁹¹ In early 2015, the Ministry of Finance released figures showing that, in the period 2010-12, the number of patent box users doubled from 910 to 1,841, while the revenue loss associated with the policy grew from approximately €345 million to €852 million.⁸⁹² The figures also showed that, while big companies (those with more than 250 employees) only made up 11 per cent of patent box users, they accounted for 60 per cent of the budgetary costs of the incentive.⁸⁹³

Within the Base Erosion and Profit Shifting (BEPS) process, together with the UK and others, the Netherlands had initially refused to agree to “curbs on patent boxes aimed at stopping ‘harmful’ tax competition that were supported by 40 other countries.”⁸⁹⁴ In May 2015, members of the European Parliament’s special committee on tax rulings (TAXE) questioned the Dutch Deputy Minister and other stakeholders on the harmful effects of the innovation box.⁸⁹⁵ Questions on abuse of the innovation box were also asked by Dutch politicians.⁸⁹⁶ In the European Council, the Dutch government has welcomed efforts to “put a stop on innovation/patent boxes that encourage profit shifting” and “trading of patents only for the purpose to move them to the most favourable tax regime”. However, at the same time they have called for a wider interpretation of which activities qualify for reduced rates offered under patent boxes.⁸⁹⁷ The Dutch patent box is currently under review by the government, and an evaluation report is expected at the end of 2015.⁸⁹⁸

Tax treaties

In a welcome development, the government is approaching 23 developing countries with which the Netherlands already has a tax treaty, or with which negotiations are taking place, with the intention of including an anti-abuse clause in these treaties.⁸⁹⁹ A recent report from ActionAid shows, however, that treaties can have a harmful impact in spite of anti-abuse provisions, for example, due to low withholding tax rates.⁹⁰⁰ In its response to the questionnaire for this report, the Netherlands states that it is willing to accept higher rates of source state taxation in treaties with developing countries compared to what it would otherwise accept.⁹⁰¹ However, evidence of this intention is limited in existing treaties with developing countries, which on average reduce the withholding tax rates by 3.5 percentage points.⁹⁰² In general, the Netherlands adheres to the Organisation for Economic Co-operation and Development (OECD) Model, but the government states that both the OECD and the UN Model are reflected in Dutch tax treaties with developing countries.⁹⁰³

In 2015, the Netherlands started talks with Senegal, Iraq and Mozambique to negotiate new tax treaties.⁹⁰⁴ A renewed treaty with Malawi was recently signed after Malawi cancelled its treaty with the Netherlands in 2013.⁹⁰⁵

Financial and corporate transparency

Public reporting for multinational corporations

Earlier in 2015, the Dutch Parliament adopted a resolution calling for public country by country reporting for all multinational companies.⁹⁰⁶ In May 2015, the Dutch government wrote to the European Commission stating that the government “supports the initiatives for public country-by-by reporting” and further encouraged the Commission to “give priority to the impact assessment [announced by the Commission in March 2015] for the expansion of public country-by-country reporting.”⁹⁰⁷

The government supports the OECD threshold for country by country reporting, meaning that only companies with annual revenues of more than €750 million would have to report on a country by country basis. In the Netherlands, this means that companies like Shell, Heineken and Unilever would be required to comply, whereas companies like Telegraaf Media Groep⁹⁰⁸ (media concern), Van Wijnen⁹⁰⁹ (construction company) and Zeeman Groep BV (textile company)⁹¹⁰ would not.

Public country by country requirements for banks under the EU's Capital Requirements Directive were implemented into Dutch legislation in September 2014.⁹¹¹ In the process of implementation the Dutch government seems to have changed the wording slightly regarding the requirements to disclose subsidiaries and the number of employees.⁹¹² These changes could lead to inconsistencies and difficulties in making comparisons with other countries.

Of the four largest Dutch banks, ING, Rabobank and ABN AMRO have published country by country data in their 2014 annual reports.⁹¹³ SNS Bank did not comply with CRD IV country by country reporting requirements. An analysis of ING, Rabobank and ABN AMRO's financial reports shows, among other things, a significant presence in known low tax and financial secrecy jurisdictions with minimal resulting tax payments. For example, the bank ING reports a profit of €233 million under the category "Mauritius / others" of which it only paid €3 million in taxes, an effective tax rate of 1.3 per cent. Rabobank is also present in Mauritius as well as the Cayman Islands, while ABN AMRO has subsidiaries in Jersey, Guernsey and the United Arab Emirates.

Ownership transparency

Many letterbox companies are administered by Dutch trust offices ('trustkantoren'). These corporate service providers host such letterbox companies in their offices and ensure that they comply with their legal obligations, for example, by depositing annual accounts. Although the Netherlands does not require the beneficial owners of such companies to be publicly known, trust offices are legally obliged to request such information from their clients. Recent research by the Dutch Central Bank, the supervisor of trust offices, revealed that too often trust offices fail to identify the beneficial owner, or know what the origin of the capital is or the goal of its corporate structure.⁹¹⁴ The supervisor concluded that "trust offices thereby accept the risk of being misused for laundering of corrupt money."⁹¹⁵ Currently, the supervisor is discussing new or improved regulations with the Ministry of Finance.⁹¹⁶

Past scandals regarding letterbox companies used by political leaders such as Colonel Gaddafi from Libya and former President Suharto of Indonesia, as well as a recent Romanian fraud scandal where funds were taken from local football clubs and diverted through the Netherlands, show how the provision of such letterbox company structures can facilitate illicit practices.⁹¹⁷ The Dutch government, however, opposes the creation of a public register for beneficial owners, which could help expose the shady deals.⁹¹⁸

Automatic exchange of information

The SwissLeaks revelations showed very large amounts of money in the Swiss branch of HSBC that had connections to the Netherlands.⁹¹⁸ Only 12 other countries in the world ranked higher.⁹¹⁹ The Dutch government reports that it has received the so-called Lagarde list⁹²⁰ and has investigated 130 SwissLeaks cases⁹²¹ of the 1,268 bank accounts held by the 654 clients exposed. In 48 of the cases investigated, the authorities made reassessments because the Swiss bank account was not declared in the relevant tax return. Up until now the amount of tax adjustments and penalties resulting from the reassessments is approximately €2.3 million.⁹²²

In relation to the establishment of a global standard on the automatic exchange of information, the Netherlands government states that it is, in principle, willing to send information to developing countries that are not yet able to send information on an automatic basis in return, and that this will be determined on a case-by-case basis.⁹²³

EU solutions

The Netherlands does not support the move towards a coordinated approach to corporate taxation in the EU through the Common Consolidated Corporate Tax Base (CCCTB) proposal. The Ministry of Finance justifies this rejection by referring to possible negative effects on GDP and growth, as well as stating that a targeted directive to counter base erosion and profit shifting would have "more merit than a complete overhaul" of the corporate tax system that the CCCTB proposal would involve.⁹²⁴

The Netherlands will take over the EU Presidency in the first semester of 2016. Fighting tax avoidance and evasion will be one of its main priorities, including implementing measures against base erosion and profit shifting in EU law, according to the Ministry of Finance. In addition, the Dutch presidency will likely coincide with the negotiations with the Commission and European Parliament on the Shareholders Rights Directive, which at the intervention of the European Parliament includes a proposal for public country by country reporting and for making selected information from tax rulings public.

Global solutions

The Dutch position on the OECD's BEPS project was laid out in a letter to Parliament in June 2015.⁹²⁵ It emphasises that having and keeping an attractive investment climate is one of the government's main priorities. At the same time, the government expresses a willingness to increase the exchange of information between tax authorities and its renegotiations of tax treaties with developing countries to include anti-abuse provisions. According to the letter, other measures to tackle tax abuse should be dealt with within a multilateral forum – the OECD.⁹²⁶

Ahead of the June 2015 Financing for Development conference Lilianne Ploumen, the Dutch Minister for Foreign Trade and Development Cooperation, stated that combating tax evasion and avoidance should be one of the top priorities for the conference.⁹²⁷ In spite of this, the Dutch government did not support the creation of an intergovernmental body on taxation during the conference, and instead supported the official EU line.⁹²⁸

Conclusion

New cases of tax avoidance brought forward by the media and NGOs continue to highlight the role of the Netherlands in eroding other countries' tax bases. A poll conducted in April 2015 revealed that more than seven out of ten Dutch citizens believe that the government must put a stop to the 'tax tricks' multinationals use to avoid taxes by routing funds through the Netherlands.⁹²⁹ It is clear that the debate about tax dodging in the Netherlands is far from over and will continue among the public as well as politicians. It seems the government is slowly changing its position in some respects, for instance with regard to increasing transparency and including developing countries in a system for the exchange of tax information. At the same time, however, it is clear that changes in essential elements that make up the Dutch conduit role, such as the absence of withholding taxes on outgoing interest and royalty payments, are out of the question according to the government. Time will tell how both domestic and international pressure on the Netherlands might change the government's position.

Poland

"It's worth being honest, although it is not always profitable. It's profitable to be dishonest, but it is not worth it."

Władysław Bartoszewski, former Minister of Foreign Affairs, Poland⁹³⁰

General overview

The last year has seen major reforms of Poland's approach to international taxation, with a dizzying array of legal changes bringing in rules that would allow the tax authorities to challenge international corporate tax dodging more effectively. However, the reform process was complicated by presidential elections and parliamentary campaigns that brought some unfortunate steps backwards on previous reform promises. The issue of developing countries and taxation is slowly gaining more prominence, with a new Policy Coherence for Development plan where the Ministry of Finance has been taking a lead role in including issues relating to taxation. Despite these positive steps forward, however, there is a sense that the Polish government has failed to deliver on reforms that would really matter for developing countries such as public country by country reporting and a UN intergovernmental body on tax.

Tax policies

In September 2014, the then Polish President signed a new tax bill (referred to as the "tax havens bill"⁹³¹) that for the first time introduced controlled foreign corporation (CFC) rules in Poland, as well as revising the country's rules to limit the amount of corporate debt for which the tax is deductible (thin capitalisation rules).⁹³² The CFC rules target subsidiaries of Polish companies in low tax jurisdictions and particularly target passive income earned by subsidiaries that are taxed at less than 14.25 per cent, while the tightening of the thin capitalisation rules seeks to discourage the use of debt by multinational companies to reduce their tax payments in Poland.⁹³³

After the law was signed it caused a lot of turbulence. First the official announcement in the Legal Register was delayed, which cost one resignation in the Ministry of Foreign Affairs and an investigation into the causes of the delay.⁹³⁴ Then a new amended law was signed by the President at the end of October 2014.⁹³⁵ The delays resulted in the later implementation of the new law, which was supposed to come into force in January 2016.⁹³⁶

Legislative progress was further complicated due to both presidential elections and the ongoing parliamentary election campaign in 2015.

Thus, the Ministry of Finance in the first part of 2015 called for a review of the "Tax Ordinance Act and other Acts" to include a new General Anti-Avoidance Rule (GAAR) and the establishment of a Tax Avoidance Council. The GAAR would have given the tax authorities the opportunity to deny companies a tax benefit that would arise from a structure whose main purpose was to produce a tax benefit. Global audit company KPMG noted that the proposed anti-avoidance rule had been "a source of significant controversy" due to what was perceived as "vague and general provisions".⁹³⁷ Unfortunately, just before being ousted in the presidential elections in May, then President Bronislaw Komorowski proposed a "softer approach" against tax payers facing tax investigations, resulting in the anti-avoidance rules being removed from the Bill and sent back to the Ministry of Finance.⁹³⁸ It is expected that the Ministry will rework the Bill and try to re-launch it after the parliamentary elections in October 2015. However, one audit company notes that "it is safe to assume" that the general anti-avoidance rule "will not be introduced before at least the end of 2016."⁹³⁹

A May 2014 report from the Highest Control Office (NIK – Najwyższa Izba Kontroli) on the effectiveness of the tax administration in controlling tax evasion in relation to value added tax (VAT) noted serious shortcomings.⁹⁴⁰ These included a decrease in the number of tax controls, general chaos in terms of record keeping in registers, and delays in replying to calls from EU offices on tax information.⁹⁴¹

Tax rulings

According to Poland's Ministry of Finance, it is possible to apply for a tax ruling in the form of an interpretation of tax law applying to an individual case, which can include an assessment of the tax consequences for companies from planned future actions.⁹⁴² The Ministry reports that there is no data regarding the number of individual interpretations issued to multinational companies. Polish law also allows for Advance Pricing Agreements (APAs) and the Ministry reports that nine APAs were granted in the period 2012-2014.⁹⁴³ Data published by the European Commission shows that in total, Poland had 19 APAs in force at the end of 2013.⁹⁴⁴

Special Purpose Entities (SPEs)

Poland recently started to disaggregate its statistics on Foreign Direct Investment (FDI) and the results show that only about 2 per cent or less of FDI into Poland goes to SPEs.⁹⁴⁵ This indicates that Polish SPEs are of relatively low significance in international tax planning.

Patent box

Poland does not have a patent box and, according to the Ministry of Finance, does not have any plans to introduce one.⁹⁴⁶

Tax treaties

Poland has 37 tax treaties with developing countries.⁹⁴⁷ The Polish government is currently expanding the number of treaties with developing countries, with a new treaty signed with Ethiopia in July 2015,⁹⁴⁸ and plans to start negotiations with Thailand, South Africa, Turkmenistan and Brazil in the near future.⁹⁴⁹ The treaty with Ethiopia does not seem to include reductions in the withholding tax rates otherwise applied in Ethiopia.⁹⁵⁰

According to the Ministry of Finance, Poland as a rule follows the OECD model convention, but also allows elements from the UN model depending on the treaty partner.⁹⁵¹ However, the Ministry states that it would not use the UN model as the starting point for its negotiations with developing countries.⁹⁵² Among Poland's existing treaties with developing countries only its treaty with India includes an anti-abuse clause. This reflects that Poland only recently started applying these clauses in its treaties, and the Ministry reports that, in ongoing negotiations with Sri Lanka and Georgia, anti-abuse clauses are included.⁹⁵³

Polish tax treaties are usually negotiated by the Ministry of Finance. The Ministry of Foreign Affairs does not interfere with the content of tax treaties nor does it impose or seek for possibilities of preparing spillover analysis of tax treaties.⁹⁵⁴

However, the cooperation between the two ministries became more visible in the process of developing a new Policy Coherence for Development (PCD) plan, during which the Ministry of Finance proposed illicit financial flows and the fight against tax avoidance and money laundering as a priority area in Polish PCD. The Ministry of Finance will prepare leading documents including annual activity plans prepared together with other ministries and other institutions. Poland will prepare a report for the European Commission and OECD on the implementation of PCD priority areas.⁹⁵⁵

Financial and corporate transparency

Public reporting for multinational corporations

Poland published a draft law in April 2015 that proposed new regulations regarding transfer pricing documentation.⁹⁵⁶ The amendments result from the OECD's and G20's recommendations within the framework of the project addressing Base Erosion and Profit Shifting (BEPS). For entities with a turnover over €750 million/year and single transactions of more than €500,000, Poland will require country by country reporting. Among the listed companies headquartered in Poland only 29 would fall above this threshold.⁹⁵⁷ In line with the OECD's BEPS recommendations, Poland has decided not to make the information from country by country reporting public.⁹⁵⁸

The country by country reporting requirement will be effective from the beginning of 2016, while other new transfer pricing documentation requirements for multinationals will take effect from 2017.⁹⁵⁹

While the Polish government has been one of the first governments in the EU to develop regulations for BEPS country by country reporting, it has been one of the slowest when it comes to implementing the public country by country reporting requirements for the financial sector, contained in the 2013 Capital Requirements Directive. Until today the directive has not been implemented into Polish law. The Ministry of Finance reports that the procedure of the implementation is pending and that the legislative process was supposed to have been concluded by June 2015.⁹⁶⁰ In September 2015 the finished law to implement the last remaining bits of the directive was sent for Presidential signature and as such the directive should be fully implemented relatively soon.⁹⁶¹

Ownership transparency

Poland underwent a peer review by the intergovernmental Global Forum on Transparency and Exchange of Information for Tax Purposes in 2015. The review looked at ten aspects of the Polish system for corporate transparency and found the country to be compliant on nine out of ten aspects.⁹⁶² The only factor where the country was rated non-compliant was on the availability of ownership and identity information, where three serious shortcomings were found. First it was noted that, while Poland generally has good standards for registering ownership information for domestic companies, the same is not true for foreign companies operating in Poland. For these "no ownership information has to be provided upon registration, nor is such information available otherwise" and as a consequence the review recommends that the authorities "ensure that information on the owners of a foreign company that is tax resident in Poland is available."⁹⁶³

The second shortcoming noted by the review is in relation to bearer shares where the review notes “serious legal gaps” and lack of ownership information.⁹⁶⁴ The last problem identified is in relation to trusts. While these structures are not recognised under Polish law, it is possible to administer trusts from Poland and in that case the review notes that ownership information for the settlors, beneficiaries and trustees is not captured by the authorities.⁹⁶⁵

In the EU negotiations on the fourth anti-money laundering directive at the end of 2014 the Polish government is reported to have been one of the countries against making beneficial ownership information fully available to the public.⁹⁶⁶ However, the government’s official position is not known as it has currently not clarified how it plans to implement the directive and whether it will allow full public access to the registers. While the government’s position is unclear the position of its citizens is crystal clear, with a survey conducted in 2015 showing that 82 per cent of Poles favour making the information public.⁹⁶⁷

EU solutions

Poland headed for a collision course with the European Commission after months of stalling on a reply to a request for information on the country’s tax ruling practice. In June the Commission took the unusual step of threatening Poland – together with Estonia – with legal action unless the information was handed over within one month.⁹⁶⁸ According to the Ministry of Finance, by June 2015 they were still conducting analysis to look into the “legality of providing information on APAs [one type of tax rulings] to the Commission.”⁹⁶⁹ Finally, in reply to the Commission’s request, the Ministry of Finance sent 25,000 individual tax rulings out of which 700 had a cross-border element.⁹⁷⁰

The Ministry reports that all individual rulings along with the request for interpretation are published in the Bulletin of Public Information. However, this is only after removing data identifying the applicant. It further states that it supports the publication of anonymised data on the number and type of APAs under the EU’s Joint Transfer Pricing Forum.⁹⁷¹

The Ministry of Finance reports that it supports the Commission’s attempt to re-launch the proposal for a coordinated EU approach to corporate taxation (the so-called Common Consolidated Corporate Tax Base (CCCTB) proposal). However, the Ministry also reports that it is against the consolidation of tax bases in the EU, without which the proposal is toothless against tax dodging.⁹⁷² The Ministry of Finance also states that it sees the EU’s Code of Conduct Group on Business Taxation as only a “partially” effective way of removing harmful tax practices in the EU.⁹⁷³

A week after the Commission published its list of non-cooperative jurisdictions⁹⁷⁴ (or tax havens) in June 2015, the Polish government delisted Bermuda from its own national list of uncooperative jurisdictions, following “furious criticism” from Bermuda officials.⁹⁷⁵ Shortly before the publication of the Commission list, Poland also delisted Gibraltar from its own list.⁹⁷⁶ Moves like these can have consequences for the Commission list, as only jurisdictions listed on at least ten Member States’ national list are included on the Commission’s list.⁹⁷⁷

Global solutions

Poland has a representative acting as an expert in the Committee of Experts on International Cooperation in Tax Matters. Consequently, Poland fully supports the UN processes aimed at assisting developing countries on tax. However, the Polish government states that it sees a need to analyse the establishment of an intergovernmental body under the auspices of the United Nations on tax before deciding its position.⁹⁷⁸ At the Financing for Development (FfD) conference in July 2015, the Polish government did not deviate from the EU line, which rejected the establishment of the UN intergovernmental body. According to Polish internal policy, all Tax Information Exchange Agreements have to be signed with a condition of reciprocity.⁹⁷⁹ This condition implies that Poland will effectively exclude exchanging information with most developing countries, since they do not have the capacity and the systems to collect and share information from their own countries automatically.

Conclusion

Steps have been taken forward by the Polish government against tax dodging in the past year, with new CFC rules, a General Anti-Avoidance Rule and other measures intended to shore up the tax base of Poland. Encouragingly, the Ministry of Finance has started to cooperate with the Ministry of Foreign Affairs within the PCD process, and taxation and its effects on developing countries is one of the issues being looked at. These are all positive signs of change. However, a lot of work still remains, not least on corporate transparency where Poland often takes a negative stand, as was again demonstrated in 2015 when the government decided to implement confidential country by country reporting requirements. Poland has deepened its activities at the EU and global level. An indication of this came during the FfD summit where the Minister of Finance was present as a head of the Polish delegation. Unfortunately, however, Poland did not support the establishment of an intergovernmental tax body.

Slovenia

"[LuxLeaks will] weaken Juncker's and the Commission's position."

Slovenian Prime Minister Miro Cerar, November 2014⁹⁸⁰

General overview

This year has seen the launch of a tax reform and the continuation of a focused effort to crack down on tax dodging in Slovenia. This builds on large-scale reforms in 2014, with a major organisational restructuring of the tax administration, and the creation for the first time of a department focusing solely on transfer pricing.⁹⁸¹ A change in government in September 2014 has not slowed down the pace of change, with the new coalition agreement stressing the fight against economic crime and corruption, higher effectiveness at collecting taxes, the fight against the 'grey economy', the strengthening of the tax culture and a number of new tax initiatives launched in the budget in June 2015.⁹⁸²

The Slovenian economy is home to a relatively modest number of multinational companies. Among the smaller EU Member States, only Greece receives less foreign direct investment (FDI) as a percentage of gross domestic product (GDP).⁹⁸³ As a result there is more focus on domestic challenges to the tax system in Slovenia than in many other EU Member States. However, in mid-2015 the government adopted a six-year strategy to achieve the increased internationalisation of Slovene companies and to attract more FDI.⁹⁸⁴ As part of this strategy, export to non-EU markets is targeted to expand annually by 5 per cent, with a focus on areas such as China, India and Central Asia, among others.⁹⁸⁵ Combined with an ambitious privatisation strategy – which in 2015 alone brought in new major multinational actors in the economy including Heineken and the American bank Merrill Lynch – it seems likely that the issue of international tax planning may increasingly find its way onto the domestic agenda.⁹⁸⁶

Tax policies

In 2014, major changes have occurred in the organisation of the tax administration in the Republic of Slovenia. On the basis of the Financial Administration Act,⁹⁸⁷ the Financial Administration of the Republic of Slovenia⁹⁸⁸ was established on 1 August 2014, uniting the Customs Administration and Tax Administration.

In the field of tax supervision, the Financial Administration of the Republic of Slovenia reports that it performed 6,822 financial supervisions in the field of the implementation of laws on taxing, Tax Procedure Act and EU legislation, and recovered an additional €97 million in tax obligations.⁹⁸⁹ As well as this, the financial inspectors also performed several focused supervisions, including transfers to tax havens (131 supervisions with violations detected in 39 per cent of cases), and a newly established department for transfer pricing performed 73 focused tax inspections with an additional €5.37 million in taxes collected as a result.⁹⁹⁰

The LuxLeaks database did not show any data about Slovenian companies. In spite of this, however, the LuxLeaks affair attracted the attention of Slovenia's media.⁹⁹¹ The Slovenian delegates in the European Parliament also responded to the scandal. They proposed the independent investigation of relevant institutions and suggested that there needed to be solutions for unacceptable and unfair tax practices.⁹⁹²

Tax rulings

According to the Ministry of Finance, the Slovenian law provides for rulings in the form of clarification for companies on how the tax law applies to them, and the government can issue binding information on the tax treatment of planned transactions or business events.⁹⁹³ However, Slovenia is one of a handful of EU Member States that do not offer binding information or rulings in relation to transfer pricing, the so-called Advance Pricing Agreements (APA).⁹⁹⁴ According to the Ministry, Slovenia has complied with the Commission's request for information on the country's tax rulings, but – citing 'tax secrecy' – declines to make the information public.⁹⁹⁵ Under the system of information exchange on tax rulings within the EU, Slovenia has neither received nor sent information regarding tax rulings to another EU Member State.⁹⁹⁶

Special Purpose Entities (SPEs)

According to the Ministry of Finance, SPEs are not forbidden in Slovenia. They are a form of special vehicle for securities defined in the country's previous banking act.⁹⁹⁷ However, with the passing of a new banking act in March 2015, this definition has been removed, which means that Slovenian law does not currently contain any definition of SPEs.⁹⁹⁸ It is difficult to say whether SPEs play any important role in the Slovenian economy, but given that FDI flows through the country are among the lowest in the OECD, it is unlikely that the country is being used to route FDI.⁹⁹⁹

Patent box

Slovenia does not currently have a patent box and the Ministry of Finance reports that there are no plans to introduce one.¹⁰⁰⁰ The Ministry declines to state whether they are concerned about the effect of other EU Member States' patent boxes on the Slovenian tax base.

Tax treaties

In 2014, the government signed tax treaties with two low-tax jurisdictions – the United Arab Emirates and Luxembourg. Both treaties contain significant reductions in withholding tax rates compared to the statutory rate applied by Slovenia to non-treaty countries.¹⁰⁰¹ The Ministry of Foreign Affairs reports that Slovenia's tax treaties with developing countries are not solely based on the OECD or UN models, but are rather based on the mandate for negotiating that is determined by the government.¹⁰⁰² The Ministry of Foreign Affairs also reports that neither it nor any other development stakeholder is involved in the negotiation of tax treaties with developing countries.¹⁰⁰³

Financial and corporate transparency

In 2014, the Financial Administration of the Republic of Slovenia filed 18 criminal reports to the State Prosecutor's Office due to the suspicion of committing the criminal offence of tax evasion, according to Article 249 of the Criminal Code. It also filed 73 announcements on suspicions that a criminal offence was committed.¹⁰⁰⁴

In the same year, the police sent 84 criminal reports on committed criminal offences of tax evasion to the State Prosecutor's Office, with a total value of €14,329,000.¹⁰⁰⁵

Public reporting for multinational corporations

On 13 May 2015, the new Banking Act came into force, which introduced the provisions of the Capital Requirements Directive into Slovenian legislation. While the Banking Act does not contain the country by country reporting requirement, the Ministry of Finance reports that it expects the Bank of Slovenia to prescribe what financial institutions should report on in their financial statements.¹⁰⁰⁶

The Ministry of Finance reports that it is supportive of extending the country by country reporting obligation to all economic sectors, but only based on the OECD model and states that "information so obtained has to be confidential."¹⁰⁰⁷ The Ministry has not yet settled on a threshold for which companies should report if they were to introduce a requirement for country by country reporting for all sectors, stating that this is a political decision.¹⁰⁰⁸ Should the government decide to make use of the threshold recommended under the OECD's Base Erosion and Profit Shifting (BEPS) project, only six multinational companies listed in Slovenia would have to report on a country by country basis.¹⁰⁰⁹ Using the EU's definition of 'large undertakings' instead, 27 listed companies would be covered by the reporting requirement.¹⁰¹⁰

Ownership transparency

Under existing laws, it is possible to set up structures in Slovenia that effectively obscure the real owners of legal entities. For example, a corporate law firm based in Slovenia reports online that "even though Slovenia is not categorized as a tax haven like other offshore jurisdictions, foreign entrepreneurs can benefit from [...] the possibility to appoint a nominee director [...which allows] the investor to protect his/her identity."¹⁰¹¹ However, with current plans, this secrecy mechanism is set to become a thing of the past.

Slovenia is on course to implement the EU's anti-money laundering directive in record speed, having indicated that it plans to have a legislative proposal ready by the second half of 2015, which it hopes to pass by the end of 2015.¹⁰¹² Still more impressive and crucial, Slovenia has indicated a willingness to grant wider access to the register of beneficial owners of companies than the minimum requirement in the EU's directive.

The Ministry of Finance reports that the new regulation will require legal entities to provide information on their beneficial owner, and that the information will be published in the public business register (AJPES). It also reports that, while it will make use of the 'legitimate interest' test to limit those who have access to the full range of beneficial ownership information, it will at the same time grant 'the general public' access to a sub-set of beneficial ownership information, regardless of whether they can demonstrate a so-called 'legitimate interest'.

The Ministry reports that it has not yet arrived at an agreement on how to define those with a 'legitimate interest' and it is also still unclear what the difference will be between the information that the general public and those who can demonstrate a 'legitimate interest' will be.¹⁰¹⁴ Nonetheless, Slovenia has taken important steps towards corporate transparency by indicating a willingness to go beyond the EU's minimum requirements and establish transparency for the public when it comes to beneficial ownership.

Banking secrecy

March 2015 saw the adoption of a new bank law (the so-called Zban-2),¹⁰¹⁵ which saw some welcome easing of bank secrecy. With the new law, the National Assembly has been granted access to confidential bank information under certain conditions in order to fulfil its role in supervising the financial sector. The protection of banking secrecy has also been removed in cases of criminal prosecutions. Finally, the new banking law makes it mandatory for banks to adopt a whistleblower policy to expose potential wrongdoing.¹⁰¹⁶

EU solutions

The government of Slovenia has a somewhat ambivalent track record on supporting EU coordination on taxation. On the one hand, Slovenia is a part of the smaller group of 11 EU Member States that are willing to implement the so-called Financial Transaction Tax – a small levy on financial trading.¹⁰¹⁷

This indicates a willingness to push for cross-border tax coordination. However, when it comes to coordination through the introduction of a Common Consolidated Corporate Tax Base (CCCTB), Slovenia has been more sceptical in the past. It is among nine EU Member States that officially objected to the Commission's CCCTB proposal when it was discussed in 2011.¹⁰¹⁸ It is not clear whether the current government intends to continue these objections or whether the country's stance has changed. In early 2015, the government reported that it "supports the efforts of the Commission" in their fight against tax avoidance and evasion, but some uncertainty exists as to the extent and content of this support.¹⁰¹⁹

Global solutions

The Ministry of Foreign Affairs reports that Slovenia does not consider either taxation or illicit financial flows as part of the policy coherence for development agenda.¹⁰²⁰ As a consequence, Slovenia does not have any capacity-building programmes for developing countries on taxation and does not have any plans to conduct a spillover analysis of its tax policies' effect on developing countries.¹⁰²¹

Despite this, the Ministry of Foreign Affairs reports that the government of Slovenia considers taxation as one of the key topics, since it mobilises public funds in support of development. However, in a globalised world, the government also recognises that taxation provides many opportunities for evasion and avoidance, and therefore calls for efficient international cooperation.¹⁰²²

The Ministry of Foreign Affairs also reports that the government of Slovenia supports the call to establish an intergovernmental body on taxation under the auspices of the UN.¹⁰²³

Slovenia attended the Third International Conference on Financing for Development in Addis Ababa, represented by the Permanent Representative of Slovenia to the United Nations in New York and the Head of the Department for International Development Cooperation Policies in the Ministry of Foreign Affairs. The President of the Slovenian NGO African Centre, and Representative of the Centre of Excellence in Finance, an international organisation, headquartered in Slovenia, also both accompanied the official delegation formally as representatives.¹⁰²⁴

Conclusion

Through granting wider access to the register of beneficial owners of companies than the minimum requirement in the EU's directive, Slovenia has taken important steps towards corporate transparency for the public when it comes to beneficial ownership. Equally important, Slovenia has also expressed willingness to support the call to establish an intergovernmental body on taxation under the auspices of the UN, although the government unfortunately seems to have followed the general EU line during the Third Financing for Development conference in Addis Ababa.

On the other hand, Slovenia does not support introducing public country by country for all sectors, but instead insists that the information should be kept confidential. The government is yet undecided about the threshold for which companies should report.

When negotiating tax treaties, Slovenia still does not solely use the UN model and still does not include any development stakeholders in the negotiations of tax treaties with developing countries. In addition, 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.

Spain

“This is not a problem of unfair tax competition, but that certain tax measures of certain EU countries constituting genuine State aid have to cease definitely. But this is nothing new, in fact, we have been suffering this discrimination for decades.”

Cristóbal Montoro, Spanish Ministry of Treasury, regarding Luxleaks¹⁰²⁵

General overview

2015 has been a year shaped by the many elections in Spain, with regional and local elections in May and general elections due by the end of the year. The results of the May elections opened up a brand new political situation in Spain, bringing a large set-back for the conservative government party (Popular Party) and the rise of new political parties associated with new citizens' movements for social justice.¹⁰²⁶

In this context, the political national debate has intensified, and has included accusations of tax avoidance and the use of tax havens by the political elite. A prominent example were the accusations of money laundering and tax evasion levelled against Rodrigo Rato, former Spanish Minister of Finance and IMF Managing Director.¹⁰²⁷ However, he was far from the only one.¹⁰²⁸ Surprisingly, and even though tax data is considered confidential in Spanish law, the Minister of Finance has used individual tax information in what some have characterised as a political tool to try to discredit political adversaries.¹⁰²⁹

A tax reform that entered into force included tax cuts for businesses while failing to include any measures to address tax dodging by multinational companies.¹⁰³⁰ The Spanish government boasted that the new reduced rates for corporations “puts Spain on a level of taxation below its major trading partners such as Germany, France and Italy”,¹⁰³¹ and thereby placed Spain as an aggressive participant in the European tax competition race.

Tax policies

On 1 January 2015, a new tax reform entered into force in Spain,¹⁰³² which among other things meant reductions in tax rates for business. The corporate income tax rate was reduced from 30 per cent to 28 per cent in 2015 and will be reduced further to 25 per cent in 2016. Meanwhile the withholding tax rate on dividends and interest paid to non-residents was reduced to 20 per cent in 2015 and 19 per cent in 2016.¹⁰³³ The reform did not include any measures to fight tax dodging and it decreases the progressive nature of the Spanish taxation regime, as Oxfam Intermon has highlighted.¹⁰³⁴

The LuxLeaks and SwissLeaks have raised the practice of tax dodging high up the agenda in terms of public opinion.¹⁰³⁵ In the case of LuxLeaks, the only Spanish company involved in the tax rulings scandal was Mercapital, a private equity firm.¹⁰³⁶

In terms of potentially harmful tax practices, Spain has recently approved a special tax regime for the Canary Islands that will allow companies located there to pay a reduced corporate tax rate of 4 per cent under certain conditions.¹⁰³⁷ These benefits are linked to investment requirements and the creation of a minimum of five jobs. This regime includes a controversial point, which is a deduction for economic activities in countries of Northern and Central Africa.¹⁰³⁸ The purpose is to promote the use of the Canary Islands as an export platform to West African countries.¹⁰³⁹

On a more positive note, at the end of 2014, the Spanish Parliament approved a law that establishes a board responsibility for decisions in relation to investments or transactions that potentially involve tax risks and obliges company boards to define a tax strategy for their business.¹⁰⁴⁰

Tax rulings

Companies in Spain have the possibility of making a binding enquiry to the tax administration about the tax treatment of a transaction, like an advance price agreement. According to the Ministry of Finance, taxpayers making the same enquiry will get the same answer,¹⁰⁴¹ implying that they do not grant preferential treatment to companies through such rulings. Spain had 52 Advance Pricing Agreements (APAs) in force by the end of 2013, which places it among the countries in the EU that issue most of these types of rulings.¹⁰⁴² The Ministry of Finance reports that the rulings in force are considered confidential and that they can only be shared in certain conditions strictly defined under the legislation.¹⁰⁴³

Special Purpose Entities (SPEs)

ETVEs (Entidades de Tenencia de Valores Extranjeros) are Special Purpose Entities (SPEs) that work as Luxembourg or Netherlands holding companies and have tax exemptions on their foreign financial in- and outflows.¹⁰⁴⁴ In 2013, inflow of foreign direct investment (FDI) in Spain through ETVEs was 19.7 per cent of total FDI and outflow was 26.3 per cent.¹⁰⁴⁵

Although the characteristics of ETVEs are almost the same as entities that the OECD considers to be an SPE, the Spanish government does not consider them to be SPEs, as there is no definition for these kinds of arrangements in Spanish regulations.¹⁰⁴⁶ The Spanish Institute of Foreign Trade (ICEX) – which works under the Ministry of Finance – promotes these vehicles on its webpage as a tool to attract foreign investment.¹⁰⁴⁷ Although the ETVE regime is ideal for routing investments for tax purposes, the EU's Code of Conduct Committee has determined that the ETVE does not represent potentially harmful tax competition.¹⁰⁴⁸

Patent box

The Spanish patent box consists of a 60 per cent tax exemption for the income derived from transfers of intangible assets.¹⁰⁴⁹ The Spanish patent box regime is marketed by the Spanish government as “the most beneficial of all those that exist within the EU” in terms of scope, since it covers not only patents but also “models, designs, formulae, plans and even know how.”¹⁰⁵⁰ Despite the intentions of attracting innovative practices, some have questioned whether the patent box meets this objective or whether the policy is simply reducing Spanish tax revenues when they are more needed than ever.¹⁰⁵¹

Tax treaties

Spain has a comprehensive network of tax treaties, including one with a low-income country and 17 with lower middle-income countries.¹⁰⁵² Spain is very aggressive in terms of negotiating these treaties and gets an average of 5.4 per cent of a reduction in withholding tax rates.¹⁰⁵³ Two recent treaties with developing countries illustrate this. The first is a treaty signed with Senegal in December 2014,¹⁰⁵⁴ which includes a reduction of 10 per cent in withholding tax rates of interest and dividends.¹⁰⁵⁵ As a PwC tax newsletter says, “this treaty has a special value for those multinationals with interest in Senegal, as Spain could be used as an efficient holding location.”¹⁰⁵⁶ A second treaty announced in April 2015 was with Nigeria, and again the withholding tax rates on interest, royalties and dividends were lowered through negotiation, this time from 10 per cent to 7.5 per cent.¹⁰⁵⁷

When negotiating a tax treaty with a developing country, Spain primarily follows the OECD convention model as well as includes specific anti-abuse clauses.¹⁰⁵⁸ However, when one of these processes begins, the only actors that are consulted by the Spanish negotiators are companies.¹⁰⁵⁹ The Spanish government does not plan to conduct a spillover analysis of how its tax treaties affect developing countries.¹⁰⁶⁰

Financial and corporate transparency

In March 2015, Oxfam Intermón launched a study of the tax transparency of the 35 major Spanish companies listed in the stock market. The report found that only 10 per cent of the companies provide some information about how much taxes they pay and where.¹⁰⁶¹ All but one of the 35 companies analysed have subsidiaries in tax havens, totalling 810 in 2013, an increase of 44 per cent from the previous year.¹⁰⁶²

While the report showed large gaps in terms of corporate transparency, SwissLeaks also documented failings in terms of financial transparency. The leaked information revealed accounts held by the recently deceased president of the biggest Spanish bank and by a twice world-champion F1 driver.¹⁰⁶³ No legal actions have been pursued by the Spanish authorities, although the former made a complementary payment of €200 million to regularise the situation.¹⁰⁶⁴ The 2012 tax amnesty showed the current Spanish government's tolerance of these kinds of practices.¹⁰⁶⁵

In general, any information regarding the tax issues of a specific taxpayer is considered to be confidential under Spanish law.¹⁰⁶⁶ Only tax authorities have the right to this information and it cannot be disclosed to anyone except in certain and well-defined cases.¹⁰⁶⁷ In practice, this principle defines the stance of the Spanish government towards any measure regarding taxation negotiated in international forums.

Public reporting for multinational corporations

The Spanish government has announced that country by country reporting will be included in regulation expected to be implemented at the beginning of 2016.¹⁰⁶⁸ Disappointingly, the government has announced that this will mostly¹⁰⁶⁹ follow the OECD's Base Erosion and Profit Shifting (BEPS) standard, which implies that it will not be made public, that developing countries in most cases will not be eligible to receive the reports, and that only major companies above an annual consolidated turnover over €750 million will be covered.¹⁰⁷⁰ With this threshold for reporting, it is estimated that only 183 out of 24,000 big companies in Spain will be required to report, representing just 0.76 per cent of big companies in Spain.¹⁰⁷¹

Spain last year implemented the European Capital Requirements Directive IV, which requests banks to make a public report on a country by country basis.¹⁰⁷² Currently only one major bank, Banco Santander, has published the complete country by country report information,¹⁰⁷³ while two others – BBVA and Banco Popular – have published incomplete versions of it.¹⁰⁷⁴

Ownership transparency

Spanish legislation includes a register of beneficial ownership of companies, foundations and trusts, but it is not open to the public.¹⁰⁷⁵ Although the EU's Anti-Money Laundering Directive allows for wider public access to the register than those who can demonstrate a legitimate interest, the Spanish government has not yet made any decision about whether or not to allow for this.¹⁰⁷⁶ In negotiations about the beneficial ownership register, the Spanish stance was very strongly in favour of not making the registers public.¹⁰⁷⁷

EU solutions

Prior to the European Summit in December 2014, the Spanish President wrote a letter to the President of the European Council asking for "effective tools at the European level to tackle tax fraud and evasion."¹⁰⁷⁸ Spain supports further coordination of EU corporate tax policies through the Consolidated Common Corporate Tax Base (CCCTB) proposal, and supports making it mandatory for all multinational companies in all Member States.¹⁰⁷⁹ Furthermore, the EU's Code of Conduct on Business Taxation is seen as effective by the Ministry of Finance, although they acknowledge there is room for improvement in its functioning, rules and mandate.¹⁰⁸⁰

Global solutions

Although the government is awaiting the final content of the OECD BEPS recommendations, the Ministry of Finance reports that the intention of Spain is not to deviate from the conclusions that will be reached.¹⁰⁸¹ This is consistent with Spain's plans to follow the OECD BEPS recommendations for country by country reporting, as described above.

Regarding the creation of an intergovernmental tax body under the auspices of the UN, the Spanish position – when this issue was discussed between the EU countries – was that its establishment should be properly studied prior to any decision.¹⁰⁸² In parallel, the Spanish government kept the position that the current UN Tax Committee should at least be reinforced in order to accomplish its mission better.¹⁰⁸³ During the negotiations at the Financing for Development conference in July 2015, the Spanish government followed the joint EU position,¹⁰⁸⁴ which considered the establishment of an intergovernmental body to be a 'red line'.

Conclusion

The Spanish tax system includes some regimes that could facilitate tax dodging and the government is unfortunately not showing the will to tackle these issues, with the largest corporate tax reform of the previous year instead focused on lowering tax rates. There are indications that the government has a particular blind-spot when it comes to the potentially harmful impacts of its tax system on developing countries. This was symbolised in the last year by new tax treaties with Nigeria and Senegal with significantly reduced tax rates, and the government's approval of a special regime for the Canary Islands that will allow investors in West Africa a low-tax platform.

When it comes to transparency measures that could assist developing countries, the Spanish government has also taken less than helpful positions, having decided not to make country by country reporting public and also working against public registers of beneficial ownership information.

In general, the position of the Spanish government seems rather reactive to public opinion as well as to EU and international processes. Meanwhile, public opinion is getting less tolerant of tax scandals and, with elections coming up this year, change could be expected.

Sweden

“Tax flight is an example where civil society organisations have shown that ten times as much money disappears from the developing countries than what we give in aid through tax flight. Of course this is something we really have great use of, this type of information and debate.”

Isabella Lövin, Minister of International Development Cooperation at the Ministry of Foreign Affairs, Sweden¹⁰⁸⁵

General overview

In September 2014, Sweden held elections and changed to a Socialist-Green led government. The new government has not offered any visible changes to the country's stance on tax justice or provided any major changes on corporate tax in their first budget.

Since the new government came into office, ministries have taken many opportunities for dialogue meetings, consultations and seminars with civil society. In early June 2015, the Swedish Parliament held a seminar on capital flight, addressing the challenges and possibilities of Base Erosion and Profit Shifting (BEPS) and other global and European initiatives.

The LuxLeaks and SwissLeaks scandals did not go unnoticed in Sweden. In fact, the media coverage attracted major attention with headlines such as “Sweden loses millions in tax planning in Luxembourg.”¹⁰⁸⁶ According to documents from the LuxLeaks scandal, there were 26 companies with ties to Sweden out of 343. The most prominent Swedish companies included IKEA, Tele2, EQT and SEB. Consequently, the French news magazine Le Monde described IKEA as the “world champion in optimising its tax burden.”¹⁰⁸⁷ IKEA did not respond to any of the leaks and refused to appear at the European Parliament hearing about LuxLeaks.¹⁰⁸⁸ Similarly, SwissLeaks publicly exposed almost 500 account holders, including famous Swedish football players, who have tried to hide their identities through anonymous accounts and letterboxes in tax havens with help from HSBC Bank.¹⁰⁸⁹

Primarily, the debate after LuxLeaks and SwissLeaks has been on Swedish companies' tax planning and their responsibilities beyond the legal requirements or laws.¹⁰⁹⁰ Swedish companies have slowly started to work strategically on corporate social responsibility (CSR) and adopting CSR policies. According to web rankings by Comprehend, only three out of 100 Swedish companies see tax as a CSR issue and seven companies have tax listed as a responsibility issue on their website. There is similarly low attention paid to transparency, with only three out of 100 companies in Sweden using any form of country by country reporting.¹⁰⁹¹

Tax policies

In Sweden, there are big ambitions to strengthen the fight against tax evasion and tax fraud. The Swedish government frequently highlights that acting against tax dodging is one of its priorities, often related to Financing for Development. However, there is a sense that the fight mostly consists of public speeches and articles debating the issues.¹⁰⁹²

The General Anti-Avoidance Rule (GAAR) in the Act Against Tax Evasion has been in force since 1995. The Ministry of Finance proposed an extension of the GAAR in early 2015, but the proposal was set aside as the Ministry stated it is “no longer relevant”. Instead of extending the application of GAAR, there is a proposal to make an amendment to the anti-avoidance rule in the Act on Withholding on Tax.¹⁰⁹³

Tax rulings

Sweden does offer tax rulings to multinational companies, including Advanced Pricing Agreements (APAs) based on legislation that took effect in 2010. The Ministry of Finance (MoF) does not want to disclose the number of rulings, nor give comments on the Swedish position of making tax rulings publicly available.¹⁰⁹⁴ Data from the European Commission shows that Sweden only had one APA in force at the end of 2013, which was with a company based in an unknown non-EU member state. According to the Commission, the APA took 40 months to negotiate.¹⁰⁹⁵ This indicates that Sweden's APA system is still in fledgling form. However, the data from the Commission also shows that Sweden received nine requests for APAs in 2013 alone,¹⁰⁹⁶ indicating that the number of rulings in place might have increased since the end of 2013.

In its submission to the European Parliament's special committee on tax rulings (TAXE), the MoF stresses that, according to Swedish law, APAs can only be entered into through bilateral or multilateral negotiations with countries that Sweden has a tax treaty with. According to the Ministry, this ensures that Sweden's rulings do not contain “arbitrary and selective assessments.”¹⁰⁹⁷

Special Purpose Entities (SPEs)

According to the Ministry of Finance, Sweden does not allow for the establishment of Special Purpose Entities (SPE), as there are no legitimate entities designed to keep foreign investments separate from domestic economic activities.¹⁰⁹⁸

Patent box

Sweden does not currently have a patent box and has no plans to introduce one.¹⁰⁹⁹

Tax treaties

In 2015, Sweden only signed one new treaty with the UK, but this is not yet in force.¹¹⁰⁰ The MoF has not given out any information about planned negotiations for other new treaties, as it is not part of Swedish policy to do so.¹¹⁰¹ According to the MoF, there are large differentiations within and between the existing treaties. Officials did not reveal any information regarding whether the treaties primarily follow the UN model in allocating tax rights or the OECD model, instead noting that “tax treaties are a result of bilateral negotiations.”¹¹⁰² All tax treaties are subject to ratification by the Swedish Parliament, which ensures their involvement, according to the Ministry.¹¹⁰³

Swedish negotiations of bilateral treaties include lowering charged tax payments for transfers between countries, allowing a grey zone where money could be moved in and out of Sweden easily without incurring the normal tax levels.¹¹⁰⁴

Financial and corporate transparency

Sweden has signed information exchange agreements with several low-tax jurisdictions in the past year, including Panama, Bahrain, Belize, Hong Kong, Macau and Grenada.¹¹⁰⁵ At the beginning of 2015, an agreement for information exchange on request with Liberia also entered into force.¹¹⁰⁶ However, there is no further information available regarding whether Sweden would be willing to automatically exchange information with developing countries.

Public reporting for multinational corporations

The MoF has reported that it intends to follow the recommendations by the OECD BEPS project on country by country reporting. This means that the reporting will not be made public and only very large multinational companies with an annual turnover of more than €750 million will be required to comply with this type of reporting.¹¹⁰⁷

By indicating a preference for confidential reporting, Sweden is missing a major opportunity to promote corporate transparency. Furthermore, should Sweden choose to implement country by country reporting with the OECD’s threshold of €750 million, only a fraction of relevant multinational companies will be captured. The OECD threshold will only cover 56 of the listed multinational companies headquartered in Sweden, while the threshold currently proposed by the European Parliament would cover 224 companies.¹¹⁰⁸

Nonetheless, Sweden does have a legal requirement on reporting of transfer pricing and carry forwards of losses.¹¹⁰⁹ The Swedish Tax Authority is responsible for handing in additional reporting on company structures, but the information is not accessible to the public. Sweden has fully adopted the EU requirements for public country by country reporting for banks and investment firms.¹¹¹⁰

Ownership transparency

A money laundering scandal at Swedish banks indicates the need for strong anti-money laundering (AML) rules in Sweden. The Swedish financial watchdog has fined two of the larger banking groups, Nordea and Handelsbanken, to the tune of millions of euros because of major deficiencies in their approach and work regarding money laundering. The lack of an effective system of preventing money laundering or activities linked to terrorism by the Swedish banks was not only heavily portrayed in media, with a negative effect on the stock market, but also forced the banks to increase their resources to comply with the regulations.¹¹¹¹

The new Swedish government would like to see a swift adoption of the Anti-Money Laundering Directive (AMLD) and therefore appointed a public inquiry in December 2014. The inquiry was supposed to present proposals on how to implement the AMLD in Swedish legislation, but it has been postponed until 15 December 2015.¹¹¹² The proposals of the inquiry will be followed by a consultation and then by the work of producing the legislative proposals at the MoF. Given the legislative process, there are no firm timelines that may be conveyed at this point, but the government aims to present the proposal to Parliament as soon as possible.¹¹¹³

As the AMLD requires a central register of beneficial owners, an investigation appointed by the government will include an analysis regarding how the AMLD should be implemented in Swedish law.¹¹¹⁴ Sweden is undecided about whether to allow wider access to the registers of beneficial owners than those stated in the AMLD. The inquiry is targeting issues related, for example, to the implementation of a central register. At this time, the government is unable to provide any answers on the details.¹¹¹⁵

The government reports that trusts or similar legal structures are not recognised in Swedish law.¹¹¹⁶

In terms of Sweden's Development Finance Institution (DFI) – Swedfund – due diligence processes are incorporated to gather information regarding beneficial ownership from companies which Swedfund works with, but the information will not be made public. According to the Swedish government, the “requirement to make this kind of information public need[s] to be a decision made with respect to companies in general and not only for Swedfund.”¹¹¹⁷

EU solutions

In terms of policies related to the EU, the government believes that the Code of Conduct on Business Taxation Group is “very much” an effective way of removing harmful tax practices in the EU. On the other hand, it does not have an official position on whether to agree that more transparency in the dealings with the Code of Conduct would be useful.¹¹¹⁸

The government has declined to state its official position on the EU's Common Consolidated Corporate Tax Base (CCCTB) proposal for the purpose of this report.¹¹¹⁹ When the proposal was last discussed in 2011, the government's official position was that the proposal ran against the subsidiarity principle of the EU,¹¹²⁰ and hence it did not support the proposal.

Global solutions

The new government recognises capital flight and tax dodging as obstacles for global development. Tax revenues and combating illicit financial flows are both crucial for increasing resource mobilisation for sustainable development and are considered as key issues in the Financing for Development negotiations, according to the Development and Cooperation Minister Isabella Lövin.¹¹²¹ However, the Swedish government unfortunately does not support the establishment of an intergovernmental body on taxation under the UN.¹¹²² Instead, the government underlines the importance of developing countries participating in BEPS, which, according to the government, needs to be further strengthened. Officials state that the BEPS process has already proved effective with concrete results based on the priorities from developing countries.¹¹²³

The Swedish Foreign Ministry has requested that each ministry should establish an action plan for Policy for Coherence, including the Ministry of Finance.¹¹²⁴ The MoF will include targets on its work against tax dodging in the action plan but no draft has been made public so far. The government will consult with civil society and findings will be presented during spring 2016.¹¹²⁵

Sweden also provides technical assistance for developing countries, primarily in the areas of tax administration strategies, legal drafting and advice, tax policy adoptions, tax administration implementation as well as training and knowledge management. The Swedish National Tax Board budget for 2014 was €2,451,000 for both domestic and international taxation. Currently, Sweden provides this assistance to Kenya, Moldova, Kosovo and Botswana.¹¹²⁶

The new government does not plan to conduct spillover assessments of how existing tax treaties impact developing countries.¹¹²⁷

Conclusion

While Sweden's new government has frequently highlighted the need for stemming tax dodging, including in developing countries, its actions so far are not always in line with the rhetoric. A new initiative to strengthen policy coherence for development in the ministries is welcomed. However, with the lack of support for a global tax body, the unwillingness to conduct a spillover analysis of its tax treaties, and its preference for confidential country by country reporting, the new Swedish government is not off to a good start when it comes to supporting developing countries on taxation matters.

The aftermath of LuxLeaks has not only given tax dodging and corporate transparency a bigger place in the Swedish media but also seems to have created a wider understanding among Swedish companies of the need to incorporate tax as part of their CSR policy. Money laundering scandals involving two of Sweden's major banks indicates the need for strong AML rules in Sweden. The government is in the planning stages of tackling this issue, through the adoption of the EU anti-money laundering directive, but as of yet has not decided whether the public will have access to beneficial ownership information. This is not the only issue where the government is yet to take a firm position. One could argue that the Swedish government either does not have a clear position on a number of tax issues, or that there is a lack of coherence between the government parties or the ministries.

United Kingdom

“While we want a tax system that is competitive for business, we also want a tax system where businesses pay their taxes.”

David Gauke, Financial Secretary to the Treasury¹¹²⁸

Overview

Tax has often dominated both the political and media agenda in recent years, and 2015 was no exception. This is perhaps not surprising since the UK occupies such a central location in international finance, through both the role of the City of London, and the Overseas Territories and Crown Dependencies that are constitutionally linked to the UK. In 2015 a range of issues were in the spotlight including; LuxLeaks, HSBC, Non-Dom status, the Diverted Profits Tax and devolving taxing rights to Scotland and Northern Ireland.

Many more tax issues featured in the May 2015 General Election campaign, where tax was one of the big issues, helped by the Tax Dodging Bill campaign, which saw over 80,000 people and over 20 NGOs and unions call on all parties to show a commitment to improving tax policy.¹¹²⁹ Polling continued to show public dissatisfaction with tax policy, with 85% thinking the election commitments on tax avoidance did not go far enough.¹¹³⁰ While publicly all the focus was on domestic tax issues, all the main parties included specific commitments on ensuring tax policies deliver results in developing countries, a significant change from the previous elections in 2010.¹¹³¹ And while the UK was one of the countries blocking the creation of a UN tax body at the Financing for Development Conference in Addis Ababa, the development impact of tax does remain higher on the political agenda in the UK than in many EU Member States. The new Conservative Government created their own headlines with their July budget committing to cut corporation tax to 18% by 2020 and to new restrictions on those claiming to be non-domiciled for tax purposes – the so-called ‘non-doms’.¹¹³²

Tax policies

The UK Government has continued to pursue what can at times appear to be a Janus-faced approach. On the one hand promising an increasingly intolerant approach to tax evasion and avoidance, and claiming to lead international cooperation. On the other hand, promising to ensure that the UK is the most competitive tax regime in the G20 through reductions in headline rates and supporting incentives such as the patent box regime. The UK’s aggressive participation in global tax competition has caused some controversy, with a professional tax advisor warning that the UK “upsets governments in the EU and the US who see the UK becoming a tax haven in relative terms.”¹¹³³

The most eye-catching policy from the UK in 2015 was perhaps the Diverted Profits Tax (DPT), or the ‘Google Tax’ as it has been dubbed by many. This tax became effective from April 2015 and imposes a 25% charge on profits that are deemed to have been ‘diverted’ away from the UK by the use of contrived arrangements (e.g. through avoiding a UK taxable presence).¹¹³⁴ Following the UK’s announcement, Australia has introduced its own version of the DPT, with other countries considering similar moves;¹¹³⁵ there is also speculation that the DPT may have influenced Amazon’s decision to alter its structure in the EU.¹¹³⁶

While this was portrayed as an example of the UK Government taking tough action against tax avoidance, questions still remain on the influence of corporations on UK Government tax policy. A leading tax lawyer, who advised the Government on the Google Tax, publicly stated that, “I don’t think in the last 20 years or so one can say that governments have driven corporation tax policy. It’s the large companies that have driven the direction of corporate tax policy.”¹¹³⁷

Beyond the DPT, most of the changes in tax policy have centred on either preparing the ground for the OECD’s Base Erosion and Profit Sharing (BEPS) proposals, or for further devolution of taxing powers to the nations of the United Kingdom.¹¹³⁸

Following the SwissLeaks revelations there were concerns that, rather than prosecuting non-compliant HSBC Switzerland account holders, Her Majesty's Revenue Collection (HMRC) encouraged many of the individuals with HSBC accounts to regularise their tax affairs through the Liechtenstein Disclosure Facility.¹¹³⁹ As a result, only one prosecution has been brought in the UK, and the revenue yield from the SwissLeaks data has been much lower in the UK than in other countries.¹¹⁴⁰ This was not the only scandal surrounding the SwissLeaks to attract attention in the UK; as HSBC is a UK-headquartered bank there was significant interest in how the bank ended up facilitating such large-scale evasion, including the perhaps inevitable Public Accounts Committee inquiry.¹¹⁴¹

Tax rulings

Tax rulings – or 'clearances', as they are also referred to in the UK – are obtainable by any business in the UK. These can be under either a statutory or non-statutory basis, as well as being negotiated bilaterally or unilaterally. Statutory clearances are those where legislation clearly states that a clearance can be sought, and includes Advance Pricing Agreements (APAs); non-statutory clearances are cases where there is no specific provision for a clearance, but HMRC is willing to grant one in the interests of ensuring an efficient tax system.¹¹⁴² The UK is one of the leading suppliers of APAs in the EU; for the countries where data is available, only Luxembourg provides more APAs.¹¹⁴³ In all cases of clearances, including APAs, the UK Government states that no special treatment is received by the company seeking a clearance; it merely clarifies how the law applies to anyone in the same situation.¹¹⁴⁴

The impact of other countries' tax rulings on the UK was clearly an area of concern following the LuxLeaks revelations. More than 120 of the 360 companies detailed in the LuxLeaks files had links to the UK. The revelations also led Parliament's Public Accounts Committee to reopen their inquiry into the role of large accountancy firms in tax avoidance. It led to the findings that professional services firm PwC was engaged in the "promotion of tax avoidance on an industrial scale" and that the tax industry "cannot be trusted to regulate itself."¹¹⁴⁵ This led to recommendations that included stricter regulations for tax advisors.¹¹⁴⁶

Patent box

UK introduced a patent box which took effect in 2013 that offers a tax rate of 10% on profits made from exploiting patented inventions.¹¹⁴⁷ In 2014, the UK was one of the leading defenders of the patent box system when it came under pressure from other EU Member States.¹¹⁴⁸ The UK however managed to ensure the continuation of the system by negotiating an agreement with Germany,¹¹⁴⁹ which later became the basis for an agreement adopted by the G20 and OECD countries in the BEPS negotiations.¹¹⁵⁰ The agreement meant that existing patent box systems can continue business as usual until 2021, after which they have to comply with a new 'modified nexus' approach (see section 3.4 on 'Patent boxes').

Tax treaties

There appears to be some minor movement to recognise the potential significance of tax treaties to developing countries, as the Department for International Development (DFID) is now consulted annually as part of the HMRC annual consultation exercise, and the HMRC treaty team has a development objective in their strategic plan.¹¹⁵¹ However, the impact of this remains unclear.

The UK has one of the largest treaty networks in the world, with over 100 tax treaties and tax information exchange agreements in force.¹¹⁵² However, it is still active in negotiating new treaties and protocols with developing countries, including India, Malawi and Senegal, in the current list of negotiation priorities.¹¹⁵³ One issue that is likely to receive increasing attention in future negotiations will be the inclusion of binding arbitration clauses. The UK, as part of the G7, has committed to establishing binding arbitration on cross-border tax,¹¹⁵⁴ something that – unless designed well to provide simplicity, transparency and affordability – could place developing countries at a significant disadvantage.¹¹⁵⁵

Financial and corporate transparency

Public reporting for multinational corporations

The UK implemented the EU requirements on country by country reporting for banks in 2013.¹¹⁵⁶ The first set of reports was published in 2014. However, as this was before the EC decision that all the information should be made public, there was a difference between banks on the amount of information disclosed.¹¹⁵⁷

The UK has also been one of the first countries to commit to implementing the OECD BEPS country by country reporting template, with the March 2015 budget creating the legal powers for the Treasury to introduce regulations along these lines.¹¹⁵⁸ When the commitment was originally announced in the 2014 Autumn Statement, it appeared that the UK was not seeking to impose a threshold on the size of multinational companies that would have to report.¹¹⁵⁹ However, that position now appears to have changed and the UK will adopt the OECD's high threshold, which would effectively exclude the vast majority of multinational companies from the reporting requirement.

The debate around whether country by country reporting should be made public has continued, and most parties addressed the issue to some degree in their election manifestos. The Conservative Party that formed the Government had a commitment to "consider the case for making this information publicly available on a multilateral basis",¹¹⁶⁰ although it is unclear if the EU arena is the 'multilateral basis' they would consider acceptable. Beyond the political parties, a survey of FTSE100 companies by Christian Aid found that only a minority of companies state a clear opposition to legislation requiring public country by country reporting. Most companies appear willing to accept such regulations.¹¹⁶¹

Ownership transparency

The UK was the first EU country to pass legislation to require public registers of beneficial owners of companies. Companies will start providing the data and the register will come online in 2016.¹¹⁶²

Being only one of a small handful of EU Member States with plans for public registers of the beneficial owners of companies, the government also provided crucial credence to the idea of the public's access to this information in the EU negotiations on the Anti-Money Laundering Directive (AMLD) at the end of 2014.¹¹⁶³

While the UK has been at the forefront on transparency for companies, it has resisted measures to increase the transparency of trusts. During the EU AMLD negotiations, they successfully fought hard to exclude trusts as falling among those structures whose real owners should be centrally registered, let alone be made public.¹¹⁶⁴ Part of the UK defence of its position on trusts appears to be that other EU countries do not fully understand how trusts under UK law operate. It is certainly true that there are many more trusts in the UK and its dependent territories than in the rest of the EU. It is estimated the UK alone was home to close to 200,000 trusts in 2008/2009, with 20,000 of these having corporate trustees.¹¹⁶⁵ However this dominance of the EU trust market could also imply that the UK may also be seeking to protect UK business by preventing new legislation. There is likely to be continued close attention paid to the UK (and its territories) trust sector. This is not only due to the repeated links to grand-scale corruption and tax evasion in the developing countries,¹¹⁶⁶ but also as the recent tightening of non-dom rules has led some tax advisors to recommend the users of this tax-saving trick to place their funds in a trust instead.¹¹⁶⁷

While the UK's Overseas Territories and Crown Dependencies all agreed to consultations on public registers of companies, at the time of writing, only the Cayman Islands and British Virgin Islands have produced a full response to their consultation, and none of the territories has made any substantial moves towards public registers.¹¹⁶⁸ Gibraltar will have to apply the EU directive as it is part of the EU, and it is suspected that the Crown Dependencies of Jersey, Guernsey and the Isle of Man may also adopt the EU directive to ensure continued access to the EU market as equivalent regimes. However, the interpretation of 'legitimate interest', which is a condition for individuals to get access to the information, appears likely to be very restrictive.¹¹⁶⁹

EU solutions

Amidst growing EU scepticism and an upcoming referendum on the UK's continued membership of the EU, the UK government¹¹⁷⁰ has provided only lukewarm support for active coordination and harmonisation of tax policies within the EU. Reflecting this stance, immediately after the Commission re-launched its proposal for a Common Consolidated Corporate Tax Base (CCCTB) in June 2015, the Financial Secretary to the Treasury David Gauke shot down the idea, calling it "a proposal still looking for a justification."¹¹⁷¹

Global solutions

The UK continues to declare tax as a key development issue, and claimed to support tax as a key issue for the Financing for Development (FfD) conference in Addis Ababa. What this meant in practice was less clear, as the UK was one of the key blockers against creating an intergovernmental tax body under the UN,¹¹⁷² believing that such a body would both duplicate the work of the OECD and reduce the tax sovereignty of the UK. The UK does support capacity building for developing countries either directly or through multilateral institutions in 22 developing countries; and is developing programmes in a further four countries.¹¹⁷³ As part of this capacity-building effort, the UK has created a specialist Developing Country Capacity Building Unit in HMRC. It was also one of the countries behind the Addis Tax Initiative¹¹⁷⁴ launched in the margins of the FfD conference.

Despite the recommendations from the International Development Committee and the increasing focus from the IMF and others on spill-overs, the UK does not plan to undertake any spill-over analysis. However, it does note that the BEPS project is looking into how spill-overs can be assessed. It is currently not clear if the commitment to policy coherence for development in the Addis Tax Initiative will alter this approach.¹¹⁷⁵

All major parties included tax and development commitments in their manifestos for the 2015 General Election, showing the increased importance of the issue (and the impact of the Tax Dodging Bill campaign), and indicating a degree of cross-party unity on the issue, if not necessarily the specific policies to pursue. In addition to a commitment on capacity building, the Conservative Party, which won the election, also committed to “ensure developing countries have full access to global automatic tax information exchange systems”,¹¹⁷⁶ a stronger commitment than had previously been made. The UK now does appear to support temporary non-reciprocity for developing countries as a way to help integrate them into the international system for the automatic exchange of information, although this may only be as part of pilot projects recommended by the Global Forum Roadmap. The first step in this direction was seen in August with the announcement of a partnership with Ghana to help that country prepare for automatic information exchange.¹¹⁷⁷

Conclusion

The UK continues to occupy a central, if somewhat inconsistent, role in international tax. The UK Government appears to be attempting to be simultaneously both one of the loudest advocates for new measures to address tax avoidance and tax and development issues, while also being one of the most aggressive countries in terms of promoting tax competition and blocking the creation of a global tax body to allow developing countries an equal voice. Whether it is possible to maintain such an approach for a sustained period of time is unclear. However, what does seem clear from the developments in 2015 is that the new UK Government intends to try.

Appendix

Methodology for country rating system

Category 1 Tax treaties

This category is based on information from Figure 4 and Table 5 on the average rate of reduction in tax treaties and the total number of tax treaties between 15 EU Member States and developing countries (see section 3.5 on 'Tax treaties'), as well as on information from the national chapters. As noted in the report, an increasing number of countries are currently introducing anti-abuse clauses in their tax treaties. Although this is positive, these clauses do not address the main concern with tax treaties – namely that treaties are used to lower tax rates in developing countries and reallocate taxing rights from poorer to richer countries. Therefore, the presence of anti-abuse clauses is not used as a determining factor in the rating system outlined below.

Green: 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 average rate reduction on withholding taxes in treaties with developing countries is below 1 percentage point.

Yellow: The average rate reduction on withholding taxes in treaties with developing countries is above 1 percentage point. However, the negative impacts of the country's tax treaty system is relatively limited because the average reduction in percentage points and the number of tax treaties the country has with developing countries are both below average among the countries covered in this report (2.99 percentage points and 41 treaties respectively).

Red: The tax treaty system of the country is relatively harmful because the average reduction in percentage points and the number of tax treaties the country has with developing countries are both above the average among the countries covered in this report (2.99 percentage points and 41 treaties respectively).

Category 2 Ownership transparency

This category is based on information from the national chapters and Figure 6 on 'Money-laundering risks in 15 EU countries, 2015' (see section 3.9 on 'Hidden ownership of companies and trusts').

Green: The government has announced that it is introducing a public register for beneficial ownership information on companies, and does not allow the establishment of trusts or similar legal structures.

Yellow: The government is either undecided or has chosen a problematic middle-way, either by establishing a public register for beneficial owners of companies while at the same time providing opportunities for establishing secret trusts or similar legal structures, or establishing a public register for beneficial owners of trusts but not for companies.

Red: The country is a potential money laundering risk, either because the government has rejected the option of establishing public registers of beneficial owners, or because it figures in the top five countries with the highest money laundering risks according to the Basel Institute of Governance's Anti-Money Laundering Index 2015 (see Figure 6 in section 3.9 on 'Hidden ownership of companies and trusts').

Category 3 Public reporting for multinational corporations

This category is based on information from the national chapters.

Green: The government is a champion and has either actively promoted EU decisions on public country by country reporting, or has already gone – or plans to go – further in its national legislation.

Yellow: 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 in the middle between positive and negative, as well as countries where the position is unclear.

Red: The government has, or is in the process of, introducing laws that would make country by country reporting confidential, for example by implementing the OECD BEPS outcome. The government furthermore supports the OECD BEPS recommendation of only requiring companies with a turnover of more than €750 million per year to report. Furthermore, the government is actively speaking against public country by country reporting at the EU level.

Category 4 Global solutions

This category is based on information from the national chapters.

Green: 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: The position of the government is unclear, or the government has taken a neutral position.

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

Symbols



Arrows

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



No access sign

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

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