

Identifying & listing corporate tax havens

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OXFAM

Content

- 1) Oxfam & tax justice work
- 2) What are tax havens
- 3) Identifying corporate tax havens
- 4) Reflection on set of criteria
- 5) Recommendations

Oxfam & tax justice work (1)

- Oxfam is an international confederation of 18 organizations working together with partners and local communities in more than 90 countries.
- One person in three in the world lives in poverty. Oxfam is determined to change that world by mobilizing the power of people against poverty.

The citizen-state compact:



For richer nations *“if a company avoids tax or transfers the money to offshore accounts what they lose is revenues; here on our continent, it affects the life of women and children – in effect in some situations it is like taking food off the table for the poor”*

Former UN Secretary-General
Kofi Annan, 2013

Oxfam & tax justice work (2)

- Actions with partners to increase citizens and civil society capacities on tax (accountability)
- *Actions in Burundi, Egypt, Ghana, Kenya, Mali, Malawi, Mozambique, Myanmar, Nigeria, Niger, Senegal, Uganda, Zambia, OPTI, Morocco, Tunisia, Cambodia, Indonesia, Laos, Pakistan, Vietnam, Dominican Republic, El Salvador, Guatemala, Paraguay, Peru, Nicaragua, Honduras, Bolivia, Cuba, India and Brazil*
- *Next level: how to protect the tax base of developing countries considering financial flows through global tax havens?*



Oxfam & tax justice work (3)

- Tax evasion and tax avoidance deprives governments of crucial billions to provide essential public services
- Oxfam is calling for the end to the era of tax havens .



What are tax havens (1)

- What is the problem to be addressed?:
 - Profits reported in 'tax havens' are not aligned with economic activities
 - Corporate tax avoidance made possible thanks to secrecy?
 - Corporations not paying a 'fair share'?
 - Decreasing income from corporate taxes, reducing finance available for public services and development?
 - **All of the above?**

What are tax havens (2)

- Only one type of tax havens?
 - Secrecy jurisdictions
 - Private wealth tax havens
 - Domestic or Global tax havens
- Corporate tax haven:
 - Tax havens are jurisdictions or territories which have intentionally adopted fiscal and legal frameworks allowing to avoid paying taxes where actual substantial economic activity is performed.
 - Play a role in current tax race to the bottom



What are tax havens (3)

Tax havens tend to specialize but have common features:

- Grant fiscal advantages to non-resident;
- Provide significantly lower effective level of taxation;
- Prevent automatic exchange of information for tax purposes.
- Allow the non-disclosure of the corporate structure of legal entities.

Identifying corporate tax havens (1)



Identifying corporate tax havens (2)

Jurisdiction & listing	Inward gross debt liabilities >10 billion/>20%/GDP *	Top 10 profit shift US MNCs **	MNC top X subsidiaries ***	CIT 0%
Bermuda (FSI, OECD, UNCTAD, EP, EC, GAO, IMF)	✓	✓	F; FO; S; C; K	✓
Cayman Islands (FSI, OECD, UNCTAD, EP, EC, GAO, IMF, BIS)	✓		F; FO; S; C; K	✓
Mauritius (FSI, OECD, UNCTAD, EP, EC, BIS)	✓		F; FO; S; K; SA	
Singapore (FSI, EP, GAO)	✓	✓	F; FO; S; C; SA	
Switzerland (FSI, EP)	✓	✓	F; FO; S; C	

* Inward gross debt liabilities above 10 billion and more than 20%/GDP (CDIS)

** Still Broken, report from Tax Justice Network, Global Alliance for Tax Justice, PSI, Oxfam International, November 2015

*** F = FTSE 100 top 15 subsidiaries; FO = Fortune 500 top 15 subsidiaries; S = Spanish companies top 15 subsidiaries; C = Top 10 Canadian companies subsidiaries; K= Use of tax havens in ownership structure of Kenyan petroleum rights (Oxfam research report May 2016) subsidiaries; SA = Use of tax havens by the 20 largest South African companies listed on the JSE top 10 – subsidiaries.



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Identifying corporate tax havens (3)

All partner countries which provided more than USD 10 bln. in loans - and more than 20% of GDP to 76 reporting countries together (in 2014 76 countries reported inward investments to CDIS)

6370%	Virgin Islands, British
3843%	Cayman Islands
2791%	Bermuda
1233%	Luxembourg
372%	Mauritius
365%	Curacao
203%	Cyprus
88%	Netherlands
83%	Ireland
59%	Switzerland
47%	Belgium
26%	Singapore

Explanation:

Intra-group loans can be used for profit shifting
Table shows intra-group loans provided as % of GDP (to 76 reporting countries, 2014 IMF CDIS data)

Only countries that provided intra-group loans over USD 10 bln.

Intra-group loans >20% GDP

Compare to UK (13%), Sweden (11%), France (8%)



Reflection on set of criteria (1)



Reflection on set of criteria (2)

OECD

Jurisdiction:	<u>OECD criteria1: Rating by the Global Forum</u>	<u>OECD criteria 2: THE CRS MULTILATERAL COMPETENT AUTHORITY AGREEMENT (MCAA) signatories. **</u>	<u>OECD criteria 3: MCMAA ***</u>
Bermuda			
Cayman Islands			
Mauritius			
Singapore		X	
Switzerland			X (signed)

* 1: Rating by the Global Forum on Transparency and Exchange of Information for Tax Purposes is not “largely compliant” or better -on-request/ratings/#d.en.342263

** 2: Only later in 2016 it will be possible to verify if an effective exchange relationship is in place between two jurisdictions under the MCAA that allows for the automatic exchange of CRS information and when this exchange relationship became effective. <http://www.oecd.org/tax/automatic-exchange/international-framework-for-the-crs/>

*** 3: MCMAA Convention on Mutual Administrative Assistance in Tax Matters (entered into force)

Conclusion: these criteria are completely inadequate as a mean to identify and take measures against corporate tax havens. Almost all jurisdictions fulfil all, or most of the requirements.

Reflection on set of criteria (3)

Other considerations

<u>Jurisdiction:</u>	<u>CIT below 25%</u>	<u>CIT below 5%</u>	<u>preferential tax treatment of IP income</u>	<u>Ruling possible</u>	<u>Other incentives</u>	<u>Lack of CFC rules</u>	<u>Inclusive framework membership (29/08/2016)</u>
Bermuda	✓	✓				✓	✓
Cayman Islands	✓	✓				✓	✓
Mauritius	✓	✓		✓		✓	✓
Singapore	✓		✓	✓	✓	✓	
Switzerland	✓			✓	✓	✓	

Conclusion: Some corporate tax jurisdictions have a very low (or 0%) headline corporate income tax rate. Other corporate tax havens have a reasonable headline rate, but facilitate reduction of effective tax rates paid through several tax incentives. Generally popular corporate tax havens seem to be missing strong CFC-rules.

Recommendations: How the EU can target corporate tax havens (1)

- Blacklisting is a tool not the solution
- Blacklisting of tax havens can only work against tax avoidance and corporate tax race to the bottom if OECD/EU countries agree on a number of underlying principles:
 - Corporate tax competition between countries is ultimately harmful;
 - Transparency by corporations on where they pay their taxes, make their profits etc. is essential;
 - Transparency is essential by governments on the tax incentives
 - Corporations should be made to pay a fair level of Corporate Income Tax



Global problem of excessive corporate tax competition needs a global approach

Global approach:

- Agree on the need to address the race to bottom
- Agree on additional BEPS-measures

Measures at EU level:

- ATAD (incl. strong CFC etc.)
- CCCTB
- Public CBCR
- Transparency & review tax incentives



EU-Listing process, dialogue, counter-measures.

3rd countries:

- Inclusive framework
- CFC
- CBCR
- Transparency & review tax incentives

Countries seem to be having a choice: “effectively address the problem of international tax avoidance and excessive tax competition (through agreeing on the need to address the corporate tax race to the bottom), or to maintain autonomy.”

Recommendations: How the EU can target corporate tax havens (2)

- Tackling tax havens also means tackling the tax race to the bottom.

The EC should undertake a study on a fair Corporate Income Tax (CIT) rate and until then e.g. apply a threshold linked with EU average CIT rate.

- Include indicators covering transparency and OECD-minimum requirements, on (effective) tax rates and also on harmful tax practices, as well as (additional) anti-abuse indicators.
- Reform the current definition and approach to Harmful Tax Practices
- Consider lack of CFC rules as an Harmful Tax Practice



Recommendations: How the EU can target corporate tax havens (3)

- Counter measures

Common defensive measures which can prevent tax revenues to fly away:

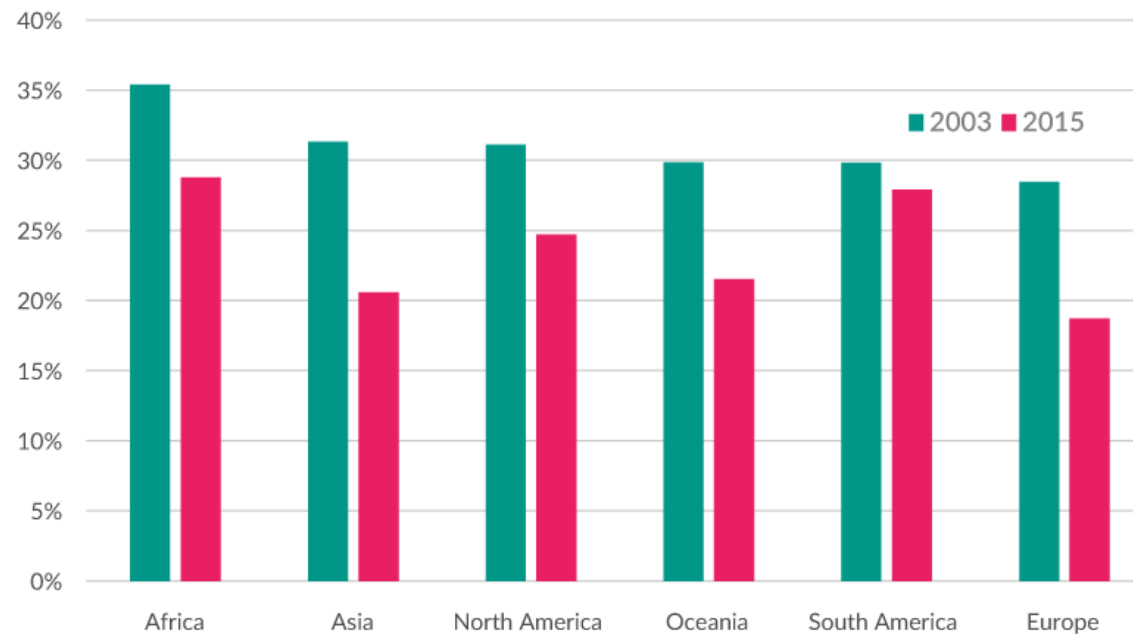
- Withholding taxes.
- Strong CFC rules based on a common list
- Public CBCR reports
- Work with tax haven jurisdictions on finding solutions to the corporate tax race to the bottom (global & regional cooperation needed).
- Etc (access to EU funds, access to EU market, reduced mobility for financial flows)

THANK YOU FOR YOUR ATTENTION



Race to the bottom?

**Top Marginal Corporate Tax Rates Throughout the World
Have Declined in the Past Twelve Years**



Note: Simple averages used.

Source: Tax Foundation calculations based on data from the World Bank, OECD, and KPMG.



Sources:

- Bad/Good image slide 12:
<https://www.port80software.com/blog/2012/12/application-securityblacklisting-or-whitelisting/>