

Tax Games: the Race to the Bottom

Europe's role in supporting an unjust global tax system

2017





This report is dedicated to the memory of Daphne Caruana Galizia – a courageous journalist and researcher who dared to speak truth to power. Her extensive investigations into the Panama Papers and numerous other sources exposed high-level corruption in Malta. Daphne was killed in a car bomb attack near her home in Bidnija, Malta on 16 October 2017.

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Glossary

Advance Pricing Agreement (APA) / Advance Tax Agreement

See under 'Tax ruling'.

Aggressive tax planning

See under 'Tax avoidance'.

Anti-Money Laundering Directive (AMLD)

A European Union (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 AMLD was adopted in May 2015, and it is expected that a 5th AMLD will be adopted during 2017.

Automatic Exchange of Information

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

Base erosion and profit shifting (BEPS)

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

Beneficial ownership

A legal term used to describe anyone who has the benefit of ownership of an asset (for example, bank account, trust, property). In some cases, the beneficial owner does not nominally 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 taxable profits of multinational corporations operating in the EU, and dividing this 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 taxable profits, but simply allocates it and leaves it to the member state to decide what tax to apply. The proposal was redrafted and relaunched in 2016 (see chapter 5.2 on 'A coherent system for taxing multinationals'), and is currently being negotiated by the EU member states.

Conduit-offshore financial centre

See 'Offshore jurisdictions or centres'.

Controlled Foreign Company (CFC) rules

CFC rules allow countries to limit profit shifting by multinational corporations by requesting that the corporation reports on profits made in other jurisdictions where it 'controls' another corporate structure. There are many different types of CFC rules, with different definitions of 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 abuse of tax rules has been detected. When used in tax treaties, GAARs can in some cases be used to prevent tax avoidance by allowing tax administrations to deny multinational corporations tax exemptions, but 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 spill-over effects on taxation in other countries, for example, by eroding tax bases or distorting investments.

Illicit financial flows

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

Laundromat scandal

The Laundromat scandal first surfaced in 2014, but received renewed attention in 2017, when the Organized Crime and Corruption Reporting Project (OCCRP) published a series of articles on a large-scale money laundering operation. The scheme operated from 2010-2014, and allegedly brought at least US\$20 billion out of Russia and into banks around the world. According to the media reports, the money laundering in many cases involved shell companies registered in the UK with nominee directors concealing the real owner (see 'Beneficial owner' above). A core method in the scheme was for Russian ownership to guarantee large fake loans between two shell companies. When one shell company failed to repay the fake debt to the other, the loan would get authenticated by judges in Moldova, at which point the Russian company would be able to transfer money out of Russia under the pretence of covering unpaid debt. The scandal has among other things led to money laundering charges against a number of judges in Moldova for their alleged involvement in the scheme. It has also led to criticism of a number of international banks for their failure to detect suspicious transactions.

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 former employees of PricewaterhouseCoopers (PwC). The LuxLeaks dossier allegedly documented how hundreds of multinational corporations were using the system in Luxembourg to lower their tax rates, in some cases to less than one per cent.

Malta Files

In 2017, the network of European Investigative Collaborations (EIC) published a series of articles based on hundreds of thousands of documents, including details about over 70,000 companies registered in Malta's public company register. The investigation allegedly showed that Malta operates as a hub for corporate tax avoidance inside the EU and has, among other things, cost other countries €2 billion in lost tax income. The scandal also concluded that the Maltese system is being used by wealthy individuals to dodge taxes in their home countries.

OECD BEPS Convention

A convention to implement the treaty-related parts of the outcomes of the OECD BEPS process (see below). Also known as the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS or simply the Multilateral Legal Instrument (MLI).

OECD BEPS process

Intergovernmental negotiating process initiated in 2013 with the aim of producing an agreed outcome on how to address base erosion and profit shifting (see above). The process was led by the Organisation for Economic Co-operation and Development (OECD) and the Group of 20 (G20), and produced the 'BEPS package', consisting of 15 agreed actions.

Offshore jurisdictions or centres

Usually known as low-tax jurisdictions, specialising in providing corporate and commercial services to corporations and individuals that aim to avoid or evade taxes. This is often combined with a certain degree of secrecy. 'Offshore' can be used as another word for tax havens or secrecy jurisdictions. Offshore jurisdictions are sometimes divided into 'sinks', which are jurisdictions that attract and retain foreign capital, and 'conduits', which function as intermediates between source countries and sinks by enabling the transfer of capital without taxation.

Panama Papers

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

Paradise Papers

The Paradise Papers scandal broke on 5 November 2017 when the ICIJ once again exposed the hidden world of tax havens. The leak had ties to over 120 politicians and world leaders, more than 100 multinational corporations, and countless wealthy individuals, spread over 180 countries. At the core of the stories were 13.4 million leaked files, mainly originating from the law company Appleby, the trust company Asiatici, and company registers in 19 secrecy jurisdictions.

Patent box

A 'patent box', 'innovation box', 'intellectual property (IP) box' or 'knowledge box' is a special tax regime that includes tax exemptions or deductions for activities related to research, innovation or intellectual property. 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)

Public country by country reporting would require transnational corporations to provide a publicly available breakdown of profits earned and taxes paid and accrued, as well as an overview of their economic activity in every country where they have subsidiaries, including offshore jurisdictions. In order to give an accurate picture, it should as a minimum include public 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 subsidiaries 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 corporation operates.
- The assets: all the property the corporation 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.

Sink-offshore financial centre

See 'Offshore jurisdictions of centres'.

Special purpose entity

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

Swiss Leaks

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

Tax avoidance

Tax planning practices that are often technically legal, but which stretch existing rules to their limits, or exploit loopholes, to minimise tax payments. Tax avoidance activities often go against the spirit of the law, although they may comply with the letter of the law.

Tax evasion

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

Tax ruling

A tax ruling is a written interpretation of the law issued by a tax administration to a taxpayer. It is in most cases binding for the tax administration that issues it. Tax rulings cover a broad set of written statements, many of which are uncontroversial. However, those rulings that are so-called 'advance tax agreements' with multinational corporations have become an issue of much debate. One such type of agreement are the so-called advance pricing agreements (APAs), which are used by multinational corporations to get approval of their transfer pricing methods. Advance pricing agreements and other advance tax agreements have become increasingly controversial after the LuxLeaks scandal, as well as several EU state aid cases, showing how such deals can be used by multinational corporations to avoid taxes on a large scale.

Tax treaty

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

Transfer mispricing

When 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 corporation are supposed to take place 'at arm's length', i.e. based on prices on the open market. Market prices can be difficult to quantify, however, particularly with respect to 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

Corporate tax income is needed more than ever...

The world's governments have committed to ambitious Sustainable Development Goals and a new global climate agreement, but the funding necessary to reach these goals is lacking. This gap is felt most strongly in developing countries, where funding sources are in short supply and the development challenges are most severe. In this context, corporate tax income is an absolutely indispensable source of government revenue.

...but governments are racing to the bottom

Despite the promises to make multinational corporations pay their fair share of tax, the world's governments have become locked in a very costly and destructive 'race to the bottom' on corporate taxation. One government's decision to cut taxes for corporations leads others to follow suit, and if the current trend continues, the **global average corporate tax rate will hit zero per cent in 2052**. This projection is based on the development between 1980 – when the average corporate tax rate was above 40 per cent – and 2015 – where it has dropped to less than 25 per cent.

Europe is playing a leading role in this race, and currently seems to be accelerating the pace. An analysis of developments in the EU and Norway shows that **12 governments have either just carried out a new cut in the corporate tax rate, or are planning to do so** over the next few years. One extreme example is Hungary, which slashed its corporate tax rate in half within a few months, and overtook Bulgaria as the EU country with the lowest corporate tax rate. Meanwhile, only two governments – Greece and Slovenia – have decided to increase their rates.

While corporations are being asked to pay less, consumers around the world are being asked to pay more, reflecting the fact that someone has to fill the gap from the missing corporate tax income. Since consumer taxes impact disproportionately hard on the poorest, this trend has the concerning consequence that tax systems are becoming more regressive, and risk exacerbating inequality rather than reducing it.

The international tax system remains full of loopholes

Some governments justify corporate tax cuts with a theory that the income lost will be regained as a result of increased efforts to combat tax avoidance. However, as highlighted in this report, the **political process to stop corporate tax avoidance resulted – at best – in half-hearted solutions**, and new loopholes are being introduced to replace old ones. Attempts to simplify the global tax system resulted in the opposite, and the OECD's base erosion and profit shifting (BEPS) agreement has taken the complexity of the international tax system to new levels.

Meanwhile, corporations continue to dodge taxes. A constant stream of corporate tax scandals serves as a reminder that corporate tax avoidance is still widespread, and the best estimates say it is costing societies around US\$500 billion in lost revenue every year. One key reason why this problem has been allowed to continue, is the fact that **governments offer secrecy, tax incentives and loopholes** that make it possible. **Europe plays a central role in this problem.** Scientific research has identified the countries that play the most central roles as 'sinks' – where corporations can keep their profits without incurring much tax – and 'conduits', which are countries that help channel corporate profits out of the countries where the multinational corporation is doing business, and into the sinks. The researchers found that the world's largest sink and conduit countries are both EU member states, namely Luxembourg and the Netherlands respectively, while several other European countries such as the UK and Ireland also feature high on the list.

Developing countries have been side-tracked in global decision making

Developing countries are particularly vulnerable to corporate tax avoidance, as corporate taxation is central to their revenue. Despite this, they are still not able to participate on a truly equal footing in the decision-making on international tax standards. The OECD – also known as the rich countries' club – continues to occupy the role as global decision maker, often in tandem with the G20. And while more than 100 developing countries were excluded when the most recent standards were negotiated, OECD countries are now keen to ensure that developing countries join the implementation. Meanwhile, a large group of developing countries keep calling for a UN negotiation to solve the problems in the global tax system, in a setting where all countries participate as equals. However, the analysis carried out in this report shows that **a large block of EU countries still insist on keeping the global decision making at the OECD.**

Secrecy remains a key obstacle to tax justice

Meanwhile, **information is still hard to get** for citizens that want to know what multinational corporations pay in taxes, and hence tax scandals still serve as a key source of information. **Whistleblowers who expose corporate tax avoidance risk prosecution**, as exemplified by the ongoing LuxLeaks trial in Luxembourg.

As a result of the mounting political pressure, the EU is now discussing whether to allow citizens to see where multinational corporations do business, and how much they pay in taxes in each country where they operate. However, **this report has mapped the positions of 18 European countries**, as well as the European Parliament and Commission, and found that **a majority are still against introducing full public country by country reporting**.

On a more positive note, substantial **progress is being made with regards to ending anonymous shell-companies**, which can be used to hide money and evade taxation. A growing number of countries are committing to introducing public company registers showing the real – beneficial – owners. However, despite the revelations in the Paradise Papers, the EU is still locked in hard negotiations about whether public registers should become an EU-wide standard, and whether owners of trusts should also be publicly registered.

While the EU is focused on blacklisting other countries as 'tax havens', European countries have a lot of homework to do.

In this report, a broad coalition of civil society organisations analysed 18 European countries and found that:

- Harmful tax practices are popular in several European countries, and problematic practices such as patent boxes and secret advance tax rulings have been increasing in numbers over the last years. Out of the 18 countries analysed, five received a 'green light' on harmful tax practices, while nine countries received a 'red light'.
- European tax treaties with developing countries remain a key issue of concern. Out of the 18 countries analysed, 12 countries have tax treaty networks that are highly problematic;
- Six countries have pushed ahead in the fight against secret shell companies by introducing public company registers showing the real – beneficial – owners. Meanwhile, secret company ownership is still possible in 12 of the analysed countries, and the UK still offers opportunities for setting up anonymous trusts;
- The majority – ten of the analysed countries – seem reluctant or outright against the idea of introducing full public country by country reporting, which would allow citizens to see where multinational corporations do business, and how much they pay in taxes;
- 13 out of 18 countries are openly against the proposal of establishing an intergovernmental UN tax body to address the problems in the global tax system, while ensuring that developing countries participate on a truly equal footing;
- While the vast majority of the governments studied now provide financial support to promoting domestic resource mobilization in developing countries, few have analysed how their own tax systems and policies can either promote or undermine tax collection in developing countries.

This report makes the following recommendations:

Tax policies

Governments and EU institutions must promote progressive tax systems to counter rising inequality; ensure that tax policies promote gender equality and are fully in line with policy coherence for development; and stop the race to the bottom on corporate taxation, including through lowering corporate tax rates and using harmful tax practices that facilitate corporate tax avoidance.

For this purpose, they should:

1. Carry out and publish spill-over 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 or reform policies and practices that have negative impacts on developing countries.
2. 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.
3. Support a proposal on a Common Consolidated Corporate Tax Base (CCCTB) at the EU level that includes the consolidation and apportionment of profits, and avoid introducing new mechanisms that can be abused by multinational corporations to dodge taxes, including large-scale tax deductions.
4. Publish data showing the flow of investments through special purpose entities in their countries.
5. Stop the spread of, and remove, existing patent boxes and similar harmful structures.
6. Publish the basic elements of all advance tax agreements granted to multinational corporations (including, at a minimum, the name of the corporation to which it is issued, duration of the agreement and the topics covered). Move towards a system for taxing multinational corporations that is transparent, clear and less complex.
7. Publish annual assessments of the cost and benefits of all tax incentives provided to multinational corporations.
8. Ensure that tax advisors are legally liable for promoting and advising on practices that violate the law.
9. Adopt effective whistleblower protection to protect those who act in the public's interest, including those who disclose legal tax avoidance or tax evasion. The protection must include both private and public sector employees.

10. If negotiating or renegotiating tax treaties with developing countries, governments should:

- Conduct and publish a comprehensive impact assessment to analyse the impact on the developing country and ensure that negative impacts are avoided;
- Fully respect source country rights to tax the profits generated by business activities in their countries, and stop reducing withholding tax rates;
- Ensure full transparency around every step of treaty negotiations as well as effective participation by civil society and parliamentarians.

Transparency

Governments and EU Institutions must allow the public to access the key corporate information necessary to ensure accountability and tax justice. They must also ensure full and effective exchange of information between all the governments so that citizens are not able to use international structures to circumvent national tax laws.

For this purpose, they should:

11. Work towards a Global Standard on Automatic Information Exchange, which includes a transition period for developing countries that cannot currently meet reciprocal exchange requirements due to lack of administrative capacity. This transition period should allow developing countries to receive information automatically, even though they might not have the capacity to share information from their own countries. Furthermore, under the current standards, developed country governments must commit to exchange information automatically with all developing countries that fulfill basic data protection requirements, by establishing the necessary bilateral exchange relationships.
12. Establish fully publicly accessible registries of the beneficial owners of companies, trusts and similar legal structures. At the EU level, the revision of the EU anti-money laundering directive provides an important opportunity to do so, and governments must ensure that the problems related to secret ownership, as exposed in the Panama Papers, are finally resolved.
13. Adopt full country by country reporting for all large multinational corporations, 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,¹ but cover all corporations that meet the EU definition of 'large undertaking'.

International decision-making

Governments and EU institutions must support all international decision-making on tax matters being fair and transparent, including the participation of all countries on a truly equal footing, and an intergovernmental decision-making process that allows full access for observers.

For this purpose, they should:

14. Support the establishment of 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 become the main forum for international cooperation in tax matters and related transparency issues. The tax body should be adequately funded and allow full access to observers, including civil society and parliamentarians. One of the key priorities of the commission should be to negotiate and adopt an international convention on tax cooperation and related transparency.
15. Replace or fundamentally reform the EU Code of Conduct Group on Business Taxation to ensure that EU decision-making on international tax matters becomes fully transparent to the public, and that decision-makers become accountable to their citizens.

1. Introduction

When they adopted the Sustainable Development Goals (SDGs) in 2015, the world's governments committed to eradicating extreme poverty and hunger, reducing global inequality, ensuring free quality education for all children, universal access to safe drinking water, sanitation, reproductive healthcare, safe and affordable housing, and preventing the extinction of threatened plants and animals – all within the next 15 years.² Additionally, through the Paris Climate Agreement, they committed to strengthening the global response to climate change.³ Common to these ambitious objectives is the fact that the funding necessary to reach them is lacking.

Taxation is the most important source of government income, and will be essential for achieving these global goals. However, numerous scandals have revealed serious flaws in the global tax system, including serious examples of large-scale tax dodging by some of the world's largest multinational corporations and richest individuals. Some of these scandals concern illegal tax evasion, whereas others involve tax avoidance by multinational corporations, the latter being tax planning practices that may be technically legal, but that either stretch existing rules to their limits, or exploit loopholes.

The latest large-scale scandal, dubbed the 'Paradise Papers', happened in early November 2017, when the International Consortium of Investigative Journalists (ICIJ) published findings based on 13.4 million leaked files from the law firm Appleby, the trust company Asiatici, and 19 corporate registers from secrecy jurisdictions.⁴ The leaks revealed hidden offshore activities of over 120 politicians and global leaders, countless wealthy individuals and more than 100 multinational corporations.⁵

The leak shone a light on the tax arrangements of giants such as Nike, Apple and Glencore. It also revealed how multinational corporations active in Africa and Asia operate through shell companies in Mauritius and Singapore.⁶ Appleby replied by underscoring that the activities were fully legal and that the company saw no evidence of wrongdoing on their part.⁷ However, the fact that concealing large amounts of wealth and moving profits into tax havens can still be done in legal ways only raises even stronger concerns about the state of the global tax system.

Through initiatives such as the action plan on base erosion and profit shifting (BEPS) and automatic information exchange, the member states of the Organisation for Economic Co-operation and Development (OECD) and the Group of 20 (G20) have committed themselves to creating a functioning global tax system.⁸ In particular, they have sought to ensure that multinational corporations pay taxes where they do business, and break down the secrecy structures that have allowed large sums of money to disappear into an international tax vacuum. However, a few years after these initiatives were launched the job seems largely undone, and the political promises made are losing ground to other agendas. Indeed, while these promises to address global tax problems remain largely unfulfilled, many of the same governments are providing multinational corporations with yet more tax reductions.

This report analyses the state of play with a special focus on European policies and proposals, which can have an impact on tax dodging by multinational corporations and wealthy individuals globally, and the consequences this can have for developing countries.

Box 1: Tax and gender equality

All tax policies and systems can have differing impacts on women and men, and many current practices have disproportionately negative impacts on women, which is why an understanding of gender and tax should be central to efforts to reform the global system and national tax regimes.

In November 2016, the United Nations Committee on the Elimination of Discrimination Against Women (CEDAW) concluded a review of Switzerland and stated concern about *'[Switzerland's] financial secrecy policies and rules on corporate reporting and taxation having a potentially negative impact on the ability of other states, in particular those already short of revenue, to mobilise the maximum available resources for the fulfilment of women's rights.'*⁹

This important acknowledgement of the links between women's rights, financial secrecy and harmful tax practices came after civil society organisations had urged the committee to recognise the issue.¹⁰

Public revenues are essential to promote gender equality and protection of women's rights, including the provision of services such as reproductive healthcare and education. When government budgets fall short, women often suffer disproportionately from spending cuts and underfunded services, since it is often women and girls who undertake most of the care of children, older people and the family.¹¹ Tax dodging by multinationals and wealthy individuals reduces public revenues and can undermine efforts to protect women's rights.

2. The race to the bottom

'The trend of corporate tax rate reductions, which had slowed down after the crisis, seems to be gaining renewed momentum.' This was the OECD's conclusion in an assessment of the tax trend across its member states.¹² The analysis, published in September 2016, does not include more recent developments, such as the dramatic reduction of the corporate tax rate in Hungary, which was slashed by more than half – from 19 per cent to just 9 per cent (see table 1).¹³

The tax trend in OECD countries can create political momentum in other countries around the world to follow suit, resulting in an accelerated global 'race to the bottom'.

Table 1: Recent and upcoming changes in corporate income tax rates in EU countries and Norway, covering the years from 2015 to 2022. The table shows corporate income tax rates exclusive of surtax. For Luxembourg, the numbers in brackets indicate the combined corporate income tax rate.¹⁴ Latvia has increased its corporate tax rate to 20 per cent, but at the same time introduced a 0 per cent corporate tax rate for retained and reinvested earnings.

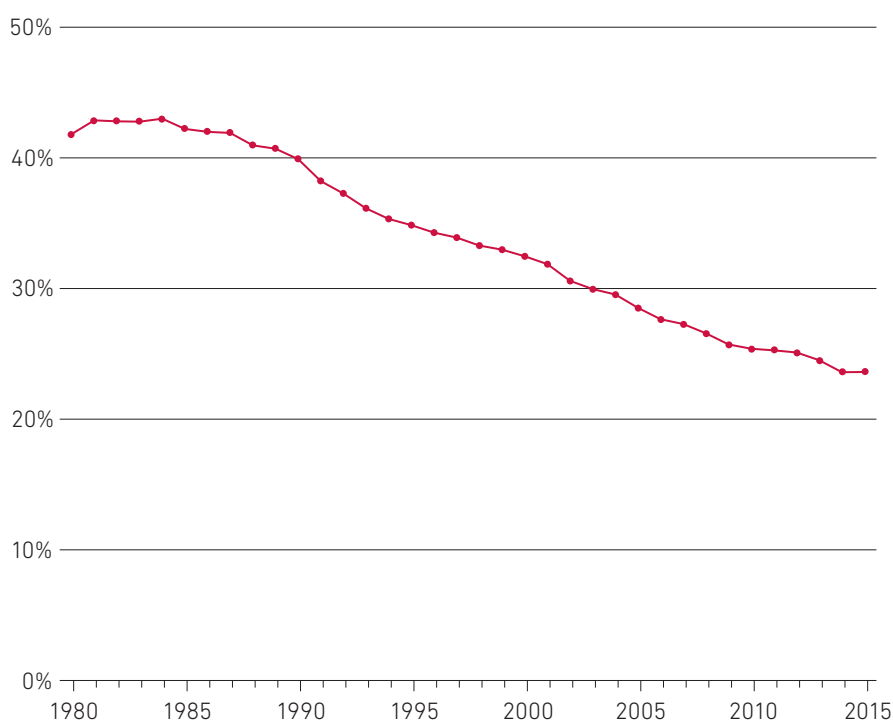
	Summary of changes	2015	2016	2017	2018	2019	2020	2021	2022
Hungary	52.6% reduction from 2016 to 2017	19%	19%	9%					
Belgium	24.2% reduction from 2018 to 2020	33%	33%	33%	29%	29%	25%		
France	24.2% reduction from 2018 to 2022	33%	33%	33%	33%	31%	28%	26.5%	25%
Netherlands	16% reduction from 2017 to 2021(*)	25%	25%	25%				21%(*)	
United Kingdom	15% reduction from 2016 to 2020	20%	20%	19%	19%	19%	17%		
Norway	14.8% reduction from 2015 to 2018	27%	25%	24%	23%				
Luxembourg	14.3% reduction from 2016 to 2018	21% (29%)	21% (29%)	19% (27%)	18% (26%)				
Italy	12.7% reduction from 2016 to 2017	27.5%	27.5%	24%					
Spain	10.7% reduction from 2015 to 2016	28%	25%	25%					
Sweden	9.1% reduction from 2017 to 2018	22%	22%	22%	20%(*)				
Denmark	6.4% reduction from 2015 to 2016	23.5%	22%	22%					
Slovakia	4.6% reduction from 2016 to 2017	22%	22%	21%					
Latvia		15%	15%	15%	20%/0%				
Greece	11.5% increase from 2015 to 2016	26%	29%	29%					
Slovenia	11.8% increase from 2016 to 2017	17%	17%	19%					

(*) The reduction has been proposed by the government but is not yet formally adopted by Parliament.

Sources: OECD,¹⁵ Luxembourg government,¹⁶ EY,¹⁷ UK government,¹⁸ Dutch government,¹⁹ Swedish government,²⁰ Norwegian government,²¹ Latvian parliament,²² French parliament²³ and French government.²⁴

This race is by no means a new phenomenon – the average global corporate tax rate has been falling since the early 1980s, dropping from above 40 per cent to below 25 per cent in less than 35 years (see figure 1).²⁵

Figure 1: Global Corporate Income Tax Rate 1980-2015



Source: Eurodad calculations based on IMF data²⁶

Box 2: When will we hit the bottom?

If the changes in the global corporate tax rate from 1980-2015 were to continue, it would **hit zero by 2052**.²⁷

This would be a very conservative projection, given that the speed of corporate tax cuts, especially among OECD countries, seems to have increased after 2015,²⁸ and that some multinational corporations have already been able to reduce their effective tax rate to less than one per cent due to generous treatment by some governments.²⁹

Adding to the race to the bottom is the fact that many countries are using so-called 'harmful tax practices' (see chapter 4), which can help multinational corporations avoid paying the official corporate income tax rate in countries where they do business. Common for all tax benefits designed for cross-boundary activities is that they are of no use to companies that are only present in one country, which is especially the case for many small and medium enterprises. Thus, these tax practices distort the competition between big business and small companies.

2.1 Why do governments race to the bottom?

When cutting the corporate tax rate, governments often refer to the need to 'compete' with other countries and the need to attract investment. But this is a highly questionable argument. In a recent analysis, the tax expert and senior policy advisor at Oxfam Novib, Francis Weyzig, concludes that in general, there is no link between tax rates and a country's investment climate.³⁰ This finding echoes concerns raised numerous times before. In 2013, for example, a World Bank survey found that over 90 per cent of surveyed investors in East Africa would have invested even if they had not received any tax incentives,³¹ and in 2015, a report by the IMF, OECD, World Bank and the UN highlighted that *'tax incentives generally rank low in investment climate surveys in low-income countries, and there are many examples in which they are reported to be redundant – that is, investment would have been undertaken even without them.'*³²

Another argument is that lower corporate tax rates will translate into higher wages for workers, cheaper products for consumers and a healthier economy overall. But experiences from the United States show a very different picture. Due to large-scale tax avoidance, many of the largest multinationals have in reality been paying very low levels of tax.³³ And while profits have increased dramatically, the share of income going to workers has dropped and low wages have stagnated³⁴ (this, however, doesn't apply to CEO salaries, which have sky-rocketed³⁵). It has sometimes been assumed that when labour receives a smaller share of corporate income, owners of capital will receive more.³⁶ However, there are indications that the share of income going to capital has also declined.³⁷ What has, however, increased, is the tendency for market power to be concentrated among a few corporations,³⁸ reducing rather than improving competition. Related to that, the difference between the prices consumers have to pay for products, and the corporations' cost of production, has also increased substantially,³⁹ showing that consumers have paid the price. Nobel laureate in economics, Joseph Stiglitz, comments that: *'This increase in market power helps explain simultaneously the slowdown in productivity growth, the sluggishness of the economy, and the growth of inequality – in short, the poor performance of the American economy in so many dimensions.'*⁴⁰

Over US\$250 billion:
the size of Apple's cash
pile in 2017.⁴¹

Corporate income tax is a key tool for avoiding the creation of overly wealthy corporations, which can use their power to control markets and lobby political decision-makers to provide them with special benefits. At the same time, corporate income tax provides governments with much needed income, while ensuring that wealthy individuals do not use corporate entities to evade personal income tax.⁴²

Lastly, it is important to note that while private investments are important, they cannot replace public investment. In its 2016 report, the Inter-Agency Task Force on Financing for Development highlighted that *'public investments in basic infrastructure, health and education, and many other areas, provide the preconditions without which markets cannot function well.'*⁴³ Therefore, tax income remains vital.

2.2 Someone has to pay

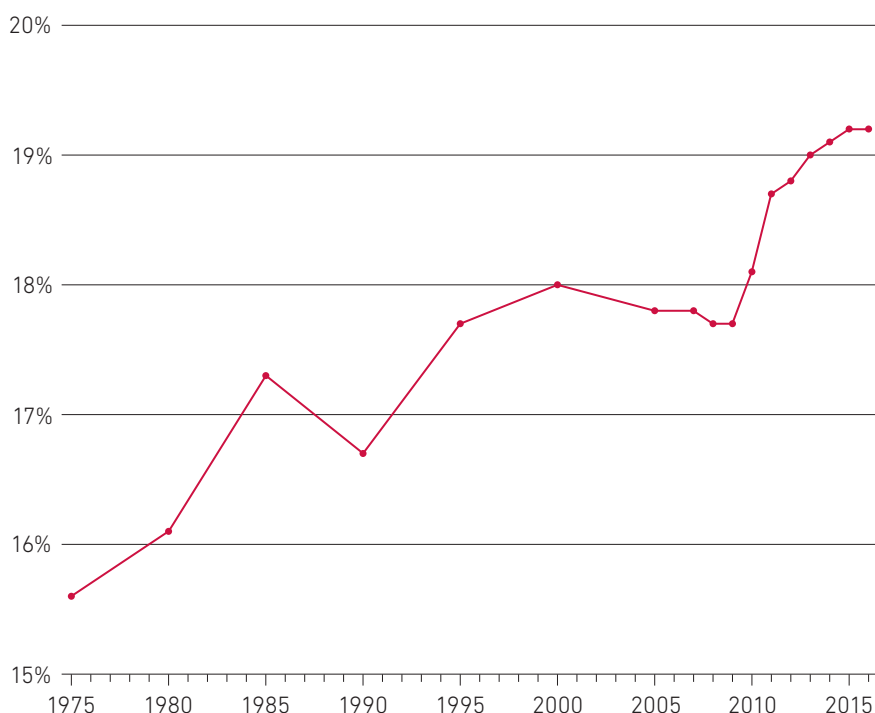
When some taxpayers pay fewer taxes, governments can either choose to cut spending, or increase taxes on others. Therefore, when corporations enjoy a sharply declining tax rate on their profits, ordinary workers and consumers can be expected to pay more.⁴⁴ This is hugely problematic. Consumption taxes such as value added tax (VAT) target consumers on a wide range of products. VAT rates are the same for all, and consumption of everyday household goods and services usually entails a larger share of the income of poorer rather than wealthier people. Thus, VAT is often viewed as a regressive tax, which risks contributing to increasing inequality between rich and poor, as opposed to reducing it. There are also concerns that women will be impacted harder than men, among other reasons due to the simple fact that women are more likely to live in poverty.⁴⁵

Despite the regressive impact of consumption taxes, international financial institutions such as the International Monetary Fund (IMF) have consistently championed the introduction or increase of indirect taxes in developing countries.⁴⁶

Over the last 50 years, VAT has spread across the world: while fewer than 10 countries applied the tax in the late 1960s, it is today a reality in over 166 countries.⁴⁷

In the OECD, where the most recent data is available, VAT rates rose sharply after 1975 before stabilising from 1995-2008, but then jumped to an all-time high of 19.2 per cent by 2015 (see figure 2).⁴⁸

Figure 2: OECD Average VAT 1975-2016



Eurodad illustration based on data from OECD.⁴⁹
The rates shown are unweighted averages from 1 January of each year.

2.3 Tax certainty – for whom?

In 2017, the G20 and OECD put a strong new emphasis on the importance of ensuring 'tax certainty' – by which they mean that taxpayers should be able to predict how much tax they will be asked to pay in the future. However, while certainty is a positive concept, one might ask: for who? A report by the OECD and IMF, which underpins the G20's 2017 endorsement of the concept, makes no secret of the fact that certainty is meant to be provided specifically to businesses and investors.⁵⁰

Among the tools promoted in the report are advance pricing agreements, which are secret tax rulings issued by tax administrations to specific multinational corporations. Such rulings have become controversial, after several scandals revealed how multinational corporations have used them to avoid paying taxes (see chapter 4.4 on 'Sweetheart deals').

The OECD/IMF report also makes clear that the 'certainty' agenda does not focus on tackling tax avoidance by multinational corporations.⁵¹ Thus it provides no guarantee that multinational corporations will pay their fair share of tax, nor offers much tax certainty for ordinary citizens, who might have to pick up the bill if corporations continue to dodge taxes. The very focus on tax certainty for business and investors gives the impression that the OECD and G20 are resisting further tax reforms to prevent corporate tax dodging. Developing a new and better corporate tax system could be a way to increase tax certainty for citizens, corporations and investors.

3. Corporate tax avoidance

Meanwhile, many multinational corporations are continuing to lower their tax payments even further through engaging in tax avoidance. In a study published in 2017, Alex Cobham and Petr Jansky estimated that governments worldwide lose a staggering US\$500 billion annually due to corporate tax avoidance.⁵² Based on the same study, the Tax Justice Network highlights the example of Pakistan, which loses the equivalent of 40 per cent of the country's overall tax revenues from corporate tax avoidance,⁵³ while Mark Curtis and Bernadette O'Hare underline that the loss to sub-Saharan Africa alone equals over two per cent of the region's GDP per year.⁵⁴

Box 3: What does US\$500 billion look like?

With the thickness of a normal US\$1 bill being 0.010922cm,⁵⁵ US\$500 billion worth of dollar bills would result in a pile of money more than **54,000 kilometres high**. To put this in perspective, the international space station is only just over 400 kilometres above the surface of the earth.⁵⁶

This is money that could be spent on strengthening healthcare, providing education, combating climate change, and on reducing the escalating inequality that the world is currently witnessing. In early 2017, an analysis by Oxfam found that the world's eight richest men now own the same wealth as the poorest half of the world's population.⁵⁷ The world's richest individuals include numerous founders and owners of some of the world's largest multinational corporations.⁵⁸

Box 4: Developing countries and tax

The 'race to the bottom' on corporate taxation is not just a problem in OECD countries. A 2016 study by ActionAid found that governments in East Africa could be losing between US\$1.5-\$2 billion per year due to tax incentives, many of which are granted to corporations.⁵⁹

"Tax incentives generally rank low in investment climate surveys in low-income countries, and there are many examples in which they are reported to be redundant – that is, investment would have been undertaken even without them."⁶⁰

Study by IMF, OECD, World Bank and the UN

The IMF's Deputy Managing Director, Mitsuhiro Furusawa, recently warned about the 'damaging' impacts of tax incentives in Southeast Asia, which are offered by governments in the region in order to attract foreign investment. He highlighted that: 'we are living through what often looks like a race to the bottom in which countries compete – to the advantage only of investors,' adding that 'the result is being felt on the bottom line, with pressures on much-needed government revenue.'⁶¹ This echoes the warning by the IMF's Managing Director, Christine Lagarde, who has underlined that 'by definition, a race to the bottom leaves everybody at the bottom'.⁶²

These tax incentives do not, however, seem to prevent multinational corporations from seeking to avoid paying taxes – meaning that governments lose out on revenues twice. When assessing global losses due to corporate tax avoidance, Alex Cobham and Petr Jansky concluded that: 'The greatest intensity of losses occurs in low- and lower middle-income countries, and across sub-Saharan Africa, Latin America and the Caribbean, and South Asia'.⁶³ The problem is serious because developing countries rely more heavily on income from corporate taxation: the UN Conference on Trade and Development (UNCTAD) estimates that in developing countries, taxes from foreign multinationals are twice as important as a proportion of total tax revenues as they are for developed countries.⁶⁴

Box 4 (continued): **Developing countries and tax**

Although developing countries are more badly affected by the flaws of the global tax system than developed countries, they have much less influence on global tax standards, and face more difficulty in accessing the information needed to combat the problem (see chapters 5.8 on 'Ensuring financial and corporate transparency' and 5.9 on 'Ensuring truly global decision-making'). UNCTAD has also estimated that one type of corporate tax avoidance alone is costing developing countries around US\$100 billion per year, meaning that the total loss can be assumed to be significantly higher.⁶⁵

A recent Oxfam analysis found that Reckitt Benckiser (RB), the UK-based multinational producer of products such as Vanish, Durex and Dettol, avoided £200 million in tax globally from 2014 to 2016, including up to £60 million in developing countries.⁶⁶ Oxfam's report argues that RB used intra-company transactions through the low-tax jurisdictions of the Netherlands, Dubai and Singapore, as well as tax rulings (see chapter 4.4 on 'Sweetheart deals') issued by Luxembourg, to lower its global tax bill. In response to the report, RB rejected Oxfam's assertion that it engaged in tax avoidance and underlined its support for public country by country reporting.⁶⁷

When multinationals avoid paying taxes in developing countries, governments are likely to try and fill the gap through other means, including by imposing taxes on consumers. The fact that VAT impacts the poorest most,⁶⁸ as noted above, is particularly problematic in the poorest countries, where many people struggle to afford basic necessities such as food and healthcare. Some developing countries try to reduce the negative impacts on the poorest people by exempting basic goods such as food products and household items from VAT, but other countries have recently reduced or abolished these kinds of safeguard policies.⁶⁹

Developing countries are also affected by tax evasion by individuals. In 2017, the Ecuadorian government responded to the Panama Papers scandal by holding a historic referendum on whether elected officials and public servants should be barred from holding assets or capital, of any nature, in a tax haven.⁷⁰ According to figures from the Ecuadorian Ministry of Foreign Relations, US\$30 billion in assets is held offshore by Ecuadorian citizens, a sum that is the equivalent to a third of its GDP.⁷¹

Tax haven referendum in Ecuador

To the question 'Do you agree that, for those holding a popularly elected office or for public servants, there should be a prohibition on holding assets or capital, of any nature, in tax havens?' 55% voted 'yes' and 45% voted 'no'.

In February 2017, the Ecuadorian public voted 'yes' – with roughly 55 per cent voting in favour of barring offshore holdings by public officials, and only about 45 per cent opposing.⁷² In July the Ecuadorian National Assembly adopted legislation to implement the proposal.⁷³

In 2015, the Ecuadorian government published a blacklist of jurisdictions that it considers to be tax havens.⁷⁴ It includes over 80 different tax jurisdictions, including EU countries such as Luxembourg, Malta and Cyprus.⁷⁵ In 2017, the government of Ecuador added Hong Kong to the list, and furthermore decided to consider tax regimes in the Netherlands, UK, New Zealand and Costa Rica as harmful.⁷⁶

3.1 Which offshore financial centres are multinationals using?

In 2017, a study was published in the scientific paper *Nature*, which assessed the real ownership relations and number of subsidiaries established by multinational corporations in individual jurisdictions.⁷⁷ This provided important input to a tax debate that has often focused on which types of policies can, in theory, lead to corporate tax avoidance, but rarely included a quantitative assessment of which jurisdictions multinational corporations are actually setting themselves up in.

Based on an analysis of over 98 million corporate entities, the researchers mapped out the world of offshore financial centres and identified two types of offshore jurisdictions. First, 'sinks' are jurisdictions, most of which are small with a low or zero corporate tax rate, where multinational corporations store capital. Second, 'conduits' play a central role as intermediaries, facilitating the movement of capital between sinks and other countries where corporations are doing business.

Generally, conduits are countries that allow corporations to channel large sums of capital through them without paying much, if any, tax. They are typically highly developed countries with a large network of tax treaties and strong legal systems. While the research identified 24 key sink jurisdictions, the number of conduits was significantly lower – only five conduits channel the majority of transfers to and from some of the most important sinks (see table 2).⁷⁸

The researchers also found that *'the corporate use of [offshore financial centres] is in fact concentrated in a small number of key jurisdictions, most of which are highly developed OECD countries'*.⁷⁹ Lastly, they noted that *'the largest [offshore financial centres] generally have well-developed regulatory institutions and comply with international laws on trade and money laundering'*.⁸⁰ This seems in line with concerns that civil society organisations have often highlighted, namely that loopholes in international standards allow jurisdictions to be compliant, while at the same time continuing to facilitate international tax dodging.

Table 2: Offshore financial centres – top five⁸¹

Sinks	Conduits
Luxembourg	The Netherlands
Hong Kong	United Kingdom
British Virgin Islands*	Switzerland
Bermuda*	Ireland
Cyprus	Singapore

(*) These jurisdictions are British Overseas Territories

Source: The top five sinks and conduit jurisdictions, as identified in the research paper *Uncovering Offshore Financial Centers: Conduits and Sinks in the Global Corporate Ownership Network* (Garcia-Bernardo et al., 2017).⁸²

As can be seen in table 2, European countries figure prominently both in the list of the world's largest sinks, and in that of conduits. In fact, 80 per cent of conduits are European countries, and similarly 80 per cent of sinks are either European countries or their overseas territories. The paper also identifies the geographical specifications of the different sinks and conduits, and concludes that the Netherlands specialises as a conduit to sinks such as Luxembourg, Curaçao, Cyprus and Bermuda, while the United Kingdom specialises as a conduit to Luxembourg, Bermuda, Jersey, British Virgin Islands and Cayman Islands. The third biggest conduit, Switzerland, acts as a link to Jersey, while number four, Ireland, serves as a link between American and Japanese corporations and Luxembourg.

Lastly, the paper found that the biggest sink, Luxembourg, does not necessarily need conduits, and therefore the majority of investments from Luxembourg go directly to other countries.⁸³ One key reason why Luxembourg does not need conduits is that it is not typically identified as a tax haven. In this context, Luxembourg's membership of the EU seems to be an advantage, since the EU has decided never to list its own member states as tax havens (see chapter 5.3 on 'Blacklisting 'non-cooperative jurisdictions'').

Box 5: Keeping it in the family – how the EU discusses harmful tax practices among its member states

The prominent role that EU member states play among the world's biggest facilitators of corporate tax avoidance makes it important to look at how the EU deals with member states that engage in harmful tax practices. The key mechanism used by member states to meet and discuss these issues is the 'Code of Conduct Group on Business Taxation' – informally known as 'The Code' – which was set up in 1998. Meetings are kept secret from the public, and the little information that gets published does not include any specific detail about what was said.⁸⁴ Minutes of the meetings were also kept secret from the European Parliament, but after a strong push, representatives of the parliament were, in 2016, given access to some documents. They were not, however, allowed to disclose the contents of the documents to the public.⁸⁵

Leaked German diplomatic cables have provided more detail about discussions held by 'The Code' in the past. One cable read, *'It is impressive to see how some member states present themselves outwardly as proponents of [international tax reforms] and at the same time to watch how they actually behave in EU discussions, protected by confidentiality.'*⁸⁶ The confidential nature of discussions also seems to have been an issue of heated debate in the group. For instance, another leaked cable states that, *'It has become abundantly clear once again that a majority [of member states] are not interested in real reform. In particular, Luxembourg representatives said they would fundamentally object to any proposal to publish arguments made by Luxembourg in the committee.'*⁸⁷

One obstacle to the EU making more ambitious reforms is the requirement for unanimity on tax decisions. When this issue was discussed in 'The Code', it seems member states could not reach consensus on moving from unanimous decision-making to qualified majority, which means that decisions can still be blocked by small minorities of countries, or even by a single state.⁸⁸ In addition to Luxembourg, the media has highlighted the Netherlands as examples of countries often holding back attempts to make progress on tax reforms in the EU.⁸⁹

Meanwhile, two of the people who have played the most central role in the European Parliament's work on tax have made strong objections to the EU's method of discussing harmful tax practices. In a joint declaration, the parliamentarians Sven Giegold and Fabio De Masi⁹⁰ underlined that *'19 years of failure to tackle unfair tax practices of member states are a major cause of frustrations against the European project. (...) The unanimity in the code group has to be overcome and the definition of harmful tax measures be fundamentally reworked. The proceedings shall become transparent so that citizens can hold governments accountable.'*⁹¹

4. Potentially harmful tax practices

The 'race to the bottom' includes the simple approach of lowering the corporate tax rate (see chapter 2 on 'The race to the bottom'), but also more complicated approaches that allow multinational corporations to pay a much lower tax rate than the official one. For example, countries can create ways for corporations to reduce the amount of profit they have to pay taxes on (the 'tax base'). Common to these approaches are that they create incentives for corporations to move their profits from the countries where actual business activity takes place, to countries where they pay less tax – in other words, they can be used for aggressive tax planning.

In early 2016, a study was released that mapped the amount of such structures in each EU member state. The study, commissioned by the European Commission, showed that on average, each EU member state had over 10 structures that could be used for aggressive tax planning purposes, and not a single member state had zero. The countries with the highest number were the Netherlands (17), Belgium (16), Cyprus (15), Malta (14), Latvia (13), Luxembourg (13) and Hungary (13).⁹²

4.1 A changing landscape

The tax structures of countries are a constantly changing landscape, and harmful structures are introduced, removed or replaced. Sometimes, when removing a structure that could be used for corporate tax avoidance, the government at the same time announces new initiatives that fuel further tax competition between countries, such as another type of harmful structure, or simply a lowering of the corporate tax rate. One example of this is the new government of the Netherlands, which stated in its coalition agreement: *'We fight tax dodging and broaden the tax base for business. The revenues generated by that will be used to lower the corporate income tax rate, also given the developments in the countries around us.'*⁹³

Through the Paradise Papers, the International Consortium of Investigative Journalists (ICIJ) highlighted several examples of how quickly multinational corporations can change their tax setups, and thus adjust as one loophole gets closed and another is opened. According to the ICIJ, Apple allegedly responded to a change in the Irish tax rules by moving to Jersey, which allowed the corporation to *'[continue] to enjoy ultra-low tax rates on most of its profits and now holds much of its non-U.S. earnings in a US\$252 billion mountain of cash offshore.'*⁹⁴ ICIJ added that *'The Irish government's crackdown on shadow companies, meanwhile, has had little effect.'* In response, a spokesperson from Apple stated that *'At Apple we follow the laws, and, if the system changes, we will comply.'*⁹⁵

Another example from the Paradise Papers is Nike, which according to the ICIJ, *'stayed one step ahead of the regulators'* by changing its tax arrangements in 2014.⁹⁶ Allegedly, Nike's new setup involves a tax deal with the Netherlands, as well as a special loophole in the Dutch legislation (a type of limited partnership known as a 'Dutch CV'), which allows corporations to keep their profits in the Netherlands without paying tax.⁹⁷ In response to questions from ICIJ regarding its tax arrangements, Nike responded with the statement: *'Nike fully complies with tax regulations.'*⁹⁸

Tax loopholes such as the ones associated with Dutch CVs were recently debated in the EU, where countries agreed that they should eventually be closed. But after lobbying from the government of the Netherlands,⁹⁹ it was agreed to keep the existing rules until 2021.¹⁰⁰ During the EU discussions, the tax advisor firm Baker McKenzie posted an update on its website with the comment: *'this means that there will likely be more time to consider restructuring alternatives before this updated EU Directive (...) comes into play', and added that 'there are various transitional and longer term solutions that can be considered and we would be happy to discuss these with you.'*¹⁰¹

In the following chapters, some of the common tools of tax competition that are currently in place in Europe are introduced, and in the national chapters, the state of play in individual countries is analysed.

4.2 Special purpose entities

The research on offshore financial centres mentioned above (see chapter 3 on 'Corporate tax avoidance') also identified which types of corporate entities are used to hold and transfer financial assets for multinational corporations, and found clear sector specialisations for different countries.¹⁰² In the biggest conduit jurisdiction, the Netherlands, the researchers found a frequent occurrence of 'holding companies', which is often another phrase for 'special purpose entities', which are also known as 'shell companies', 'conduit companies', or simply 'letterbox companies'.

4.2.1 What are special purpose entities?

Special purpose entities exist only on paper, and the nickname 'letterbox companies' stems from the fact that they often only consist of a nameplate and a post-box. They are ultimately owned by a corporation in another country and carry out very little, if any, actual economic activity in the country itself, where they also have few or often no employees.¹⁰³ The bulk of the financial resources running through the company stem from investments to or from other countries,¹⁰⁴ and these resources are normally subject to very little, if any, tax in the country where the entity is registered.¹⁰⁵

Setting up a special purpose entity is not illegal, but they can be used by multinational corporations to avoid taxation, in particular as a tool to route the profits of the corporation out of the countries where the real economic activity is taking place, and into jurisdictions where those profits can be kept free of taxation. For example, setting up an entity in a country can give the multinational corporation access to the tax treaty network of that country, and thus benefit from lower tax rates for finances transferred to and from that country (see chapter 4.5 on 'Bilateral tax treaties').

The OECD highlights that special purpose entities account for 25 per cent or more of inward foreign direct investments in Luxembourg, the Netherlands, Hungary, Austria, Iceland and the United Kingdom, and also play a smaller but still significant role in Switzerland, Denmark, Portugal, Sweden and Spain.¹⁰⁶ The OECD's analysis does not include specific data on special purpose entities in Ireland, despite the fact that these types of entities also play a major role in that country.¹⁰⁷

4.2.2 Efforts to combat 'letterbox companies'

In December 2015, the European Parliament called for a 'ban' on letterbox companies through the introduction of new rules requiring a minimum level of economic activity.¹⁰⁸ In response, the European Commission referred to anti-abuse provisions that can be applied by member states and commented that, *'the fight against letterbox companies which are used exclusively for tax evasion purposes should not lead to the stigmatisation of company forms. There are many reasons why companies are established abroad. Legitimate reasons for establishment should be protected.'*

The Commission also referred to a ruling by the European Court of Justice to point out that *'the fact that a company does not conduct any business in the Member State in which it has its registered office and pursues its activities only or principally in the other Member State is not sufficient to prove the existence of abuse or fraudulent conduct.'*¹⁰⁹ The question of what constitutes 'proof' of abuse is key, because anti-abuse provisions such as the Principal Purpose Test, which is a commonly used anti-avoidance mechanism¹¹⁰ (see chapter 4.5 on 'Bilateral tax treaties'), allows countries to deny tax benefits to corporations if it can be proven that achieving a tax benefit was one of the principal purposes of the corporation's actions. However, as can be seen from the Commission's comment, this can be difficult to do.

Box 6: Complexity of multinational corporations

Multinational corporations often consist of a complex network of legal entities. For example, the banking giant HSBC is composed of at least 828 legal corporate entities in 71 countries and the world's largest brewer, Anheuser-Busch InBev, consists of at least 680 entities in 60 countries, according to the scientific paper *Uncovering Offshore Financial Centers: Conduits and Sinks in the Global Corporate Ownership Network*.¹¹¹

Recently, the new government in the Netherlands announced that it will introduce a withholding tax on interest and royalty payments to some (yet to be identified) 'low-tax jurisdictions'.¹¹² However, the effectiveness of such an initiative will depend on how it is implemented. At the same time, the new Dutch government announced that it will abolish the withholding tax on dividend payments,¹¹³ which could have the opposite effect. Furthermore, several other tax practices in the Netherlands still cause great concern (see national chapter on 'The Netherlands').

4.3 Patent boxes

Patent boxes, or 'knowledge boxes', are a special type of tax incentive offered to corporations for revenues derived from intellectual property. They are also widely known as a practice that creates the risk of corporate tax avoidance. Intellectual property is very difficult to put a monetary value on, and its geographical origin is often difficult to determine since, unlike for example, factories, it is often not tied to a specific location. Furthermore, payments for intellectual property (royalties) often enjoy reduced rates of taxation through tax treaties, and can thus be moved across borders without much (and in some cases, zero) taxation.¹¹⁴ This has made intellectual property income, and the patent boxes that provide associated low taxation, a potential tool for multinational corporations who wish to reduce their tax payments.

The IMF concluded in its biannual 2016 Fiscal Monitor that *'the analysis shows that patent boxes (which reduce taxes on income from intellectual property) are often not cost-effective in stimulating [research and development]. In some cases, they are simply part of an aggressive tax competition strategy.'*¹¹⁵ These concerns are echoed by the European Commission, which highlights that *'patent boxes give a tax break on the output from [research and development] activities i.e. earned from exploiting intellectual property rights. Research shows that they do not stimulate [research and development] and may rather be used as a profit-shifting instrument, leading to high revenue losses.'*¹¹⁶

4.3.1 Here to stay?

However, the number of EU countries with patent boxes has increased significantly in the last ten years, and keeps going upwards. In 2016, this number reached 13 countries (see box 7), and in 2017, the government of Slovakia also published a legislative proposal that includes the introduction of a patent box.¹¹⁷

Box 7. EU member states with patent boxes

Belgium, Cyprus, France, Greece, Hungary, Ireland, Italy, Luxembourg, Malta, the Netherlands, Portugal, Spain and United Kingdom (13 in total).¹¹⁸

Under consideration in: Slovakia.¹¹⁹

In addition to creating opportunities to avoid taxes, patent boxes can result in large decreases in tax revenues for the governments which implement them. For instance, the introduction of a patent box in the Netherlands resulted in an estimated tax loss of €605 million in 2011, and this figure was projected to rise to €1.2 billion by 2016.¹²⁰

Some had hoped that the BEPS project would lead to a ban on patent boxes, but instead the BEPS outcome includes a standard for how countries can design patent boxes, the so-called 'modified nexus approach' (see also chapter 5.1 on 'Implementing a controversial 'sticking plaster'').¹²¹ Commenting on this, Grace Perez-Navarro, Deputy Director for the OECD's Centre for Tax Policy and Administration said: *'[We created] the modified nexus approach so that the tax benefit associated with the patent box is linked to real economic activity. But (...) it's not because the OECD thinks patent boxes are a good idea. In fact, we think that there are probably much better tax and other tools to foster innovation and research and development than providing a benefit after the research and development has been done and putting the benefit on the profit.'*¹²² Furthermore, the BEPS outcome also included a generous 'grandfathering clause', which allows corporations to keep patent box arrangements initiated before June 2016 until 2021.¹²³

"[The European Parliament] stresses that the so-called modified nexus approach for patent boxes recommended by the BEPS initiative will not be enough to sufficiently limit the problems associated with patent boxes."

Resolution by the European Parliament¹²⁴

4.3.2 Alternative ways of supporting research and development

In its proposal on the Common Consolidated Corporate Tax Base, the European Commission has proposed to restrict access to patent boxes for some corporations when operating in the EU. Under this proposal, the corporations would however be able to obtain a very generous 'super-tax-deduction' on their research and development expenses (see chapter 5.2 on 'A coherent system for taxing multinationals'). However, although support for research and development is generally positive, opening up loopholes such as large-scale deductions in the corporate tax system can be both a harmful and ineffective approach.

The obvious alternative is for governments to support research and development directly through budget allocations. This not only ensures that all harmful effects on the tax system are avoided. It also creates full transparency around which types of support are given for what purpose, and what the cost to society is. Furthermore, it gives governments the opportunity to give highest priority to those research and development activities that are considered most important to society, rather than giving away tax deductions for any expense that can be labelled 'research and development'.

4.4 'Sweetheart deals'

Advance tax agreements, or 'tax rulings', are sometimes referred to as 'sweetheart deals', since they are agreements between tax administrations and specific multinational corporations. In some cases they provide opportunities for these corporations to avoid paying large amounts of tax.¹²⁵

There are several different types of advance tax agreements. The best-known type, so-called 'advance pricing agreements' (APAs), determine how transfer pricing rules will be applied to certain transactions among subsidiaries of a multinational corporation.¹²⁶ But the agreements can also address other issues in corporate taxation, such as how different types of structures will be taxed.

4.4.1 The problem with advance tax agreements

Advance tax agreements are usually¹²⁷ not illegal. However, their characteristics raise several concerns:

- **Advance:** the agreements concern the future, and thus the tax administration is not able to see the tax return or country by country report of the multinational corporation before entering into the agreement, since these are submitted after the tax year has ended. If the administration later discovers that the corporation is engaged in large-scale tax avoidance, the advance agreement can limit the administration's chances of intervening.
- **Binding:** the agreements are often binding for the tax administrations that enter into them, normally for a pre-determined period of, for example, five years.¹²⁸
- **Individual:** agreements are requested by individual corporations and issued specifically to them. This introduces the risk of special treatment for powerful and influential corporations.
- **Secret:** the agreements are secret to the public, and whistleblowers that release information about the deals risk ending up in court (see chapter 5.5 on 'Protecting whistleblowers').

The agreements can be either 'unilateral', meaning they have been issued by one country, or multilateral, meaning that two or more countries have approved them. The concerns outlined above apply to both these types of agreements. However, multilateral agreements have the advantage over unilateral agreements in that they have been scrutinised by more than one country, and thus may be less controversial. There is a lower risk of agreements coming into force that result in tax avoidance when they include the country where the multinational corporation has its business activity and generates its profits (the so-called 'source country') – since the source country has no interest in such tax avoidance. Multilateral agreements can, however, also be between a conduit country and a sink (see chapter 3 on 'Corporate tax avoidance'), in which case there is a risk that both countries are willing to sign an agreement facilitating tax avoidance. Due to the high levels of secrecy, there is no public data available to show which countries have signed multilateral agreements together. The EU, however, publishes numbers on the total amount of APAs in force (see table 3).

Advance tax agreements can have a very strong impact on the level of corporate tax paid by the multinational corporation. This became obvious when over 500 agreements from Luxembourg were leaked to the media and resulted in the so-called 'LuxLeaks scandal', which broke in 2014.¹²⁹ The deals were made with over 300 corporations, in some cases allowing them to substantially lower their tax payments, occasionally to below one per cent.¹³⁰ Advance tax agreements have also played a very central role in several large-scale state aid cases launched by the European Commission against EU member states (see box 8).

Box 8: Expensive tax deals

Advance tax agreements, including both advance pricing agreements and other tax rulings, have been at the centre of several cases launched by the European Commission against member states, using the argument that the tax deals constitute illegal state aid. The table below outlines examples of this.

Case	Number of 'sweetheart deals' involved	European Commission's estimate of tax avoided
Luxembourg and Amazon (2017)	1 APA ¹³¹	Around €250 million ¹³²
Ireland and Apple (2016)*	2 tax rulings ¹³³	Up to €13 billion ¹³⁴
Netherlands and Starbucks (2015)*	2 APAs ¹³⁵	€20-30 million ¹³⁶
Luxembourg and Fiat (2015)*	1 APA ¹³⁷	€20-30 million ¹³⁸

*The state aid cases on Ireland/Apple, Netherlands/Starbucks and Luxembourg/Fiat have all been appealed and are pending at the European Court of Justice.¹³⁹

Advance tax agreements that concern issues relating to transfer pricing are of no use to companies that consist of only one entity, such as many small and medium enterprises. This, and the fact that each corporation can receive its own secret agreement, undermines the principle of equality before the law.

The lack of transparency also creates a very serious lack of clarity on how corporate tax rules are being applied in practice. Because the general transfer pricing legislation and its 'arm's length principle' (see chapter 5.2 on 'A coherent system for taxing multinationals') is in itself very unclear, advance tax agreements, which are a type of interpretation of the law, become essential information for understanding how multinational corporations are, in reality, being taxed.

Corporate taxation should be based on clear legislation, rather than agreements between individual corporations and governments, and the best solution would of course be to replace transfer pricing legislation with a system that brings clarity and consistency to the taxation of multinational corporations. But until this happens, public information about the basic content of advance tax agreements issued to multinationals is vital information for understanding the tax system we currently have.

4.4.2 Advance pricing agreements in the EU and Norway

The latest available official data on the number of advance pricing agreements in force in the EU is from the end of 2015. Table 3 shows the number of deals in force in each EU country, as well as how many of these deals are unilateral APAs and bi- or multilateral APAs. From 2014-2015, there was a steep increase in the total number of APAs in the EU, especially driven by an increase in unilateral APAs in Luxembourg and Belgium.

Table 3: Number of Advance Pricing Agreements – also known as 'sweetheart deals' – in force in the EU and Norway at the end of 2015 and 2014 (in brackets)

	Bi- or multilateral	Unilateral
Luxembourg	0	519 (347)
Belgium	15 (7)	396 (157)
Hungary	0	70 (79)
Italy	7 (0)	61 (51)
Czech Republic	1 (0)	46 (34)
Spain	15 (11)	45 (40)
UK	50 (53)	44 (35)
Finland	1 (0)	23 (15)
Poland	4 (2)	16 (13)
France	40 (39)	15 (16)
Portugal	0 (0)	7 (4)
Lithuania	0 (0)	3 (1)
Greece	0 (0)	1 (0)
Latvia	0 (0)	1 (1)
Slovak	0 (0)	1 (3)
Germany	25 (24)	0 (0)
Denmark	16 (11)	0 (0)
Ireland	8 (10)	0 (0)
Sweden	7 (5)	0 (0)
Norway ¹⁴⁰	5(4)	0

Source: European Commission¹⁴¹ and Norwegian tax administration.¹⁴²

Numbers for Norway refer to APAs granted, since information on the total number of APAs in force is not publicly available.

Austria and the Netherlands do not report to the Commission on the number of APAs in force.¹⁴³ The Netherlands reports on the number of APAs granted per year – for 2015 this number was 235 (203 in 2014). However, the Netherlands does not provide information about whether the APAs granted were unilateral, bilateral or multilateral.¹⁴⁴

4.4.3 EU discussions about tax rulings

The European Parliament has called for the essential elements of corporate tax agreements to be made public,¹⁴⁵ but this has not been accepted by the European Commission or member states. Instead, member states decided that the agreements should remain secret to the public, but exchanged confidentially between tax administrators in the EU.¹⁴⁶ However, even if tax administrators are allowed to see the agreements issued by other member states, they might have very limited possibilities for challenging deals that appear to facilitate corporate tax avoidance.

In its state aid cases, the European Commission has taken several years to investigate even a small number of agreements, and in the cases where it has concluded that state aid law has been violated, the decision has often been appealed at the European Court of Justice.¹⁴⁷ It is difficult to imagine that country tax administrations, which already struggle with lack of resources,¹⁴⁸ will have an easier time challenging the tax practices of other member states. The secret exchange of agreements also brings with it a difficult dilemma for the tax administrator, who might witness clear signs of tax avoidance, but not be allowed to tell anyone (see also box 13).

EU member states also decided that the European Commission should only have access to 'a limited set of basic information' about advance tax agreements issued by member states, and that the Commission should, for example, not have access to information about which multinational corporations have obtained such agreements, nor any summary of the content. Member states further underlined that the Commission may not use this information for any other purpose than to monitor and evaluate the effective application of the automatic exchange between member states themselves.¹⁴⁹

4.5 Bilateral tax treaties – signing off taxing rights

Bilateral tax treaties, or 'double tax agreements', were originally conceived as a way to avoid taxpayers operating in more than one country being taxed twice on the same income. Through the treaties, two countries determine which country gets to tax what income, and how financial flows moving between the two countries should be taxed.

However, the treaties have also led to large-scale reductions in the level of tax that countries levy on financial flows such as royalty payments, interests and dividends.¹⁵⁰ It is known that these types of flows are sometimes used by multinational corporations to move profits out of countries where they do business, and into countries where such types of income are taxed at lower rates (or not at all).¹⁵¹ Thus, by lowering the tax rates of these cross-border flows (commonly referred to as 'withholding taxes'), bilateral tax treaties have both reduced the amount of tax collected by governments, and created a potential instrument for tax avoidance.

Furthermore, many treaties have strengthened the taxing rights of the home countries of multinational corporations at the expense of the countries where the corporation does business and generates profits. As leading experts from the IMF have pointed out: '*Tax treaties usually reallocate taxing rights over foreign investment income from the host country to the home country [of the investor or corporation] (...) Since developing countries are usually net capital importers with little if any outbound investment, they stand to lose significant revenue from the lower [withholding tax rates] negotiated in tax treaties.*'¹⁵² Developing countries often sign treaties in the hope that this will spur foreign direct investment to their countries. However, the experts from IMF highlight that '*existing evidence on treaty costs and benefits for developing countries are at best inconclusive.*'¹⁵³

Since the early 1990s, the number of bilateral tax treaties agreed globally has tripled, and is now above 3,000. In particular, the number of treaties involving developing countries has increased significantly.¹⁵⁴

In 2004, Uganda signed a tax treaty with the Netherlands that entirely removed Uganda's right to tax specific types of dividends to corporate owners resident in the Netherlands. A decade later, as much as half of Uganda's foreign direct investments were, at least on paper, owned through corporations in the Netherlands.¹⁵⁵

If a country has a number of treaties, then there is a risk that potential foreign investors will take advantage of the one with the lowest taxes. Therefore, bilateral tax treaties have been described by commentators in an IMF blog as a bathtub, 'a single leaky one is a drain on a country's revenues.'¹⁵⁶

However, it is not only the most harmful tax treaties that have negative effects on developing countries, since bilateral tax treaties in general contain clauses which reduce tax rates.

4.5.1 Bilateral tax treaties between European and developing countries

Table 4 and figure 3 provide an overview of the total number of tax treaties between developing countries and the European countries covered by this report, as well as the average reduction in withholding taxes in developing countries that has been introduced through these treaties.

Table 4: Total number of bilateral tax treaties between developing countries and the European countries covered by this report.

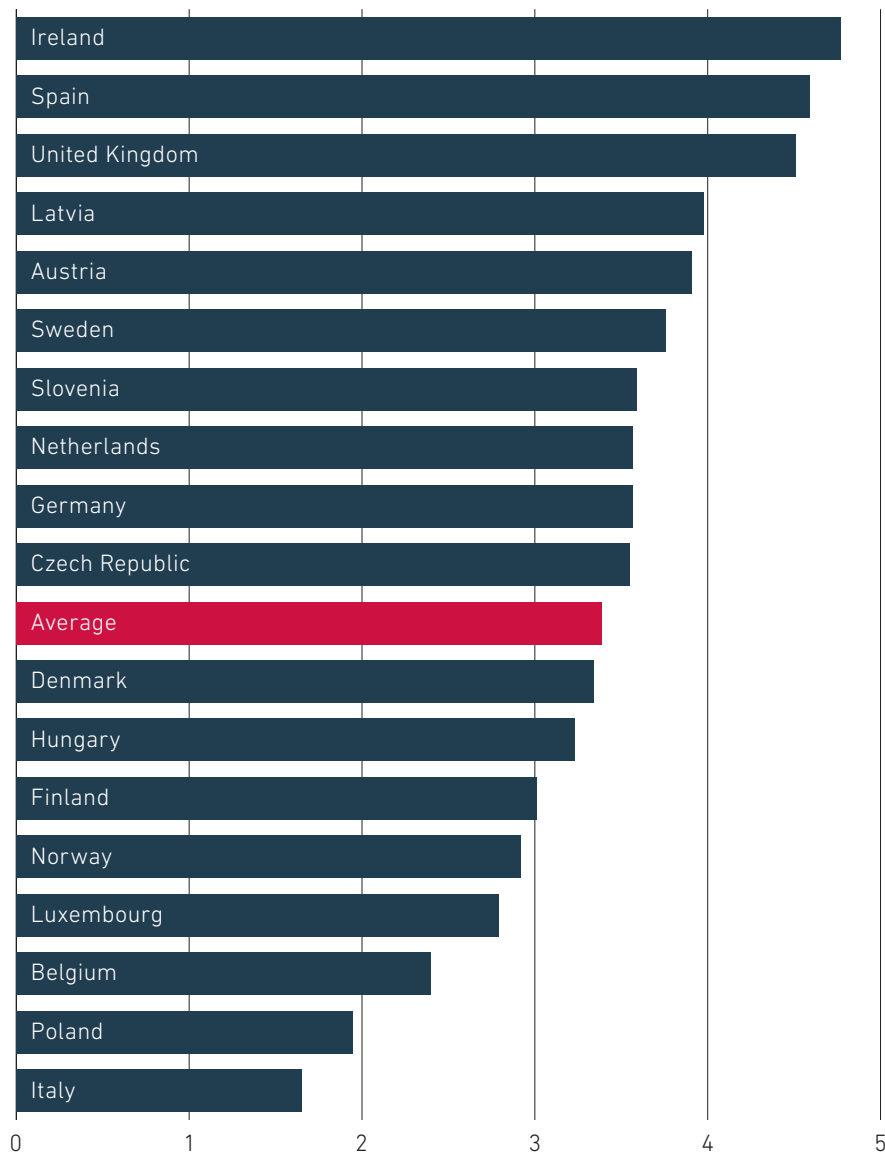
Source: See figure 3. Data is accurate as of 8 November 2017.

	Low Income	Lower Middle Income	Upper Middle Income	Total
Slovenia	0	7	16	23
Latvia	0	9	15	24
Luxembourg	0	12	17	29
Ireland	1	11	18	30
Hungary	0	15	19	34
Denmark	2	16	17	35
Finland	1	17	19	37
Poland	1	20	20	41
Average	2.22	17.27	22.27	41.77
Austria	1	16	25	42
Sweden	3	14	25	42
Czech Republic	1	19	23	43
Norway	9	15	21	45
Spain	1	17	29	47
Netherlands	3	22	24	49
Belgium	3	21	26	50
Italy	5	23	26	54
Germany	2	25	28	55
United Kingdom	7	32	33	72
Total	40	311	401	752

Figure 3. Average reduction in withholding tax rates (in percentage points) as a result of bilateral tax treaties between developing countries and the European countries covered by this report.

Source: Eurodad calculations.¹⁵⁷

The average rate reduction covers withholding taxes on four income categories: royalties, interests, dividends on companies and qualified companies. It does not cover tax rates on services or management due to the lack of data. The average rate reduction refers to the difference between the rates contained in the individual treaties and the statutory rates in the developing country for all four income categories. The figure for the overall average reduction is an unweighted average for all of the 18 European countries covered in this report. Data is accurate as of 8 November 2017.



There are also individual tax treaties between developed and developing countries, which give extra reasons for concern due to the high level of restrictions these treaties impose on the taxing rights of developing countries. As shown in table 5, a number of countries covered by this report do have such 'very restrictive'¹⁵⁸ tax treaties with developing countries. These treaties can come at a high cost for the developing countries that sign them.

For example, a tax treaty between the UK and Zambia signed in 2014 prevents Zambia from collecting more than five per cent tax on dividends from direct investments from the UK.¹⁵⁹ ActionAid also estimates that a very restrictive treaty signed with Norway is costing Bangladesh over US\$2 million per year due to foregone tax income from dividends.¹⁶⁰

Table 5: The concept of 'very restrictive treaties' is based on a thorough assessment by ActionAid, which analyses how each treaty allocates taxing rights between the signatories, as well as the level of reductions of developing country tax rates. For more information, see the report 'Mistreated' by ActionAid.¹⁶¹ Data is accurate as of 8 November 2017

	Number of 'very restrictive' tax treaties with developing countries in Africa and Asia
Italy	13
United Kingdom ¹⁶²	12
Germany	10
Norway ¹⁶³	7
Netherlands ¹⁶⁴	7
Belgium	7
Poland ¹⁶⁵	5
Denmark	5
Sweden	4
Ireland ¹⁶⁶	3

4.5.2 How to avoid harmful effects of tax treaties?

A key method promoted through the OECD BEPS agreements to avoid multinational corporations abusing tax treaties is the 'Principal Purpose Test', which allows a country to deny treaty benefits when it can be shown that one of the principal purposes of the transaction is to avoid taxes.¹⁶⁷ But the OECD underlines that '*It should not be lightly assumed, however, that obtaining a benefit under a tax treaty was one of the principal purposes of an arrangement or transaction, and merely reviewing the effects of an arrangement will not usually enable a conclusion to be drawn about its purposes. Where, however, an arrangement can only be reasonably explained by a benefit that arises under a treaty, it may be concluded that one of the principal purposes of that arrangement was to obtain the benefit.*'¹⁶⁸ As noted above, this is not easily proven, especially by developing countries with few resources and limited access to information. Furthermore, the Principal Purpose Test does not address the fact that tax treaties in general drive down the withholding tax rates of developing countries, and thus reduce their tax income.

A more important approach is to ensure that harmful treaties are not signed with developing countries in the first place, and that harmful treaties that already exist are renegotiated or revoked. The key tool to assess the negative impacts of tax treaties on developing countries is through so-called 'spill-over analyses' (see chapter 5.6 on 'Measuring the impacts of European tax policies').

The European Parliament has called for tax treaties between EU countries and developing countries to be negotiated in a way that ensures policy coherence for development and fairness for developing countries.¹⁶⁹

5. Good and bad solutions

Large groups of civil society organisations have put forward precise and detailed proposals for how tax avoidance and evasion can be addressed, and how the interests of developing countries can be integrated as a core element of such solutions (see chapter 6 on 'Recommendations'). A few of these proposals have been picked up by decision-makers and turned into concrete initiatives, but the majority still face political opposition.

In response to numerous tax scandals, decision-makers have also launched their own proposals with the stated aim of ending tax dodging. In the following chapters, the most central developments are presented and analysed.

5.1 Implementing a controversial 'sticking plaster'

The OECD and G20's work on 'base erosion and profit shifting' – a technical term for corporate tax avoidance – was launched with the ambition of ensuring that multinational corporations pay tax *'where economic activities deriving the profits are performed and where value is created'*.¹⁷⁰ The package has, however, been strongly criticised for failing to reach anywhere near that objective, both by civil society organisations¹⁷¹ and by actors such as the All-Party Parliamentary Group on Responsible Tax in the UK, which referred to BEPS as a *'sticking plaster on a system not fit for the twenty-first century'*.¹⁷²

Some of the elements of BEPS which have generated criticism are its standard on patent boxes (see chapter 4.3 on 'Patent boxes'), its failure to ensure that country by country reports would be made public,¹⁷³ and the unwillingness to discuss taxing multinational corporations as single 'unitary' entities¹⁷⁴ (see chapter 5.2 on 'A coherent system for taxing multinationals'). The process was also criticised for failing to address the global race to the bottom on corporate tax rates and ignoring issues of vital importance to developing countries, including division of taxing rights between the countries.¹⁷⁵

5.1.1 BEPS and transparency

After the adoption of the BEPS outcome in 2015, new discussions emerged about whether BEPS prevents governments from taking more ambitious steps. Specifically, the debate has focused on the question of whether citizens are allowed to know what multinational corporations pay in tax and where they do business (public country by country reporting (CBCR)). This is fundamentally an issue of accounting¹⁷⁶ rather than taxation, and therefore it was not logical that the issue was picked up under the tax-focused BEPS process in the first place. Under this process, governments decided to introduce secret CBCR, which only allows certain tax administrations to access the information.¹⁷⁷



However, the EU has long considered the option of introducing full public CBCR (the first step was taken in 2013, before BEPS was launched, with the introduction of public CBCR for banks in the EU,¹⁷⁸ and public reporting on payments to governments by corporations in the logging and extractives sector).¹⁷⁹ But when the EU in 2016 initiated a process to introduce public CBCR for all sectors, some actors, including the OECD's Tax Director, Pascal Saint-Amans, started arguing that this would be a violation of BEPS, and instead advocated for keeping the information secret from the public.¹⁸⁰ While the argument that public transparency would be a violation of BEPS has been rejected by both civil society organisations¹⁸¹ and the European Commission,¹⁸² it is highly concerning that BEPS is being used as an argument to prevent transparency. Fortunately, the EU debate has moved forward towards public CBCR despite these attempts to prevent it (see chapter 5.8.3 on 'Allowing citizens to know what multinationals pay in taxes').

5.1.2 'Tax sudoku' – the OECD's BEPS Convention

In June 2017, the OECD held a 'signing ceremony' for its new multilateral convention to implement the treaty-related parts of BEPS.¹⁸³ The number of countries and jurisdictions signing on to the agreement reached 71 in the summer of 2017.¹⁸⁴ However, the instrument includes numerous possibilities to opt out of the specific commitments in the agreement.

It can seem ironic that a convention that aims to create 'co-ordination and consistency'¹⁸⁵ in BEPS implementation ended up as a highly complex multiple choice agreement, which adds a whole new web of opt ins and opt outs to the already very complex world of tax treaties. Rather than a clear and consistent international system, the result looks more like a gigantic 'tax sudoku' (see tables 7 and 8, which provide an overview of the choices made so far by the EU, Switzerland and Norway).

The obvious alternative would have been for the BEPS convention to outline a set of clear commitments and implementation methods, and then require all signatories to commit to following this. But rather than reaching consensus and committing to common approaches, it seems that the countries negotiating BEPS simply ended up solving many of their disagreements by agreeing to disagree. Adding further to the complexity is the fact that each country can decide that their commitments under the BEPS convention should only apply to some of their treaties, but not all.

Which articles should governments adopt?

As noted above, civil society organisations have repeatedly criticised BEPS for being weak and having many loopholes. Despite these many shortcomings, countries should – at the very least – commit themselves to implementing those BEPS outcomes that can help limit the options corporations have to avoid taxation.

But the new multilateral instrument is not all positive, and includes elements that are greatly concerning. Therefore, some civil society organisations have issued specific recommendations regarding which articles countries should adopt and which they should opt out of (see table 6).

Secret binding arbitration

Among the articles that civil society organisations have warned against is Article 18 concerning arbitration. This issue relates to situations where a corporation is taxed on the same income in two countries, because the tax administrations in the two countries disagree on how the corporation should be taxed. In this case, a common and uncontroversial solution is that the two tax administrations start a negotiation to try and reach a common understanding. The issue of arbitration is whether there should be a possible step two, which can come into play if the tax administrations are not able to find agreement within a given timeline.¹⁸⁶ Arbitration entails the disputed issues being sent to a group of appointed arbitrators, most commonly tax experts,¹⁸⁷ to make a decision.

The OECD first integrated arbitration into its model tax convention in 2008,¹⁸⁸ and since then it has been applied in a number of bilateral tax treaties, including treaties with developing countries.¹⁸⁹

Under the OECD model, arbitration can be triggered if two tax administrations have been unable to resolve a dispute within two years, and if it is requested by the corporation concerned in the tax dispute.¹⁹⁰ If countries decide to commit to arbitration as suggested by the OECD,¹⁹¹ they will be bound to follow the decision of the arbitrators.¹⁹² This is not the case for the concerned corporation, which has the right to reject the outcome¹⁹³ and decide to pursue other avenues instead, such as initiating a national court case in one of the countries involved.

While most OECD countries are in favour of mandatory binding arbitration,¹⁹⁴ a number of concerns have been raised by developing countries and other commentators. This includes a concern about whether the interests of countries can be properly safeguarded by a group of private arbitrators, and whether it is in reality possible to ensure that arbitrators are neutral and truly independent.¹⁹⁵

Sol Picciotto, Emeritus Professor of Law at Lancaster University, highlights that arbitrators can typically be expected to come from a '*small group of like-thinking insiders*', especially from the international tax corporations such as the big four (PwC, EY, Deloitte, KPMG) and Baker McKenzie.¹⁹⁶

An additional concern is the fact that these arbitration processes are carried out in absolute secrecy.¹⁹⁷ At most, the public will receive information about the overall number of cases, but information about the content of the dispute, the name of the corporation involved, the names of the arbitrators and, critically, the outcome of the case, will be kept secret from the public.¹⁹⁸ This creates the obvious concern that no international case law will be developed, which can set precedents for how disputes are resolved, and the public lacks insight into the realities of how transfer pricing legislation is applied. But at a much more fundamental level, secret binding arbitration entails a risk that a high amount of supra-national power will be concentrated in the hands of a few corporate tax experts with no accountability to the public.

What have European governments actually committed to?

An overview of what European governments have actually committed to can be found in table 7 (for the recommendations that civil society organisations have called on to be adopted), and table 8 (for those articles civil society are calling for governments to opt out of).

Table 6: Overview of recommendations by civil society organisations in relation to the OECD’s multilateral instrument to implement BEPS. The high level of technicality in this table reflects the nature of the issues addressed by BEPS.

Article	Civil society recommendation
<p>3. Transparent entities. Limits possibilities for corporate tax avoidance through so-called ‘transparent entities’ (or ‘flow-through entities’), which are corporate entities that allow income to pass through untaxed.</p>	<p>Countries should commit to these elements¹⁹⁹</p>
<p>4. Dual resident entities. Limits possibilities for corporations to avoid taxes by claiming tax residency in more than one country with the aim of obtaining additional tax advantages.</p>	
<p>5. Hybrid mismatches/application of methods to avoid double taxation. Limits possibilities for corporate tax avoidance through abuse of mismatches between tax laws in different countries.</p>	
<p>7. Treaty abuse. Introduces methods to limit treaty abuse, most notably a ‘principal purpose test’ (PPT), which allows a country to deny treaty benefits when it can be shown that one of the principal purposes with the transaction is to avoid taxes. It should be noted, however, that this can be a difficult thing to do (see more in chapter 4.5 on ‘Bilateral tax treaties’).</p>	
<p>8. Dividends. Limits possibilities for corporate tax avoidance through circumvention of ownership thresholds. This article requires the minimum ownership threshold to be met for a 365-day period in order to obtain treaty benefits related to dividends paid to direct investors.</p>	
<p>9. Capital gains. Strengthens possibilities for countries to tax certain types of capital gains.</p>	
<p>10. Permanent establishment in third countries. Limits possibilities for corporate tax avoidance for corporations that establish subsidiaries in low-tax jurisdictions. In bilateral tax treaties between two countries, this article gives a treaty partner some new possibilities of denying tax benefits to corporations with subsidiaries in a third country, which has a corporate tax rate of less than 60 per cent than the rate of the treaty partner’s own rate.</p>	
<p>11. Right to tax own residents. Strengthens the right of countries to tax their own residents, for example through so-called ‘Controlled Foreign Company’ rules. These rules can be used by countries to impose taxes on the incomes of foreign subsidiaries of multinational corporations, if those subsidiaries have paid relatively low amounts of taxes in the country where they are based.</p>	
<p>12. Commissionaire arrangements. The OECD corporate tax system determines that a corporation is only liable to pay tax in a country if it has a ‘permanent establishment’ (PE) in that country, and therefore multinational corporations can avoid taxation by circumventing the definition of what constitutes a PE. Even after BEPS, the PE definition remains very problematic. That said, this article can help to limit some types of circumventions by making it more difficult for multinational corporations to outsource their activities to ‘independent agents’, and thereby avoid having a formal PE.</p>	
<p>13. Specific activity exemptions. Corporations have sometimes been able to avoid that their activities in a country constitute a formal PE (see above) by claiming that the activities are of a ‘preparatory or auxiliary character’. This article restricts these options and thus limits possibilities for tax avoidance through this loophole.</p>	
<p>14. Splitting-up of contracts. Limits the possibilities for corporations to circumvent the PE definition (see above) by splitting their activities up in short-term contracts.</p>	
<p>17. Corresponding adjustments. Obliges countries to relieve ‘economic double taxation’, which refers to a situation where two subsidiaries of a corporation are taxed on the same income. This can become relevant if one country makes a decision that impacts on the allocation of profits between a subsidiary in its own country, and a subsidiary in another country. This article does not seem in line with the arm’s length principle, and can be problematic since it can pressure countries to accept transfer pricing methods used by other countries, with which they do not agree.</p>	<p>Countries should not commit to these elements</p>
<p>18. Arbitration. Introduces mandatory secret binding arbitration in case of tax disputes (see above under ‘secret binding arbitration’).</p>	

Sources: OECD’s BEPS Convention,²⁰⁰ Explanatory Statement to the Convention,²⁰¹ BEPS Monitoring Group,²⁰² and the OECD Transfer Pricing Guidelines.²⁰³

Table 7.: Overview of commitments by EU countries, Switzerland and Norway to OECD BEPS Convention articles that civil society organisations have called for countries to adopt (see table 6). 'Light blue' indicates that the country has opted in to the commitment, 'dark blue' indicates that the country has opted out of the commitment, and 'light grey' indicates that the country has chosen an in-between option. The two rows at the bottom of the table show the percentage of countries that have opted in to the commitments among the countries included in the table (second to last row) and in total among all signatories to the instrument (last row). Estonia has not yet signed the multilateral instrument, and is therefore not included in the overview. Data is accurate as of 25 October 2017. Table 7 is based on the positions of signatories as indicated at the time of signature or ratification, but these positions can change. Source: OECD.²⁰⁴

Country choices among the articles of the OECD BEPS Convention that civil society has called for countries to opt in to														
Article / Country	3	4	5	7	8	9	10	11	12	13	14	Total		
												Opt in	In between	Opt out
Austria												3	1	7
Belgium			*									4	3	4
Bulgaria												1		10
Croatia												3		8
Cyprus												1		10
Czech R.												1		10
Denmark												1		10
Finland			*									1	1	9
France												5	1	5
Germany			*									4	2	5
Greece												2		9
Hungary												1		10
Ireland			*									4	4	3
Italy			*									2	1	8
Latvia												1		10
Lithuania			*									2	3	6
Luxemburg												1	3	7
Malta												1		10
Netherlands												8	2	1
Norway												7	2	2
Poland												6	1	4
Portugal												4	2	5
Romania												10		1
Slovakia												11		0
Slovenia			*									7	1	3
Spain												8		3
Sweden												1		10
Switzerland												1	1	9
United Kingdom			*									3	3	5
Opt in %	24%	28%	21%	100%	28%	34%	24%	24%	31%	34%	10%			
Opt in % Global ²⁰⁵	30%	39%	15%	100%	37%	44%	31%	31%	44%	48%	25%			

(*) The country has not chosen any option at all, and therefore neither opted in nor out

Table 8: Overview of commitments by EU countries, Switzerland and Norway to OECD BEPS Convention articles that civil society organisations have called for countries not to adopt (see table 6).

'Light blue' indicates that the country has opted in to the commitment, and 'dark blue' indicates that the country has opted out of the commitment. The two rows at the bottom of the table show the percentage of countries that have opted in to the commitments among the countries included in the table (second to last row), and in total among all signatories to the instrument (last row). Estonia has not yet signed the multilateral instrument, and is therefore not included in the overview. Data is accurate as of 25 October 2017. Table 8 is based on the positions of signatories as indicated at the time of signature or ratification, but these positions can change.

Source: OECD.²⁰⁷

Country choices among the articles of the OECD BEPS Convention that civil society has called for countries to opt out of				
Article / Country	17	18	Total	
			Opt in	Opt out
Austria	Light blue	Light blue	2	
Belgium	Light blue	Light blue	2	
Bulgaria	Light blue	Dark blue	1	1
Croatia	Light blue	Dark blue	1	1
Cyprus	Light blue	Dark blue	1	1
Czech R.	Dark blue	Dark blue		2
Denmark	Light blue	Dark blue	1	1
Finland	Light blue	Light blue	2	
France	Light blue	Light blue	2	
Germany	Light blue	Light blue	2	
Greece	Light blue	Light blue	2	
Hungary	Light blue	Dark blue	1	1
Ireland	Light blue	Light blue	2	
Italy	Light blue	Light blue	2	
Latvia	Dark blue	Dark blue		2
Lithuania	Light blue	Dark blue	1	1
Luxemburg	Light blue	Light blue	2	
Malta	Light blue	Light blue	2	
Netherlands	Light blue	Light blue	2	
Norway	Light blue	Dark blue	1	1
Poland	Light blue	Dark blue	1	1
Portugal	Light blue	Light blue	2	
Romania	Light blue	Dark blue	1	1
Slovakia	Light blue	Dark blue	1	1
Slovenia	Light blue	Light blue	2	
Spain	Light blue	Light blue	2	
Sweden	Light blue	Light blue	2	
Switzerland	Light blue	Light blue	2	
United Kingdom	Light blue	Light blue	2	
Opt in %	98%	59%		
Opt in % Global ²⁰⁶	92%	37%		

Among the countries included in table 7 (the EU countries, Norway and Switzerland), many have opted out of the articles that civil society organisations have called to be adopted (from Article 3-14, see table 6). In most cases, fewer than 40 per cent of the countries have committed to these articles. At the same time, table 8 shows that many of the countries have committed to Article 17 and 18, both of which civil society groups have warned against. This includes secret binding arbitration, which 59 per cent of the countries have opted in to.

As can be seen in the last rows of the two tables, most of the countries included in the table – i.e. EU, Norway and Switzerland – are less in line with civil society recommendations, compared to the trend among all 71 countries and jurisdictions that have signed the OECD BEPS instrument (see ‘global’ at the bottom of the tables).²⁰⁸

Countries still have some opportunities to change their reservations and selections later on. However, the high level of reservations that countries made at the outset shows a real risk that many will make use of the ample opportunities provided by the agreement to sign without actually committing.

The Netherlands stands out as a country that has opted-in to the vast majority of the anti-abuse provisions in the BEPS convention. This is welcome, especially since the Netherlands raises much concern in terms of its promotion of possible tax avoidance strategies (see chapter 3 on ‘Corporate tax avoidance’, including table 2). This could be a sign that some things will change for the better. However, as noted above, there are harmful tax practices that the BEPS agreement does not solve (see for example chapter 4.3 on ‘Patent boxes’), and several policies in the Netherlands continue to cause great concern (see also the national chapter on ‘The Netherlands’).

5.1.3 BEPS – first step in a long walk?

It is concerning that some seem to believe that the reform of the global tax system started and ended with BEPS, and that ideas for further reform should now be shelved. The most obvious example of this is the G20 and OECD’s increasing focus on providing ‘tax certainty’ for businesses and investors (see chapter 2.3 on ‘Tax certainty – for whom?’). Critics have repeatedly highlighted that BEPS failed to address a number of key issues of importance to developing countries, such as taxation of extractive industries and allocation of taxing rights between countries. BEPS also does not address the problem noted above that tax treaties drive down the tax rates that countries charge on financial flows out of their countries (see chapter 4.5 on ‘Bilateral tax treaties’).

Lastly, as mentioned above, BEPS has left some of the more fundamental problems intact. It does not, for example, give serious consideration to the option of taxing multinational corporations and single entities (see chapter 5.2 on ‘A coherent system for taxing multinationals’). Therefore, it is important that BEPS is not seen as the end of the global tax discussion, but rather as a very cautious beginning.

5.2 A coherent system for taxing multinationals

5.2.1 The broken arm’s length principle

In recent decades, it has become unequivocally clear that the world’s tax rules have not kept up with the profound changes to the global economy. The rules for taxing multinational corporations, which in part date back to the first half of the twentieth century,²⁰⁹ are based on the idea that countries should only tax those parts of a multinational corporation that are operating in their jurisdiction, and different subsidiaries of a multinational corporation should be taxed as local businesses, even though part of a larger entity.

The transfer pricing system and the ‘arm’s length principle’ were developed to ensure that, when trading internally with each other, the subsidiaries of a multinational corporation would use the same prices as would have been used in an open market between two completely unrelated companies.²¹⁰ The theory behind this approach is that multinational corporations will not be able to use internal trading at artificial price levels to ensure that profits are moved from the subsidiaries in countries where the business activity takes place, to subsidiaries in countries where taxes are lower or absent.

In reality, however, multinational corporations today trade items that are very hard to put a price on, such as ‘management advice’, or intellectual property such as know-how or brands. When such items are used to move profits across borders, the tax administrators in the countries that are losing tax income will have to try and prove that the prices used in the internal trade are wrong – something which often becomes a mission impossible, since there are no independent markets trading such items, and thus no objective comparable price.²¹¹

Box 9: Corporate tax avoidance put simply

To avoid taxation, a corporation can, for example, establish a subsidiary in a low-tax jurisdiction and ensure that this subsidiary becomes the owner of a central piece of intellectual property. The subsidiary in the low-tax jurisdiction can then start charging large amounts of royalty fees from subsidiaries in other countries, and thereby ensure that these subsidiaries do not make any profit, while the subsidiary in the low-tax jurisdiction produces large amounts of profits that will be subject to little or no tax.

5.2.2 A 'Common Consolidated Corporate Tax Base' in the EU?

In 2016, the debate about how multinational corporations should be taxed was kicked off by a proposal by the European Commission, known as the 'Common Consolidated Corporate Tax Base' (CCCTB).²¹²

The CCCTB, in its fully implemented form, would mean that all EU-based subsidiaries of a large multinational corporation would be required to file a single set of consolidated accounts to EU tax authorities, after which the total taxable profit in the EU would be determined.²¹³ This would then be allocated to each of the countries where the multinational does business, based on a pre-negotiated formula to determine the economic activity or presence of the corporation in each country. Once the taxable profit has been allocated to different member states, it would be up to each of them to decide what percentage of tax they will collect from their share of the taxable profit.

Such an approach would make it impossible for multinational corporations to use transfer pricing to avoid taxes internally in the EU, since profits would be included in the overall EU calculation no matter which of the EU subsidiaries holds the profit.

A problematic 2-step approach

The CCCTB was first proposed by the European Commission in 2011, but resistance from member states prevented the proposal from being adopted.²¹⁴ When the Commission relaunched the proposal in 2016, there was one important difference. The proposal was split into two steps, with a fundamental change – the consolidation of the accounts of multinational corporations to determine one overall amount of taxable EU income had become a theoretical second step. The first step would focus on harmonisation of the rules to calculate taxable profits for multinationals in the EU, but not include any consolidation.²¹⁵

This raised concerns that EU negotiations might never reach the end of step two, and that the EU would be stranded with a half-developed system that could potentially introduce new loopholes.²¹⁶

Large-scale tax deductions

The first step also includes elements that cause concern. While the proposal would prevent multinationals from using the much-disputed patent boxes (see chapter 4.3) internally in the EU, the European Commission at the same time underlines that it aims to '*at least maintain existing [research and development] tax incentives*'.²¹⁷ For this purpose, the Commission's proposal includes a so-called 'super-deduction', which awards multinational corporations and other companies a tax deduction of more than 100 per cent of their expenses for research and development. The total cost of this tax giveaway is not assessed in the Commission's proposal, but given the aim of maintaining the current level of incentives, it can be assumed that it will, at the very minimum, be as costly as patent boxes currently are. While the proposal offers particularly high deductions to start-up companies,²¹⁸ it does not address the concern that start-ups might not generate large profits in their early research and development phase, and thus not be able to benefit from generous tax deductions. Lastly, as explained above (see chapter 4.3 on 'Patent boxes'), research and development is generally better supported through budget allocations, rather than through opaque and potentially harmful tax incentives.

The proposal also includes a tax incentive for equity payments, which, according to the proposal, aims to ensure that the tax system does not create incentives for choosing debt over equity as a financing model for corporations in the EU.²¹⁹ The underlying problem is that interest payments associated with corporate debt are already subject to generous tax benefits. However, civil society organisations have proposed to resolve this by limiting tax incentives for debt,²²⁰ rather than to introduce new incentives for equity.

If possibilities for obtaining large-scale tax deductions are introduced in the EU, it ultimately creates incentives for multinational corporations to shift their profits to the EU to benefit from these tax deductions. This could come at the expense of other countries around the world where corporations are generating their profits, including developing countries.

Difficult EU negotiations ahead

However, because the CCCTB proposal is considered a tax issue, there will not be an outcome until EU member states agree unanimously (as is required for the EU to make decisions on tax). The European Parliament will not be part of the final negotiations, and will be restricted to giving input in the form of an opinion on the file. Already, negotiations are starting to look difficult. The national parliaments of Denmark, Ireland, Luxembourg, Malta, the Netherlands, Sweden and the UK have all stated their objections to the plans, arguing that this type of legislation belongs at the national level rather than the EU level.²²¹

Meanwhile, the Cypriot cabinet announced it would not agree to start discussions about the CCCTB proposal.²²² Thus, it seems there is still some way to go before the EU reaches consensus.

5.3 Blacklisting 'non-cooperative jurisdictions'

This year, EU countries forged ahead with their work towards establishing a common EU blacklist of so-called 'non-cooperative jurisdictions' or, in other words, tax havens. From the very outset, it was made clear that no EU member state could be included in the list.²²³

In late 2016, EU member states published the criteria for blacklisting, which will focus on whether a country or jurisdiction:

- Complies with the OECD's standard on automatic information exchange (for more information about the standard, see below).
- Has a 'fair' tax system, which does not contain harmful tax practices or facilitate offshore structures to attract corporate profits that do not reflect real economic activity.
- Complies with the OECD BEPS decisions.²²⁴

The second criteria, in particular, leaves room for political interpretation, and it is thus still very unclear which countries will end up being blacklisted.

EU member states are now working on finalising the list in the so-called Code of Conduct Group (see box 5).²²⁵ Given that negotiations are highly secretive, and judging by experiences of previous attempts to establish such lists,²²⁶ there is concern among civil society organisations that the listing process will turn very political. There are also serious doubts that the EU would ever be willing to blacklist influential countries such as the United States or Switzerland.²²⁷ In fact, in November 2017, the Swiss Economy Minister met with EU representatives, and afterwards informed the media that Switzerland would not be included on the future EU blacklist.²²⁸

While some tax havens are excluded from the list, there is a clear risk of simply moving problems from one tax haven to another, without actually solving the problem of tax dodging. As mentioned above (see chapter 4.1 on 'A changing landscape'), multinational corporations can be quick to respond to changes by adapting their tax arrangements to abandon old loopholes and exploit new ones.

The eventual list of non-cooperative jurisdictions is expected to be endorsed by EU finance ministers before the end of 2017.²²⁹ Member states will also discuss potential counter-measures to be applied to blacklisted jurisdictions, such as imposing withholding taxes for payments to blacklisted countries, or the elimination of specific tax deductions for payments to blacklisted jurisdictions.²³⁰

However, as outlined above, several EU member states also have numerous tax practices that can be considered harmful, and could therefore be considered 'tax havens'. Especially given the fact that EU member states are themselves protected from being blacklisted, it can sometimes seem unclear whether the EU's list of non-cooperative jurisdictions is really a tool to abolish tax havens, or whether some member states will see it as an opportunity to discredit competitors outside the EU, to get an advantage in the race to attract multinational corporations with generous tax offers.

Other examples of blacklists

In 2017, the OECD's Global Forum also issued its new blacklist of countries it found to have failed to comply with information exchange standards. The list comprised just one country - Trinidad and Tobago.²³¹

Meanwhile, in 2016, Brazil decided to include Ireland on its own blacklist of tax havens.²³² The former Finance Minister of Ireland, Michael Noonan, stated that he was 'surprised and disappointed', and initiated diplomatic efforts to try and convince Brazil to remove it from the list.²³³ He was not successful.²³⁴

Brazil also maintains a 'grey-list of privileged tax regimes', which includes holding companies in Denmark, the Netherlands and Austria.²³⁵ As mentioned above (see box 4 on 'Developing countries and tax'), Ecuador has also included a number of EU countries on its blacklist, which in total contains over 80 countries and jurisdictions.

5.4 The role of middlemen

In June 2017, the European Commission published a new proposal regarding the middlemen – or so-called intermediaries – of tax dodging. These players have received increased attention since several tax scandals have highlighted the fact that multinational corporations and wealthy individuals seeking to dodge taxes often get help from tax advisors, lawyers, banks, accountants or other intermediaries in doing so.²³⁶

The Commission's proposal is to introduce an obligation for intermediaries to report 'potentially aggressive tax planning schemes with a cross-border element' to tax authorities in the country where they are based. This information should then, according to the proposal, be shared with other EU tax administrators through a central register.²³⁷

However, a number of issues are not included in the Commission's proposal. First of all, none of the information about potentially harmful schemes would be made available to the public, since the proposal only focuses on making the information available to EU tax administrators. This situation can create a 'tax administrator's dilemma', since tax administrators might be able to witness tax schemes that are very harmful, but not in direct violation of the law. In this case, EU tax administrators might have very limited possibilities of addressing the problem (see box 13).

Secondly, a number of elements the European Parliament called for have not been addressed. This includes measures to address potential conflicts of interests arising when tax advisors on the one hand provide advice to governments about tax regulation, and on the other hand advise corporations on how to structure their tax arrangements.²³⁸

"[The European Parliament] points to the problematic and questionable juxtaposition, within the same firms, of tax advice, auditing and consulting activities intended on the one hand to service tax administrations, e.g. for designing tax systems or improving tax collection, and, on the other hand, to provide tax planning services for [multinational corporations], which may be exploiting the weaknesses of national tax laws."

European Parliament, 2015²³⁹

Concerns about such conflicts of interest were for example raised by civil society organisations when PricewaterhouseCoopers (PwC) were hired in 2014 by the European Commission to analyse the pros and cons of public country by country reporting – a measure the corporation had actively lobbied against.²⁴⁰ At that point, the European Commission rejected that there was any risk of conflicting interests,²⁴¹ and still today, PwC lists tax as one of the key issues on which it sells expertise to the EU.²⁴²

The European Parliament also called for the Commission to assess the possibility of sanctioning advisors proved to be involved in implementing or promoting 'illegal tax avoidance and aggressive tax planning', and stressed that this may include 'barring access to funding from the EU budget'.²⁴³ Measures like these could potentially have a strong deterrent effect on corporations such as PwC, which sells many types of services to the EU and annually receives millions of Euros from the EU budget.²⁴⁴



Campaigners outside the court in Luxembourg during the LuxLeaks' trial. Photo: CCFD

Box 10: PwC and LuxLeaks

PricewaterhouseCoopers played a central role in the so-called 'LuxLeaks' scandal, which broke in November 2014.²⁴⁵ At the core of the scandal were leaked documents that revealed secret tax deals between the Luxembourg tax administration and more than 300 multinational corporations (see also chapter 4.4 on 'Sweetheart deals'). According to the International Consortium of Investigative Journalists (ICIJ), which published the story, these deals appear to have allowed the multinationals to save billions of dollars in tax payments through (legal) tax avoidance.²⁴⁶

The vast majority of documents exposed in the scandal were from PwC, which had negotiated hundreds of deals with the Luxembourg tax administration on behalf of the multinational corporations involved in the scandal.²⁴⁷ The two whistleblowers who played a critical role in bringing the story to the public, were both former employees of PwC.²⁴⁸

5.5 Protecting whistleblowers

In March 2017, the appeals court in Luxembourg announced its verdict in the 'LuxLeaks case'. The case started when two whistleblowers, Antoine Deltour and Raphaël Halet, were charged after revealing the documents that started scandal (see box 10). In its verdict, the court acknowledged that it was indeed a case of whistleblowing, but at the same time issued a suspended jail sentence of six months to Antoine Deltour, and a fine to both of the whistleblowers.²⁴⁹ A journalist, Edouard Perrin, who had also been charged, was acquitted.²⁵⁰ Both whistleblowers have appealed to the Luxembourg Court of Cassation.²⁵¹

The long and painful trial is a stark reminder of the fact that European whistleblower protection remains woefully inadequate. In 2017, the European Commission launched a consultation on the protection of whistleblowers in the EU, but a concrete proposal has not yet been published.²⁵²

5.6 Measuring the impact of European tax policies

The European Parliament has repeatedly called on the European Commission and member states to conduct 'spill-over analyses' to assess the impact that the tax policies of European countries can have on tax collection in developing countries.²⁵³ In 2017, the European Commission started a debate with member states and stakeholders on a potential toolbox for spill-over analyses of tax treaties.²⁵⁴ Shortly after, ActionAid published a concrete proposal outlining how spill-over analyses can be conducted.²⁵⁵ However, no concrete steps have been taken by the Commission or member states towards developing an official standard for such analyses, and no commitment has been made to systematically carry them out. In 2017, Norway appeared to be the only European country with concrete plans to conduct a new spill-over analysis.²⁵⁶

5.7 Capacity development and technical assistance to developing countries

Internationally, there seems to be a growing momentum for increasing capacity development and technical assistance on tax matters to developing countries. Such support can play a very important role in development, and resource constraints are a central problem in developing countries.²⁵⁷

However, as regards taxation of multinational corporations, some central questions still remain unanswered.

Firstly, given that tax avoidance by multinational corporations is a very big problem in all countries, not just developed ones, one might ask what kind of capacity developed countries actually have to offer?

"Given recent scandals around Apple, Google, Amazon, and Starbucks not paying taxes in OECD countries themselves, what capacity is there to transfer? If there is, they may want to keep it at home and start using it."

Pooja Rangaprasad

The Financial Transparency Coalition²⁵⁸

Secondly, there are some clear risks of conflicts of interest between donor and recipient countries. The race to the bottom between governments trying to attract investments with tax incentives creates an environment where countries are often acting against each other, rather than working together. Conflicts can also arise if a donor country is the home country of some of the multinational corporations operating in the recipient country, in which case the donor country might not have an interest in strengthening the recipient country's ability to claim taxing rights and collect more taxes from corporations.

Related to this, one question concerns whether there is a risk that capacity development and technical assistance might be abused to inappropriately influence tax practices in developing countries, for example to promote the interests of multinational corporations from donor countries, or to ensure that developing countries follow international tax standards that were agreed in forums where they were not included (see chapter 5.9 on 'Ensuring truly global decision-making'), regardless of whether this is in their interest or not. To avoid this, it is vital that developing countries are in the driving seat of projects that aim to influence their tax regulation and/or administration, and that projects are free from conflicts of interest and fully in line with developing country priorities and objectives.

5.7.1 The Addis Tax Initiative

The Addis Tax Initiative (ATI) was established by the Netherlands, Germany, UK and US in 2015.²⁵⁹ The initiative includes around twenty donor countries and a slightly higher number of developing countries,²⁶⁰ and centres around three core commitments (see box 11).

Box 11: The Addis Tax Initiative (ATI) – the three core commitments, and how they are being measured

Commitment 1: by 2020, donor countries will ‘collectively double their technical cooperation’ to support taxation and domestic revenue mobilisation.²⁶¹

Measurement: donors will use a newly developed marker in their aid reporting, so that support for domestic resource mobilisation and taxation can be tracked.²⁶²

Commitment 2: developing (or ‘partner’) countries will step up domestic revenue mobilisation with a view to achieving the Sustainable Development Goals and inclusive development.²⁶³

Measurement: in the first monitoring report of the ATI, monitoring elements vary between partner countries, but the following three indicators are applied to all: the amount of tax collected compared to the country's GDP (tax/GDP ratio); the country's ranking in the World Bank Doing Business Report; and the country's performance in the World Economic Forum Global Competitiveness Report, with special focus on how the tax system is deemed to affect the incentives to work as well as the incentives to invest in the country.²⁶⁴

Commitment 3: all countries will ensure policy coherence for development.²⁶⁵

Measurement: there is currently no systematic method for measuring the implementation of this commitment. Instead, most donor countries submit a general report on issues relating to policy coherence for development.²⁶⁶

On a positive note, the ATI declaration doesn't focus on tax collection as an end in itself, but rather as a tool to ensure inclusive development and achievement of the Sustainable Development Goals. This is important because regressive taxation, which impacts disproportionately on poor people, can reinforce inequality and undermine development (see chapter 2.2 on 'Someone has to pay'), and thus increased tax collection is not always a sign of development progress. This focus, however, doesn't seem reflected in the ATI's first monitoring report.

To assess developing countries, the ATI firstly looks at the amount of tax collected compared to a country's GDP (see box 11). Secondly, the ATI uses the country ratings in the World Bank Doing Business Report and the World Economic Forum Competitiveness Report, although the ATI itself acknowledges that both these reports are actually designed to monitor the effect of taxation on the business environment.²⁶⁷ This is by no means the same as measuring development progress through taxation (in some cases, initiatives that support development can be perceived by some business actors as worsening the business environment). Therefore, both these indicators do not seem appropriate to use in the ATI context. In its monitoring report, the ATI also highlights that *'fairness and equity in taxation (...) could not be directly assessed because there is a lack of adequate indicators'*.²⁶⁸ This is, however, not an argument for changing the focus of the ATI from development to the business environment.²⁶⁹

Another very positive element of the ATI declaration is the commitment to ensure policy coherence for development. This seems important, not least since several donor countries that have signed up to the ATI have also been identified as some of the world's largest offshore financial centres (see table 2), including the Netherlands, Luxembourg, Switzerland, Ireland and UK.²⁷⁰

The ATI commitment could entail an obligation for countries to assess harmful impacts on developing country taxation, and remove policies with negative effects. Unfortunately, this part of the ATI commitment has not been translated into a concrete set of measurement indicators (see box 11). Instead, the ATI monitoring report notes that there seems to be *'no common understanding among the ATI members about policy coherence in the area of domestic revenue mobilisation'*.²⁷¹

Looking ahead

It is important that the ATI includes a deeper analysis of what kind of assistance is provided, and whether this is really promoting inclusive development and the achievement of the Sustainable Development Goals. Furthermore, it is vital that the commitment to ensuring policy coherence for development becomes operational and implemented. Methodologies are available for conducting 'spill-over analyses' to identify and assess policies and practices in developed countries, which have negative impacts on tax collection in developing countries.²⁷² To implement the ATI commitment, developed countries could simply commit to carrying out these analyses and removing harmful policies and practices.

As with all support for developing countries, it is also vital to avoid any conflicts of interest, and ensure that capacity development and technical assistance projects are driven by recipient countries. There are indications that this might not always have been the case with the ATI. An independent analysis of UK aid highlighted in 2016: *'The Addis Tax Initiative was developed by [the UK government's Department for International Development] DFID and other donor countries with only limited consultation with developing countries and no explicit assessment of their needs. As a result, DFID and its donor partners had to lobby their partner countries at the Addis conference to sign up to the initiative.'*²⁷³

Lastly, capacity development and technical assistance must not stand alone. There are many other ways in which developed countries can help developing countries collect taxes, including by avoiding harmful tax practices, as explained above, and ensuring transparency, as explained below.

5.8 Ensuring financial and corporate transparency

5.8.1 Banking secrecy – still very much alive

Eight years after the G20 declared that the *'era of banking secrecy is over'*,²⁷⁴ one could say the reports of the death of banking secrecy are greatly exaggerated. In March 2017, following a tip-off by an anonymous source, the Dutch authorities launched an investigation into Credit Suisse, the second biggest bank in Switzerland.²⁷⁵ The suspicion was that 3,800 Dutch citizens were holding offshore accounts with the Swiss bank for the purpose of avoiding declaring their assets to the tax authorities in their home countries.

The Dutch investigation quickly spread to neighbouring European countries as well as Australia, which all began to scrutinise the accounts held by their citizens at the Swiss bank. After closer scrutiny, 55,000 suspect bank accounts were uncovered, holding assets estimated to be in the millions of euros. Credit Suisse confirmed that its offices had been searched in a case concerning 'client tax matters', and stated that it was cooperating with the authorities.²⁷⁶

Box 12: Trillions of hidden wealth

In 2015, the economist Gabriel Zucman estimated the amount of wealth hidden in tax havens at US\$7.6 trillion – or roughly 8% of the world's GDP in 2014.²⁷⁷ As Tax Justice Network has highlighted, this might even be a conservative estimate.²⁷⁸

For the EU there is progress on the horizon, since Switzerland will, starting from 2018, be exchanging banking information automatically with the region.²⁷⁹ This is, however, not the case for all countries. Switzerland has selected different specific groups of countries and jurisdictions with which it will exchange information automatically, including: G20 members, European countries and jurisdictions, important economic and trade partners (this group includes, for example, Columbia and Malaysia), and important financial centres (includes, for example, Costa Rica, Uruguay and a number of island states).²⁸⁰

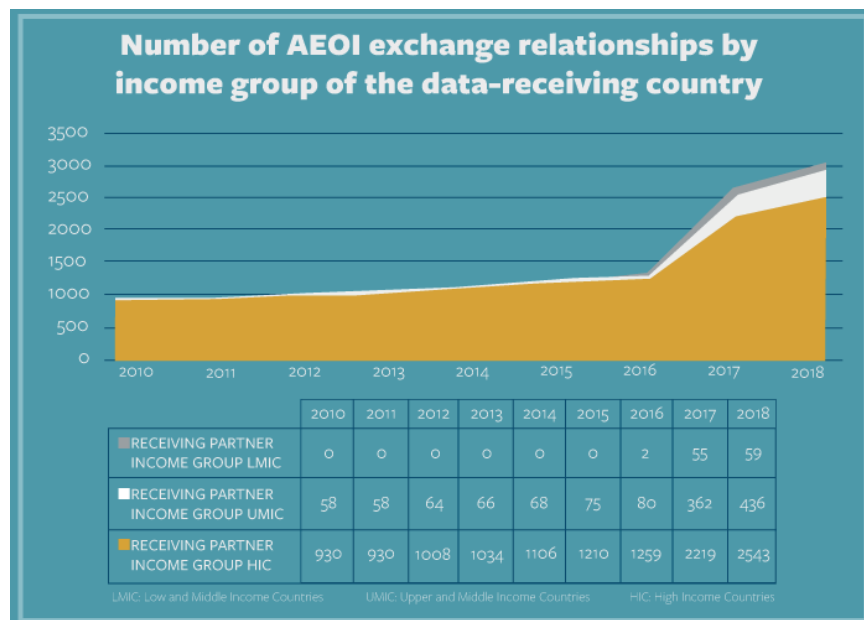
However, for countries that have not been selected by Switzerland, it is still very uncertain whether the Swiss will agree to automatic exchange. Other European countries have also not yet made any clear commitments to exchange information with all developing countries that might be interested, and there is therefore a clear risk that developing countries might not be allowed to receive the information they need to combat tax evasion, even in the case where they implement the (administratively heavy, and often costly) technical requirements, such as data protection.

The problematic dating system on automatic information exchange

It might seem counterintuitive that countries can pick and choose who to share information with, in a system which is supposed to be 'automatic'. The reason for this can be found in the international standard on automatic information exchange of banking information, which was negotiated by the OECD and G20. Although the standard is open for all countries to sign up to, this does not mean that all countries will be allowed to automatically receive information from other countries that have signed up. The standard includes a sophisticated 'dating system', where each country selects which countries it would like to exchange with, and unless two countries both agree, no automatic exchange will take place between them.²⁸¹ As can be seen in figure 4 (below), the sad fact is that especially poorer developing countries receive much less information automatically than developed countries do.

Figure 4: Number of agreements to receive information automatically obtained by high income countries, upper middle income countries and lower middle income countries.

Source: Christian Aid and the Financial Transparency Coalition²⁸²



5.8.2 Secret exchange of information on multinationals and tax

Unfortunately, the OECD and G20 chose to replicate the system, which had been developed for banking information, to exchange information needed to identify corporate tax avoidance. Civil society organisations have long called for public insight into basic information about where corporations do business and what they pay in taxes in the countries where they operate – so-called country by country reporting (see below under ‘Allowing citizens to know what multinational corporations pay in taxes’).

However, the OECD and G20 not only decided that the information should be kept confidential, but also that multinational corporations should only report information to one specific country (most commonly the place where the headquarters are located).²⁸³ When it comes to sharing information with countries where the corporation operates, the OECD and G20 once again set up a system of ‘automatic’ exchange of information – meaning a ‘dating system’ where two countries both need to agree before the exchange can happen.

The agreement did include an option for so-called ‘local filing’, meaning that countries which were unable to access information through exchange of information could demand that a multinational corporation operating in their country should submit the information directly to the government, regardless of whether the corporation is headquartered in the country or not.²⁸⁴ In 2017, the government of Vietnam decided to test this mechanism, and issued a decree requiring that multinational corporations submit country by country reports directly to Vietnam.²⁸⁵

Unfortunately, the OECD guidelines are not very welcoming towards this approach, but instead underline that local filing is only permitted if a number of strict conditions are fulfilled, including that the country where the headquarters are located must have shown a ‘systemic failure’ to exchange the reports with other countries. The OECD also underlines that it will work to ‘avoid local filing wherever possible’.²⁸⁶ It remains to be seen whether multinational corporations operating in Vietnam will comply with the new government decree and submit their country by country reports directly to the Vietnamese tax administration.

Sadly, even in the case where a tax administration manages to get hold of a country by country report, there are limitations as to how they will be able to use this confidential information to stop corporate tax avoidance (see box 13).

Box 13: The tax administrator's dilemma

'If tax inspectors see evidence of tax avoidance or evasion, but don't have the support of their hierarchy to deal with it, they have usually very limited means to do anything about it. (...) Public country-by-country reporting protects tax inspectors by removing the pressure of being the only people with access to this information.' – Ángeles Villaverde, International Coordinator at the trade union FESP-UGT, Spain.²⁸⁷

Even in the case where a country does manage to get access to documents indicating that a multinational corporation is avoiding taxes, such as an advance tax agreement or the country by country report, the insights will not necessarily mean that the tax administration can stop tax avoidance.

Firstly, tax avoidance by multinational corporations is often not illegal, and it can therefore be difficult to stop it with prosecution. A recent example is from France, where the tax administration lost a tax case against Google (the government has decided to appeal the verdict),²⁸⁸ but also the European Commission's state aid cases show how efforts to make corporations pay tax can turn into lengthy court processes (see chapter 4.4 on 'Sweetheart deals').

Secondly, pursuing corporate tax avoidance is often a very political issue, and the tax administrator might not have the necessary support from political decision-makers to go after a powerful multinational corporation.

And lastly, the information is strictly confidential. Therefore, the tax administrator is not allowed to tell the public or, for example, parliamentarians about the tax behaviour of the corporation. This confidentiality also limits the tax administrator's possibilities of discussing with other experts and tax administrations. Violating this confidentiality can put the tax administrator at risk of being fired, prosecuted, or potentially face heavily penalties (see chapter 5.5 on 'Protecting whistleblowers').

Sadly, because developing country tax administrators have much less access to key information about multinational corporations, a tax administrator in a developed country can also end up looking at information that indicates that a corporation is dodging taxes in developing countries, but not be allowed to share this information with the tax administrators in the countries that are being affected.

Public information about country by country reports and the content of advance pricing agreements will, on the other hand, allow tax administrators to benefit from public support for stopping corporate tax avoidance, and although the public can never replace tax administrators, scrutiny of public information by for example journalists and civil society, can help identify cases where multinational corporations are engaged in questionable tax practices. Public information will also allow tax administrators to openly share thoughts, insights and experiences with other tax administrators around the world – something that can be particularly important for developing country tax administrators.

'Tax inspectors are often not encouraged by their hierarchy to pursue the more complex cases of multinationals' tax dodging because the resources are not there, or because of broader vested interests. Tax inspectors need public country-by-country reporting so that civil society organisations, journalists, trade unions and citizens can see if multinationals are paying their taxes and hold politicians to account when they promise to fight tax avoidance by multinationals.' – Dounia Zaouche National Secretary at the trade union UFSE-CGT, and Alain Parisot, National Secretary at the trade union UNSA Fonction Publique, France.²⁸⁹

5.8.3 Allowing citizens to know what multinationals pay in taxes

An EU 'Pirate Base for Tax Avoidance'

In May, a scandal that quickly became known as the 'Malta Files' was published by the European Investigative Collaborations (EIC).²⁹⁰ A leak of over 100,000 documents²⁹¹ allowed journalists to reveal how multinational corporations such as BASF, Sixt, Puma, BMW and Lufthansa had set up a large number of letterbox companies in Malta.²⁹² The corporations either refused to comment, or stated that their presence in Malta was due to reasons other than taxation issues.²⁹³ However, earlier revelations and analysis by MaltaToday newspaper alleged how multinational corporations have used subsidiaries in Malta to avoid around €2 billion in tax payments every year.²⁹⁴

Price of setting up a letterbox company in Malta: **around €1,200 in deposit**²⁹⁵

Malta has a corporate tax rate of 35 per cent, but creative tax rebates allow corporations to bring the tax rate down to five per cent.²⁹⁶ MaltaToday published figures from 2015, showing how corporate profits worth around €4 billion flowed through Malta, which would otherwise have been taxed in other countries. The profit flows generated €247 million in revenues for the Maltese tax authority, but often at the expense of other countries, who lost a fortune in foregone tax revenue.²⁹⁷ The Malta Files revelations led the regional German Finance Minister of North Rhine-Westphalia to dub Malta the 'Panama of Europe'.²⁹⁸

Figures showing the tax payments and business activities of corporations in each country are normally secret to the public. However, public country by country reporting would change that, and let citizens know where multinational corporations do business and how much tax they pay in each country where they are operating, and thereby act as a disincentive for large-scale tax avoidance.

EU negotiations on public country by country reporting

Unfortunately, the EU has not yet reached political agreement on introducing real public country by country reporting. In April 2016, the European Commission came forward with a long-awaited proposal on the issue.²⁹⁹ While the Commission's proposal goes further than the secret country by country reporting, which is now part of the OECD's BEPS outcome (see chapter 5.1 on 'Implementing a controversial 'sticking plaster'), the proposal would unfortunately only require corporations to publish information on their operations in EU member states and countries to be included in a yet-to-be determined EU blacklist of tax havens.

Limiting information to EU countries and a subset of blacklisted countries is highly problematic for several reasons. Firstly, it would only give the public an incomplete picture of a large multinational's activities worldwide. Secondly, it would mean that multinationals would continue to be able to engage in profit shifting to low-tax jurisdictions that do not make it onto the EU blacklist. Lastly, developing countries would be especially disadvantaged by this proposal, as it would leave them in the dark about the activities of large multinationals operating in their jurisdictions. Another problematic point is that the Commission's proposal would only apply to corporations with a turnover of at least €750 million per year. According to the OECD, only 10-15 per cent of the world's multinational corporations meet this threshold.³⁰⁰

In response to the Commission's proposal, EU member states issued an initial informal position that suggests limiting transparency even further.³⁰¹ For instance, according to member states, reporting requirements should only cover corporations that are 'operating' in the EU. This significant change would allow letterbox companies, which often play a central role in the tax avoidance activities of large multinationals, to be excluded from the reporting obligation. Further proposed changes by the Council of EU Member States include an exception clause for corporations that only have one subsidiary in a country, due to the alleged risk of revealing commercially sensitive information. French civil society organisations have highlighted that for a multinational corporation such as Total, such an exception clause would allow the oil and gas giant to avoid reporting on its subsidiaries in 37 of the 98 countries where it has operations.³⁰²

Furthermore, some EU member states have proposed a change to the legal basis for the proposal, which would in effect exclude the European Parliament from the decision-making, and would give member states the opportunity to veto the legislation³⁰³ – a move that would in all likelihood lead to a less ambitious outcome, or even no outcome at all. While the legal service of the Council of Member States has argued that this change to the legal basis would be appropriate,³⁰⁴ it has been rejected by the Legal Affairs Committee of the European Parliament³⁰⁵ and the Commission.³⁰⁶ To change the legal basis, a unanimity of member states would need to agree, and discussions on this topic remain ongoing.

In the summer of 2017, the European Parliament adopted its position on the issue, and took a more ambitious line than the Commission and member states by expanding the list of reporting requirements, and by proposing that multinational corporations should report on their activities and tax payments in all countries where they do business.³⁰⁷ However, while the Parliament has previously supported full public country by country reporting without restrictions, some parliamentarians, in particular from the Conservative and Liberal groups, now introduced a new problematic ‘corporate get out clause’, which would allow corporations to ask for exemptions and keep selected parts of their data secret if they feel public disclosure can harm the business.³⁰⁸ Therefore, even the Parliament’s position now includes a serious loophole.³⁰⁹

The Council of EU Member States meanwhile continues to debate their negotiating position, preventing the commencement of negotiations with the Commission and the Parliament on what the final EU rules would look like. There is a strong risk that such continued political deadlock among member states could result in a long delay in adopting the final rules.

The value of corporate transparency

Full public country by country reporting has already been introduced for banks in the EU.³¹⁰ Using this public data, Oxfam carried out an analysis of the top 20 EU banks in Europe and found, for instance, that the banks often do not pay any tax at all on the profits they book in tax havens.³¹¹ Oxfam’s analysis further shows that the twenty biggest European banks register around ‘one in every four euros of their profits in tax havens.’³¹²

While tax havens account for approximately 26 per cent of the total profits made by the top 20 EU banks, these countries only account for seven per cent of the banks’ employees.³¹³ In fact, according to Oxfam’s report, at least €682 million of the European banks’ profits ‘were made in countries where they employ nobody.’³¹⁴

Oxfam’s report led the centre-left Socialists & Democrats grouping at the European Parliament to send a letter to the European Commission asking it to launch an investigation into whether the practices revealed by Oxfam constituted a breach of fair competition practices in the EU.³¹⁵ All this goes to show that making country by country reports public can allow civil society organisations and decision-makers a clearer picture about international money flows, and in turn inform public policy-making.

There is also growing recognition of the value that public country by country reporting would bring to, for example investors. Multinationals’ approaches to taxation can have reputational impacts and represent financial risks, but under current disclosure rules shareholders frequently have little to no information available to them on the tax strategy of a corporation. Public country by country reporting would allow investors to identify corporations that enhance shareholder value through sound investments, rather than into corporations that rely on aggressive tax planning strategies. In April 2017, Norway’s sovereign wealth fund, one of the largest of its kind in the world, announced new guidance that underlined that ‘*Public country-by-country reporting is a core element of transparent corporate tax disclosure. Our expectations fall into two main categories: boards should adopt appropriate and prudent tax policies, and companies should be transparent about where they generate economic value.*’³¹⁶

5.8.4 Hidden ownership

Why is public access to company ownership data important?

One of the key challenges in the fight against tax avoidance, evasion and money laundering is the ease with which individuals can use opaque legal entities such as shell companies and anonymous trusts to hide their assets and wealth from the world’s tax authorities. This once again became apparent to the world when the ‘Paradise Papers’ scandal surfaced in November 2017. For example, the leaked documents allegedly documented how wealthy individuals use anonymous ‘mega-trusts’ to conceal large amounts of assets in tax havens.³¹⁷

According to ICIJ, the leak revealed several trusts containing values of over US\$1 billion, where the client controlling the money was listed as ‘confidential.’³¹⁸ The law firm Appleby, from which large parts of the leaked documents originated, was publicly highlighting that trusts in Bermuda are ‘a popular estate planning vehicle for private clients wishing to structure their affairs in a tax efficient manner.’³¹⁹ The leaks also once again illustrated how secret shell companies, foundations and similar structures in secrecy jurisdictions can be used to hide wealth.³²⁰ According to Appleby, these practices are all legal,³²¹ but it nevertheless raises the concern that national tax systems will not be able to function effectively as long as hiding large amounts of wealth is quick and easy to do.

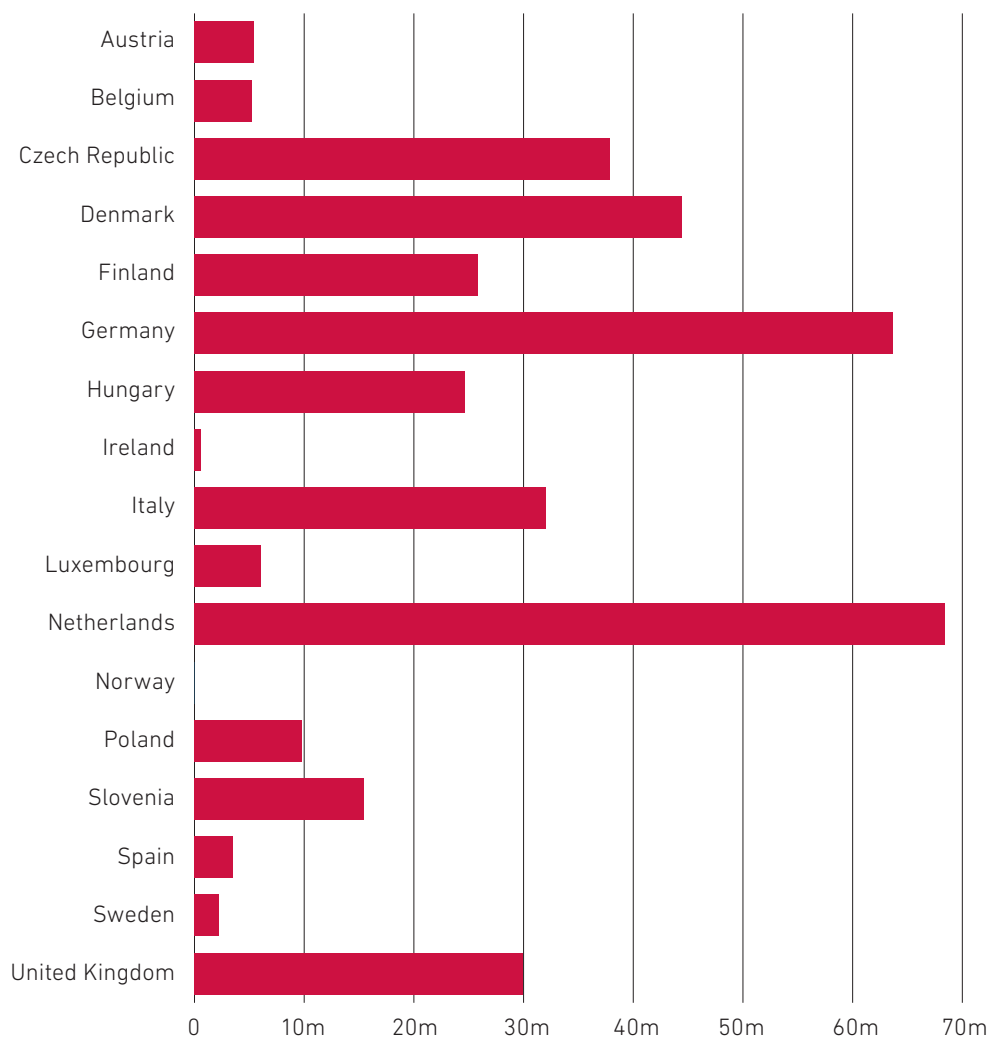
Even before the Paradise Papers, the ‘Russian Laundromat’ scandal surfaced, in spring 2017. The Organized Crime and Corruption Reporting Project (OCCRP) revealed a sophisticated money laundering scheme by which more than US\$20 billion worth of dirty money was allegedly brought out of Russia to be laundered through Moldova, brought in to the EU with the help of a Latvian bank, and then passed on to banks in 96 countries around the world.³²²

According to the OCCRP The scheme involved a high number of shell companies with fake ‘nominee’ directors, most of them registered in the UK. The scandal occurred between 2010 and 2014, before the UK introduced its public register of company owners that would have unmasked the fake frontmen sitting behind these companies and revealed the true owners.

As can be seen in figure 5, a large part of the laundered money from Russia ended up in European banks, with particularly high amounts going to countries such as the Netherlands, Denmark, the Czech Republic, Italy, Finland and United Kingdom, each of which, according to the OCCRP, received over US\$25 million.

Figure 5: Amount of money received (in US\$) through the Russian Laundromat by selected European countries.

While some of the key banks involved were based in Latvia, the country was not a final destination for the money and it is therefore not included in the chart. Source: The Organized Crime and Corruption Reporting Project.³²³



The Russian Laundromat scandal was followed by the Azerbaijani Laundromat scandal, also exposed by the Organized Crime and Corruption Reporting Project. In this case, US\$2.9 billion was allegedly laundered between 2012 and 2014, through four shell companies registered in the UK. According to the OCCRP, the Estonian branch of Danske Bank, a major European bank based in Denmark, was in charge of administering the accounts of the shell companies as they handled the large sums of money coming out of Azerbaijan.³²⁴ The money was later spent in a number of different countries, including Germany, France, the UK and Iran.³²⁵

Box 14: Directors suspected of terrorism

Using company ownership data, Danish journalists found that several individuals suspected of Islamic terrorism were registered as directors of Danish companies. The companies were suspected of large-scale fraud with value added tax (VAT) – a mechanism that can have been used to channel millions of Euros to finance terrorism.³²⁶ One person registered as director of a Danish company selling soft drinks in Copenhagen had been identified as a leader of an Al Qaida campaign group, and was killed by French special forces in Mali in 2016.³²⁷ Another person registered as director of a Danish company importing chicken to Denmark has been added to the US list of terrorists.³²⁸ Two other individuals registered as Danish company directors were arrested in an anti-terrorism operation in Spain in 2014.³²⁹

The business case for requiring companies to disclose their beneficial ownership to the world at large is growing as well. A survey by the global accountancy giant EY found that 91 per cent of senior anti-fraud executives working at large multinationals believe it is important to know the ultimate beneficial owners of the entities with which they do business.³³⁰ One of the world's largest banks, HSBC, has meanwhile also indicated its support for establishing public beneficial ownership registers for companies and trusts.³³¹ In September 2016, a group of investors representing more than US\$740 billion in assets under management, expressed strong support in a letter to US senators calling for requirements on companies to disclose their beneficial ownership information, explaining that opaque company structures are not only an obstacle for law enforcement, but also '*inhibit investors' ability to identify risks*' and thereby negatively impact on shareholder value.³³²

EU negotiations on secret shell companies and anonymous trusts

Meanwhile, the EU has continued to negotiate the review of the EU's Anti-Money Laundering Directive, which was initiated shortly after the Panama Papers scandal in April 2016. In particular, the political discussion has centred around the question of whether to introduce public registers of the real 'beneficial' owners of companies and trusts, and thus put an end to the secretive vehicles that can be used to hide and launder money.

A few months after the Panama Papers scandal, the European Commission put forth a proposal for revisions to the EU's current anti-money laundering framework that would allow for full public access to the beneficial ownership registers of companies and business-related trusts operating in the EU.³³³ While the proposal stated that some types of trusts should still be allowed to have anonymous owners, the proposal was still an important step forward.

However, meeting in December 2016, EU member states rejected the Commission's proposal on public registers, and instead proposed to keep an approach similar to that of the old directive.³³⁴ This would mean that only those individuals who can prove a 'legitimate interest' should have access to the information, and that it would be left to member states to decide what constitutes a 'legitimate interest'. A common argument for this approach is that some owners can have legitimate reasons for requesting privacy³³⁵ – a concern that has, however, been accommodated by the proposals for public registers (see box 15). In its impact assessment, the European Commission had warned that leaving legitimate interest to the discretion of EU member states could lead to '*excessive limitations of the access to the register as well as to a lack of a level playing field*' between member states.³³⁶ In certain countries, such as the Czech Republic and Italy, the interpretation of legitimate interest has been so restrictively defined that there are now concerns about whether individuals might have to go to court to demonstrate their legitimate interest.³³⁷

Despite persistent blocking at the European level, some countries have voluntarily opted to go beyond current EU requirements and introduce fully accessible registers, including United Kingdom, the Netherlands, Slovenia, Finland, Sweden, Denmark and Latvia.³³⁸

Box 15: Public registers and the right to privacy

In special cases, there can be legitimate reasons for owners of companies and trusts to wish to keep their identity hidden. Both the European Commission and the European Parliament's proposals on creating public registers of beneficial owners take this into account by suggesting that on a case-by-case basis, owners can request to be excluded from the public register.³³⁹

The UK's public register includes a similar mechanism, which allows company owners to request to remain unidentified to the public. When the register was published, approximately 30 owners (out of more than 1 million) had been given permission to remain anonymous.³⁴⁰

But while EU member states have sought to backtrack on the need for further transparency, the European Parliament voted to back public beneficial ownership registers in February 2017.³⁴¹ Members of the European Parliament also voted to improve the Commission's proposal by extending beneficial ownership transparency to so-called non-commercial trusts. Under the Commission's proposal, these types of trusts would have been exempt from public disclosure requirements, with beneficial ownership information only accessible to those with a legitimate interest. But the distinction between commercial and non-commercial trusts is not always an easy one to make in practice, and so-called family trusts can also be used to hide the proceeds of crime or tax evasion. Indeed, trust structures can offer particularly complex ownership and secrecy structures, and thus allow for very sophisticated, and highly problematic, ways for individuals to hide their assets.³⁴²

In order for it to become EU law, the European Parliament and member states will need to negotiate a final agreement on the directive.

5.9. Ensuring truly global decision-making

A recent survey of public opinions in G20 countries found that 73 per cent of respondents think it's important or very important for governments to cooperate with each other on tax policy.³⁴³

Strengthened and more equitable international cooperation on tax matters has also continued to be a high priority for the Group of 77 (G77) – a coalition representing more than 130 developing countries. The G77 has repeatedly called for decision-making on global tax standards to be moved to the United Nations, where all countries have a seat at the table, rather than the G20 and the OECD, also known as the 'rich countries' club'.

In 2017, the G77 repeated its call for an intergovernmental tax body to be established under the United Nations, and highlighted that: *'There is still no single global inclusive forum for international tax cooperation at the intergovernmental level (...) the Group underscores that the United Nations is the only universal forum where these issues can be discussed in an open, transparent, and inclusive manner'*.³⁴⁴

Like the G77, the European Parliament has repeatedly called for an intergovernmental UN tax body,³⁴⁵ but the European Commission³⁴⁶ and several member states have opposed the idea.³⁴⁷

"There is still no global, inclusive normsetting mechanism or body for international tax cooperation at the intergovernmental level. South Africa therefore, continues to believe that there is a need to evolve and upgrade the UN Committee of Experts on International Cooperation in Tax Matters into a full inter-governmental body."

Mr. Mahlatshe Mminele

Representative of South Africa at the United Nations³⁴⁸

Instead of a truly global negotiating forum, developing countries are encouraged to join the OECD's Inclusive Framework.³⁴⁹ Membership of the forum requires developing countries to pay a membership fee of €20,000 per year to the OECD, and commit to implementing the standard on Base Erosion and Profit Shifting (BEPS).³⁵⁰ This BEPS package, which runs to nearly 2,000 pages,³⁵¹ was negotiated through a process where over 100 developing countries were excluded from participating.³⁵² As mentioned above (see chapter 5.1 on 'Implementing a controversial 'sticking plaster''), its content has been criticised as both inadequate and, in some cases, highly problematic.

This approach mirrors the process on exchange of information, where a standard was negotiated and agreed in a process from which the vast majority of the world's developing countries were excluded, and since submitted for implementation by a Global Forum, where developing countries can participate and follow the standard.³⁵³

In 2016, the OECD, IMF, World Bank and UN also established a 'Platform for Collaboration on Tax'. However, the outputs from the Platform represents the views of the secretariat staff of these institutions, but not their member states.³⁵⁴ While developing countries are members of the UN, the UN cannot represent its members on tax, since there has been no process where UN member states have been allowed to negotiate and adopt positions on international tax matters (that would require an intergovernmental UN body on tax, as suggested by the G77). In 2018, the platform will organise a meeting on tax matters in the UN,³⁵⁵ but preliminary announcements about the format of the meeting suggest this will be a conference for exchanging views and experiences, but not a space where countries can negotiate and make intergovernmental decisions on international tax cooperation.

Thus there are still strong reasons for concerns about the fact that developing countries have a very limited role in international agenda setting and decision-making on tax. Furthermore, it is also concerning that there is currently no intergovernmental process that might be able to deliver stronger and truly global solutions to combat international tax dodging.

Civil society organisations have strongly supported the proposal to develop a truly global response to tax dodging under the United Nations.



Box 16: Civil society organisations' 10 reasons why an intergovernmental UN tax body is needed³⁵⁶

- 1. A key step towards a coherent global system.** Negotiation of a globally agreed system is the only way to remove the complexity, confusion, inconsistency and mismatches that exist today.
- 2. Stronger cooperation between tax administrations.** A coherent global system will make it easier for tax administrations to communicate and cooperate.
- 3. Less unilateral action.** Blacklisting and special restrictions on transfer pricing, financial transfers, corporate reporting and documentation are only some of the measures individual governments are currently introducing to protect their tax base.
- 4. Ending the race to the bottom.** The fear of losing investments is currently driving governments to introduce tax incentives, loopholes and harmful tax practices in a tragic 'race to the bottom', which is costing countries billions of dollars in lost tax income.
- 5. Better business environment.** Clear, consistent, global and stable rules are good for business.
- 6. A level playing field.** Today, governments who commit to increasing transparency and closing loopholes fear that being a 'first mover' will result in businesses and wealthy individuals registering themselves in other jurisdictions.
- 7. Stronger implementation.** No government will feel obliged to implement tax standards and norms adopted in closed rooms where it was not welcome.
- 8. Less double taxation and double-non-taxation.** The wide variety of mismatches between national tax systems is the core reason why some get taxed twice on the same income while others don't get taxed at all.
- 9. More financing for development in the poorest countries.** Currently, the world's poorest countries are excluded from decision-making on global tax standards, and international systems often don't take into account their realities and interests. This means lower tax income and thereby less available financing for development in these countries.
- 10. Fair and consistent global action against tax havens.** Many governments are currently trying to protect their tax base through national blacklists based on criteria that are often both unclear and inconsistently applied. While random blacklisting can be burdensome for impacted countries, it will not solve the tax haven problem.

6. Recommendations

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

Tax policies

Governments and EU institutions must promote progressive tax systems to counter rising inequality; ensure that tax policies promote gender equality and are fully in line with policy coherence for development; and stop the race to the bottom on corporate taxation, including through lowering corporate tax rates and using harmful tax practices that facilitate corporate tax avoidance.

For this purpose, they should:

1. Carry out and publish spill-over 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 or reform policies and practices that have negative impacts on developing countries.
2. 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.
3. Support a proposal on a Common Consolidated Corporate Tax Base (CCCTB) at the EU level that includes the consolidation and apportionment of profits, and avoid introducing new mechanisms that can be abused by multinational corporations to dodge taxes, including large-scale tax deductions.
4. Publish data showing the flow of investments through special purpose entities in their countries.
5. Stop the spread of, and remove, existing patent boxes and similar harmful structures.
6. Publish the basic elements of all advance tax agreements granted to multinational corporations (including, at a minimum, the name of the corporation to which it is issued, duration of the agreement and the topics covered). Move towards a system for taxing multinational corporations that is transparent, clear and less complex.
7. Publish annual assessments of the cost and benefits of all tax incentives provided to multinational corporations.
8. Ensure that tax advisors are legally liable for promoting and advising on practices that violate the law.

9. Adopt effective whistleblower protection to protect those who act in the public interest, including those who disclose legal tax avoidance or tax evasion. The protection must include both private and public sector employees.
10. If negotiating or renegotiating tax treaties with developing countries, governments should:
 - Conduct and publish a comprehensive impact assessment to analyse the impact on the developing country and ensure that negative impacts are avoided;
 - Fully respect source country rights to tax the profits generated by business activities in their countries, and stop reducing withholding tax rates;
 - Ensure full transparency around every step of treaty negotiations as well as effective participation by civil society and parliamentarians.

Transparency

Governments and EU Institutions must allow the public to access the key corporate information necessary to ensure accountability and tax justice. They must also ensure full and effective exchange of information between all the governments so that citizens are not able to use international structures to circumvent national tax laws.

For this purpose, they should:

11. Work towards a Global Standard on Automatic Information Exchange, which includes a transition period for developing countries that cannot currently meet reciprocal exchange requirements due to lack of administrative capacity. This transition period should allow developing countries to receive information automatically, even though they might not have the capacity to share information from their own countries. Furthermore, under the current standards, developed country governments must commit to exchange information automatically with all developing countries that fulfill basic data protection requirements, by establishing the necessary bilateral exchange relationships.

12. Establish fully publicly accessible registries of the beneficial owners of companies, trusts and similar legal structures. At the EU level, the revision of the EU anti-money laundering directive provides an important opportunity to do so, and governments must ensure that the problems related to secret ownership, as exposed in the Panama Papers, are finally resolved.
13. Adopt full country by country reporting for all large multinational corporations, 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,³⁵⁷ but cover all corporations that meet the EU definition of 'large undertaking'.

International decision-making

Governments and EU institutions must support all international decision-making on tax matters being fair and transparent, including the participation of all countries on a truly equal footing, and an intergovernmental decision-making process that allows full access for observers.

For this purpose, they should:

14. Support the establishment of 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 become the main forum for international cooperation in tax matters and related transparency issues. The tax body should be adequately funded and allow full access to observers, including civil society and parliamentarians. One of the key priorities of the commission should be to negotiate and adopt an international convention on tax cooperation and related transparency.
15. Replace or fundamentally reform the EU Code of Conduct Group on Business Taxation to ensure that EU decision-making on international tax matters becomes fully transparent to the public, and that decision-makers become accountable to their citizens.

Methodology for country rating system

Category 1

Ownership transparency

This category is based on information from the national chapters (for countries) and chapter 5.8.4 on 'Hidden ownership' (for the European Parliament and Commission).

Green

Countries that have adopted a law to introduce a public register of beneficial ownership information on companies. If the country allows the establishment of trusts or similar legal structures, these will also be subject to a public register of beneficial owners. If the country does not allow the establishment of trusts or similar legal structures, the country is not opposed to introducing public registers of beneficial owners of trusts at the EU level.

This category also includes EU institutions that have supported public registers of beneficial ownership of companies and trusts at EU-wide level.

Yellow

The country or institution has chosen a problematic 'middle way'. For countries, this category includes those that have adopted a law to introduce a public register of beneficial owners of companies, while at the same time providing opportunities for establishing secret trusts or similar legal structures. It also includes countries that have established public registers with restrictions that limit the possibilities for using the data. For EU institutions, this category includes those that have supported public registers for some entities (for example companies and business-related trusts), but not for all.

Red

Countries that have not adopted a law to introduce a public register of owners. For EU institutions, this category also includes those that have rejected the option of establishing public registers of beneficial owners at EU-wide level.

Category 2

Public reporting for multinational corporations

This category is based on information from the national chapters (for countries) and chapter 5.8.3 on 'Allowing citizens to know what multinationals pay in taxes' (for the European Parliament and Commission).

Green

Countries and EU institutions that support full public country by country reporting.

Yellow

Countries and EU institutions that have taken a neutral position. Yellow is also used to categorise countries or EU institutions with positions that are unclear or somewhere between positive and negative.

Red

Countries and EU institutions that are actively speaking against public country by country reporting. At the EU-level, this category also includes countries which argue that the European Parliament should not have a say on the issue, and that a final decision must be a unanimous decision by the EU member states (i.e. countries that argue that the legal basis of the proposal should be changed, so that it becomes a 'tax file'). It also includes countries and institutions which argue that multinational corporations should report on their activities in some countries, but not others.

Category 3

Tax Treaties

This category is firstly based on data from table 4 and figure 3 in chapter 4.5.1 on 'Bilateral tax treaties between European and developing countries', showing the total number of tax treaties with developing countries, as well as the average rate of reduction of developing country withholding tax rates in those tax treaties, for all the countries covered by this report.

Secondly, this rating takes into account whether a country has any 'very restrictive' treaties with developing countries, based on data from table 5 in chapter 4.5.1 on 'Bilateral tax treaties between European and developing countries'.

As noted in the report, some countries have integrated anti-abuse clauses in their bilateral tax treaties.³⁵⁸ Although this is positive, these clauses do not address the main concern about tax treaties – namely that they are used to lower tax rates in developing countries and reallocate taxing rights from poorer to richer countries. Therefore, the presence of anti-abuse clauses is not used as a determining factor in the rating system outlined below.

For the European Parliament and Commission, this category is based on information from chapter 4.5.2 on 'How to avoid harmful effects of tax treaties?' and chapter 5.6 on 'Measuring the impact of European tax policies'.

Green

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

Yellow

Countries that do not have any 'very restrictive' tax treaties with developing countries, but for whom the average reduction of withholding tax rates in treaties with developing countries is above one percentage point. Although the tax treaties of the countries in this category are not harmless, the negative impacts of the country's tax treaty system are relatively limited, either because the country has relatively few treaties (below the average – 41.77 tax treaties – for countries covered by this report) or because the average reduction of developing country tax rates in those treaties is relatively low (below the average – 3.39 percentage points – for countries covered by this report). For the EU institutions, this category includes institutions that have acknowledged the problems tax treaties can cause for developing countries, but have not yet put forward concrete proposals for mitigating and preventing these problems.

Red

The tax treaty system of the country is relatively harmful, either because the country has signed some 'very restrictive' treaties with developing countries, or because the average reduction of withholding tax rates in treaties with developing countries, as well as the total number of tax treaties the country has with developing countries, are both above the average among the countries covered in this report (3.39 percentage points and 41.77 treaties respectively). For EU institutions, this category includes those who have not yet acknowledged the problems tax treaties can cause for developing countries.

Category 4

Harmful tax practices

This category is based on information from table 2 on 'Offshore financial centres – top five' (see chapter 3.1 on 'Which offshore financial centres are multinationals using?'); box 7 on 'EU member states with patent boxes' (see chapter 4.3.1 'Here to stay?'); table 3 on 'Sweetheart deals' in force' (see chapter 4.4.2 on 'Advance pricing agreements in the EU and Norway'); chapter 4.2.1 on 'What are special purpose entities'; and information provided in the national chapters. For the European Parliament and Commission, the category is generally based on chapter 4 on 'Potentially harmful tax practices'.

Green

The country does not have a patent box and the level of investment activity through special purpose entities is low. The country also does not have a significant number of unilateral advance pricing agreements with multinational corporations (i.e. between 0-20 agreements in force). This category is also used for EU institutions that have shown strong opposition to patent boxes, letterbox companies, and secret advance tax agreements between governments and multinational corporations.

Yellow

The country is not among the world's biggest sink or conduit countries, and does not have a patent box. But it has a significant level of investments going through special purpose entities and/or a significant number of unilateral advance pricing agreements with multinational corporations (i.e. between 21-100 agreements). This category is also used for EU institutions that have taken a position in-between opposing and promoting harmful tax practices.

Red

This category includes countries that are among the world's top five biggest sink or conduit countries and/or have a patent box. This category also includes countries that have more than 100 unilateral advance pricing agreements with multinational corporations, or have introduced tax policies which allow a corporate tax rate of zero for multinational corporations that retain their earnings. Lastly, the category includes EU institutions that have promoted patent boxes, letterbox companies or secret advance tax agreements between governments and multinational corporations.

Category 5

Global solutions

This category is based on information from the national chapters (for countries) and chapter 5.9 on 'Ensuring truly global decision making' (for the European Parliament and Commission).

Green

The country or EU institution supports the establishment of an intergovernmental body on tax matters under the auspices of the UN, with the aim of ensuring that all countries are able to participate on an equal footing in the definition of global tax standards.

Yellow

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

Red

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

Symbols



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



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



OWNERSHIP TRANSPARENCY

The European Parliament is advocating for public registers of beneficial owners of companies, as well as all trusts and similar legal structures in the EU.



PUBLIC REPORTING

The European Parliament has proposed that multinational corporations should publish country by country data from all countries where they do business, but included a corporate get-out clause, which would allow corporations to ask for exemptions and keep a selected part of their data secret if they feel public disclosure could harm their business.



TAX TREATIES

The European Parliament has recognised the potential negative impacts of tax treaties on developing countries and called for tax treaties between EU countries and developing countries to be negotiated in a way that ensures policy coherence for development and fairness for developing countries.



HARMFUL TAX PRACTICES

The European Parliament has spoken strongly against both patent boxes and letterbox companies, and proposed public access to information about the content of advance pricing agreements between governments and multinational corporations.



GLOBAL SOLUTIONS

The European Parliament has repeatedly supported the establishment of an intergovernmental UN tax body.



OWNERSHIP TRANSPARENCY

In response to the Panama Papers scandal, the European Commission launched a proposal to introduce public registers of beneficial owners of companies and some (but not all) trusts in the EU.



PUBLIC REPORTING

The European Commission has launched a proposal that would require multinational corporations to publish country by country data from some countries but not others. This conflicts with the fundamental idea of public country by country reporting, which is to obtain a full overview from all countries where a corporation is operating. The proposal is therefore, in reality, not country by country reporting.



TAX TREATIES

The European Commission has recognised that tax treaties can have negative impacts on developing countries. However, the Commission has not yet proposed any concrete actions that can adequately address this problem.



HARMFUL TAX PRACTICES

Despite speaking out against patent boxes, the European Commission has accepted patent boxes that follow the OECD rules. The Commission has not supported the European Parliament's call for a ban on letterbox companies, but also does not promote them. While the Commission does not support the Parliament's call for more public information about the content of advance tax agreements, the Commission has initiated several state aid cases to prevent specific very harmful agreements.



GLOBAL SOLUTIONS

The European Commission does not support the establishment of an intergovernmental UN tax body.

AUSTRIA



OWNERSHIP TRANSPARENCY

Austria does not have a public register of beneficial owners of companies.



PUBLIC REPORTING

The Conservative party, which recently won the election in Austria, has repeatedly spoken out against public country by country reporting.



TAX TREATIES

Although the number of Austrian treaties with developing countries is slightly below average, the average rate of reduction of developing country tax rates imposed through those treaties is significantly above average, which indicates that these treaties could have substantial negative impacts on developing countries.



HARMFUL TAX PRACTICES

Austria has a high amount of investment going through special purpose entities, but does not have a patent box or a significant number of unilateral advance pricing agreements with multinational corporations.



GLOBAL SOLUTIONS

The Austrian government does not support the establishment of an intergovernmental UN tax body, arguing that it is 'doubtful about the added value'.

BELGIUM



OWNERSHIP TRANSPARENCY

Belgium does not have a public register of beneficial owners of companies.



PUBLIC REPORTING

The official position of the Belgian government is unclear. However, the Belgian Finance Minister has repeatedly spoken out against public country by country reporting.



TAX TREATIES

Belgium has a relatively high number of tax treaties with developing countries, but the average reduction of tax rates imposed through those treaties is low. However, what the average does not show is that several of Belgium's tax treaties with developing countries are 'very restrictive', and therefore give particular cause for concern.



HARMFUL TAX PRACTICES

Belgium has a patent box and a high number of unilateral advance pricing agreements with multinational corporations.



GLOBAL SOLUTIONS

The Belgian government does not support the establishment of an intergovernmental UN tax body.

**OWNERSHIP TRANSPARENCY**

The Czech Republic does not have a public register of beneficial owners of companies.

**PUBLIC REPORTING**

The Czech Republic supports changing the legal basis of the European Commission's proposal on public country by country reporting, which would mean that the European Parliament would be excluded from the negotiations and a final decision would require unanimity among EU member states. In reality, this would result in an unambitious outcome.

**TAX TREATIES**

Compared to the other countries covered by this report, the number of tax treaties between the Czech Republic and developing countries, as well as the reduction of tax rates imposed by those treaties, are both above average.

**HARMFUL TAX PRACTICES**

The Czech Republic has a significant number of unilateral advance pricing agreements with multinational corporations, but does not have a patent box.

**GLOBAL SOLUTIONS**

The Czech government does not support the establishment of an intergovernmental UN tax body.

**OWNERSHIP TRANSPARENCY**

Denmark has adopted a law which introduces a public register of beneficial owners of both companies and other legal structures.

**PUBLIC REPORTING**

Denmark supports the position of the European Commission.

**TAX TREATIES**

Denmark has relatively few tax treaties with developing countries, and the average reduction of tax rates imposed through those treaties is low. However, what the average does not show is that several of Denmark's tax treaties with developing countries are 'very restrictive', and therefore give particular cause for concern.

**HARMFUL TAX PRACTICES**

Denmark does not have a patent box or any unilateral advance pricing agreements with multinational corporations. However, Denmark's limited liability companies can be used for international tax avoidance and are therefore a cause for concern. The government has announced its intention to close this loophole.

**GLOBAL SOLUTIONS**

The Danish government does not support the establishment of an intergovernmental UN tax body.

FINLAND



OWNERSHIP TRANSPARENCY

Finland has adopted a law which introduces a public register of beneficial owners of both companies and other legal structures.



PUBLIC REPORTING

Finland supports the position of the European Commission.



TAX TREATIES

Although not unproblematic, Finland's tax treaties with developing countries give fewer reasons for concern compared to many other countries covered by this report, since Finland's number of treaties with developing countries, as well as the average reduction of tax rates imposed through those treaties, are both below average.



HARMFUL TAX PRACTICES

Finland does not have a patent box. However, it has a significant number of unilateral advance pricing agreements with multinational corporations.



GLOBAL SOLUTIONS

Although the Finnish parliament has called for the government to explore opportunities to strengthen the UN tax committee, the Finnish government does not support that it be upgraded from an expert committee to an intergovernmental tax body.

GERMANY



OWNERSHIP TRANSPARENCY

Germany does not have a public register of beneficial owners.



PUBLIC REPORTING

The former German government spoke out against public country by country reporting, and at the moment there are no indications that any new government will take a different position.



TAX TREATIES

Germany's tax treaties with developing countries are a cause of concern due to the high number of 'very restrictive' treaties. Also of concern is the fact that Germany's total number of treaties with developing countries, as well as the average reduction of tax rates through those treaties, are both above average among the countries covered by this report.



HARMFUL TAX PRACTICES

Germany does not have a patent box or any unilateral advance pricing agreements with multinational corporations.



GLOBAL SOLUTIONS

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



OWNERSHIP TRANSPARENCY

Hungary does not have a public register of beneficial owners of companies.



PUBLIC REPORTING

Hungary's position on public country by country reporting is unclear.



TAX TREATIES

Although not unproblematic, the Hungarian tax treaty network gives fewer reasons for concern compared with many other countries covered by this report, since Hungary's number of treaties with developing countries, as well as the average reduction of developing country tax rates, are both significantly below average among the countries covered by this report.



HARMFUL TAX PRACTICES

Hungary has a patent box and a significant number of unilateral advance pricing agreements with multinational corporations.



GLOBAL SOLUTIONS

On the issue of establishing an intergovernmental UN tax body, the position of the Hungarian government is unclear.



OWNERSHIP TRANSPARENCY

Ireland does not have a central register of beneficial owners.



PUBLIC REPORTING

The Irish government supports changing the legal basis of the European Commission's proposal on public country by country reporting, which would mean that the European Parliament would be excluded from the negotiations and a final decision would require unanimity among EU member states. In reality, this would result in an unambitious outcome.



TAX TREATIES

Of all the countries covered by this report, the Irish tax treaties with developing countries introduce the highest average reductions on the tax rates of their developing country treaty partners. Furthermore, three of Ireland's treaties with developing countries are 'very restrictive' treaties. The number of tax treaties between Ireland and developing countries is below average. However, Ireland is currently planning to expand its number of treaties with developing countries.



HARMFUL TAX PRACTICES

Ireland has been identified as the world's fourth largest conduit jurisdiction. The country also has a patent box.



GLOBAL SOLUTIONS

The Irish government does not support the establishment of an intergovernmental UN tax body.



OWNERSHIP TRANSPARENCY

Italy does not have a public register of beneficial owners.



PUBLIC REPORTING

Italy's position on public country by country reporting is unclear.



TAX TREATIES

Italian tax treaties with developing countries, on average, reduce the tax rates less than most other countries covered in this report. However, what the average does not show is that Italy has the highest number of 'very restrictive' tax treaties with developing countries among all the countries covered by this report.



HARMFUL TAX PRACTICES

Italy has a patent box and a significant number of unilateral advance pricing agreements with multinational corporations.



GLOBAL SOLUTIONS

The Italian government does not support the establishment of an intergovernmental UN tax body.



OWNERSHIP TRANSPARENCY

Latvia has adopted a law which introduces a public register of beneficial owners.



PUBLIC REPORTING

The Latvian government would like to change the legal basis of the proposal, so that the European Parliament is excluded from the negotiations and a final decision would require unanimity among the EU member states. In reality, this would result in an unambitious outcome.



TAX TREATIES

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



HARMFUL TAX PRACTICES

Latvia has introduced a system that allows multinational corporations to pay zero per cent corporate tax on retained or reinvested earnings.



GLOBAL SOLUTIONS

The government of Latvia states that it does not have an official position on the issue of establishing an intergovernmental UN tax body.

LUXEMBOURG



OWNERSHIP TRANSPARENCY

Luxembourg does not have a central register of beneficial owners.



PUBLIC REPORTING

The government of Luxembourg is against public country by country reporting and would like to change the legal basis of the proposal, so that the European Parliament would be excluded from the negotiations and a final decision would require unanimity among the EU member states. In reality, this would result in an unambitious outcome.



TAX TREATIES

Although not unproblematic, the Luxembourg tax treaty network gives fewer reasons for concern compared with many other countries covered by this report, since Luxembourg's number of treaties with developing countries, as well as the average reduction of developing country tax rates, are both significantly below average among the countries covered by this report.



HARMFUL TAX PRACTICES

Luxembourg has been identified as the world's largest sink jurisdiction. It has a patent box and a very high number of unilateral advance pricing agreements with multinational corporations.



GLOBAL SOLUTIONS

The government of Luxembourg states that it does not have an official position on the issue of establishing an intergovernmental UN tax body.

THE NETHERLANDS



OWNERSHIP TRANSPARENCY

The Netherlands does not have a public register of beneficial owners. Work is in progress to introduce a beneficial ownership register, which would be public. However, the current proposal contains restrictions on public access which could make the register difficult to use.



PUBLIC REPORTING

The previous Dutch government supported full public country by country reporting, but the public announcements from the new government suggest that they instead support the position of the European Commission.



TAX TREATIES

The Netherlands has a high number of 'very restrictive' tax treaties with developing countries. Furthermore, compared to the other countries covered by this report, the number of tax treaties between the Netherlands and developing countries, as well as the reduction of tax rates imposed by those treaties, are both above average.



HARMFUL TAX PRACTICES

The Netherlands has been identified as the world's largest conduit jurisdiction. It has a patent box, a high number of letterbox companies, as well as a high number of advance pricing agreements with multinational corporations.



GLOBAL SOLUTIONS

The Dutch government does not support the establishment of an intergovernmental UN tax body.

NORWAY



OWNERSHIP TRANSPARENCY

Norway does not have a public register of beneficial owners.



PUBLIC REPORTING

The position of Norway is unclear since the Parliament has voted for public country by country reporting, but the government has not followed up.



TAX TREATIES

Norwegian tax treaties with developing countries, on average, reduce the tax rates less than most other countries covered in this report. However, what the average does not show is that Norway has a significant number of 'very restrictive' tax treaties with developing countries.



HARMFUL TAX PRACTICES

Norway does not have a patent box, or unilateral advance pricing agreements with multinational corporations.



GLOBAL SOLUTIONS

On the issue of establishing an intergovernmental UN tax body, the position of the Norwegian government is unclear.

POLAND



OWNERSHIP TRANSPARENCY

Poland does not have a public register of beneficial owners. However, a legislative proposal, which would introduce a public register in Poland, has been put forward by the government.



PUBLIC REPORTING

Although Poland has taken concrete steps towards increased corporate transparency at the national level, its position on the issue of public country by country reporting at EU level is currently unclear.



TAX TREATIES

Polish tax treaties with developing countries, on average, introduce quite limited reductions of developing country tax rates. However, what the average does not show is that Poland has a significant number of 'very restrictive' tax treaties with developing countries.



HARMFUL TAX PRACTICES

Poland does not have a patent box. Poland's number of unilateral advance pricing agreements with multinational corporations is relatively low.



GLOBAL SOLUTIONS

The Polish government sees a need to analyse the proposal of establishing an intergovernmental UN tax body before deciding its position.

SLOVENIA



	OWNERSHIP TRANSPARENCY <p>Slovenia has adopted a law which introduces a public register of beneficial owners of both companies and other legal structures.</p>
	PUBLIC REPORTING <p>Slovenia supports full public country by country reporting.</p>
	TAX TREATIES <p>Although Slovenia's number of treaties with developing countries is the lowest among all countries covered by this report, the average rate of reduction of developing country tax rates through those treaties is above average, and thus Slovenia's tax treaties can have negative impacts on developing countries.</p>
	HARMFUL TAX PRACTICES <p>Slovenia does not have a patent box or unilateral advance pricing agreements with multinational corporations.</p>
	GLOBAL SOLUTIONS <p>The Slovenian government does not support the establishment of an intergovernmental UN tax body.</p>

SPAIN



	OWNERSHIP TRANSPARENCY <p>The Spanish government has spoken strongly in favour of public registers of beneficial owners. However, Spain has not yet introduced a public register of its own.</p>
	PUBLIC REPORTING <p>The position of Spain is currently unclear.</p>
	TAX TREATIES <p>Among all the countries covered by this report, Spain has on average been the second most aggressive negotiator when it comes to lowering developing country tax rates through tax treaties. Spain also has a relatively high number of tax treaties with developing countries, which makes the situation even more concerning.</p>
	HARMFUL TAX PRACTICES <p>Spain's holding companies (ETVEs) can be used as vehicles for corporate tax avoidance. Spain also has a patent box and a significant number of unilateral advance pricing agreements with multinational corporations. Spain has a patent box and a significant number of unilateral advance pricing agreements with multinational corporations.</p>
	GLOBAL SOLUTIONS <p>The Spanish government does not support the establishment of an intergovernmental UN tax body.</p>



OWNERSHIP TRANSPARENCY

Sweden has adopted a law that introduces a public register of beneficial owners in Sweden.



PUBLIC REPORTING

The Swedish government would like to change the legal basis of the proposal, so that the European Parliament would be excluded from the negotiations and a final decision would require unanimity among EU member states. In reality, this would result in an unambitious outcome.



TAX TREATIES

Sweden has several 'very restrictive' tax treaties with developing countries. Furthermore, compared to the other countries covered by this report, the number of tax treaties between Sweden and developing countries, as well as the reduction of tax rates imposed by those treaties, are both above average.



HARMFUL TAX PRACTICES

Sweden does not have a patent box or any unilateral advance pricing agreements with multinational corporations. However, Sweden's limited liability companies present a risk of abuse and are thus an issue of concern.



GLOBAL SOLUTIONS

The Swedish government does not support the establishment of an intergovernmental UN tax body.



OWNERSHIP TRANSPARENCY

The UK has been a true frontrunner by creating a public register for beneficial owners of companies, and the register is up and running. However, the UK is opposing public registers for trusts, and has not used the powers it has available to increase transparency in its overseas territories.



PUBLIC REPORTING

The UK government states that it supports public country by country reporting on a global level, but its position on public country by country at an EU level is unclear.



TAX TREATIES

The UK has a high number of 'very restrictive' tax treaties with developing countries. Furthermore, on average, the UK's tax treaties with developing countries contain relatively high reductions in developing country tax rates. The fact that the UK at the same time has the highest number of treaties with developing countries gives even more reason for concern.



HARMFUL TAX PRACTICES

The UK is the world's 2nd largest conduit jurisdiction. It has a patent box and a significant number of unilateral advance pricing agreements with multinational corporations.



GLOBAL SOLUTIONS

The UK government does not support the establishment of an intergovernmental UN tax body.

Austria

"I can't believe that Austria sided with Malta, Cyprus and Great Britain in the fight against tax dodging of multinationals, because then we would be on the wrong side."

Othmar Karas

Austrian member of the European Parliament, European People's Party (Christian Democrats), in reaction to Austria's unwillingness to accept public beneficial ownership registers.³⁵⁹

Overview

Some of this year's international scandals have had strong links to Austria. According to the journalist network Dossier, €4.1 million was transferred to 32 bank accounts in Austria (involving 88 transactions) from Russia, as part of the 'Laundromat' scandal.³⁶⁰ The Austrian Finance Ministry reacted cautiously, stressing that all relevant leads with links to Austria would be investigated. But the Ministry also highlighted that if financial flows and benefits turn out to have been taxed correctly, Austria will have nothing to object to. Especially when the money is transferred from another EU country, this might not cause concerns in Austria.³⁶¹

During the 'Malta Files' scandal, Austrian newspaper Kurier reported on the involvement of numerous Austrian companies and citizens, including in the gaming industry, Austrian company service providers, airlines, leasing companies, financial service providers and wealthy Austrians owning expensive yachts registered in Malta.³⁶² The Kurier reported that a 2.63 gigabyte file with 2,553 links to Austria had been sent to the media and the Ministry of Finance.³⁶³ The Ministry said it would check all entries, but underlined that being on the list did not automatically mean that anyone was guilty of tax evasion.³⁶⁴

Blacklisting of 'tax havens'

The Austrian government considers the creation of an EU list of 'non-cooperative' third-countries (i.e. non-EU tax havens) as a 'high priority'.³⁶⁵ However, some features of the Austrian tax system are themselves coming under increasing scrutiny internationally. In 2016, the Brazilian National Revenue Agency added Austrian holding companies to a Brazilian 'grey list' of 'privileged' tax regimes (PTRs). This listing only applies to holding companies without 'substantial economic activity in Austria, judged by the existence of qualified employees in sufficient number and appropriate management facilities'.³⁶⁶

Austria also came close to receiving a disastrous rating when the country's anti-money laundering system was reviewed by the Financial Action Task Force (FATF) in 2016. According to media reports,³⁶⁷ a big Austrian delegation went to the FATF meeting in Busan, South Korea, where the assessment of Austria was being discussed, to prevent the worst outcome – which would have been to end up on the FATF grey list. In the end, Austria avoided the grey list.³⁶⁸

Political proposals

In June 2017, the conservative Finance Minister, Hans Jörg Schelling, presented the 'Schelling's plan to eliminate opportunities for tax avoidance and evasion', which among other things proposes stronger measures to prevent tax avoidance caused by digitisation (by having virtual corporations); a common EU model for tax treaties with low-tax jurisdictions; and a common corporate tax base in the EU to 'ensure a more transparent tax competition between member states'.³⁶⁹

Schelling's conservative People's Party wants to lower taxes and other costs to business by maximum €12.7 billion per year. The party's election programme suggested it would allow more flexible depreciations and reduce corporate income taxes – retained business profits would not be taxed any more. The programme estimates the costs to be €1 billion,³⁷⁰ partly financed by counter measures against tax evasion (estimated to generate €0.8 billion), as the Conservatives want to 'close tax evasion routes and fight tax fraud' by multinationals by introducing digital permanent establishments, prohibiting 'dubious transfers' to 'tax havens', and offering better protection for whistleblowers. They also want to fight fraud with value added tax (VAT), criticising the EU common VAT system as being vulnerable to carousel fraud.³⁷¹

The Social Democrats – who were, together with the People's Party, part of the coalition government until parliamentary elections in October 2017 – proposed an 'anti-profit shifting law' (Gewinnverschiebungs-Bekämpfungsgesetz).³⁷² Their election programme foresaw amongst other things, public country by country reporting; providing protection for all whistleblowing employees; stronger penalties for corporate tax dodging; and new measures against corporations that use letterbox companies in tax havens.³⁷³ Chancellor Christian Kern mentioned tax as one of his seven priority areas and called for tax justice, common rules against tax competition (meaning measures against tax havens and against tax incentives for big corporations), and a common EU tax base with a minimum tax rate. He has also underlined that he considers corporate tax avoidance an abuse of European solidarity.³⁷⁴

The economic programme of the nationalist Freedom Party, which is likely to be part of the next Austrian coalition government, is very close to the programme of its possible coalition partner, the Conservatives. They also want to reduce taxes and other costs by €12 billion per year, saying businesses should be supported by lower taxes on profits and more flexible depreciations. As with the Conservatives, the Freedom Party is against wealth and inheritance taxes.³⁷⁵

EU Common consolidated corporate tax base (CCCTB)

In 2012, after the European Commission had first proposed a CCCTB, Austria was very sceptical and doubted that it would simplify administrative processes.³⁷⁶ In 2017, however, the Austrian Finance Minister, Hans Jörg Schelling, expressed support for a 'common corporate tax base',³⁷⁷ although it is unclear whether this also includes support for consolidation.

In January 2017, the Austrian Federal Council (the chamber of the nine federal provinces) drew attention to some problematic areas of the European Commission's proposal for a CCCTB. Among other things, they criticised that the 'envisaged tax privileges' (e.g. for research and development expenses) would lower tax revenues and be undesirable and difficult to explain to the population, as citizens expect CCCTB to generate higher tax revenues and/or impose higher taxes on multinational corporations. Moreover, they highlighted the risk of a high administrative burden as a result of the EU running one system for internal transactions (i.e. the CCCTB), and another for international transactions. Finally, they argued that '*a minimum tax rate should be established as a matter of urgency, to avoid further intensifying tax competition within [the] EU*'.³⁷⁸

Already in December 2016, Schelling told members of the EU sub-committee of the Austrian parliament that he had tried to raise the issue of minimum tax rates in the EU, but that his arguments were 'crushed' by other member states.³⁷⁹

Tax and development

The Austrian government states that it provides bilateral tax capacity building assistance to Macedonia without conditionalities.³⁸⁰ The Austrian government does not have a strategy that specifically links tax issues with policy coherence for development,³⁸¹ and is not planning to conduct any impact assessments to measure the effects of its tax policies on developing countries.³⁸²

Transparency

Public country by country reporting (CBCR)

The conservative Austrian Finance Minister Schelling repeatedly spoke out against public country by country reporting and cited 'taxpayer confidentiality' as a key reason for his opposition.³⁸³ However, the Social Democrats have spoken out in favour of public country by country reporting.³⁸⁴

Ownership transparency

Austria has implemented the EU's 4th Anti-Money Laundering Directive (AMLD) in two steps. In December 2016, a new anti-money laundering law for the financial sector was created (Finanzmarkt-Geldwäschegesetz).³⁸⁵ In July 2017, this was supplemented with, among other things, a beneficial ownership register law (Wirtschaftliche Eigentümer Registergesetz), in which Austria has committed itself to setting up a beneficial ownership register.³⁸⁶ This law will come into force on 15 January 2018, but the register will not be public. Access to the register will be completely open only to designated people who need access because of their anti-money laundering duties within the framework of customer due diligence, i.e. banks, attorneys, notaries, business consultants, estate agents, insurance brokers, members of the gambling and betting industry, tax consultants, accountants, etc.³⁸⁷

For other people, the register will be less accessible. Upon written request, individuals and organisations can get access if they can demonstrate a 'legitimate interest' in connection with the prevention of money laundering and terrorist financing. 'Legitimate interest' means that prevention of money laundering or terrorist financing must be laid down in the organisation's mission statement or statutes, or that he/she can already prove 'successful activities' in that area. Additionally, the person has to prove how access to the register can contribute to preventing money laundering or terrorist financing.³⁸⁸

The register will contain data on any person who ultimately owns (25 per cent or more) or controls (as a senior manager or board member) entities such as limited liability companies, partnerships, private foundations and (foreign) trusts managed in Austria. The law's commentary³⁸⁹ explains that trusts of the (widely used) Treuhand kind, which is sufficiently similar in its functioning and structure to ordinary trusts, will fall under the scope of the law.³⁹⁰ This is a welcome step forward, since Treuhands have previously raised concerns. For example, in its 2016 evaluation of Austria, FATF highlighted that: '*measures to prevent the misuse of Treuhand arrangements are limited*'.³⁹¹

There will be penalties of up to €200,000 for not registering beneficial owners, a penalty of €10,000 for unauthorised access, and of €30,000 for transferring confidential data to third parties.³⁹² The register has been developed with Statistics Austria, and will be operated as a supplement to their Business Service Portal.³⁹³ The register cannot be accessed cost-free, and the user fee has yet to be decided.³⁹⁴

Automatic exchange of information – a loophole for Austrians

In response to international developments, Austria has implemented automatic exchange of financial account information.³⁹⁵ However, due to a loophole in the automatic exchange agreement between Austria and Liechtenstein, Austrian residents will still be able to hold certain types of assets secretly in Liechtenstein.³⁹⁶

Taxation

Tax treaties

In total, Austria has 42 tax treaties with developing countries, which is just above average (41.77) among the countries covered by this report.³⁹⁷ The average reduction of developing country tax rates within those³⁹⁸ treaties – 3.9 percentage points – is also above the average (3.39 percentage points) among the countries covered in this report.³⁹⁹

Austria re-negotiated a double taxation agreement with India, ratified in May 2017, which now allows for automatic exchange of information and mutual administrative assistance. Since 2015, Austria has also been in tax treaty negotiations with Kosovo.⁴⁰⁰

In general, according to the Ministry of Finance, Austria's double tax treaties are 'largely' oriented by the OECD Model Tax Treaty.⁴⁰¹

International commitments

Although Austria has participated in the OECD BEPS negotiations, Austria has in the end chosen to make a lot of reservations when signing the BEPS Convention. Out of the 11 articles that civil society organisations have called on governments to adopt, Austria has made reservations (opted out) of seven (see table 7 in chapter 5.1.2 on 'Tax sudoku – the OECD's BEPS Convention'). At the same time, Austria has opted in to the articles that civil society organisations have warned against, including secret binding arbitration (see chapter 5.1.2 on 'Tax sudoku – the OECD's BEPS Convention', including table 8).

Tax practices

ABA – Invest in Austria, the national investment promotion company – promotes Austria on its website for its tax advantages, especially for holding structures. It refers to Austria as an 'outstanding holding location'. For example, ABA highlights that profits from foreign subsidiaries can be pooled tax-free in an Austrian holding company; profits from the disposal of foreign subsidiaries are tax-free; losses of foreign subsidiaries can be offset against the domestic profits of the holding company (group taxation); interest expenses on borrowings used to acquire third-party equity interests are tax deductible, and dividends and capital gains from foreign subsidiaries are, for the most part, tax free.⁴⁰²

Austria also allows corporations to consolidate foreign losses with domestic profits for tax purposes.⁴⁰³

According to the OECD, special purpose entities account for 25 per cent or more of inward foreign direct investments in Austria.⁴⁰⁴

Tax rate

The Ministry of Finance has been keeping an eye on possible new tax breaks in the wake of Brexit and the plans of other EU countries to lower their corporate taxes.⁴⁰⁵ The Ministry has already calculated the impact of a decrease in corporate income tax from 25 to 20 per cent, estimating the cost to be €1.5 billion per year.⁴⁰⁶ According to the Ministry, this loss would only be compensated by an economic stimulus of €300 million, leaving net costs of €1.2 billion.⁴⁰⁷ A precedent came in 2005, when the corporate income tax rate was reduced from 34 to 25 per cent, prompting many German companies to return to Austria. Back then, after some irritation with Austria, Germany also lowered its corporate income tax rate.⁴⁰⁸

However, the People's Party as well as the Freedom Party – who might form the next coalition government – have announced that they are more in favour of tax incentives (for example, no taxation of retained profits) than in a cut in headline tax rates.⁴⁰⁹

Austria regularly calculates the costs of tax incentives (as indirect subsidies). For example, in 2015 it calculated foregone annual tax revenues caused by group taxation to be €250 million. However, the indirect costs for some tax exemptions are not calculated, such as tax-free profits from 'international intercorporate stock holdings' (internationale Schachtelbeteiligungen).⁴¹⁰

Tax rulings

Austria has a formal procedure for obtaining unilateral advance pricing agreements (APAs) (see also chapter 4.4 on 'Sweetheart deals') since 2011.⁴¹¹ Taxpayers can ask for binding APAs regarding certain issues in taxation such as transfer pricing, but also for corporate restructurings or for group taxation. Bilateral APAs are possible in cases where a tax treaty provides for the procedure. A procedural document on APAs, released in December 2014, concerns APA applications submitted by multinational corporations, containing specific criteria to prevent aggressive tax planning. The Ministry of Finance also considers the economic substance of the company's activities performed in Austria, liaising with other jurisdictions when necessary. PwC comments that although the *'document represents rather a formalisation of the existing APA practice, it also reduces the room for potential negotiation with the tax authorities during the application process that might have been the case in the past.'*⁴¹²

In answering a written parliamentary question, the Ministry of Finance has given details on the APAs provided between 2011 and 2014. For 2014, 26 rulings have been issued, of which 13 were for restructurings, two for group taxation and 11 concerned transfer pricing.⁴¹³ The fee charged for issuing APAs varies with the size of the corporation,⁴¹⁴ and data provided shows that most APAs have been issued to large corporations: between 2011 and 2015, the maximum fee of €20,000 has been paid for 68 APAs (out of a total of 137).⁴¹⁵

Austria's APAs are not included in the official statistics of the European Commission because, according to the Commission, the data has not been made available to them.⁴¹⁶

Global solutions

The government says it is *'doubtful about the added value of an intergovernmental body on tax cooperation under the auspices of the UN'*. Instead, it *'believes that the existing panels in the EU and OECD are suitable for holding a dialogue with partner states in the topic area'*. Furthermore, Austria believes that it is crucial to develop capacities of those actors in partner countries who are – in their respective field – drivers of change (governmental offices, non-governmental organisations, e.g. local chapters of Transparency International, national auditing authorities or universities).⁴¹⁷

Conclusion

Austria has taken a cautious approach to international tax reforms, trying to rely mainly on its domestic tax laws and anti-abuse measures. What is also striking is the government's reluctance to allow greater transparency, being against both public country by country reporting, and public registers of beneficial owners. Although Austria has partly given up its strict banking secrecy, it seems the country is still hesitant towards transparency.

The Austrian tax treaty network is an issue of concern. Both the total number of tax treaties with developing countries, as well as the average reduction in developing country tax rates, are above average. Thus, one can assume that the Austrian treaty network has a negative impact on its developing country partners. Unfortunately, Austria has no plans to conduct an analysis of these impacts.

Another issue of concern is Austrian holding companies, which have caused the country to be grey-listed by Brazil. The possible tax cuts, especially for corporates, that are envisaged by a possible coalition between the Conservatives and the Freedom Party might further tax competition within the EU and globally.

Finally, it is problematic that the Austrian government does not support the establishment of an intergovernmental UN tax body, which would give developing countries a truly equal say in global decision-making on tax matters.

Belgium

"Lowering the corporate tax rate is a necessity."

Johan Van Overtveldt
Belgian Finance Minister⁴¹⁸

Overview

In 2017, the Belgian authorities continued investigating the information revealed in the Panama Papers scandal. Shortly after the scandal broke, Belgian Finance Minister Johan Van Overtveldt announced a package of eight measures to address tax fraud,⁴¹⁹ and instructed the Special Tax Inspectorate of the Ministry of Finance to investigate 732 Belgian nationals and residents mentioned in the leaked documents.⁴²⁰ By March 2017, nearly a year after the Panama Papers were leaked, the Special Tax Inspectorate had managed to reclaim just €175,000 from individuals implicated in wrongdoing in the scandal. The reasons for such a low result were explained as a lack of cooperation by implicated taxpayers, and a lack of automatic exchange of information between Belgium and well-known tax havens.⁴²¹ However, in August 2017, following a number of successful investigations, the taxes reclaimed mounted significantly to €8 million.⁴²²

However, at the same time, Belgium is a very active player in the international race to the bottom on corporate taxation. In July 2017, the Belgian government committed itself to reducing the corporate income tax rate for large companies from 33 per cent in 2017 to 29 per cent in 2018, and 25 per cent by 2020.⁴²³ To compensate for lowering the corporate tax rate, the Belgian government is planning to introduce limitations on a number of existing tax deductions and exemption regimes, including the 'notional interest deduction regime' – a tax incentive that has raised concerns about possibilities for corporate tax avoidance.⁴²⁴ The government has also extended its portfolio of tax incentives by opening up its patent box regime to cover more types of assets.⁴²⁵

Meanwhile, Belgian citizens are increasingly sceptical of the tax treatment of multinationals. In October 2016, for example, a poll by the newspaper *Le Soir* and RTL revealed that 70 per cent of Belgians were against giving tax incentives to multinational corporations that move to Belgium. Over 70 per cent of respondents also answered yes to the question 'Are politicians powerless against large multinationals?'.⁴²⁶

EU Common Consolidated Corporate Tax Base (CCCTB)

At the EU level, the Belgian government has at times received attention for being sceptical towards tax reforms, such as during the 2016 negotiation on the Anti-Tax Avoidance Directive.⁴²⁷ However, Finance Minister Van Overtveldt has indicated that he supports the aims of the European Commission's proposal to introduce a Common Consolidated Corporate Tax Base at the EU level, arguing that it would make national corporate tax systems more resilient to the aggressive tax planning activities of multinationals. He also said that an important feature of the European Commission's proposal is the capacity for member states to set their own corporate tax rates, and has underlined that this flexibility is key for smaller economies such as Belgium.⁴²⁸

Tax and development

In 2016, Belgium committed €3 million to the International Monetary Fund's (IMF) Revenue Mobilization Trust Fund to increase developing countries' tax capacity.⁴²⁹ This followed a commitment made in 2015, as part of the Addis Tax Initiative (ATI), to increase support for domestic resource mobilisation and taxation in developing countries.⁴³⁰ As a member of the ATI, Belgium has also committed to ensuring policy coherence for development on the issue of taxation.

On 31 October 2017, the Commission into the Panama Papers published its final conclusions, which included a recommendation to carry out an impact assessment of Belgium's tax treaties, to identify any potential negative impacts on developing countries.⁴³¹ Such a spillover analysis could form a good starting point for future efforts to ensuring policy coherence for development.

Transparency

Public country by country reporting (CBCR)

On the issue of public country by country reporting at the EU level, the official Belgian government position is not very clear, but there are signs that Belgium is sceptical. The remit for this legislative dossier falls with the Minister of Economy and Employment Kris Peeters, who has not taken a public stance on current EU negotiations. Other cabinet ministers have, however, taken a critical stance on the new rules. For instance, in February 2016, Finance Minister Van Overtveldt said that he would be reluctant to adopt any anti-tax avoidance measures going beyond the OECD BEPS framework.⁴³²

In April 2016, following the launch of the EU legislative proposal on public country by country reporting, Van Overtveldt also said that any divergences between the European Commission's proposal and the OECD BEPS rules would be harmful for the competitiveness of European businesses, and have a negative impact on economic growth, jobs and Belgian public finances.⁴³³ When asked for his opinion on the EU legislative proposal, Van Overtveldt also stressed the need to be '*careful about privacy issues and other issues related to that*'.⁴³⁴

Whistleblower protection

While there are legal protections for whistleblowers in the public sector in Belgium, these do not extend to workers in the private sector.⁴³⁵ Belgian law also precludes tax authorities from purchasing leaked whistleblower information about the tax activities of Belgian citizens holding offshore bank accounts.⁴³⁶ However, in the wake of the Panama Papers, the government set up a working group in the Ministry of Finance's Special Tax Inspectorate to assess whether there should be a change in the law. This group will report on the potential budgetary impacts of purchasing and using leaked information, and assess the need for whistleblower protection.⁴³⁷ According to the Flemish newspaper *De Standaard*, the working group issued its conclusions to the Ministry of Finance in June 2017. In October 2017, in a response to a written question from an MP, the Belgian Minister of Finance said that from a budgetary perspective, purchasing whistleblower information would be a defensible proposition. However, he also added that the Belgian government has not yet made an official decision on whether it would be appropriate to change Belgian law to permit financial incentives for whistleblowing.⁴³⁸

Ownership transparency

On 18 September 2017, the Belgian government approved the transposition of the EU's 4th Anti-Money Laundering Directive (AMLD) into Belgian national law.⁴³⁹ Under the Belgian law, an ultimate beneficial ownership register will be established in order to help identify true owners. The threshold for being considered a beneficial owner of a company in Belgium has been set at 25 per cent of the shares.⁴⁴⁰ If no beneficial owner can be identified, then a senior managing official can be listed as the beneficial owner instead.⁴⁴¹

Belgian law also foresees the requirement to register the beneficial owners of trusts and other similar legal entities in Belgium. However, a final decision on the exact legal structures and trusts that will be covered by the register will be specified in a Royal Decree.⁴⁴² The register will be managed by a department in the Ministry of Finance, but a final decision on what information will need to be registered, who will be able to access it, and whether any fees will be charged, will only be defined in a Royal Decree following input from the Belgian Commission for the Protection of Privacy.⁴⁴³

The Belgian government has not taken an official stance concerning efforts at the EU level to make beneficial ownership registers fully publicly accessible. However, in April 2016, the Belgian Chamber of Representatives set up a special Commission to investigate the Panama Papers and international tax fraud.⁴⁴⁴ In its final conclusions, the Commission into the Panama Papers recommended that access to beneficial ownership registers should only be available to citizens with a 'legitimate interest'.⁴⁴⁵

Taxation

Tax treaties

Belgium currently has 50 tax treaties with developing countries, which is considerably above the average number (41.77 treaties) among the countries covered in this report.⁴⁴⁶ But while Belgium has a large number of treaties with developing countries, the average reduction of developing country taxing rates introduced through those treaties – 2.4 percentage points – is not excessively high compared to the average – 3.39 percentage points – among the countries covered by this report.⁴⁴⁷

Furthermore, following a full assessment of the content of the treaties, seven of the Belgian tax treaties with developing countries were ranked by ActionAid as being 'very restrictive' treaties, which give particular cause for concern due to the strong restrictions they impose on the taxing rights of developing countries (see also table 5 in chapter 4.5 on 'Bilateral tax treaties').⁴⁴⁸ In general, Belgium adheres to the OECD model treaty when negotiating with partner countries.⁴⁴⁹

In February 2016, a report by Belgian civil society organisation 11.11.11 assessed the economic and fiscal effects of Belgian tax treaties on developing countries, with a focus on 28 treaties that include reduced withholding tax rates on income from dividends and interest. The report's conservative estimate puts the fiscal cost to these developing countries at €35 million in 2012.⁴⁵⁰ The report sparked a debate in the Belgian parliament, including a series of hearings with representatives from the European Commission, the OECD, academia, the private sector and civil society.⁴⁵¹ A resolution was then tabled by members of parliament asking the Belgian government to conduct an independent assessment of existing tax treaties, especially with developing countries, and to refrain from signing tax treaties with tax havens.⁴⁵² Finance Minister Van Overtveldt rejected carrying out an assessment, but said that Belgium takes the *'special circumstances of partner countries including developing countries'* into account when negotiating tax treaties, and is willing to *'respond to a country's request to revise a certain treaty'*, but that it would not consider conducting an impact assessment.⁴⁵³

International commitments

In June 2017, Belgium signed up to the OECD's BEPS Convention.⁴⁵⁴ Compared to other countries covered by this report, Belgium submitted relatively few reservations to the Convention. Out of the 11 articles that civil society organisations have called on governments to adopt, Belgium has opted out of four (see table 7 in chapter 5.1.2 on 'Tax sudoku – the OECD's BEPS Convention'). However, at the same time, Belgium has opted in to both of the articles that civil society organisations have warned against, including article 18 on secret binding arbitration (see chapter 5.1.2 on 'Tax sudoku – the OECD's BEPS Convention', including table 8).

Tax rates and practices

In July 2017, the Belgian government announced changes to the corporate tax rates for both small- and medium-sized enterprises (SMEs) and large companies. For SMEs, the rate will decrease to 20 per cent by 2018.⁴⁵⁵ For larger corporations, the rate will decrease from 33 per cent to 29 per cent by 2018, and to 25 per cent by 2020.⁴⁵⁶ The Belgian government maintains that the impact of these tax reductions will be revenue neutral, and will be compensated for by the closure of certain tax deductions, or by reducing the attractiveness of certain deductions. However, tax experts disagree with the government's assessment, arguing that a large number of tax deductions would need to be removed or reduced in order to compensate for the lower tax rate.⁴⁵⁷

To compensate for reducing the corporate income tax rate, the government also plans to introduce a new measure in its budget that will limit the use of tax deductions that companies have excessively used to reduce their effective tax rate. Under the new rules, companies will only be allowed to deduct up to 70 per cent of their taxable income above €1 million, though research and development incentives are exempted from this rule.⁴⁵⁸ However, the government has not yet released detailed information on how the rules will work in practice.

Patent box

In February 2017, the Belgian government enacted a new patent box incentive regime.⁴⁵⁹ This replaced an earlier scheme that was abolished in July 2016 when it was found to be incompatible with the new OECD BEPS rules.⁴⁶⁰ In line with the OECD guidelines, however, a so-called grandfathering clause ensures that companies will be able to benefit from the old patent box rules until 2021.

Under the new patent box rules, Belgian companies will receive a more generous tax deduction for their qualifying intellectual property assets. Under the previous regime, companies could deduct 80 per cent of their qualifying intellectual property income, resulting in an effective corporate rate of 6.8 per cent. Under the new rules, companies can deduct 85 per cent of the net income they derive from qualifying intellectual property assets, resulting in an effective tax rate of 5.1 per cent.⁴⁶¹ The new regime is also significantly more generous as it extends the types of assets that will be covered, whereas the previous patent box only covered patents.⁴⁶²

The Belgian High Council of Finance, an expert body that advises the finance and budget ministers, has said that aligning the Belgian patent box with the OECD BEPS rules should only be a short-term solution, and that further reflection is required on whether to maintain the patent box in law.⁴⁶³ In particular, the High Council of Finance argues that the new rules will result in a considerable compliance burden for firms that will be required to track and trace their research and development activities, and an administrative burden for tax authorities that will be required to verify this information. Other fiscal incentives, such as a tax credit for investments in research and development activities, could be more effective than a patent box, according to the expert body.⁴⁶⁴

Notional interest deduction (NID)

Since 2006, the Belgian government has operated a so-called 'notional interest deduction' regime, which awards tax incentives to corporations funded by equity. The rationale behind the NID regime is to eliminate the tax discrimination that exists between debt financing and equity financing. Corporations are allowed to deduct interest expenses related to loan financing from their taxable base, but no similar deduction exists for equity financing, resulting in a bias towards loans as a means of financing investments. While this bias could have been corrected by removing tax incentives related to loans, the Belgian government has instead opted to introduce tax incentives for equity too. However, since there are no interest expenses for equity, the Belgian system allows corporations to deduct from their taxable income a fictitious interest expense calculated on the basis of their shareholders' equity. The interest rate for this imaginary expense is based on the average cost of government borrowing over a 10-year period, and is capped at a maximum of three per cent.⁴⁶⁵

Since the NID regime was introduced in 2006, it has attracted a great deal of criticism. The regime is controversial because there are concerns that the mechanism has been abused by multinational corporations for aggressive tax planning. For instance, a recent report by the Greens in the European Parliament lists the NID regime as one way in which the German chemical company BASF was allegedly able to avoid paying taxes on its corporate income.⁴⁶⁶

Several years of international pressure finally pushed Belgium to announce reforms to the NID regime. In 2017, the government announced that it would limit the amount firms can deduct from their taxable income under the NID. From 2018, the deduction granted will be based on the incremental equity increase of the past five years, rather than the amount of qualifying equity of the company.⁴⁶⁷ Although this is a welcome reform, it remains unclear whether the new rules will also include effective anti-abuse measures, which are necessary in order to ensure the regime is not abused for tax planning purposes. Furthermore, the reform has not addressed the fundamental question of whether this kind of public subsidy in the form of tax incentives to multinational corporations is really desirable.

Tax rulings

Belgium offers unilateral, bilateral and multilateral advance pricing agreements (APAs). According to data from the European Commission, Belgium had 411 APAs in force at the end of 2015,⁴⁶⁸ of which the vast majority – 396 APAs – were unilateral APAs, which is the most problematic kind.⁴⁶⁹

Some advance tax rulings are published in an anonymised form on a government website.⁴⁷⁰

Global solutions

Belgium did not support the proposal for a global tax body at the Financing for Development summit in Addis Ababa in July 2015.⁴⁷¹ There has been no indication that the government has changed its position on this issue. Appearing before the Belgian Chamber of Representatives in April 2016, Finance Minister Van Overtveldt said that tax avoidance can best be fought within the framework of the OECD BEPS Action Plan, and that Belgium should not go beyond the minimum standards set out in BEPS.⁴⁷²

Conclusion

Belgium's position on issues of transparency has previously been unclear, but there are growing indications that the country is taking a sceptical approach. For example, while Belgium decided to introduce a register of beneficial owners, there are as yet no signs that this register will be open to the public. On the issue of public country-by-country reporting, although the government's official position is still unclear, the Belgian Finance Minister has repeatedly expressed resistance and scepticism towards the idea.

Although Belgium's tax treaties with developing countries on average only introduce a moderate reduction of developing country tax rates, Belgium has several 'very restrictive' treaties, which are particularly problematic due to the strong limitations they impose on the taxing rights of developing countries.

As regards corporate taxation, the Belgian approach also continues to be an issue of concern. Despite a recent reform, there are clear risks that the Belgian 'notional interest deduction' can be used by multinational corporations to avoid taxation. The same is the case for the Belgian patent box, the scope of which was expanded during the recent reform. Belgium also has a very high number of unilateral advance pricing agreements with multinational corporations. Furthermore, it is highly concerning that Belgium has become very active in the international race to the bottom by introducing quite dramatic reductions to the corporate tax rate.

Lastly, it is problematic that the government does not support the establishment of an intergovernmental UN tax body, which would give developing countries a truly equal say in global decision-making on tax matters.

Czech Republic

"None of the EU countries can now be labelled as a tax haven because they all report to the general standards agreed by the OECD and the EU."

Milena Hrdinkova

Director of Minister's Office Department
at the Ministry of Finance⁴⁷³

Overview

In the Czech Republic, there has been limited public discussion on international tax avoidance and evasion, although the Azerbaijani Laundromat scandal generated considerable attention.⁴⁷⁴ The Czech Republic also figured prominently in the so-called 'Russian Laundromat' scandal, which broke earlier in 2017. In total, the Organized Crime and Corruption Reporting Project (OCCRP), which exposed the scandal, estimated that over €32 million (or CZK 820 million) laundered money from Russia ended up in the Czech Republic.⁴⁷⁵

Almost all political parties in the Chamber of Deputies included tax dodging and transparency in their manifestos in the lead up to elections in October 2017.⁴⁷⁶ Most political parties also acknowledge that the problem of tax dodging can be solved only through international cooperation, and are showing an increased willingness to discuss EU policy proposals.

According to the Ministry of Finance, tax incentives provide for an '*additional administrative burden, space for tax avoidance and for aggressive tax planning*', as well as a reduction in the size of the tax base.⁴⁷⁷ The Ministry is working on a new Income Act that should significantly reduce the research and development super-deduction, which currently provides a 100 per cent tax deduction on such expenses.⁴⁷⁸ On the other hand, the Ministry does not consider a new type of measure to link tax deductions to equity finance ('Allowance for Growth and Investment' (AGI)) as a tax incentive, but rather as an instrument to prevent double economic taxation. However, the Ministry acknowledges that '*it has negative impact on tax neutrality*', by which they mean that AGI could have different impacts on different types of taxpayers (companies).⁴⁷⁹ The final position of the Ministry will depend on the final parameters of the proposal.⁴⁸⁰

EU Common Consolidated Corporate Tax Base (CCCTB)

In January 2017, Andrej Babiš, then the Minister of Finance, now Prime Minister-designate leader of the (Akce nespokojených občanů) ANO party, described the EU CCCTB proposal as interfering with the sovereignty of member states.⁴⁸¹ This followed an earlier report by the Czech parliament's Committee on European Affairs in December 2016, which also took a negative view of the European Commission's CCCTB proposal.⁴⁸² By contrast, former Prime Minister Bohuslav Sobotka (of the Social Democrats) considered the EU proposal a potentially good tool against tax avoidance, and asked the Minister of Finance to prepare an impact assessment of the proposal on the Czech economy and state budget.⁴⁸³

Based on this assessment, the former government announced changes in its position and signalled that it was ready to discuss the proposal.⁴⁸⁴ The Ministry of Finance has stated that there are some issues that could be problematic and should be discussed further. For instance, there is a concern that the chosen formula could create space for new forms of tax avoidance.⁴⁸⁵ The EU proposals were also supported by the Senate (upper chamber) in March 2017.⁴⁸⁶

The future for the CCCTB in the Czech Republic is unclear, and very much depends on the composition of the new government. A more eurosceptic cabinet would probably mean less enthusiasm for the harmonisation of tax rules.

Tax and development

In 2007, the Ministry of Finance launched a technical cooperation project in order to promote cooperation between the Czech Republic and other countries on financial and economic matters, including with a number of developing countries such as Sudan, Thailand, Vietnam and Kenya.⁴⁸⁷ The Ministry of Finance's priorities for 2017 to 2019 are, among other issues, to enhance technical cooperation in the areas of tax and customs, money laundering, and terrorism financing counter measures with partner countries.⁴⁸⁸

The new Czech development cooperation strategy was approved in August 2017. Policy coherence for development is mentioned as one of the guiding principles within the strategy, but without an explicit link to the tax agenda. Economic transformation and growth is mentioned among the key goals and priorities of Czech official development assistance. However, this is again without any mention of tax revenues in relation to financing of development and/or domestic resource mobilisation.⁴⁸⁹

It is not known if the government has any plans to conduct impact assessments to measure the effects of its tax policies on developing countries, but information suggests this is unlikely.

The only reference to the tax agenda in relation to development that can be found is in the 'National Report on the Implementation of the 2030 Agenda for Sustainable Development', which states that the Czech Republic will 'support further progress in international cooperation in tax matters as increasing the mobilisation of domestic resources is crucial for developing countries'.⁴⁹⁰ The original text of this document included direct support for the establishment of an intergovernmental tax body, but this was subsequently cut at the ministerial level.⁴⁹¹

Transparency

Public country by country reporting (CBCR)

The government has a neutral position on public country by country reporting: 'This means that the Czech Republic will not block the adoption of the proposal and will be willing to disclose the information if the member states support this opinion in their vote.'⁴⁹² However, the Czech government supports a change in the legal base to consider the proposal an issue of taxation rather than accounting,⁴⁹³ as the European Commission has suggested. A change in legal base would in reality mean that the European Parliament is excluded from decision-making, and the decision will require unanimity among EU member states.⁴⁹⁴

As explained in chapter 5.8.3 on 'Allowing citizens to know what multinationals pay in taxes', this is likely to result in a much less ambitious outcome. There is no strong political support from the Ministry of Finance for public CBCR, and thus its position appears to be a way of avoiding direct disagreement with the proposal. The Ministry is also in favour of only applying the agreement to companies with a turnover of €750 million or more.⁴⁹⁵

In line with EU requirements, the government has already introduced public CBCR for banks, as well as public reporting on payments to governments for multinational corporations engaged in extractive industries.⁴⁹⁶ The Ministry of Finance says it does not know of any examples of negative impacts from implementation of these measures in the Czech Republic.⁴⁹⁷

Whistleblower protection

The government has not said anything in the past year about the protection of whistleblowers in relation to tax. Although the protection of whistleblowers is a government priority included in the Anti-Corruption Action Plan for 2015-2017,⁴⁹⁸ there is no comprehensive legislation on this in the Czech Republic.⁴⁹⁹ Nevertheless, there are two legislative proposals currently on the table. One has been proposed by Andrej Babiš, in his past role as Minister of Finance, as an individual law - but it was not supported by the government. It has been waiting to be discussed in the Chamber of Deputies for more than a year (since April 2016).⁵⁰⁰ A second proposal to protect whistleblowers was proposed by the Czech government in February 2017, through an update of the Act on the Civil Procedure Court. However, this law was not approved by the Chamber of Deputies prior to the election, and will need to be re-introduced after the elections.⁵⁰¹

Ownership transparency

The Czech Republic transposed the 4th Anti-Money Laundering Directive (AMLD) into law at the end of 2016.⁵⁰² Under this law, companies as well as trusts will be required to record their beneficial ownership information in a central register to be managed by the Czech courts. The deadline for establishing the beneficial ownership register is January 2018. The threshold for being considered a beneficial owner of a company in the Czech Republic has been set at 25 per cent of voting rights, portion of registered shares and/or distribution of dividends.⁵⁰³ However, access to the beneficial ownership register will be limited to select authorities such as the courts, tax administration, intelligence services and the police.⁵⁰⁴

Public access to the register is possible for those who are deemed to have a 'legitimate interest'. However, until the register is established and the 'legitimate interest' definition is tested in practice, it is difficult to assess how restrictive public access to the register will be. There are nevertheless strong concerns that the 'legitimate interest' test will be interpreted in a restrictive way, and the law currently does not specify whether journalists or civil society organisations would fall automatically under this category.⁵⁰⁵

During ongoing EU negotiations on revisions to the 4th AMLD, the Czech government has indicated that it is now supportive of ensuring full public access to beneficial ownership registers for companies and trusts.⁵⁰⁶ While the European Commission's proposal only requires beneficial ownership transparency for 'business trusts', the Czech government indicates that it supports extending this obligation to 'family' trusts as well, arguing that it would be difficult to distinguish between different types of trusts.⁵⁰⁷

According to the Finance Ministry, the Czech government also supports the European Parliament's proposal to require all trusts with a connection point to the EU to register their beneficial ownership information, as well as the European Commission's proposal to interconnect all national beneficial ownership registers in the EU.⁵⁰⁸ The Czech Ministry of Finance informs that it has not yet taken a final position on whether to support lowering the beneficial ownership threshold from 25 per cent to 10 per cent.⁵⁰⁹

Taxation

Tax treaties

The Czech Republic plans to negotiate tax treaties with the following countries in the next five years: Cameroon, Kyrgyzstan, Senegal, Iraq, Algeria, Bangladesh, Tanzania, Zambia and Kenya. It also plans to update the protocol with Montenegro and Macedonia and to renegotiate the double taxation treaty with Sri Lanka.⁵¹⁰

The government says it follows its own model when negotiating tax treaties, which is mostly based on the OECD model. However, it also states that it is *'open to discuss and accept some other provisions following the UN model'*.⁵¹¹ The Ministry of Finance states that, when negotiating a double taxation agreement, it receives advice from the Ministry of Foreign Affairs and the Czech parliament.⁵¹² However, informal discussions with several members of parliament suggest that their involvement is normally just a formality and that they almost never comment on the content of the treaty.⁵¹³ Consultation with non-state actors does not occur.

In total, the Czech Republic has 43 tax treaties with developing countries, which is above the average (41.77) among the countries covered by this report.⁵¹⁴ The average reduction of developing country tax rates within those treaties – 3.55 percentage points – is also above the average (3.39 percentage points) among the countries covered in this report.⁵¹⁵

International commitments

In June 2017, the Czech Republic signed on to the OECD's BEPS Convention.⁵¹⁶ However, at the same time the government submitted a very high number of reservations to the Convention. Out of the 11 articles that civil society organisations have called on governments to adopt, the Czech Republic has opted out of 10 (see table 7 in chapter 5.1.2 on 'Tax sudoku – the OECD's BEPS Convention'). On a positive note, the Czech Republic has also opted out of both of the articles that civil society organisations have warned against, including article 18 on secret binding arbitration (see chapter 5.1.2 on 'Tax sudoku – the OECD's BEPS Convention', including table 8).

Tax rate and practices

The corporate income tax rate in the Czech Republic is 19 per cent,⁵¹⁷ and most political parties have not proposed any corporate tax reductions in their election manifestos for the 2017 general elections.⁵¹⁸ Several parties – for example, ANO, Zelení (the Greens), the Communist Party and Občanská demokratická strana (ODS) – have underlined the need to simplify the current Income Act, including reforms in order to limit the current tax exemptions available to businesses, and to introduce digitalisation to the corporate tax system in order to reduce the possibility of tax dodging.⁵¹⁹

In 2017, PwC noted that *'the number of tax audits focused on transfer pricing and the amounts of the resulting tax adjustments have skyrocketed in the Czech Republic'*. PwC links this to the fact that the Czech Republic has introduced mandatory disclosure of transactions between subsidiaries of multinational corporations, as well as the fact that the tax administration now has more expertise and is using 'field investigations' to collect additional information. PwC also notes that Czech tax policy has become more oriented towards maximising tax revenue, and that this puts corporations at 'a disadvantage'.⁵²⁰ Lastly, PwC notes that with (secret) country by country reporting on its way, as well as the fact that transfer pricing is in the spotlight, it expects the number of tax audits to keep increasing.⁵²¹

The Czech Ministry of Finance does not measure the effective corporate tax rate in the country. It is currently undertaking work on new models to predict the relationship between income from corporate taxes and the level of the corporate tax rate.⁵²² A 2016 study by Petr Jansky at Charles University in Prague analysed the extent to which international corporate tax avoidance by multinational enterprises lowers the Czech Republic's corporate income tax revenue. It estimated that these losses range from CZK 6 to 57 billion (€230 million to €2.2 billion) a year – equivalent to four to 38 per cent of current corporate income tax revenue – with a median of CZK 15 billion (€574 million), or 10 per cent of corporate income tax revenues.⁵²³

Tax rulings

Based on the Czech Income Taxes Act, corporations can apply for an advance pricing agreement (APA) with the Czech tax authority.⁵²⁴ The Czech tax law allows for unilateral, bi- or multilateral APAs, which can remain valid for a period of up to three years, as long as the conditions and the related laws to the transaction in question remain unchanged. Corporations are required to pay a fee of CZK 10,000⁵²⁵ (around €390) in order to apply for an APA.

According to data from the European Commission, the Czech Republic had 47 APAs in place with multinational corporations at the end of 2015. Of these, 46 were unilateral, which are the most concerning type of APAs (see chapter 4.4.1 on 'The problem with advance tax agreements'). The number of APAs is relatively high compared to many other European countries, and it is also interesting to notice that the number increased rapidly from 2014 to 2015 (from 34 to 47).⁵²⁶ During informal discussions, government officials explained the increase in terms of the need to report the APAs to the EU, as well as the fact that tax rulings can be issued by a regional tax authority in the Czech Republic. It seems that APAs were not properly documented until the need for automatic exchange of APAs with other countries was introduced.

Global solutions

The Czech government does not support the establishment of an intergovernmental body on tax. While the Ministry of Finance is opposed to moving the international tax agenda from the OECD, there could be more space to discuss this issue in the framework of the SDGs, and more concretely the Czech Implementation Strategy 2030. The national report on the implementation of the United Nation's 2030 Agenda included an assurance that the Czech Republic will 'support further progress in international cooperation in tax matters as increasing the mobilisation of domestic resources is crucial for developing countries'.⁵²⁷

Conclusion

The Czech Republic remains ambiguous about tackling tax dodging at both the national and international level. On the one hand, the last year has seen some positive changes in government positions on the transparency of beneficial owner registries, and a willingness to discuss the issue of public country by country reporting. On the other hand, it remains unclear whether these will translate into concrete action.

It is clear that the Czech Republic's own register of beneficial owners will not be made public, and it might be very difficult to access the information in the register. It is also clear that the government's support for considering public country by country reporting as a tax issue at the EU level might lead to a less ambitious outcome of the ongoing EU negotiations. However, at the same time the government has indicated a willingness to be flexible on the issue.

Czech tax treaties with developing countries is an issue of concern, because both the number of treaties, and the average reduction of developing country tax rates within those treaties, are above average.

On harmful tax practices, the number of unilateral APAs with multinational corporations stands out as an issue of concern. On a positive note, the Czech Republic does not have any of the most notorious harmful tax practices, such as a patent box, and the idea of abolishing some of the country's tax incentives seems to be gaining popularity among decision-makers.

Although the Czech Republic highlights the importance of international tax cooperation, it has not yet been willing to support the establishment of an intergovernmental UN tax body, which could give developing countries a truly equal say in global decision-making on tax matters.

Denmark

"Why, honourable Ministers Karsten Lauritzen, Brian Mikkelsen and Søren Pape Poulsen, don't you speak up next time you meet with the European Council of Ministers and demand concrete action against money laundering and tax dodging?"

Jeppé Kofod

Member of the European Parliament, Social Democrat and Rapporteur, European Parliament Special Committee on Tax Rulings and Other Measures Similar in Nature or Effect (TAXE 2)⁵²⁸

Overview

Over the past few years, there has been a broad public outcry about tax havens and the issue of fair taxation in Danish politics, attracting considerable media coverage as well as broad political support of the need for action. Concurrently, there is a big gap between how the Danish government views itself on tax issues, and how the country is regarded by opposition politicians and civil society organisations that criticise Denmark for not walking the talk in international fora or pushing reforms at the European Council.⁵²⁹

The revelations of the Russian Laundromat scandal in March 2017⁵³⁰ prompted a particularly strong response in Denmark. Danske Bank – the biggest bank in Denmark – was closely implicated in the scandal,⁵³¹ and the largest bank in Scandinavia – Nordea Bank – was also closely linked to the money laundering allegations.⁵³² In response, a representative from Danske Bank admitted that the bank had not 'secured enough control' and not 'been good enough at monitoring suspicious transactions', but underlined that new procedures had since been introduced.⁵³³ A representative from Nordea declined to comment on specific transactions, but highlighted that the bank had later on launched a comprehensive programme to improve compliance in relation to financial crime.⁵³⁴

In September, a new money laundering scandal unfolded, again with Danske Bank playing a central role.⁵³⁵ It was alleged that the bank's branch office in Estonia served as gateway into the European financial system, allowing corrupt Azerbaijani officials to launder no less than DKK 18 billion (€2.4 billion) from 2012 to 2014. Danske Bank was heavily criticised⁵³⁶ and responded by admitting it had made mistakes in the past.⁵³⁷

The 'football leaks' scandal, which revealed several allegations regarding how well-known football stars were engaged in tax avoidance activities through offshore companies, was also heavily covered in Denmark, giving rise to numerous articles in the national media.⁵³⁸

Recent research has estimated that the wealthiest 320 families in Denmark are holding DKK 60 billion (€8 billion) offshore. The researchers estimate that this is equal to about 25 per cent of the families' total wealth.⁵³⁹

There is also continued public discontent with the Danish tax authorities over billions of Danish kroner of uncollected tax arrears.⁵⁴⁰ In 2016, it was revealed that the Danish tax authority Skat had failed to act on numerous warnings that foreign companies were abusing Danish tax rules and forging documents in order to fraudulently apply for dividend tax refunds.⁵⁴¹ The abuse is estimated to have cost the Danish tax authority over DKK 12 billion (more than €1.5 billion).⁵⁴²

In 2017, all parties in the Danish parliament agreed to increase the budget for those tax authority units fighting international tax evasion and money laundering.⁵⁴³ The government is also considering new rules regarding the roles and responsibilities of accountants when advising companies on tax matters.⁵⁴⁴

EU Common Consolidated Corporate Tax Base (CCCTB)

Minister of Finance Kristian Jensen has expressed support for some of the elements included in the proposal to introduce a CCCTB in the EU, but has noted that implementation will be difficult in practice. Jensen has also said that, if the corporate tax base is not made broader than the current proposal suggests, Denmark will not support it since this could result in big tax revenue losses, and that the most effective corporate tax system is with a broad base and low rate.⁵⁴⁵ A parliamentary majority opposes the EU proposal on the CCCTB, mainly on the grounds that it could imply costs for Denmark in terms of reduced tax revenues, and that taxation is an issue of national competence, which should be addressed through national legislation.⁵⁴⁶

Tax and development

Denmark is part of the Addis Tax Initiative (ATI), in which donors have committed to doubling their support for domestic resource mobilisation and taxation in developing countries by 2020.⁵⁴⁷ In 2015, Denmark's gross disbursement for domestic resource mobilisation was US\$7.12 million (€6 million).⁵⁴⁸ Denmark has included a separate paragraph on 'Mobilisation of the developing countries' own national resources - tax' in the 2017 Danish strategy for development cooperation and humanitarian aid.⁵⁴⁹

Through the Addis Tax Initiative, Denmark has also committed to ensuring policy coherence for development on the issue of taxation.⁵⁵⁰ However, the 2017 Danish development strategy does not mention policy coherence between tax and development, only broader issues of coherence, for instance between migration and development.⁵⁵¹

In its ATI monitoring report, Denmark states that it will assess policy coherence for development by reporting on the global indicator related to Sustainable Development Goal 17.14 (which calls for enhancing policy coherence for sustainable development), and by following the EU's reporting on related indicators via the EU focal point for the policy coherence for development network.⁵⁵² Denmark has set aside DKK 35 million (€4.7 million) to strengthen collaboration between the areas of development and taxation.⁵⁵³

However, the most solid basis for a policy coherence for development policy would be a national tax spillover analysis to identify potential negative impacts of both existing and future Danish tax policies on developing countries. This seems very important – especially in the context of Denmark's treaty network – since several of the treaties impose strong restrictions on the taxing rights of developing countries.⁵⁵⁴ But the Ministry of Taxation has previously stated that it has no plans to undertake a spillover analysis of the impact of Danish tax treaties on developing countries⁵⁵⁵ and such suggestions, by political parties in parliament and by civil society organisations, have repeatedly been rejected by the Danish government.⁵⁵⁶

Transparency

Public country by country reporting (CBCR)

The Danish government supports the European Commission's proposal for public country by country reporting.⁵⁵⁷ However, as explained in chapter 5.8.3 on 'Allowing citizens to know what multinationals pay in taxes', the Commission's proposal would only allow citizens to access information about the activities of multinational corporations in some countries, but not in others. Therefore, under this proposal, it would still be possible for multinationals to hide profits in tax havens that are not among those countries multinationals report on. The Danish government does not support requiring corporations to report on their operations on a disaggregated basis for all countries.⁵⁵⁸

Denmark also opposes extending this public country by country reporting requirement to large multinationals with a turnover below €750 million.⁵⁵⁹

Like most other EU member states, and in line with EU legal requirements, Denmark has introduced public CBCR for the financial sector,⁵⁶⁰ and non-public CBCR for multinational corporations based in Denmark that have a turnover of at least €750 million.⁵⁶¹

Whistleblower protection

A Danish law made it mandatory from September 2014 for companies in the financial sector to implement a whistleblower policy.⁵⁶² Since then, political interest has focused only on whistleblower protection for the public sector, and not on private sector employees. Following a two-year investigation, a special committee concluded that there is no need for new legislation⁵⁶³ – an assessment that has been supported by the Danish government.⁵⁶⁴

Ownership transparency

In May 2017, a new Danish law⁵⁶⁵ introducing public registers of beneficial owners entered into force.⁵⁶⁶ In line with the EU's 4th Anti-Money Laundering Directive (AMLD), the law requires legal entities such as companies, trust and foundations to register their beneficial owners. The deadline for registering is 1 December 2017.⁵⁶⁷

The register of beneficial owners will be fully publicly accessible and free.⁵⁶⁸ However, on 4 October 2017, an amendment bill was introduced in parliament that suggests that any person can choose to have his or her address concealed in the register.⁵⁶⁹ Without the exact address, it will be more difficult to identify or differentiate between beneficial owners on the Danish public register.

In connection with the implementation of 4th AMLD the Danish government expressed concerns about the potential burden placed on businesses and emphasised that there should be a cost-benefit balance between the burdens and the expected benefits.⁵⁷⁰

In Denmark, 25 per cent of shareholding is set as an indication threshold of beneficial ownership,⁵⁷¹ but it does not define it. This means that an owner with less than 25 per cent of a shareholding can be registered as a beneficial owner, if the definition of beneficial ownership applies to them.⁵⁷² The law specifies a beneficial owner as a '*natural person who ultimately owns or controls, whether directly or indirectly, a sufficient part of the equity, interests, or voting rights, or who exercises control via other means*'.⁵⁷³

This definition is more difficult to circumvent than a strict percentage limit, and is thus a positive step. However, the law allows for the board of managers to be recognised as the beneficial owners in situations where the company has no real beneficial owner, or where the owner cannot be identified.⁵⁷⁴

Denmark also has an online register for shareholders, which covers ownership above a five per cent threshold. Anyone can access shareholders' full names and addresses.⁵⁷⁵

In May 2017, all political parties in parliament agreed that Denmark should support a pilot project aimed at introducing a global register of beneficial owners. It is however not specified whether such a register would be public.⁵⁷⁶

Taxation

Tax treaties

In total, Denmark has 35 tax treaties with developing countries, which is just below the average (41.77) among the countries covered by this report.⁵⁷⁷ The average reduction of developing country tax rates within those treaties – 3.34 percentage points – is just below the average (3.39 percentage points) among the countries covered in this report.⁵⁷⁸ Furthermore, following a full assessment of the content of the treaties, five of Denmark's tax treaties with developing countries were ranked by ActionAid as being 'very restrictive' treaties, which give particular cause for concern due to the strong restrictions they impose on the taxing rights of the developing countries (see also table 5 in chapter 4.5 on 'Bilateral tax treaties').⁵⁷⁹

Both the current Minister of Taxation and the former Danish government⁵⁸⁰ have announced that they want Denmark to negotiate more double taxation treaties.⁵⁸¹ However, Denmark did not finalise any new tax treaties between 2016 and 2017. Treaty negotiations were held relating to a new treaty with Azerbaijan,⁵⁸² as well as a renegotiation of a 1974 treaty with Brazil.⁵⁸³

Unfortunately, tax treaties remain the sole domain of the Ministry of Taxation.⁵⁸⁴ In June 2016, a majority in the Danish parliament rejected several progressive suggestions including: that Denmark should use the UN model treaty as a basis for treaty negotiations with low- and middle-income countries;⁵⁸⁵ that transparency should be increased by holding public hearings on treaty negotiations; and that the Danish parliament and public should be granted access to the negotiation text.⁵⁸⁶ The Danish government maintained this position when asked again in September 2017.⁵⁸⁷ The treaties do not contain any specific anti-abuse clauses,⁵⁸⁸ although they are subject to a 'Super General Anti-Abuse Rule' adopted in 2015,⁵⁸⁹ which made all Danish tax treaties subject to an anti-abuse clause, largely inspired by the OECD's BEPS Convention.⁵⁹⁰ However, this seems less effective compared to a situation where anti-abuse clauses have been written directly into the texts of treaties.

International commitments

In May 2017, all political parties in parliament reached an agreement for Denmark to sign the OECD BEPS Convention,⁵⁹¹ which Denmark did in June.⁵⁹² However, the government at the same time submitted a very high number of reservations to the Convention. Out of the 11 articles that civil society organisations have called on governments to adopt, Denmark has opted out of 10 (see table 7 in chapter 5.1.2 on 'Tax sudoku – the OECD's BEPS Convention'). On a positive note, Denmark has also opted out of one of the articles that civil society organisations have warned against, namely article 18 on secret binding arbitration (see chapter 5.1.2 on 'Tax sudoku – the OECD's BEPS Convention', including table 8).

Tax practices

Danish limited liability companies (called *kommanditselskaber*) have been widely criticised and investigated by the media in recent years, for being potential vehicles of both money laundering and aggressive tax planning.⁵⁹³ In March 2016, a report commissioned by the government concluded that limited liability companies offered opportunities of hidden ownership structures, and that there are indications that these companies have been used for the purpose of corruption or money laundering.⁵⁹⁴ In response to this, Denmark introduced public beneficial ownership registration for owners of limited liability companies.⁵⁹⁵ However, the report also highlighted that Danish limited liability companies can be used for aggressive tax planning, and estimated that over 50 per cent of Danish limited liability companies with foreign owners were at risk of being used for this purpose.⁵⁹⁶

The risk of tax avoidance is related to the fact that Danish limited liability companies are so-called 'transparent' entities, which are not normally subject to taxation because it is assumed that tax is collected directly from the owners. These rules have however proven easy to circumvent through international tax loopholes, which can lead to very low, or no, taxation of the income from the company.⁵⁹⁷

In November 2017, the Danish government announced its intention to put forward a legislative proposal to prevent international tax avoidance through Danish limited liability companies.⁵⁹⁸ However, until this happens, these companies remain potential vehicles for tax avoidance. This might explain why the OECD in 2016 highlighted that a significant part of foreign direct investments into Denmark were going through 'special purpose entities' (also known as 'letterbox companies'; see more in chapter 4.2 on 'Special purpose entities').⁵⁹⁹

In 2016 the company ReXKern, one of the main corporate service providers known for 'selling' Denmark as a place to do offshore business,⁶⁰⁰ had to close down. The company stated the following as some of their reasons for closing: *'A number of clients are undergoing investigations due to the 'Panama papers' case, and our management have spent countless hours handling inquiries from Tax Authorities. The cost of legal assistance has been a burden (...) We exhausted our financial resources.'*⁶⁰¹

Tax rate

In early 2017, the Minister of Taxation said that the government had no concrete plans to lower the corporate income tax rate, and it seems there would not be a parliamentary majority to do so.⁶⁰² However one of the parties forming the Danish government, and several prominent individuals in the government, are strong advocates for lower tax rates.⁶⁰³ Meanwhile, in October 2017, the Minister of Taxation said he shared the concern about international tax competition, and thought it was worth thinking about whether a minimum corporate tax rate could be introduced.⁶⁰⁴

In Denmark, all tax payments by companies from 2012 onwards are made public,⁶⁰⁵ and the press frequently investigates and discloses the nominal tax payments of the country's largest companies.⁶⁰⁶ However, scandals such as the Paradise Papers have illustrated the shortcomings of this register when it comes to multinational corporations. When journalists tried to track the sales and tax payments of Nike, they found that a Dutch Nike company played a central role in the sale of Nike products in Denmark.⁶⁰⁷ Since foreign affiliates of multinational corporations are not covered by the Danish register, it can be difficult to use the register to get a realistic picture of the level of corporate income tax paid by multinational corporations operating in Denmark.

There are no known calculations of the revenue loss from providing corporate tax incentives. The Danish tax authorities regularly estimate the 'tax gap' for small- and medium-sized companies of up to 250 employees, which is calculated as the cost of non-compliance plus the sum of arrears (non-payments). It estimates the tax gap at around DKK 10 billion (€1.3 billion) or two per cent of the revenue potential.⁶⁰⁸ The figure is far from comprehensive as it excludes all companies with more than 250 employees, international tax avoidance by multinational companies, the costs of tax incentives, non-compliance by wage earners, and the informal economy.

Tax rulings

Multinational companies can apply for APAs in Denmark. However, the authorities advocate for involving the tax authorities of other relevant countries when negotiating APAs with companies.⁶⁰⁹ As of 2016, Denmark had no unilateral APAs in force.⁶¹⁰ Although bilateral APAs can still be problematic, they are less problematic than unilateral ones (see chapter 4.4.1 on 'The problem with advance tax agreements'). There is no known intention to make public any information about specific APAs.

Global solutions

The Danish government has previously expressed opposition to the proposal of establishing an intergovernmental UN tax body, and argued that it is important to avoid a proliferation of institutions. There are no indications that their position has changed.⁶¹¹

Conclusion

When it comes to putting an end to secret shell companies and trusts, Denmark is among the frontrunners with its introduction of a public register for beneficial owners of both companies and trusts. However, the Danish parliament is currently considering whether to open up a new loophole, which could offer opportunities for beneficial owners to hide their identity.

The same cannot be said when it comes to corporate transparency. By supporting the European Commission's proposal on country by country reporting, Denmark is in reality only advocating for partial country by country reporting. Since the reporting would not cover all countries, multinationals would still be able to hide their profits.

Although Denmark has relatively few tax treaties with developing countries, several of them qualify as so-called 'very restrictive treaties', which impose relatively strong limitations on the taxing rights of developing countries. This is an issue of concern.

As regards harmful tax practices, Denmark's limited liability companies continue to be an issue of concern, due to the fact that they can be used for international aggressive tax planning. However, it is positive that the government has announced its intention to close this loophole in the future.

Finally, it is problematic that the Danish government has opposed the establishment of an intergovernmental UN tax body, which would give developing countries a truly equal say in global decision-making on tax matters.

Finland

"The government is strongly committed, both nationally and internationally, to working against tax evasion and aggressive tax planning and to implementing legislative measures."

Government of Finland

May 2017 ⁶¹²

Overview

In Finland, 2017 has been another year marked by tax scandals. In March, the public broadcasting company Yle covered the role of Finnish banks and companies in the Russian Laundromat scandal in depth, showing that Finnish regulatory scrutiny of large-scale money laundering remains weak.⁶¹³ According to Yle, at least €19 million worth of laundered money from Russia ended up in Finland, with the lion's share – €16 million – flowing through the Nordic bank Nordea. When given the opportunity to comment on the allegations, Nordea declined.⁶¹⁴

The non-governmental organisation Finnwatch estimates that Finland loses between €430 million and €1.4 billion a year from aggressive tax planning by corporations.⁶¹⁵ According to Finnish tax expert Reijo Kostianen, even state-owned enterprises, such as the energy company Fortum, have engaged in tax avoidance – although this has previously been rejected by Fortum's Chair of the Board of Directors.⁶¹⁶

It remains unclear whether the government will enforce the ban on aggressive tax planning it imposed on state-owned companies in May 2016. This policy does not include a mechanism for overseeing that the ban is respected, nor does it introduce sanctions.⁶¹⁷

EU Common Consolidated Corporate Tax Base (CCCTB)

Finland has not yet agreed a position on an EU *Common Consolidated Corporate Tax Base*, as parliament has requested further information on the proposal's impact on Finnish businesses and tax revenue. The Finnish parliament fears that the suggested formula under the CCCTB for dividing corporate tax revenue is not in Finland's national interest. Parliament has doubts related to harmonising corporate taxation, and also on the part of the proposal that concerns establishing a common tax base in the EU.⁶¹⁸

Tax and development

Strengthening domestic revenue mobilisation is one of the key goals of Finland's development policy.⁶¹⁹ However, in March 2017, Finnwatch presented detailed evidence to document that publicly-owned development finance institution Finnfund had invested in a fund that exploited a tax ruling provided by Luxembourg to avoid taxes in Malaysia and Finland.⁶²⁰ In response to the allegations, Finnfund rejected the findings of the report, arguing that tax planning had not been aggressive.⁶²¹ Finnfund, however, committed to preparing guidelines that would be discussed with the Finnish Foreign Ministry and, among other things, specify in further detail its framework conditions relating to taxation and openness.⁶²² In September 2017, Finnfund invited comments on a discussion paper outlining its proposed tax policy.⁶²³

Finland is a member of the Addis Tax Initiative (ATI), in which donor countries have committed to doubling support for domestic resource mobilisation and taxation by 2020, as well as to ensuring policy coherence for development on the issue of taxation.⁶²⁴ One of the best tools to ensure policy coherence for development is a spillover analysis, which could assess the impact of Finnish tax policies and practices on developing countries. However, Finland currently has no plans to carry out such an impact assessment. In June 2017, the Ministry of Finance published a study assessing the impact of implementing BEPS actions on Finland,⁶²⁵ but not on developing countries. In its annual review, Finland's multi-stakeholder development policy committee called for a more coherent approach to tax and development policies.⁶²⁶

In 2016, Finland published an action plan on tax and development. This plan includes an objective of enhancing policy coherence for development on tax matters at the EU level, including by raising tax and development issues in the EU Council.⁶²⁷

Transparency

Public country by country reporting (CBCR)

On the issue of public country by country reporting, the Finnish government states its support for increased transparency, but remains concerned about the administrative burden the new rules could imply for corporations, arguing that it should not increase.⁶²⁸ Finland supports the European Commission's proposal on public country by country reporting, including the approach of requiring multinational corporations to disaggregate their data on a country by country basis for EU countries and blacklisted countries, but not for all countries.⁶²⁹ However, as explained in chapter 5.8.3 on 'Allowing citizens to know what multinationals pay in taxes', under this approach it would still be possible for multinationals to hide profits in tax havens that are not among those countries multinationals report on.

The government is not in favour of extending reporting requirements to include large multinationals with an annual turnover of less than €750 million.⁶³⁰

Finland has not contested the legal basis of the legislative proposal and considers public country by country reporting to be an accounting matter, only requiring approval by a qualified majority of EU member states.⁶³¹

The risk of tax avoidance and the need for more public country by country reporting have also been key points of discussion in relation to government plans for healthcare reform.⁶³² If the reform advances, the market for providing public services will be opened up to private companies, many of which are large multinationals. The government proposed in May 2017 to include public country by country reporting for large private health groups, but the proposal excluded key data needed to assess the level of business activity of a corporation, such as profits and number of employees.⁶³³ A revised draft is now under discussion and the government is expected to put forward a new proposal in March 2018, as the original proposal was rejected by parliament.⁶³⁴

In May 2016, the government also committed itself to updating the very weak guidelines for public country by country reporting by state-owned enterprises.⁶³⁵ The current guidelines have, among other things, been criticised for being too narrow and unclear in their requirements, as well as for giving corporations the opportunity to 'comply or explain', resulting in reports that were limited in scope and incommensurable.⁶³⁶ However, in September 2017, the government stated that it had no plans to revise the guidelines until negotiations on public country by country reporting were concluded at EU level.⁶³⁷

Ownership transparency

In June 2016, parliament approved laws transposing the 4th Anti-Money Laundering Directive (AMLD).⁶³⁸ Information on the beneficial owners of companies and other legal entities such as foundations will be made public, and accessible free of charge. However, the deadline for submitting information to the corporate register is not until July 2020.

A person is considered a beneficial owner when owning more than 25 per cent of the legal entity, or in other ways exercising 'effective control'. Directors are considered as beneficial owners if the real beneficial owner cannot be identified.⁶³⁹ Thus, loopholes in the legislation remain. When approving the laws, the Finnish parliament required that the government should, in the context of the implementation of the next AMLD, evaluate whether the ownership threshold is sufficient to ensure that it is not easily circumvented.⁶⁴⁰

Finland supports the Commission's proposal to revise the 4th AMLD, and to increase beneficial ownership transparency. However Finnish legislation does not recognise trusts, and the government takes no position on transparency regarding these legal entities.⁶⁴¹

A recent change in legislation will weaken shareholder transparency in companies included in the book-entry system, which is used to keep track of the ownership of shares. All publicly listed companies are included. Until now, Finnish citizens have only been allowed to own shares directly, with up-to-date data on ownership publicly available at the central securities depository. In May 2017, however, parliament passed a law that allows Finnish companies to issue shares through foreign depositories that allow the nominee registration of shareholdings. In these cases, only the name of the account manager – for example, a bank – will be available, instead of the name of the actual shareholder.⁶⁴² The government claimed that the change was required by the EU regulation on central securities depositories, but this has been rejected by the European Commission.⁶⁴³

Taxation

Tax treaties

Tax treaties concluded by Finland have articles along the lines of both the OECD and UN model treaties. All tax treaties are subject to approval by parliament.⁶⁴⁴ Although in the past an anti-abuse clause has not been systemically included in tax treaties, several treaties do in fact include such a clause.⁶⁴⁵

A new treaty with Turkmenistan was agreed in December 2016, and took force in February 2017.⁶⁴⁶

In total, Finland has 37 tax treaties with developing countries, which is below the average (41.77) among the countries covered in this report.⁶⁴⁷ The average reduction of tax rates within those treaties is 3.01 percentage points, which is also below the average (3.39 percentage points) among the countries covered in this report.⁶⁴⁸

Finland is not planning to assess the spillover effects of its tax treaties with developing countries.⁶⁴⁹

International commitments

In June 2017, Finland signed up to the OECD's BEPS Convention.⁶⁵⁰ However, the government at the same time submitted a quite high number of reservations to the Convention. Out of the 11 articles that civil society organisations have called on governments to adopt, Finland has opted out of nine (see table 7 in chapter 5.1.2 on 'Tax sudoku – the OECD's BEPS Convention'). At the same time, Finland has opted in to both of the articles that civil society organisations have warned against, including article 18 on secret binding arbitration (see chapter 5.1.2 on 'Tax sudoku – the OECD's BEPS Convention', including table 8).

Tax rate and practices

A report by the government-commissioned working group on corporate taxation concluded that Finland's corporate income tax rate of 20 per cent was 'competitive' at the moment.⁶⁵¹ There are no plans to lower the corporate income tax rate, but the government is keeping a close eye on developments elsewhere in Europe, the United States and other OECD countries.⁶⁵² Thus, the misconception of achieving competitiveness through corporate tax cuts remains strong in Finland.

Some measures to address aggressive tax planning have proven effective. A study shows that the effective tax rate of multinational healthcare companies increased from 11 to 16 per cent between 2011 and 2015, although the nominal tax rate dropped during this period. Behind this is most likely the combination of negative publicity due to aggressive tax schemes, and an interest deduction limitation that was introduced in 2014.⁶⁵³ Another study, by the VATT Institute for Economic Research, showed that the interest deduction limitation has been an effective tool against aggressive tax planning.⁶⁵⁴

According to a study commissioned by the government, tax subsidies influencing business activity amounted to around €6 billion in 2015. Of these, value added tax (VAT) accounts for around €3 million and excise duty tax for around €2 million, with the remainder being various business tax subsidies. The study also found that a broad tax base is a better means of supporting growth than tax subsidies.⁶⁵⁵

Tax rulings

Finland offers advance tax rulings that define how the law is interpreted in a specific case, as well as unilateral, bilateral and multilateral advance pricing agreements (APAs).⁶⁵⁶ According to data from the European Commission, Finland had 24 APAs in force at the end of 2015, of which 23 were unilateral.⁶⁵⁷

Global solutions

The government does not support an intergovernmental UN tax body.⁶⁵⁸ The Development Policy Committee recommended in its annual review that Finland should promote developing countries' participation in decision-making on tax matters and '*support developing countries in their efforts to present their case in processes led by the OECD/G20 and more generally in the United Nations, where developing countries are able to participate in the processes on a more equal basis*'.⁶⁵⁹

In 2016, parliament proposed that the government should explore opportunities to strengthen the UN's Tax Committee.⁶⁶⁰

Conclusion

On a rhetorical level, the government in Finland appears committed to combatting tax avoidance and increasing transparency. However, closer scrutiny of the policy positions taken on key EU and national processes demonstrate a tendency by the Finnish government to sometimes prioritise the interests of big corporations over those of broader society. This includes Finland's position on public country by country reporting, where the government has so far not been willing to support a proposal for multinational corporations to publicise data on their business activities and tax payments for all countries where they operate. Instead, Finland supports the European Commission's proposal, which would mean that only parts of the data will be published on a country by country basis.

On the issue of the real – beneficial – owners of companies, Finland is among the group of EU countries that have committed to setting up a public register, which is very positive. Unfortunately, the timeline for setting up the register is relatively long. At the same time, the government has taken steps to undermine the previously progressive policies Finland had in terms of public access to shareholder information.

Finland has relatively few tax treaties with developing countries, and the average reduction of developing country tax rates introduced through those treaties is below average among the countries covered in this report. While this makes Finland's tax treaty network less concerning than certain other European countries, this does however not make it harmless.

As regards tax practices, Finland has a significant amount of unilateral advance pricing agreements with multinational corporations. As mentioned in chapter 4.4.1 on 'The problem with advance tax agreements', these agreements are normally signed 'in advance', which means that the tax administration approves transfer pricing matters before having been able to inspect the tax return and country by country report of the multinational corporation in question. Furthermore, there are also numerous examples of such agreements having been used by multinational corporations to avoid taxation. Therefore, this is concerning.

Despite having committed to policy coherence for development, Finland has not considered the impact its tax policies may have on developing countries. The government also does not support the establishment of an intergovernmental UN tax body, which would give developing countries a truly equal say in global decision-making on tax matters.

Germany

"Why does every master baker of Wittenberg pay higher tax rates than big corporations in Europe?"

Sigmar Gabriel

Former Federal Minister of Foreign Affairs⁶⁶¹

Overview

Corporate taxation has continued to be a topic of major debate in Germany this year, and several new laws have been adopted in order to combat tax evasion and avoidance. In 2017, the German government implemented a new law to prevent the use of letterbox companies in tax havens, introducing tighter reporting obligations for domestic taxpayers and intermediaries for their offshore holdings.⁶⁶²

New legislation to address the harms associated with patent boxes was introduced, limiting the ability of multinational corporations to shift profits via royalty payments to low-tax jurisdictions with patent regimes.⁶⁶³ Germany also implemented the 4th Anti-Money Laundering Directive (AMLD),⁶⁶⁴ including a register of the real – beneficial – owners of companies, as well as internationally agreed reforms on automatic exchange of information⁶⁶⁵ and (non-public) country by country reporting for multinationals.⁶⁶⁶

While these reforms are important steps towards a fairer tax system, the new rules frequently contain shortcomings or loopholes. For example, the definition of beneficial ownership was watered down in the adoption of the 4th AMLD, an initial proposal to allow public access to the register was ultimately dropped, and new reporting obligations on the ownership of shell companies were limited to companies outside the EU.⁶⁶⁷

However, at the same time, the need for transparency around the real owners of shell companies has been very evident in Germany. During the 'Russian Laundromat' scandal, the Organized Crime and Corruption Reporting Project alleged that between 2010 and 2014, over US \$60 million⁶⁶⁸ from Russia had ended up in German banks, after having been laundered through Moldova with help from a Latvian bank and a sophisticated system of shell-companies with fake 'nominee' directors.⁶⁶⁹

Another new scandal meanwhile dominated German headlines, when it was revealed that the German tax authorities allegedly lost billions of Euros due to trickeries by bankers and brokers to manipulate tax payments and refunds.⁶⁷⁰ Referred to as the 'cum ex' and 'cum cum' trading scandal, investigations by German media led them to conclude that over 100 German and foreign financial institutions, including several large well-known commercial banks, were under suspicion for exploiting a legal loophole that allowed shareholders to claim double ownership of the same shares.⁶⁷¹ Double ownership allowed multiple shareholders to claim tax rebates from the German government, and although the loopholes were closed in 2012 and 2016, one economist estimated that the illicit tax refunds may have cost the state up to €31.8 billion.⁶⁷²

A final report by an inquiry committee established by the Bundestag concluded that the tax tricks were illegal, but the parties represented in the committee disagreed on who was to blame for the fact that these illegalities had been allowed to occur in the first place.⁶⁷³ The scandal incited not just debates on the state of tax justice in Germany, but also on the influence of the business lobby in helping to draft national legislation.⁶⁷⁴

EU Common Consolidated Corporate Tax Base (CCCTB)

Meanwhile on the European front, the German government has, in principle, backed the initiative to re-launch the proposal to establish a Common Consolidated Corporate Tax Base (CCCTB) in the EU. However, it has also called for pragmatism, backing the 'two-step' approach as put forth by the European Commission.⁶⁷⁵ An agreement reached by the former government coalition in 2013 mentions support for a 'Common Corporate Tax Base', but offers no common coalition position on the second step of 'Consolidation'.⁶⁷⁶

In 2011, when discussions were ongoing on the previous CCCTB proposal, the government expressed concerns that Germany would lose revenue in a consolidated framework.⁶⁷⁷ At an Economic and Financial Affairs Council (ECOFIN) hearing in 2017, former German Finance Minister Wolfgang Schäuble said that many technical problems remain with the CCCTB proposal, and cautioned that 'we should be careful to raise too high expectations'.⁶⁷⁸

Tax and development

In terms of capacity development in developing countries, the Ministry for Economic Co-operation and Development (BMZ) funds regional networks such as the African Tax Administration Forum and the Inter-American Centre of Tax Administrations, with the declared goal of giving developing countries a stronger voice in the international tax debate.⁶⁷⁹ In 2017, the Ministry of Finance also launched a programme of cooperation with Jamaica's tax administration within the framework of Tax Inspectors without Borders.⁶⁸⁰

Furthermore, BMZ supports the International Tax Compact,⁶⁸¹ and Germany has joined the Addis Tax Initiative (ATI).⁶⁸² In the ATI framework, donor country governments have committed to doubling the resources spent on supporting domestic resource mobilisation by 2020 as compared to the 2015 level, as well as ensuring policy coherence for development (see chapter 5.7 on 'Capacity development and technical assistance to developing countries').

Despite its ATI commitment, the German government has no explicit strategy for promoting policy coherence for development. BMZ works on improving interdepartmental coordination,⁶⁸³ and regularly works together with the Federal Ministry of Finance on issues such as fighting tax evasion, tax treaties and increasing foreign direct investment by German companies.⁶⁸⁴ Aspects of policy coherence can be found in the government's strategy for sustainable development. However, tax policy is not mentioned there.⁶⁸⁵

Transparency

Public country by country reporting (CBCR)

The former German government was opposed to public country by country reporting, and there are so far no indications that the new government will take a different position. In a hearing before the Committee of Inquiry into Money Laundering, Tax Avoidance and Tax Evasion (PANA), former Finance Minister Schäuble stressed that the European Union should not go beyond the BEPS agreement, as this might undermine countries' willingness to reach further global agreements.⁶⁸⁶

As explained in chapter 5.1.1 on 'BEPS and transparency', the BEPS rules only introduce non-public CBCR, where multinational corporations send confidential reports to tax authorities. In a 2015 written statement to a parliamentary question, the government justified its opposition to public country by country reporting, stating that such information was not helpful for tax purposes and should be rejected due to concerns about commercial competitiveness, as well as to preserve tax confidentiality.⁶⁸⁷

Whistleblower protection

Only certain types of whistleblowers in Germany are protected under the Financial Services Supervision Act ('Finanzdienstleistungsaufsichtsgesetz'),⁶⁸⁸ which covers banks, insurance companies and other financial institutions. However, this act does not cover audit firms, an exclusion that has in the past been criticised by opposition members of parliament.⁶⁸⁹ The German Whistleblower Network has also criticised Germany for having no general law for whistleblower protection.⁶⁹⁰ The government announced in 2013 that it would review whistleblower legislation, but so far has not done so.⁶⁹¹

Ownership transparency

On 26 June 2017, the new Anti-Money Laundering Act ('Geldwäschegesetz')⁶⁹² entered into force in Germany, transposing the 4th Anti-Money Laundering Directive (AMLD) into national law. The Transparency Register introduced through this act required all German corporations, partnerships and trusts managed by German trustees to report their beneficial ownership information by 1 October 2017.⁶⁹³

When the draft law was first presented in December 2016, public access to beneficial ownership information was considered.⁶⁹⁴ However, following further consultation and pressure from business, this decision was reversed by the German Ministry of Finance when it officially published the draft law in February 2017.⁶⁹⁵ The ultimate law that was adopted will restrict the scope of access to public authorities, banks and those with a legitimate interest.⁶⁹⁶ Under German law, the minimum threshold determining beneficial ownership is 25 per cent of shares or voting rights, or similar methods of control.⁶⁹⁷ In cases where no beneficial owner can be identified, a legal representative or managing partner can be listed as the beneficial owner instead.⁶⁹⁸

A further weakness in the law is that the reporting obligation will only be placed on companies or shareholders where the companies are directly controlled by the beneficial owner. In situations of indirect control, for instance where beneficial ownership is held through several layers of legal entities, the German legal entity will have no obligation to identify the ultimate beneficial owner. Instead, the obligation is placed on beneficial owners to report themselves.⁶⁹⁹

After elections in September 2017 the Christian Democrats are once again the biggest party.⁷⁰⁰ It is not yet clear which parties will form the next government, and therefore also not clear how it will position itself on the issue of introducing public registers of beneficial owners through the 5th AMLD, which is currently being negotiated in the EU (see chapter 5.8.4 on 'Hidden ownership'). However, the outcome of the recent debate about the 4th AMLD indicates that there is substantial resistance towards public beneficial ownership registers in Germany.

Taxation

Tax treaties

The German government is currently negotiating treaties for the first time with Angola, Ethiopia, Botswana, Hong Kong, Jordan, Qatar, Colombia, Nigeria, Rwanda, Senegal, Serbia and Tanzania. It is also negotiating revisions or revision protocols with Argentina, Bangladesh, Bolivia, India, Kyrgyzstan, Republic of Korea, Kuwait, Liberia, Namibia, Tajikistan and Vietnam.⁷⁰¹

For these treaty negotiations, Germany uses its own model agreement (officially called a 'negotiation basis' and publicly available since 2013).⁷⁰² The German model agreement mainly follows the OECD model to determine taxing rights, and the German basis for negotiations does not provide for taxation at source of interest and royalties.⁷⁰³ This is problematic for developing countries, which are often the source of income, but rarely the residence country of multinational corporations or investors. Therefore, it is difficult for them to claim taxing rights under the OECD model, which favours taxing rights for residence countries over source countries.⁷⁰⁴ The UN has developed an alternative model, which makes it easier for developing countries to claim taxing rights,⁷⁰⁵ and there does seem to be some limited possibilities for developing countries to use this model in negotiations with Germany. However, only two of the more recent treaties, with the Philippines and Taiwan, are based on the UN model.⁷⁰⁶

Existing tax treaties with developing countries usually provide for some limited taxation at source.⁷⁰⁷ However, following a full assessment of the content of the treaties, 10 of Germany's tax treaties with developing countries were ranked by ActionAid as being 'very restrictive' treaties, which give particular cause for concern due to the strong restrictions they impose on the taxing rights of developing countries (see also table 5 in chapter 4.5 on 'Bilateral tax treaties').⁷⁰⁸

In total, Germany has 55 tax treaties with developing countries – the second highest number among all the countries covered in this report.⁷⁰⁹ The average reduction of developing country tax rates within those treaties – 3.57 percentage points – is above the average (3.39 percentage points) among the countries covered in this report.⁷¹⁰

The German government has not published a spillover analysis on the impacts of its double taxation treaties on developing countries, and has not announced any plans to do so.

International commitments

In light of Germany's relatively progressive profile on corporate tax avoidance, it can seem strange that Germany has opted out of five of the elements of the OECD BEPS Convention that civil society has called for the adoption of (see table 7 in chapter 5.1.2 on 'Tax sudoku – the OECD's BEPS Convention'). At the same time, Germany has opted in to the articles that civil society organisations have warned against, including secret binding arbitration (see chapter 5.1.2 on 'Tax sudoku – the OECD's BEPS Convention', including table 8).

Tax practices

There is no indication that Germany is currently promoting itself as a good place for corporate tax avoidance. However, discussions are ongoing about introducing a tax incentive for research and development activities. In early 2017, the government proposed such research and development tax relief,⁷¹¹ but it was ultimately blocked (at least temporarily) by the Ministry of Finance.⁷¹² In their political manifestos for the German federal election, several political parties brought the issue back by committing to introducing this kind of incentive if elected.⁷¹³

In 2015, the German Federal Ministry of Economic Affairs and Energy also considered implementing a new fiscal incentive for equity financing.⁷¹⁴ While these reforms have not yet been implemented, they could be considered again following the outcome of the German federal elections.

In 2015, a report commissioned by the European Commission identified no active aggressive tax planning (ATP) indicator for Germany, i.e. no indicator '*which can directly promote or prompt an ATP structure*'. However, certain passive ATP indicators were identified, i.e. those that do not by themselves promote or prompt any ATP structure, but that are '*necessary in order not to hinder or block an ATP structure*'.⁷¹⁵ However, these kinds of structures were found in nearly all EU member states.⁷¹⁶

Tax rates

The corporate income tax rate in Germany is 15 per cent, but a number of regional and other additional taxes are added, which bring the combined corporate income tax rate up to above 30 per cent.⁷¹⁷ The government has not announced any concrete plans to change the corporate tax rate.

Jarass et al (2017) calculate the ratio of corporate tax payments to corporate profits derived from national accounts, and find an effective tax burden for corporations in Germany of below 15 per cent.⁷¹⁸ A comparative study of effective average and marginal tax rates based on micro-simulations (forward-looking concepts) suggested an average effective tax rate of about 28 per cent, and an effective marginal tax rate of 22.5 per cent for 2013.⁷¹⁹

Tax rulings

Taxpayers in Germany are able to apply for bilateral advance pricing agreements (APAs) at the Federal Central Tax Office for a fee of €20,000.⁷²⁰ As explained in chapter 4.1.1. on 'The problem with advance tax agreements', bilateral APAs involve more than one country, and in order to qualify for an APA, taxpayers are required to apply simultaneously in Germany and in the partner country.⁷²¹

While applicants are not involved in negotiations between competent authorities about the outcome of their APA application, they are kept regularly informed about the state of the procedure.⁷²² Following the signing of an APA with a foreign state, the German Federal Tax Office 'informs the domestic taxpayer about the negotiation outcome and asks to approve the content of the APA'.⁷²³ According to data from the European Commission, Germany had 25 bilateral APAs in force at the end of 2015.⁷²⁴

By law, unilateral APAs do not exist in Germany, and advance agreements on tax liability between tax authorities and taxpayers are prohibited. However, other types of agreements between tax authorities and taxpayers (such as, '*Tatsächliche Verständigung*', '*Verbindliche Auskunft*' and '*Verbindliche Zusage*') have been suspected to provide scope for unilateral deals, even though this was not their original purpose.⁷²⁵ Information on concluded agreements is not publicly available. However, the fact that the reported number of requested and agreed APAs is surprisingly low has aroused suspicion that a relevant number of agreements might fall into these unreported categories.⁷²⁶

Global solutions

The previous German government did not support the establishment of an intergovernmental UN tax body,⁷²⁷ and there is no indication that the new government will take a different position.

Conclusion

The German government has committed itself to countering tax evasion and corporate profit shifting, and has taken some important steps towards this at the national and international levels. At the same time, it has emerged as a determined opponent of fiscal transparency, and has undermined progress on key demands from tax justice movements to support public country by country reporting and the establishment of a public register of beneficial ownership.

There is no indication that Germany's tax system is currently being used by multinational corporations wishing to avoid taxation, and the government has not announced any intention to join the global 'race to the bottom'⁷²⁸ by lowering the corporate tax rate.

Germany's tax treaties with developing countries remain an issue of concern, both due to the high number of treaties, and the fact that restrictions imposed on the taxing rights of developing countries through those treaties are relatively high. Of particular concern are the numerous 'very restrictive' treaties that Germany has signed with developing countries. The fact that a high number of new treaties are currently being negotiated makes it even more relevant for Germany to do a thorough assessment of the negative impacts its tax treaties can have on developing countries, and ensure that such negative impacts are avoided.

Finally, it is of concern that the German government has opposed the establishment of an intergovernmental UN tax body, which would give developing countries a truly equal say in global decision-making on tax matters.

Hungary

"We have introduced a flat rate for corporation tax – which now stands at nine per cent – and a 15 per cent rate for personal income tax, which is also now a flat rate tax."

Viktor Orban
Hungarian Prime Minister⁷²⁹

Overview

In 2017, the most significant change in Hungarian tax regulations was the reduction in the corporate income tax rate.⁷³⁰ The Prime Minister announced in November 2016 that, as of 2017, corporate taxes would be slashed across the board to just nine per cent.⁷³¹ Although the announcement was sudden, it did not come completely out of the blue. Experts have been speculating for a while that the Hungarian government wants to turn the country into a regional 'Luxembourg', with the aim of attracting more foreign capital into the country.⁷³² At the same time, official statements suggest that a desire to offset pressure for corporations from rising wages also played a significant role in the decision.⁷³³

It is expected that the central budget will lose revenues in the range of HUF 145-170 billion (€464-544 million),⁷³⁴ which amounts to roughly 0.4 per cent of Hungary's GDP.⁷³⁵

In August 2017, tax incentives for multinational companies in Hungary suddenly became the centre of public attention, as a result of a ruling by Hungary's high court, the Curia. In April, the court issued a ruling which specifies that tax relief to companies are public funds, and that information about such incentives should be disclosed.⁷³⁶ To comply with the court decision, which was the result of three years of litigation, the government in August made public a list of tax credit deals it had offered multinational corporations in Hungary between July 2012 and August 2014. The data showed that, during the roughly two-year period, five multinational corporations received HUF 80 billion (€256 million) in tax relief.⁷³⁷

The biggest tax exemption, amounting to almost HUF 40 billion (€128 million) – nearly half the total amount in question – was granted to Audi Hungária Motor Ltd (now called Audi Hungária Inc). According to the Ministry for National Economy, the reason for this tax credit was an investment by the company in excess of HUF 3 billion (€9.6 million). The recipient of the second-highest tax credit was Hankook Tire Magyarország Ltd, which was exempt from payment of HUF 17 billion (€54.6 million) in taxes, again based on the investments it had made. The Dunaújváros-based Hamburger Hungária Erőmű Ltd received a tax credit of HUF 8.87 billion (€28.6 million) based on its environmental investments. The Ministry for National Economy awarded Bridgestone Tatabánya Termelő Ltd HUF 6.6 billion (€21.2 million) and ZF Lenksysteme Hungária Ltd, a supplier of automotive parts, HUF 6.3 billion (€20.2 million). This latter award was in return for investing in the municipality of Maklár, which had been designated as the preferred target of such investments in a ministerial decree.⁷³⁸

Another multinational corporation that has caught attention is General Electric (GE). In 2015, the Hungarian branch of GE bought a Swiss GE subsidiary from GE in the Netherlands for a price of CHF 40,000 (€37,000).⁷³⁹ However, on the same day, one hour later in fact, GE in Hungary sold the Swiss subsidiary back to GE in the Netherlands at a value that was over 150,000 times higher – HUF 1860 billion (€5.9 billion). Furthermore, during the hour where the Swiss subsidiary was owned by GE in Hungary, the Swiss subsidiary purchased access to customer files, patents and control instructions from GE in Hungary, at a total price of HUF 2,360 billion (€7.5 billion).⁷⁴⁰ The end result was a skyrocketing amount of profits made by GE in Hungary.⁷⁴¹ Meanwhile, Swiss media has estimated that up to CHF 1.5 billion (€1.4 billion) worth of tax payments were lost to Switzerland due to the trade that the Swiss subsidiary did with GE in Hungary.⁷⁴²

Earlier in 2015, the Hungarian parliament had adopted a special 'growth tax credit'.⁷⁴³ This credit applies to companies which from one year to the next experience a minimum six-fold increase in their profits. In 2014, GE in Hungary has reported a large loss, and thus the enormous amount of profits in 2015 meant that GE in Hungary met this requirement. The Hungarian research platform Atlatso estimated that GE in Hungary paid at most two per cent in tax on the profits.⁷⁴⁴

In response to the allegations, GE has underlined that the corporation has complied with all tax laws and legal systems.⁷⁴⁵ Furthermore, GE has stated that the rights, technology and inventory, which the Swiss subsidiary purchased from GE in Hungary, were sold at market prices that had been independently verified. Lastly, GE has underlined that the transactions were all discussed with the tax administrations in both Hungary and Switzerland ahead of being carried out.⁷⁴⁶

When it comes to value added tax (VAT), Hungary is strengthening its efforts to prevent tax evasion. A modification of Invoicing Decree No. 23/2014 means that the invoicing software of businesses will be required to have a direct data connection with the Hungarian tax authority in order to report sales data in real-time.⁷⁴⁷ This liability will apply to Hungarian business-to-business invoices on which VAT of at least HUF 1 million (€3,190) is charged.⁷⁴⁸ The system was to be introduced on 1 July 2017. However, in April 2017 the Ministry for National Economy announced that it will be postponed until 1 July 2018.⁷⁴⁹

EU Common Consolidated Corporate Tax Base (CCCTB)

Hungary is sceptical about the European Commission's proposal for a CCCTB. At an Economic and Financial Affairs Council (ECOFIN) hearing, the Hungarian government said that member states' tax systems are very different, and that flexibility must be maintained in order to ensure the competitiveness of the European Union.⁷⁵⁰

Tax and development

As regards technical assistance to developing countries, Hungary is one of six countries (with Austria, South Korea, China, Mexico and Turkey) where the OECD operates a Multilateral Tax Centre that promotes knowledge- and experience-sharing in the area of international taxation, tax policies and tax training.⁷⁵¹

The principle of policy coherence for development is not comprehensively applied in governmental decision-making. Even though an international development strategy was adopted in 2014,⁷⁵² which refers to policy coherence for development, taxation is not mentioned in this context, and there seems to be no concrete efforts on the government's side to ensure policy coherence for development on the issue of taxation.

Hungary does not plan to carry out any impact assessments on how its tax policies impact on developing countries.⁷⁵³

Transparency

Public country by country reporting (CBCR)

Hungary's position on public country by country reporting is unknown.

In line with EU requirements, Hungary introduced public country by country reporting for banks in 2013.⁷⁵⁴

Ownership transparency

As regards the transparency of beneficial owners of companies, the Hungarian national assembly has adopted Act LIII of 2017 on the Prevention and Combating of Money Laundering and Terrorist Financing.⁷⁵⁵ As a result, law enforcement agencies will have unlimited access to a beneficial ownership registry. Others can also request access to data from the registry, provided they can prove they have a legitimate interest in the information.⁷⁵⁶ 'Beneficial owner' is defined as a person owning a minimum of 25 per cent of the company, or who is exercising control through other means.⁷⁵⁷ The government decree that will detail the underlying rules has not yet been adopted.

Taxation

Tax treaties

In total, Hungary has 34 tax treaties with developing countries, which is well below the average (41.77) among the countries covered in this report.⁷⁵⁸ The average reduction of tax rates within those treaties is 3.23 percentage points, which is also below the average (3.39 percentage points) among the countries covered in this report.⁷⁵⁹

The Hungarian Prime Minister recently authorised negotiations on double taxation treaties with Sri Lanka and Panama, as well as other Latin American and African countries.⁷⁶⁰

The government says it has no plans to review its current agreements.⁷⁶¹ The whole government, including the Ministry for Foreign Affairs and Trade, is involved in finalising double taxation treaties, and the national assembly must ratify all international agreements; civil society tends not to be involved.

International commitments

In June 2017, Hungary signed on to the OECD's BEPS Convention.⁷⁶² However, the government at the same time submitted a very high number of reservations to the Convention. Out of the 11 articles that civil society organisations have called on governments to adopt, Hungary has opted out of 10 (see table 7 in chapter 5.1.2 on 'Tax sudoku – the OECD's BEPS Convention'). As regards the articles that civil society has warned against, Hungary has opted out of one, namely article 18 on secret binding arbitration (see chapter 5.1.2 on 'Tax sudoku – the OECD's BEPS Convention', including table 8).

Patent box

In July 2016, the Hungarian government introduced a reformed patent box regime in line with the OECD's BEPS rules.⁷⁶³ This entailed a narrowing of the type of intellectual property rights that can qualify for the tax advantage.⁷⁶⁴ After the government lowered the corporate income tax rate last year, companies in Hungary can now obtain an effective corporate tax rate as low as 4.5 per cent for their qualifying income related to intellectual property.⁷⁶⁵ For direct costs of fundamental research and certain other expenses, the patent box regime also awards a 'super deduction', meaning that 200 per cent of the costs can be deducted.⁷⁶⁶

Tax benefits granted under the old patent box regime will continue to apply until 30 June 2021.⁷⁶⁷

Tax rate

As from 1 January 2017, the corporate income tax rate in Hungary was reduced to nine per cent – the lowest current rate on offer within the European Union.⁷⁶⁸ Under the previous tax code, corporate incomes were taxed at a 10 per cent rate for profits below HUF 500 million (€1.6 million), and at a separate rate of 19 per cent for any profits above this level.⁷⁶⁹ Announcing the measure, the Hungarian Economy Minister Mahily Varga said that government reserves of up to HUF 200 billion (€642 million) could cover any costs of the measures.⁷⁷⁰

Advance pricing agreements (APAs)

The Hungarian tax system provides taxpayers with the opportunity to apply for general advance tax rulings, as well as advance pricing agreements – both of which are binding for the tax authorities after issuance, unless the circumstances change or the critical assumptions are not met.⁷⁷¹

Hungary offers unilateral, bilateral and multilateral APAs.⁷⁷² Data from the European Commission shows that Hungary had 70 APAs in force at the end of 2015, of which all were unilateral.⁷⁷³

Global solutions

Hungary's position on the issue of establishing an intergovernmental UN tax body is not clear, but is open for discussion. The Ministry for National Economy emphasises that '*inefficient duplication should be avoided*' and that '*Hungary would like to enhance its engagement with the UN in the field of taxation*'.⁷⁷⁴

Conclusion

When it comes to corporate taxation, developments in Hungary are extremely concerning. Not only has the government introduced the lowest corporate tax rate in all of the EU. Hungary also continues to have a number of harmful tax practices, including tax reliefs granted to large multinational corporations, and a patent box regime that can be used to obtain an effective corporate tax rate as low as 4.5 per cent.

Hungary has relatively few tax treaties with developing countries, and the average reduction of developing country tax rates introduced through those treaties is below average among the countries covered in this report. Seen in isolation, Hungary's tax treaty network is thus less concerning than certain other European countries. However, seen in the context of Hungary's very low corporate tax rate, as well as the harmful tax practices on offer, there is a significant risk that multinational corporations will seek to move their profits to Hungary to lower their tax bill. Hungary's tax treaties can provide avenues for shifting profits to Hungary without occurring much withholding tax, and thus, they can become part of a bigger problem.

On the issue of transparency, it is concerning that the Hungarian register of real – beneficial – owners of companies will not be open to the public. Meanwhile, the government's position on public country by country reporting is currently unknown.

On the issue of establishing an intergovernmental tax body under the UN, Hungary seems to be undecided.

Ireland

'We need to acknowledge the negative influence our former tax policies have had on developing countries and move forward expecting more from ourselves.'

Minister Katherine Zappone

Speaking at the Irish government summit 'Corporate Tax: Fairness, Responsibility and Leadership', February 2017⁷⁷⁵

Overview

At a tax summit in February 2017, Ireland's then Minister of Finance Michael Noonan said that the Irish government was 'willing to take action where needed to amend our corporate tax residence rules to prevent companies exploiting mismatches between our rules and the rules in other countries'.⁷⁷⁶ But despite such rhetoric, a number of concerns remain regarding Irish tax policies and practices.

On 30 August 2016, following a two-year investigation, the European Commission concluded that Ireland had given tax benefits to the tech giant Apple that were illegal under EU State Aid rules.⁷⁷⁷ The European Commission found that two tax rulings issued by the Irish government to Apple gave the multinational a selective tax advantage, allowing Apple to pay substantially less tax than other businesses in Ireland. It also decided that Ireland would be required to recover around €13 billion in illegal aid from the tech giant.

Shortly thereafter, the Irish government announced that it would appeal against the European Commission's decision, but in parallel committed itself to an independent review of Ireland's corporate tax code.⁷⁷⁸ Ireland also committed to holding a summit on corporate tax fairness, which took place in February 2017.⁷⁷⁹ The undertakings to review the Irish tax code and hold a summit were at the insistence of independent members of parliament who form part of the current government coalition.⁷⁸⁰

In October 2017, the European Commission referred Ireland to the European Court of Justice for its failure to recover the around €13 billion of tax due from Apple to the Irish government.⁷⁸¹ The deadline set by the European Commission for returning illegal state aid was 3 January 2017, and while Ireland had taken initial steps to recover the money, progress was assessed as insufficient by the Commission.⁷⁸² At the time of writing, it is anticipated that the Irish government will collect the money by March 2018.⁷⁸³ The funds will be held in escrow until the outcome of the Irish and Apple appeals at the European Court of Justice, a process that is likely to take four to six years.⁷⁸⁴

On 14 September 2017, Ireland's Ministry of Finance published the Independent Review of the Irish Corporate Tax Code, which was ordered in the wake of the Apple state aid case. The review recommended that Irish tax policy should continue to deliver tax certainty for business. It also included a recommendation to ensure that the Irish tax code does not provide preferential treatment to any single taxpayer, and called on Ireland to implement its commitments under the OECD BEPS programme.⁷⁸⁵ On 10 October 2017, Irish Finance Minister Paschal Donohoe re-affirmed Ireland's commitment to the 12.5 per cent corporate tax rate, stating in front of parliament that it 'will remain a core part of our offering'.⁷⁸⁶

EU Common Consolidated Corporate Tax Base (CCCTB)

The Irish government's official position on the proposal to establish a common consolidated corporate tax base (CCCTB) in the EU is that they are actively engaging in the technical debate while analysing whether it is in Ireland's long term interest. The Department of Finance states that the issue of consolidation has not yet begun to be debated and will not even be discussed by member states unless and until a common tax base can first be agreed.⁷⁸⁷ The Irish parliament was one of seven parliaments in EU countries that raised objections to the CCCTB in early 2017.⁷⁸⁸ Later in January, EU Commissioner Pierre Moscovici's visit to Ireland included a discussion on the CCCTB, where he tried to reassure the Department of Finance that it would not narrow Ireland's tax base.⁷⁸⁹

Tax and development

Irish Aid – Ireland's official development agency – provides financial assistance to the African Tax Administration Forum, which aims to improve the performance of tax administration in Africa. It also supports the OECD Task Force on Tax and Development, which discusses issues related to tax and development.⁷⁹⁰ Ireland is an Addis Tax Initiative (ATI) development partner, having joined in 2017.⁷⁹¹

The ATI contains commitments regarding taxation and policy coherence for development.⁷⁹² According to *One World One Future* – Ireland’s policy for international development – a report on Ireland’s progress on policy coherence for development should be prepared every two years.⁷⁹³ However, there has been no such report since the publication of *One World One Future* in 2013. The most recent report on the issue, which is from 2012, measures Ireland’s progress on policy coherence for development on taxation through an the indicator that maps whether or not Ireland has signed a double taxation agreement with Irish Aid partner countries.⁷⁹⁴ However, as explained in chapter 4.5 on ‘Bilateral tax treaties’, such agreements can be damaging to developing countries, and several of the treaties between Ireland and developing countries impose strong limitations on the taxing rights of the developing countries that have signed them (see also below under ‘Tax treaties’).

The government commissioned a spillover analysis on the potential impact of Irish tax policies on developing countries, and published this with the 2015 budget.⁷⁹⁵ This was widely welcomed by civil society groups and will prove to be an important baseline.⁷⁹⁶ However, there were a number of omissions, including failing to analyse how Ireland’s tax code impacts on developing countries when used in combination with other states, especially European countries such as Luxembourg and the Netherlands. The LuxLeaks revelations highlight that Ireland’s interaction with Luxembourg can be an important aspect of aggressive tax planning by companies, some of which may have operations in developing countries. There were also significant omissions of information such as data on special purpose entities (SPEs), which can play a key role in tax avoidance. The spillover analysis also did not take into account whether Ireland’s corporate tax rate has had a knock-on effect on driving down developing country rates.⁷⁹⁷

As highlighted below, ActionAid has concluded that three of the tax treaties that Ireland currently has with developing countries are so-called ‘very restrictive’ treaties. Two of these treaties (signed with Zambia and Pakistan) are both the outcome of renegotiations that took place after the spillover analysis had been finalised.⁷⁹⁸ The third one, with Ethiopia, was signed in 2014 and not covered by the quantitative assessments in the spillover analysis, which focused on the years 2009 to 2012.⁷⁹⁹

Transparency

Public country by country reporting (CBCR)

The Irish government officially states that it is undecided on the issue of public country by country reporting, and will continue to engage in debate at the EU level.⁸⁰⁰ However, Ireland does not support the European Commission’s legal basis for the legislative proposal, believing that the issue should be treated as an issue of taxation rather than accounting.⁸⁰¹ As explained in chapter 5.8.3 on ‘Allowing citizens to know what multinationals pay in taxes’, a change in legal base would in reality mean that the European Parliament is excluded from decision-making, and the decision will require unanimity among EU member states, which is likely to result in a much less ambitious outcome.

The lower house of parliament, Dáil Éireann, adopted a Reasoned Opinion in June 2016 to the effect that the proposed Directive is concerned with tax, which is a national competence.⁸⁰² At a corporate tax event in February 2017, the Finance Minister at the time, Michael Noonan, also criticised the European Commission’s proposal. He said it ‘goes against the BEPS consensus’. He called for a ‘consistent global approach’ based on the OECD BEPS rules, and warned that other non-EU countries could refuse to share country by country reports filed with their tax authorities with EU countries. He added that any EU action that deviated from the BEPS consensus should be met with caution.

As mentioned in chapter 5.1.1 on ‘BEPS and transparency’, the BEPS rules only introduce non-public CBCR, where multinational corporations send confidential reports to tax authorities. Ireland supports this type of CBCR, and the Finance Act of 2015 introduced the obligation for certain companies to report to the Revenue Commissioners, Ireland’s tax body, in line with OECD arrangements. This Act requires companies that are headquartered in Ireland to disclose information on all their activities, regardless of where they are located. In the case of subsidiary companies in Ireland, if their parent fails to file a country by country report in its home jurisdiction, the Irish subsidiary is required to file a report on behalf of the group, to the extent that the relevant information is in its possession or in its legal power to acquire.⁸⁰³

Whistleblower protection

Following the 2008 financial crisis, whistleblowers in financial services claimed their concerns were ignored and that they were personally penalised after making disclosures.⁸⁰⁴ Since then, the Protected Disclosures Act 2014 has been introduced, which aims to protect people who raise concerns about possible wrongdoing in the workplace.⁸⁰⁵ Since the introduction of this legislation, there has been a surge in the number of whistleblowers making protected disclosures,⁸⁰⁶ and this figure is set to double in 2017.⁸⁰⁷ Former Finance Minister Michael Noonan has said he is *'satisfied that whistleblower procedures for banks and other financial institutions are robust'*.⁸⁰⁸ However, at least one member of parliament has questioned whether the investigations to follow up on whistleblower cases are conducted fast enough, and whether the protections afforded to whistleblowers are strong enough.⁸⁰⁹ Ireland's view on any potential EU proposal on whistleblowing is that it needs to apply consistent standards across all types of wrongdoing, and should not weaken Ireland's existing protections.⁸¹⁰

Ownership transparency

As of 15 November 2016, all corporate and other legal entities in Ireland must take all reasonable steps to hold adequate, accurate and current information on their beneficial ownership, and keep this information in their own companies' beneficial ownership register.⁸¹¹ Ireland determines ownership either by an indicative threshold of above 25 per cent or through considering control via other means.⁸¹² In due course, corporate and other legal entities will be required to file beneficial ownership information within a central register. Additional legislation to establish this central beneficial ownership register was first expected in June 2017, then delayed until autumn 2017, and now seems to have been delayed yet again.⁸¹³

The Irish government is considering the feasibility of making the registers publicly accessible, and has said that levels of access will only be settled once a determination has been reached at the EU level. As part of the initial phase, the government's intention is for beneficial ownership information to be accessible to the state's financial intelligence units and relevant state authorities only.⁸¹⁴ The Irish government does not have an official position about ongoing negotiations on revisions to the 4th Anti-Money Laundering Directive (AMLD), including on the issue of whether all registers of beneficial owners of companies and trusts should be made public. However, a statement by current Finance Minister Paschal Donohoe before the European Parliament's Committee of Inquiry into Money Laundering, Tax Avoidance and Tax Evasion (PANA), suggests that Ireland would have strong concerns about disclosing beneficial ownership information for trusts.⁸¹⁵

Taxation

Tax treaties

In total, Ireland has 30 tax treaties in force with developing countries, which is below the average (41.77 treaties) among the countries covered in this report,⁸¹⁶ although the number has been increasing throughout recent years.⁸¹⁷ However, the average rate of reduction of developing country tax rates within those treaties – 4.8 percentage points – is the highest among all the countries analysed in this report.⁸¹⁸ Three of Ireland's tax treaties, signed with Zambia, Ethiopia and Pakistan, were ranked by ActionAid as being 'very restrictive' treaties, which give particular cause for concern due to the strong restrictions they impose on the taxing rights of the developing countries (see table 5 in chapter 4.5 on 'Bilateral tax treaties').⁸¹⁹

Ireland signed a new treaty with Kazakhstan in April 2017, and procedures to ratify the treaty are underway. Negotiations have also concluded for new double taxation agreements with Azerbaijan, Ghana, Oman, Turkmenistan and Uruguay.⁸²⁰

Former Finance Minister Michael Noonan has said, in the past, that Ireland's treaties with developing countries *'take elements from both the OECD and the UN model treaties'*.⁸²¹ The Irish Finance Ministry also underlines that all treaty negotiations with developing countries are carried out on an equal footing, and that it is for the developing country partner to decide on the appropriate balance between the interest of maintaining taxing rights and promoting investments.⁸²² However, analysis carried out by civil society organisations shows that a number of other developed countries have tax treaties with Zambia, Ethiopia and Pakistan that allow the developing countries to apply significantly higher tax rates, compared to the rates contained in the treaties with Ireland.⁸²³

Civil society organisations in Ireland have repeatedly called on the government to take a pro-development approach to the negotiation of tax treaties, by adopting the UN model double taxation convention between developed and developing countries (the 'UN model') as the minimum standard.⁸²⁴

International commitments

In June 2017, Ireland signed up to the OECD's BEPS Convention.⁸²⁵ Compared to other countries analysed in this report, Ireland has submitted relatively few reservations ('opt outs') of the articles that civil society is calling for countries to commit to (see table 7 in chapter 5.1.2 on 'Tax sudoku – the OECD's BEPS Convention'). Ireland has also opted in to the articles that civil society organisations have warned against, including secret binding arbitration (see chapter 5.1.2 on 'Tax sudoku – the OECD's BEPS Convention', including table 8).

Tax practices

Researchers have found Ireland to be the fourth biggest conduit jurisdiction in the world,⁸²⁶ and the Irish government and tax advisors continue to market Ireland as a low-tax jurisdiction. The corporate tax regime is strongly promoted by Ireland's investment agency, IDA, whose website notes the 'attractive holding company regime', 'effective zero tax rate for foreign dividends' and 'excellent intellectual property regime'.⁸²⁷ In the aftermath of the government's decision to appeal against the Commission's decision regarding Apple, IDA's CEO Martin Shanahan said: *'If this decision was left unchallenged, it would harm the prospects for [foreign direct investment] into this country... Ireland has again reiterated that we do not do tax deals and that we reject the principle that the Commission can retrospectively overrule tax laws in member states.'*⁸²⁸ Existing tax incentives were estimated by the revenue authority in 2014 to cost €22.95 billion, but there is no separate figure available for corporate tax incentives.⁸²⁹

The patent box (known as the 'Knowledge Development Box'), introduced in 2016, is a cause for concern among civil society groups,⁸³⁰ but is welcomed by tax advisors.⁸³¹ The regime was introduced following the OECD's new rules on the Modified Nexus Approach, and allows companies in Ireland to enjoy a lower tax burden of 6.25 per cent on all profits derived from patented activity.⁸³² Under the new rules, a company can outsource research and development activities to a qualifying university or third level institution located anywhere in the world, and still use those expenses to qualify for the tax incentive.⁸³³

The Department of Finance argues that the OECD Forum on Harmful Tax Practices and the EU Code of Conduct group have reviewed Ireland's regime and found it to be fully compliant with the agreed international rules for such regimes.⁸³⁴ However, as pointed out in chapter 4.3 on 'Patent boxes', this says more about the international standards than about the potential harmfulness of the regime, and the fact that the OECD BEPS negotiations ended with a specification of how patent boxes should be designed, rather than a decision to abolish the practice, has been a key point of criticism from civil society organisations.⁸³⁵ Furthermore, the fact that the OECD BEPS negotiations failed to reach agreement on abolishing patent boxes has not prevented international institutions from continuing to raise concerns. For example, the European Commission has highlighted that *'Research shows that they do not stimulate [research and development] and may rather be used as a profit-shifting instrument, leading to high revenue losses'*,⁸³⁶ and the OECD has underlined that the BEPS outcome should not be seen as a sign that the OECD thinks patent boxes are a good idea.⁸³⁷

In general, Ireland rejects claims that the country has any harmful tax practices, and underlines that it is an active and compliant participant of both the OECD's Forum on Harmful Tax Practices, as well as the EU's Code of Conduct Group.⁸³⁸ However, the OECD's Forum on Harmful Tax Practices is only as effective as the international standards allow it to be, and as highlighted in chapter 5.1 on 'Implementing a controversial 'sticking plaster'', the OECD's standards contain a number of very problematic loopholes. The same problem applies to the EU's Code of Conduct group, which has furthermore been strongly criticised for its very secretive nature, as well as for having failed its task of getting rid of harmful tax practices.⁸³⁹ The critics highlight as one of the key reasons for this failure the fact that countries which use harmful tax practices are members of the group, and can therefore veto proposals that would limit their ability to use such practices.⁸⁴⁰

Tax rate

Ireland's corporate income tax rate is 12.5 per cent, and the government has stated it has no plans to change it.⁸⁴¹ This was confirmed by Finance Minister Donohoe in October 2017 when he presented his 2018 budget.⁸⁴²

The Department of Finance has stated that the effective rate of corporation tax in Ireland was 10.1 per cent in 2013, 9.7 per cent in 2014, and 9.6 per cent in 2015.⁸⁴³ However, figures derived using other methodologies paint a very different picture. One academic study notes that, in 2011, US subsidiaries operating in Ireland had the lowest effective tax rate in the EU at 2.2 per cent.⁸⁴⁴ Some estimates of effective tax rates paid by individual corporations produce similar low amounts – famously, the European Commission claimed Apple paid an effective tax rate of 0.005 per cent.⁸⁴⁵

Tax rulings

The government maintains that Ireland does not have a statutory system of binding tax rulings.⁸⁴⁶

However, the Revenue Commissioners issue non-binding opinions on the application of tax law to specific transactions or situations, and any taxpayer can request an opinion from the Revenue.⁸⁴⁷

In its decision on the state aid case regarding Ireland's tax treatment of Apple, the Commission notes that Ireland refers to tax rulings as 'advance opinions', but adds that the Commission considers the two notions to be one and the same.⁸⁴⁸ The core issue in the case was two such tax rulings, or advance opinions, issued to Apple in 1999 and 2007, which according to the Commission allowed Apple to lower its tax payments by around €13 billion.⁸⁴⁹ As mentioned above, Ireland has decided to appeal this decision.

Ireland introduced a formal bilateral advance pricing agreement (APA) programme in June 2016. Prior to this, Ireland only accepted requests for bilateral APAs in situations where a treaty partner had agreed to enter into a bilateral APA negotiation.⁸⁵⁰ The legal framework for Ireland's bilateral APA programme is the tax treaties it has signed with other countries.⁸⁵¹ According to data from the European Commission, Ireland had eight bilateral APAs in force at the end of 2015.⁸⁵²

Global solutions

Ireland does not support the establishment of an intergovernmental UN tax body. Ireland supports the BEPS Inclusive Framework,⁸⁵³ and believes this provides an important global approach to tax reform, while benefiting from the expertise and experience of the OECD Secretariat.⁸⁵⁴

Conclusion

Despite the fact that the government has no official position on public country by country reporting and public registers of beneficial owners, there seems to be significant clear resistance towards both of these key transparency measures. This is for example evident in statements by ministers, and the fact that Ireland has not introduced a public register for beneficial owners. On a positive note, the Irish system for protection of whistleblowers is more advanced than in many other countries, although there are still concerns regarding the time taken to investigate cases and ensure real protection of those individuals who blow the whistle.

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

Ireland's tax policies and practices also remain an issue of concern. Researchers have found Ireland to be one of the biggest conduit jurisdictions in the world, and the country is being promoted as a low-tax jurisdiction. New initiatives such as the Knowledge Development Box present a risk that multinational corporations will now find new ways of using Ireland to avoid taxation. Ireland's 12.5 per cent corporate tax rate, which is well below most other EU countries, also places the country among the frontrunners in the race to the bottom on corporate taxation.

Finally, it is of concern that the Irish government opposes the establishment of an intergovernmental UN tax body, which would give developing countries a truly equal say in global decision-making on tax matters.

"Current welfare and tax systems in Italy are ineffective for enhancing income distribution, tax evasion is a plague."

Pier Carlo Padoan
Italian Minister of Finance⁸⁵⁵

Overview

Although Italy raises a high proportion of its GDP in taxes compared to other countries,⁸⁵⁶ the Italian tax system remains highly inefficient, and tax evasion and avoidance have reached extraordinary levels in recent years. For instance, a recent report from the Italian Ministry of Finance and the Economy found that the evasion of social contributions and taxation in Italy amounted to more than €100 billion in 2015.⁸⁵⁷ The European Commission also estimated the Italian VAT gap as one of the highest in the EU in 2015. The gap between what should have been collected and what was actually received by Italian revenue authorities in VAT was €35 billion.⁸⁵⁸

According to a poll commissioned by Oxfam Italy, tax evasion and avoidance are perceived by the public as one of the key driving factors of increasing income inequality in Italy.⁸⁵⁹ Despite strong political rhetoric in Italy aimed at tackling the interrelated problems of tax dodging and inequality, the Italian government has not implemented effective anti-tax dodging measures.⁸⁶⁰ The Italian Court of Auditors has, meanwhile, reported a significant drop in fiscal control activities between 2012 and 2016.⁸⁶¹

In the past year, the Italian tax authorities and judiciary have continued to target large non-resident corporate taxpayers in order to settle tax disputes. In May 2017, global tech giant Google agreed to a tax settlement of more than €300 million with the Italian government.⁸⁶² The Google deal follows a similar settlement with Apple in December 2015, when the Italian tax authorities reached an accord with the corporation to pay over €300 million in order to resolve a tax dispute.⁸⁶³

These examples indicate that Italian tax authorities have taken a procedural approach to tax dodging schemes by non-resident multinational corporations, especially those operating in the digital economy. The focus of this approach is on cooperation and compliance. More fully-fledged approaches – such as applying withholding tax on the turnover generated by non-resident multinational corporations in the Italian market, or broadening the definition of 'permanent establishment'⁸⁶⁴ – do not appear to have been taken into consideration.

Italy featured prominently in the 'Russian Laundromat' scandal, which broke earlier in 2017. In total, the Organized Crime and Corruption Reporting Project (OCCRP), which exposed the scandal, estimated that over €27 million laundered money from Russia ended up in Italy.⁸⁶⁵

EU Common Consolidated Corporate Tax Base (CCCTB)

The Italian government supports the European Commission's proposal for a Common Consolidated Corporate Tax Base. The Italian Minister of Finance Pier Carlo Padoan has said that the proposed rules would help to reduce opportunities for tax planning by large multinational corporations, while reducing compliance costs and increasing legal certainty for firms.⁸⁶⁶

Tax and development

In June 2017 Italy also supported – in partnership with the OECD, Germany and Kenya – the creation of a pilot programme in Kenya aimed at strengthening local capacity to combat illicit financial flows and prevent fiscal and financial crimes in the African region.⁸⁶⁷

Since 2015 Italy also has been a member of the Addis Tax Initiative (ATI),⁸⁶⁸ and thus committed to ensuring policy coherence for development on the issue of taxation. In its reporting to the ATI, Italy mentions that it is committed to pursuing policy coherence for development, and has established an Inter-Ministerial Committee for Development Cooperation that addresses this issue.⁸⁶⁹ In terms of initiatives to support policy coherence for development, Italy highlights its support for introducing tobacco taxes in developing countries, and increased use of environment-related taxes in Italy. However, Italy does not seem to have any plans to conduct an analysis of the potential harmful impacts that Italy's tax policies can have on developing countries. Since Italy has a high number of 'very restrictive treaties' with developing countries,⁸⁷⁰ there seems to be good reason for conducting such an analysis, which could form the basis of ensuring policy coherence for development through the removal of harmful policies, including tax treaties.

Transparency

Public country by country reporting (CBCR)

The Italian government supports the European Commission's proposal on public country by country reporting,⁸⁷¹ but it is unclear whether Italy could also support a more ambitious proposal to introduce full public country by country reporting. As explained in chapter 5.8.3 on 'Allowing citizens to know what multinationals pay in taxes', the Commission's proposal would only allow citizens to get information about the activities multinational corporations have in some countries, but not in others. Therefore, it would still be possible for multinationals to hide profits in tax havens that are not among those countries multinationals report on. The government also supports the Commission's assessment that the CBCR proposal should be treated as an issue of accounting rather than taxation.⁸⁷² This is positive, since treating the issue as a tax file would in reality mean that the European Parliament is excluded from decision-making, and the decision will require unanimity among EU member states – a change that would in all likelihood result in a much less ambitious outcome.⁸⁷³

Like many other countries, and in line with EU requirements, Italy has already introduced secret CBCR. In February 2017, the Italian Ministry of Finance published an implementation decree transposing the 4th Directive on Administrative Cooperation (DAC4) into national law. The implementation decree introduces an obligation for large multinationals in Italy to file their CBCR reports to Italian tax authorities, and requires the Italian tax authority to automatically exchange this information with other EU member states.⁸⁷⁴

Ownership transparency

In May 2017, Italy transposed the 4th Anti-Money Laundering Directive (AMLD) into national legislation, including by establishing a register of beneficial owners.⁸⁷⁵ The register will not be public, and only those who can prove a 'legitimate interest' can have access to the data. In this context, the Italian government has implemented a very restrictive definition of 'legitimate interest'. Under Italian law, access to beneficial ownership information will only be granted to parties in legal proceedings, and entities involved in the case being investigated.⁸⁷⁶ The current rules will limit the ability of civil society organisations and investigative journalists working on financial transparency to access the necessary information when seeking to expose potential wrongdoing.

In addition, as regards the definition of 'beneficial owner', the government has decided that only individuals owning a minimum of 25 per cent of a company will be considered owners, rather than a lower percentage, as had been proposed by Italian civil society organisations,⁸⁷⁷ and also in a non-binding opinion⁸⁷⁸ of the parliament's finance and justice committees. In cases where no owner can be found, Italy will allow senior managers to be registered, but the government rejected a parliamentary suggestion to note in the beneficial ownership register the instances when the ultimate owner is not identified.⁸⁷⁹

The Italian government has not taken a public position regarding the ongoing revision of the 4th AMLD. Italy does not seem to be pushing for full beneficial ownership transparency, but appears to be open to some of the enhanced beneficial ownership transparency provisions, as foreseen by the European Commission's draft directive.⁸⁸⁰

Taxation

Tax treaties

Italy currently has 54 tax treaties with developing countries, which is one of the highest number of treaties among the countries covered in this report.⁸⁸¹ The average reduction of developing country tax rates within those treaties – 1.65 percentage points – is well below the average (3.39 percentage points) among the countries covered in this report.⁸⁸² However, following a full assessment of the content of the treaties, 13 of Italy's tax treaties with developing countries were ranked by ActionAid as being 'very restrictive' treaties, which give particular cause for concern due to the strong restrictions they impose on the taxing rights of developing countries (see also table 5 in chapter 4.5 on 'Bilateral tax treaties').⁸⁸³

International commitments

Italy participated in the BEPS negotiations and signed on to the OECD BEPS Convention in June 2017.⁸⁸⁴ However, Italy has chosen to make a lot of reservations when signing the Convention. Out of the 11 articles that civil society organisations have called on governments to adopt, Italy has opted out of eight (see table 7 in chapter 5.1.2 on 'Tax sudoku – the OECD's BEPS Convention'). At the same time, Italy has opted in to the articles that civil society organisations have warned against, including secret binding arbitration (see chapter 5.1.2 on 'Tax sudoku – the OECD's BEPS Convention', including table 8).

Tax practices

In April 2017, the Italian government adopted a reformed patent box regime in line with the OECD's Modified Nexus Approach.⁸⁸⁵ The amendment was aimed at aligning the scheme to the BEPS recommendations, and led to the removal of trademarks (including already registered brands and those in the process of being registered) from the list of items identified as eligible for preferential tax treatment. Despite this modification, a grandfathering clause was introduced that allows taxpayers who applied for a patent box tax benefit before 31 December 2016 to continue benefiting from the old rules until 30 June 2021.⁸⁸⁶

As explained in chapter 4.3 on 'Patent boxes', these instruments are problematic because they can create opportunities for multinational corporations to move their profits from the countries where they have real business activities, to the countries where they can obtain tax advantages through patent boxes. According to Italian State General Accounting Department estimates,⁸⁸⁷ the new patent box regime could help to generate an additional €37.6 million in extra revenue for Italy in 2017. This revenue could rise further to €75.3 million in 2022, once the grandfathering period has ended.

The 2017 Finance Bill⁸⁸⁸ introduced a flat-tax ruling-based levy on the foreign personal income of taxpayers moving their fiscal residence to Italy without being Italian tax residents for at least nine of the past 10 fiscal years. The measure has created an uneven playing field, discriminating against Italian tax residents generating foreign income who are excluded from the flat-tax option. The provision is considered by many as a harmful tax practice, highlighting Italy's attempt to play a bigger role in the race to the bottom on personal income taxation by strengthening the country's attraction to high-earners intent on leaving the United Kingdom after Brexit. However, the European Commission has stated that choices on personal income tax by member states fall outside the scope of its harmful tax practices monitoring.⁸⁸⁹

Tax rate

The Italian corporate tax rate has continued to gradually decline in the past decade, as a result of the ever-continuing global race to the bottom on corporate tax rates.⁸⁹⁰ In 2015, former Prime Minister Matteo Renzi announced his intention to further reduce Italy's corporate tax rate.⁸⁹¹ Effective from 1 January 2017, the Italian corporate tax rate was cut from 27.5 per cent to 24 per cent.⁸⁹²

Taxation of the digital economy

The tax liabilities of the digital giants in Italy have become the subject of a lively media and political debate. A media analysis showed that the Italian entities of Facebook, Amazon, Apple, Twitter, Tripadvisor and Airbnb paid a meagre €11.7 million in taxes in 2015.⁸⁹³ Research by the Parliamentary Budget Office shows that, in 2015, Google's online advertising turnover in Italy was €637 million, of which only €67 million was booked in Italy, while the remainder (€570 million) was attributed to Google Ireland. Similarly, Facebook's estimated online advertising turnover in Italy was €233 million in 2015, and was almost entirely attributed to the Irish entity of the group, with only €8 million booked in Italy. By attributing turnover to Irish entities, the firms were allegedly able to significantly reduce their tax liability in Italy.

In September 2017, a report by MEP Paul Tang into the operations of digital companies in the EU – and the difference between where they operate and where they pay their taxes – estimated an overall tax loss for Italy of €549 million in 2013-2015.⁸⁹⁴ Italy has become vocal in Europe and internationally on the need to better address taxation of the digital economy. It supports the structural tax policy solutions proposed by the OECD Digital Economy Task Force,⁸⁹⁵ but also signed a statement in September 2017 with Germany, France and Spain calling for a European 'equalisation tax' on the turnover of digital multinational corporations.⁸⁹⁶

Tax rulings

According to data from the European Commission, Italy had 68 advance pricing agreements (APAs) in place with multinational corporations at the end of 2015. Of these, 61 were unilateral, which are the most concerning type of advance pricing agreements (see chapter 4.4.1 on 'The problem with advance pricing agreements').

Global solutions

The Italian government has previously been opposed to the establishment of an intergovernmental body on tax under the auspices of the United Nations, and there are no indications that this position has changed.⁸⁹⁷

Conclusion

On the issue of preventing secret owners of companies, Italy's implementation of the 4th Anti-Money Laundering Directive is problematic, since it will in reality be very difficult for the public to get access to information about the true owners of Italian companies. On the positive side, it seems that Italy is open to increased transparency around beneficial ownership, if the decision is taken at the EU level.

When it comes to corporate transparency, Italy's position is still unclear. However, it is welcome that Italy supports the European Commission's view that the file should be treated as a matter of accounting.

Italy's tax treaty network remains an issue of concern, due to the fact that Italy has a high number of so-called 'very restrictive treaties', which impose relatively high restrictions on the developing countries that sign them.

In terms of tax practices, it is equally concerning that Italy has a patent box as well as a relatively high number of unilateral advance pricing agreements with multinational corporations. Both of these elements can introduce opportunities for multinational corporations to lower their tax payments. By deciding to lower the corporate tax rate, Italy has also become an active player in the race to the bottom on corporate taxation.

Finally, it is problematic that the Italian government does not seem to support the establishment of an intergovernmental UN tax body, which would give developing countries a truly equal say in global decision-making on tax matters.

"Fraud, especially in the field of taxation, is hard to fight when society perceives it as normal. We need everyone to understand that with every product and every service that we receive with no invoice, we rob ourselves, our family and the country in the long term."

Ilze Cīrule

Director General of the State Revenue Service⁸⁹⁸

Overview

Tax and inequality are questions of significant importance to the Latvian economy. Tax revenues in Latvia are lower than in many EU countries – the tax revenue-to-GDP ratio is only 29 per cent.⁸⁹⁹ Income inequality is also greater compared to other EU countries. With a 35.4 Gini coefficient, Latvia is the fourth most unequal country in the EU.⁹⁰⁰ Latvia's shadow economy is large, and estimated to be 20 per cent of GDP.⁹⁰¹

Over the last year, the Latvian government has implemented a number of positive initiatives in order to address corruption, the shadow economy and tax avoidance.

In September 2017, Latvia started implementing automatic information exchange as per the OECD global agreement.⁹⁰² A public anti-fraud campaign 'FraudOff'⁹⁰³ was launched in 2017 that condemned dishonest business practices, such as selling fake products, paying salaries in cash or dodging corporate tax and value added tax (VAT) payments.⁹⁰⁴ In October 2017, Latvia also updated its law on the prevention of money laundering and terrorism financing, to implement the EU's Anti-Money Laundering Directive (AMLD), and introduce public information about the real – so-called beneficial – owners.⁹⁰⁵

The positive changes come after a period where tax evasion and money laundering has been big in the news. While the LuxLeaks and Malta files scandals did not draw strong links to Latvian politicians or organisations, other scandals dominated headlines in the Latvian news, demonstrating the impact of lax financial regulation and transparency in Latvia. For instance, in March 2017, journalists uncovered the 'Russian Laundromat' money laundering case, which had strong links to a Latvian bank. Nearly US\$13 billion (€11 billion) was allegedly laundered through this scheme and according to media reports, Latvian bank Trasta Komercbanka played a central role in this operation, acting as middleman between Russia and other countries, and transferring laundered money and funds to over 96 countries.⁹⁰⁶ Trasta Komercbanka was declared insolvent shortly before the scandal broke.⁹⁰⁷

In June 2017, a Paris court fined the third largest bank in Latvia, Rietumu Banka, €80 million for facilitating a scam that promoted tax evasion among ordinary taxpayers and small businesses in France.⁹⁰⁸ In response, the bank said that '*we strongly disagree with the decision and this decision will be appealed*'.⁹⁰⁹

Latvian individuals and companies were also closely implicated in the Panama Papers. According to the Ministry of Finance, Latvia's name was associated with 2,951 offshore legal entities, 162 private individuals, 18 intermediaries and 153 addresses in the Panama Papers.⁹¹⁰ Despite Latvia's central role in these revelations, there has been little follow-up action by the government in the form of investigations or prosecutions.

In July 2017, the Saeima, Latvia's parliament, adopted a new tax reform that, among other things, raises the corporate income tax from 15 per cent to 20 per cent.⁹¹¹ However, at the same time, Latvia introduced a controversial loophole, which allows corporations to pay zero corporate tax on all profits that are retained or reinvested.⁹¹²

EU Common Consolidated Corporate Tax Base (CCCTB)

Latvia does not support a corporate tax system based on consolidation, as outlined in the European Commission's 2016 CCCTB proposal. The government states that it has concerns that this proposal will have uneven impacts on EU member states, with certain countries benefiting while others risk losing out.⁹¹³ The government has also said that tax matters should remain a national competence so that countries can react more effectively and quickly to economic challenges and changes, and that there is a risk the CCCTB could undermine this.

Latvia does support the proposed 'super-deduction' for research and development activities, and the 'Allowance for Growth and Investment' (AGI). However, it would like to have maximum flexibility regarding the implementation of CCCTB rules.⁹¹⁴

Tax and development

Latvia's government does not have (and does not plan to have) an official position on policy coherence for development,⁹¹⁵ and there is little focus on the impact of tax policies on developing countries. Latvia does not provide financial support bilaterally to developing countries to support technical assistance or capacity development on tax matters.⁹¹⁶

Transparency

Public country by country reporting (CBCR)

Latvia supports the European Commission's proposal on CBCR, but has not decided yet on extending the reporting requirements for this to cover all countries where a multinational corporation is present.⁹¹⁷ However, the government does not support the European Commission's legal basis for the legislative proposal, which is a clear indication that Latvia believes that the proposal should be treated as an issue of taxation rather than of accounting. As explained in chapter 5.8.3 on 'Allowing citizens to know what multinationals pay in taxes', a change in legal base would in reality mean that the European Parliament is excluded from decision-making, and the decision will require unanimity among EU member states, which is likely to result in a much less ambitious outcome.

Latvia supports that the proposal should only cover multinational corporations with a yearly turnover of minimum €750 million, but believes a future directive on CBCR should require that multinational corporations use an open and machine-readable format when they publish their data. Latvia has introduced public CBCR for financial institutions and extractive industries, in line with the existing EU requirements (see chapter 5.1.1 on 'BEPS and transparency').⁹¹⁸

Whistleblower protection

The Latvian government states that whistleblowers who bring information about large-scale tax avoidance by multinational corporations to the public's attention should be protected from legal prosecution and punishment, and argues that Latvia already has sufficient legal protection for whistleblowers.⁹¹⁹ However, according to an international whistleblower non-governmental group, current whistleblower protections in Latvia remain *'fragmented and untested, creating significant obstacles for employees and citizens who are considering reporting corruption without fear of reprisals.'*⁹²⁰ Recognising the potential need to improve protections further, the government proposed new legislation to further enhance the protection of whistleblowers in March 2017.⁹²¹ However, parliamentary negotiations on this have since stalled.⁹²² The Latvian government has expressed support for EU-wide legislation for whistleblower protection.⁹²³

Ownership transparency

In October 2017, Latvia adopted a revision to its Anti-Money Laundering Law, in order to implement the EU's 4th Anti-Money Laundering Directive (AMLD) into national legislation.⁹²⁴ The new rules introduce a public register of beneficial owners, to be launched on 1 March 2018. Information in the public register is supposed to be made available in an open and machine-readable format, and will be accessible to the public online (on the company register website) for a fee.⁹²⁵

Since the register will be public, Latvia does not plan to make use of the 'legitimate interest' test in determining who among the public is granted access to the register of beneficial owners.⁹²⁶ The threshold for being considered the beneficial owner of a company is set at 25 per cent of shares or voting rights. When a beneficial owner cannot be identified, then the person with the highest management role in the given entity can be identified as the beneficial owner instead.⁹²⁷

Latvia supports the European Commission's proposal to revise the 4th AMLD, requires public beneficial ownership registers for companies, and does not have any opinion on the issue of trusts. Latvia also supports the European Commission's proposal to interconnect all national beneficial ownership registers in the European Union.⁹²⁸

Taxation

Tax treaties

Latvia currently has 24 tax treaties with developing countries, which is one of the lowest numbers of treaties among the countries covered in this report.⁹²⁹ The average reduction of tax rates within these treaties is 3.98 percentage points, which is above the average of 3.39 percentage points among the countries covered in this report.⁹³⁰

Latvia follows the OECD model when negotiating tax treaties.⁹³¹ The Latvian government is planning to sign new agreements with developing countries in the future, but does not have any plans to renegotiate any existing tax treaties with developing countries over the next five years. There is no systematic involvement of stakeholders in negotiations on double taxation treaties. However, all draft treaties are made available to the public on the government's website, before they are signed off by the Cabinet of Ministers.⁹³²

International commitments

Although Latvia has signed the OECD BEPS Convention, the government at the same time submitted a very high number of reservations. Out of the 11 articles that civil society organisations have called on governments to adopt, Latvia has opted out of 10 (see table 7 in chapter 5.1.2 on 'Tax sudoku – the OECD's BEPS Convention'). At the same time, however, Latvia has opted out of the articles that civil society organisations have warned against, including secret binding arbitration (see chapter 5.1.2 on 'Tax sudoku – the OECD's BEPS Convention', including table 8).

Tax practices

Latvia does not have any plans to introduce a patent box.⁹³³ Latvia does, however, offer several kinds of incentives, including free economic zones, which provide tax reductions, corporate income tax rebates for large-scale investment projects, and a beneficial depreciation ratio for new technological equipment and intangible investments.⁹³⁴

Tax rate

The current corporate income tax rate in Latvia is 15 per cent. Under changes due to be introduced on 1 January 2018, this rate will be raised to 20 per cent.⁹³⁵ However, under the new rules, companies will only be required to pay taxes on their profits at the point of actual distribution. Profits that are retained or reinvested into the company prior to the point of distribution will be exempt from any taxation at all.⁹³⁶ A similar system operates in Estonia, which has so far been sold as a unique opportunity to achieve a zero corporate tax rate within the borders of the EU.⁹³⁷

The measure is intended to encourage companies to re-invest and grow their business. However, some multinational corporations have become very skilled in retaining large sums of earnings and postponing their tax payments indefinitely. One extreme case is Apple, which currently holds over US \$250 billion in undistributed earnings.⁹³⁸

The Latvian tax system can create new opportunities for companies to avoid taxes. Furthermore, it can promote the creation of very wealthy and dominant multinational corporations, which can in turn lead to a number of negative impacts on the economy (see chapter 2.1 on 'Why do governments race to the bottom?'). Even the Latvian Minister of Finance has acknowledged that the government's tax reform can generate negative impacts. For example, estimates say it may generate a loss of around €132 million in 2019.⁹³⁹

Tax rulings

Latvia offers advance pricing agreements (APAs) to multinational corporations, and had two unilateral APAs in force at the end of 2016⁹⁴⁰ – up from one at the end of 2015.⁹⁴¹ Latvia has indicated that it could support the idea of making the essential elements of tax rulings publicly available.⁹⁴²

Global solutions

Latvia does not have an official position on the proposal to establish an intergovernmental body on taxation under the auspices of the UN.⁹⁴³

Conclusion

After a year of scandals, Latvia has taken a turn and will now introduce a public register of beneficial owners. This is a positive development.

Unfortunately, Latvia still does not support full public country by country reporting, and by challenging the legal basis of the EU proposal on the issue, Latvia could *de facto* be promoting a less ambitious outcome of negotiations.

Latvia's tax treaties with developing countries impose relatively high restrictions on the tax rates of the developing countries that have signed them. However, the total number of treaties between Latvia and developing countries is still relatively low.

In terms of tax practices, Latvia's system remains an issue of concern. The new law, which will offer corporations a corporate tax rate of zero for all retained and reinvested profits, could open up new opportunities for tax avoidance, and thus is highly problematic.

Although Latvia does not oppose the establishment of an intergovernmental UN tax body, which could give developing countries a truly equal say in the negotiation of global tax standards, it also does not support it.

Luxembourg

"We were never a tax haven."

Xavier Bettel

Luxembourg Prime Minister⁹⁴⁴

Overview

In Luxembourg, the aftermath of the LuxLeaks scandal from 2014 is still playing out. The scandal itself focused on over 300 multinational corporations that had obtained secret tax rulings – or ‘sweetheart deals’ – from Luxembourg, which allowed them to lower their tax payments dramatically – in some cases to less than one per cent.⁹⁴⁵ However, tax rulings and large-scale tax avoidance is normally not illegal. Therefore, the only legal aftermath of the scandal has been the prosecution against the two whistleblowers, Antoine Deltour and Raphaël Halet, who brought the key evidence to light.

In March 2017, both were convicted by the Luxembourg Court of Appeal.⁹⁴⁶ This was the second trial, after the outcome of the first trial had been appealed by both the defendants and the prosecutor.⁹⁴⁷ Compared to the first trial, the court ruled to reduce the sentences, but Antoine Deltour was still convicted to six months suspended jail and a €1,500 fine, and Raphaël Halet to a fine of €1,000.⁹⁴⁸ Both men were convicted of several charges, including theft and computer fraud.⁹⁴⁹ At the same time, the court recognised that Antoine Deltour’s actions constituted an act of whistleblowing in defence of the public interest,⁹⁵⁰ following which it decided to acquit him of the charge of violating professional confidentiality.⁹⁵¹ The same was not the case for Raphaël Halet, who was found guilty of that charge.⁹⁵² Both whistleblowers subsequently decided to appeal the verdicts,⁹⁵³ and the Court of Cassation is expected to finalise the third trial by early 2018.⁹⁵⁴ Meanwhile, a broad group of civil society organisations, concerned citizens and even members of the European Parliament have kept insisting that Antoine Deltour and Raphaël Halet deserve praise, not punishment, and that they should both be acquitted.⁹⁵⁵

Luxembourg’s tax rulings were not only the focus of the LuxLeaks scandal. They have also been the subject of various European Commission state aid investigations, which have assessed whether the value they give to multinational corporations constitutes illegal state aid. On 4 October 2017, the European Commission concluded that one such tax ruling – an advance pricing agreement (APA) issued by Luxembourg in 2003⁹⁵⁶ – granted undue tax benefits to Amazon of around €250 million.⁹⁵⁷ In response, Amazon stated that it disagreed with the assessment that it had received any special treatment from Luxembourg, and that it paid tax in accordance with both Luxembourg and international law.⁹⁵⁸

Previously, in 2015, the European Commission ruled that an advance pricing agreement Luxembourg had issued to Fiat constituted illegal state aid worth €20-30 million.⁹⁵⁹ Both Fiat and Luxembourg have appealed against the decision at the European Court of Justice.⁹⁶⁰ Meanwhile, another state aid investigation into tax rulings issued by Luxembourg to McDonald’s remains ongoing.⁹⁶¹ In September 2016, the European Commission also opened yet another investigation into two tax rulings issued by Luxembourg to global energy supplier ‘Engie’.⁹⁶² The European Commission raised concerns that the deal with Engie appeared to treat financial transactions between the companies of Engie’s global group as both ‘debt’ and ‘equity’, resulting in double non-taxation.⁹⁶³ Luxembourg’s Ministry of Finance has pledged to cooperate with the European Commission’s investigation, but ‘*considers that no special tax treatment or selective advantage*’ has been awarded to Engie.⁹⁶⁴

In 2017, a study was published in the scientific paper *Nature*, which mapped out the world of offshore financial centres based on an analysis of the real ownership relations of over 98 million corporate entities.⁹⁶⁵ Among other issues, the study mapped the world’s ‘sink jurisdictions’, which are jurisdictions where multinational corporations store capital – most often jurisdictions that provide opportunities for avoiding taxation. Based on the results, the scientists identified Luxembourg as the biggest sink jurisdiction in the world.⁹⁶⁶

In January 2017, a series of leaked diplomatic cables revealed how Luxembourg played a key role in blocking the European Union’s efforts to end some harmful tax practices. According to the documents, Luxembourg opposed and ultimately blocked numerous tax reforms that were generally supported by other countries in the EU’s Code of Conduct Group, a secret decision-making forum established in the 1990s to reduce harmful tax competition in the EU. For example, Luxembourg ultimately blocked the suggestion made by other EU countries in the Code of Conduct Group, including France and Germany, to relax the need for unanimous consent in decision-making.⁹⁶⁷

EU Common Consolidated Corporate Tax Base (CCCTB)

In January 2017, the Luxembourg parliament’s Chamber of Representatives published its ‘reasoned opinion’ on the proposal to introduce a common consolidated corporate tax base in the EU. This opinion, among other issues, raises concerns about potential budgetary impacts the proposal could have on a small country such as Luxembourg, as well as risks of increased administrative burdens.⁹⁶⁸ The parliament furthermore argued that the Commission’s proposal would ‘have a direct impact on the prerogative’ of member states to determine their tax policy at their own discretion.⁹⁶⁹

At an Economic and Financial Affairs Council (ECOFIN) hearing in May 2017, Finance Minister Pierre Gramegna also called for a cautious approach to implementing a CCCTB. He argued that the EU had already taken ambitious stances on tax reform in recent years, and cautioned against further changes to EU tax legislation beyond what was set out in the BEPS Action Plan. He said that, if the CCTB were adopted at the EU level, then it would be crucial to implement tax incentives such as a research and development super-deduction and new tax incentives to promote equity finance, in order to foster innovation and maintain the EU's competitiveness.⁹⁷⁰

Tax and development

Luxembourg has joined the Addis Tax Initiative (ATI), under which donor countries have committed themselves to doubling support for domestic resource mobilisation and taxation in developing countries by 2020.⁹⁷¹ During 2015, Luxembourg pledged US\$0.48 million (€0.4 million) to domestic resource mobilisation, with the country of El Salvador being the largest recipient.⁹⁷²

As part of the ATI, Luxembourg has also committed itself to ensuring policy coherence for development on the issue of taxation. However, there are no indications that Luxembourg is planning to do a spillover analysis to identify potential negative consequences that Luxembourg's policies can have on tax collection in developing countries.

Transparency

Public country by country reporting (CBCR)

The Luxembourg government is opposed to the public disclosure of country by country reporting information, as set out in the European Commission's legislative proposal of April 2016. Responding to questions from opposition members of parliament, Finance Minister Gramegna has said that Luxembourg does not believe the EU should go beyond the OECD BEPS agreement on (secret) country by country reporting.⁹⁷³ Luxembourg has also questioned the soundness of the European Commission's legal basis for its legislative proposal, arguing that the dossier should be considered a 'tax' file.⁹⁷⁴ A change in legal base would in reality mean that the European Parliament is excluded from decision-making, and the decision will require unanimity among EU member states.⁹⁷⁵ As explained in chapter 5.8.3 on 'Allowing citizens to know what multinationals pay in taxes', this is likely to result in a much less ambitious outcome.

Gramegna has also argued that public disclosure of country by country reporting information would not allow a meaningful analysis of a multinational's tax situation, and has said that public disclosure could only be considered by Luxembourg if it was the basis of political consensus at the OECD and G20 level.⁹⁷⁶

Whistleblower protection

Luxembourg is one of the few countries in the European Union to have whistleblower protection in place for private sector employees. However, not all potential whistleblowers are covered by this law, as it applies only to offences related to corruption charges.⁹⁷⁷ The law is also limited in that it only protects whistleblowers against dismissal.⁹⁷⁸ As mentioned above, three years after the LuxLeaks revelations, the Luxembourg government has continued to prosecute the whistleblowers who uncovered the revelations. When the Luxembourg court in March 2017 recognised Antoine Deltour as a whistleblower, this did not prevent it from punishing him for his actions with a suspended prison sentence and a fine.⁹⁷⁹

Ownership transparency

Intermediaries in the EU, notably in Luxembourg's financial industry, were revealed by the Panama Papers to have played a key role in facilitating the movement of wealth to offshore entities. According to a study by the Greens in the European Parliament, Luxembourg accounted for 13 per cent of the EU intermediaries revealed by the scandal.⁹⁸⁰

Luxembourg continues to lag behind when it comes to transparency around beneficial owners. In April 2017, the government introduced a legislative proposal to implement several provisions of the EU's 4th Anti-Money Laundering Directive (AMLD).⁹⁸¹ However, this proposal does not provide for the implementation of a beneficial ownership register, as otherwise required under EU law.⁹⁸² The government has also not yet provided full confirmation to the European Commission that measures required under the 4th AMLD were implemented in time.⁹⁸³

It remains unclear who will be in charge of the ultimate beneficial ownership register in Luxembourg if or when it is created, as well as who will have access to it. However, there are currently no signs that the government will propose to make a potential future register accessible to the public. The threshold for being considered a beneficial owner of a company in Luxembourg has been set at 25 per cent of the shares.⁹⁸⁴ If no beneficial owner can be identified, then a senior managing official can be listed as the beneficial owner instead.⁹⁸⁵

Taxation

Tax treaties

In total, Luxembourg has 29 tax treaties with developing countries, which is well below the average (41.77) among the countries covered by this report.⁹⁸⁶ The average reduction of developing country tax rates within those treaties – 2.79 percentage points – is also below the average (3.39 percentage points) among the countries covered in this report.⁹⁸⁷

Luxembourg mainly uses the OECD model when negotiating tax treaties, though some double tax treaties also include elements of the UN model.⁹⁸⁸

International commitments

In June 2017, Luxembourg signed up to the OECD's BEPS Convention.⁹⁸⁹ Luxembourg submitted quite a few reservations to the Convention, although many of the countries covered by this report submitted more. Out of the 11 articles that civil society organisations have called on governments to adopt, Luxembourg has opted out of seven (see table 7 in chapter 5.1.2 on 'Tax sudoku – the OECD's BEPS Convention'). At the same time, Luxembourg has opted in to both of the articles that civil society organisations have warned against, including article 18 on secret binding arbitration (see chapter 5.1.2 on 'Tax sudoku – the OECD's BEPS Convention', including table 8).

Tax practices

Finance Minister Gramegna has recently stated: *'We know that some structures are not acceptable any more. Companies that are here, that have very little substance, will have to decide if they want to stay and add substance. Or if they don't, as was the case with McDonald's, they will leave. We're going to lose companies, but those that we are going to keep are going to add substance.'*⁹⁹⁰

A few months later, however, Prime Minister Xavier Bettel presented government plans to introduce a new patent box. This will replace the previous patent box regime that was closed down in 2015 after it was found to be incompatible with the OECD's BEPS rules.⁹⁹¹ In the proposal, which is currently being considered by parliament,⁹⁹² there are a few restrictions compared to the old regime. For example, trademarks and other marketing-related intellectual property assets would no longer qualify for the tax incentives.⁹⁹³

However, the new proposal would still be a broad and generous tax incentive – offering corporations an effective tax rate down to 5.4 per cent on income from a broad list of qualifying intellectual property assets.⁹⁹⁴ It would also offer corporations the possibility of counting expenses incurred outside of Luxembourg as qualifying expenditures, as long as the activity has taken place within the European Economic Area.⁹⁹⁵ In the meantime, the old patent box will remain in place for multinational corporations that applied for the tax benefit before 1 July 2016, and they will continue to be able to benefit from the old regime until 31 June 2021.⁹⁹⁶

Tax rate

In December 2016, the Luxembourg parliament approved government plans for corporate tax reform, which envisaged reducing corporate income tax from 21 per cent to 19 per cent in 2017, and to 18 per cent in 2018.⁹⁹⁷

Tax rulings

In response to the LuxLeaks scandal, the Luxembourg government introduced changes to the process that corporations must go through in order to obtain an advance tax ruling. Most noticeably, the application now has to go through a 'Tax Ruling Commission', created to ensure a uniform treatment of applicants.⁹⁹⁸ Under the new rules, tax rulings can only be valid for a maximum of five years, and companies must now also pay an administrative charge in order to apply for a ruling.⁹⁹⁹ Anonymous summaries of decisions will also be published.¹⁰⁰⁰ A 'grandfathering exemption' was put in place for any pending rulings requests that were submitted prior to 1 January 2015, meaning that these applications can still benefit from the old rules.¹⁰⁰¹

The new rules seem not to have discouraged corporations from applying for tax rulings in Luxembourg. According to data from the European Commission, Luxembourg had 519 unilateral advance pricing agreements in force at the end of 2015 – a dramatic increase from the year before, where 347 such agreements were in force.¹⁰⁰²

Global solutions

The Luxembourg government has stated that it is 'undecided' regarding the issue of establishing an intergovernmental tax body under the auspices of the UN.¹⁰⁰³

Conclusion

One might have hoped that the LuxLeaks scandal would lead to fundamental changes in Luxembourg. However, in the year after the scandal, the number of advance pricing agreements – also known as 'sweetheart deals' – skyrocketed. At the same time, Luxembourg has now started lowering its corporate tax rate, and the government has proposed introducing a new patent box regime, which would only be marginally better than the old one. Meanwhile, a 'grandfathering' clause will allow benefits handed out under the old patent box regime to continue unchanged until 2021. In other words, the tax system in Luxembourg remains an issue of major concern.

Also on the issue of transparency, the situation in Luxembourg is problematic. The government has taken a strong position against public country by country reporting – a system that could otherwise shed some much-needed light on the international tax arrangements of multinational corporations. As regards registers of beneficial owners, Luxembourg's plans are unclear, but there are no indications that a potential future register would be accessible to the public.

Although not unproblematic, Luxembourg's tax treaty network is less concerning than that of many other countries covered by this report, since both the total number of treaties with developing countries, as well as the reductions of tax rates introduced through those treaties, are below average among the countries covered by this report.

The Netherlands

"The Netherlands must remain attractive for companies that want to move and produce here. [...] This is why we will combat tax dodging [...]. The additional income this will generate will be used to lower the corporate income tax rate, given the developments in our neighbouring countries."

Coalition agreement of the newly formed Dutch government
10 October 2017¹⁰⁰⁴

Overview

The Netherlands remains a key player when it comes to international tax dodging. Researchers at the University of Amsterdam found that as much as 23 per cent of global capital flows are routed through the Netherlands and onwards to 'sink jurisdictions', where assets can be kept without incurring much (if any) tax.¹⁰⁰⁵ This makes the Netherlands the biggest conduit country in the world. The country holds the largest stock of inward foreign direct investment in the world, and reports the second largest outward foreign direct investment flows.¹⁰⁰⁶

Even though the former Minister of Finance, Jeroen Dijsselbloem, has admitted that *'for too long the Netherlands has been part of this problem [tax dodging]*,¹⁰⁰⁷ a number of scandals and reports in 2017 show that the country still has a long way to go to achieve reform.

In response to the Panama Papers, the Dutch parliament held an inquiry in June 2017 to examine the use of Dutch letterbox companies in tax dodging.¹⁰⁰⁸ CEOs and representatives of corporate service providers (known as 'trust firms' in the Netherlands), tax advisors and supervisory authorities testified under oath to the inquiry committee, and the hearings prompted significant media attention.¹⁰⁰⁹

However, while witnesses faced tough questioning during the inquiry, the committee did not have the mandate to draw conclusions or make recommendations.¹⁰¹⁰ In its report, 'Paper reality' ('Papieren werkelijkheid'), the committee among other things highlighted that *'By using tax advice and the services of trust offices, legal requirements can be met without the spirit of the law being observed'*, and that *'During the interrogations it was confirmed that foreign companies often settle in the Netherlands for tax reasons. The participation exemption, the lack of withholding tax on interest and royalties and the large number of tax treaties make the Netherlands an attractive location for tax purposes.'*¹⁰¹¹

As of October 2017, a new centre-right government was formed following the general elections in March. As explained below, the coalition agreement includes several measures relating to taxation of multinational corporations, including a lowering of the corporate income tax rate.

EU Common Consolidated Corporate Tax Base (CCCTB)

The previous Dutch government did not support the European Commission's proposal for a CCCTB, arguing that it is not appropriate for the EU to address such a matter.¹⁰¹² The government furthermore argued that the proposal has uncertain consequences for tax revenues, and that the benefits for companies appear to be limited. Lastly, during an Economic and Financial Affairs Council (ECOFIN) hearing on the CCCTB in Spring 2017, it underlined that it had strong concerns about the impact of the new rules on the tax revenues of EU member states.¹⁰¹³

Tax and development

In 2016, the government published its 'action plan' on policy coherence for development, which includes a substantial chapter on taxation.¹⁰¹⁴ One of the key activities highlighted was the effort to renegotiate tax treaties with certain developing countries in order to include anti-abuse measures, and such treaty renegotiations have now been completed with 10 developing countries.¹⁰¹⁵ However, such measures do not automatically mean that Dutch tax treaties with developing countries become harmless.

First of all, the most common anti-abuse measures in tax treaties can only be applied when tax administrations can prove that corporate tax avoidance has taken place¹⁰¹⁶ – something that can be difficult to achieve for developing countries with low levels of resources and difficulties in accessing information.¹⁰¹⁷ Secondly, the anti-abuse measures do not address a central concern with tax treaties signed with developing countries, namely that they lower the tax rates of these countries.¹⁰¹⁸

The Netherlands also supports a number of international capacity-building projects, both bilaterally and multilaterally (through the IMF and the UN, as well as the African Tax Administration Forum and the Tax Inspectors Without Borders programme).¹⁰¹⁹ While it is generally welcome that the Netherlands supports developing countries, specific concerns have been raised about the Tax Inspectors Without Borders project.

In 2016, Eurodad published a report that included previously unpublished internal OECD documents about three pilot projects of Tax Inspectors Without Borders, including the project between the Netherlands and Ghana.¹⁰²⁰ Based on these documents, Eurodad raised the concern that the pilot projects seemed to have been driven by the donor countries, and furthermore highlighted significant risks of conflicts of interest associated with the projects.

A 2017 briefing by the then Minister of Foreign Trade and Development Cooperation gave an overview of international studies of developing country revenue losses from tax avoidance and evasion. The Minister concluded that developing countries are hit hard by international tax dodging, and underlined that the government is fully dedicated to assisting them in combating this.¹⁰²¹

In 2016, the consultancy firm Profundo also delivered a report commissioned by the Ministry of Foreign Affairs, on the role of the Netherlands in tax avoidance by mining companies in developing countries.¹⁰²² The report analysed 128 companies in five selected developing countries, and concluded that of these, 34 per cent were directly or indirectly financed or owned by Dutch financing and holding companies. It furthermore highlighted that the vast majority of Dutch financing and holding companies had no employees at all, and based on an analysis of the setups, it concluded that there was a high risk that several of the companies had been set up 'with the main purpose of avoiding corporate income and/or withholding taxes to be paid to the governments of the five developing countries.'¹⁰²³

As the former Minister for Foreign Trade and Development Cooperation Lilianne Ploumen noted in the policy coherence for development action plan from 2016, '*policy coherence for development is often a matter of weighing different interests*'.¹⁰²⁴ Although it is positive that the Netherlands has a detailed strategy on policy coherence for development, it remains to be seen whether the Netherlands will in the end have the political will to ensure policy coherence for development on the issue of taxation.

Transparency

Public country by country reporting (CBCR)

The former Dutch government supported full public CBCR, meaning corporations should be required to report on their activities on a country by country basis for all countries where they operate (as opposed to the European Commission's proposal, which would only require reporting on activities in EU countries and blacklisted countries).¹⁰²⁵ However, the government added that an option to 'comply or explain' should be included for multinationals headquartered outside the EU.¹⁰²⁶ In February 2017, the Dutch parliament responded to this by adopting a resolution calling on the government to negotiate at EU level a proposal for full CBCR, without a 'comply or explain' option.¹⁰²⁷

However, the coalition agreement of the new government only states that the Netherlands will support country by country reporting with disaggregated data for each EU country and blacklisted country in which a corporation operates¹⁰²⁸ – in other words, supporting the position of the European Commission. This position is problematic, because it would still allow multinational corporations to hide profits in countries not covered by the CBCR requirements.¹⁰²⁹

The new government has provided no further public information on their position regarding public country by country reporting, so it is unclear whether the Netherlands is now against full public CBCR.

Ownership transparency

The Netherlands is currently preparing legislation for an ultimate beneficial ownership register. In April 2017, a public consultation¹⁰³⁰ was held, and it seems the intention of the new government is to send the final legislative proposal to parliament in early 2018.¹⁰³¹

According to draft rules currently under consideration, access to beneficial ownership information will be made publicly accessible.¹⁰³² However, the draft rules also foresee certain restrictions on how individuals will be able to search the register, which may impede the efficacy of the register. For instance, individuals will only be available to search by the name of the legal entity, and not the name of the beneficial owner. Users will also need to register in order to be able to access the register, and fees (not exceeding the administrative costs) are also envisaged for searching the database.¹⁰³³

The proposal from the former Dutch government did not include owners of trusts in the public register, with the argument that Dutch law does not provide opportunities for establishing trusts.¹⁰³⁴ It is not yet clear what the new government's position will be on the ultimate beneficial ownership register.

Before the new government was established, the Netherlands supported the European Commission's proposal for revision of the 4th Anti-Money Laundering Directive (AMLD). This included support for the establishment of public beneficial ownership registers, 'provided that sufficient privacy safeguards are in place'.¹⁰³⁵ It is not yet clear what the new government's position on the ongoing AMLD negotiations will be.

Taxation

Tax treaties

The Netherlands generally follows the OECD model when negotiating tax treaties with developing countries, but says it is also 'willing to accept several UN provisions'.¹⁰³⁶

A number of existing tax treaties with developing countries will be renegotiated in the coming five years, including with Malawi, Kenya, Zambia, Ghana, Zimbabwe and Indonesia.¹⁰³⁷ The Netherlands is also negotiating with Mozambique to sign the first tax treaty between the two countries.¹⁰³⁸ The Dutch government states that: 'the proceedings of the meetings are confidential but the Ministry of Finance publishes upcoming treaty negotiations and stakeholders are invited to inform the Ministry on all aspects that can be relevant for the negotiations'.¹⁰³⁹

In total, the Netherlands has 49 tax treaties with developing countries, which is well above the average (41.77) among the countries covered by this report.¹⁰⁴⁰ The average reduction of developing country tax rates within those treaties – 3.57 percentage points – is also above the average (3.39 percentage points) among the countries covered in this report.¹⁰⁴¹ Furthermore, following a full assessment of the content of the treaties, seven of the Dutch tax treaties with developing countries were ranked by ActionAid as being 'very restrictive' treaties, which give particular cause for concern due to the strong restrictions they impose on the taxing rights of developing countries (see also table 5 in chapter 4.5 on 'Bilateral tax treaties').¹⁰⁴²

International commitments

The Netherlands signed the OECD's BEPS Convention in June 2017.¹⁰⁴³ Compared to other countries covered by this report, Netherlands has submitted very few reservations to the convention. Out of the 11 articles that civil society organisations have called on governments to adopt, the Netherlands has only opted out of one (see table 7 in chapter 5.1.2 on 'Tax sudoku – the OECD's BEPS Convention'). Unfortunately, the Netherlands has also opted in to both of the articles that civil society organisations have warned against, including article 18 on secret binding arbitration (see chapter 5.1.2 on 'Tax sudoku – the OECD's BEPS Convention', including table 8).

Tax practices

The former Dutch government long obstructed an EU measure to shut down a tax dodging structure frequently used by companies to avoid paying tax in the United States, by shifting profits via the Netherlands (the so-called 'CV/BV structure').¹⁰⁴⁴ Afraid that abolishing this structure would cost the country jobs, the government tried to get the EU to delay implementation of the measure until 2024.¹⁰⁴⁵

After the Dutch parliament adopted a resolution¹⁰⁴⁶ calling on the government to support the measure's introduction in 2019, the Dutch government reached a compromise in February 2017 with the EU.¹⁰⁴⁷ The measure will now be implemented by 31 December 2021.¹⁰⁴⁸ Corporate tax advisors have pointed out that a delay in implementation provides opportunities for setting up alternative structures, and that there are 'various transitional and longer term solutions that can be considered'.¹⁰⁴⁹

During the Paradise Papers scandal, the Dutch CV/BV structure once again received media attention, as it was alleged that Nike was making use of this structure to avoid taxation.¹⁰⁵⁰ In response to questions regarding its tax arrangements, Nike responded with the statement 'Nike fully complies with tax regulations'.¹⁰⁵¹

In July 2017, Dutch newspaper *NRC Handelsblad* reported how the Dutch government offered tax incentives in a bid to convince an Israeli company, Israel Chemicals, to open its European headquarters in Amsterdam.¹⁰⁵² Internal government documents acquired through a freedom of information request showed how the Netherlands Foreign Investment Agency (NFIA), which is part of the Ministry of Economic Affairs, between 2011 and 2015 advertised possibilities to avoid taxation in the Netherlands to Israel Chemicals, and the possibility of negotiating a tailor-made tax ruling with the Dutch tax service.¹⁰⁵³

An email from February 2012 revealed how the NFIA presented to Israel Chemicals the possibility of negotiating 'an effective tax rate of around 5 per cent to 12.5 per cent', while the statutory tax rate in the Netherlands is 25 per cent.¹⁰⁵⁴ The Netherlands was competing with Switzerland to attract the company to its jurisdiction. In 2014, Israel Chemical's CEO used that as leverage to convince the Dutch government to offer him a tax package that could rival the Swiss proposal.¹⁰⁵⁵ This led to a situation whereby the corporation will pay an effective tax rate in the range of 10 per cent in the Netherlands.¹⁰⁵⁶

In response to the news story, the government argued that the Dutch tax service never negotiates about the tax rate or tax base with companies, as these are determined by the law: 'these are the same for everyone – whether you have a ruling or not'.¹⁰⁵⁷ The previous government's State Secretary for Finance, however, also stated that, while companies can never negotiate a tax rate discount, there are in fact 'tax base narrowers' that corporations can make use of, such as the patent box.

Another way for multinationals to ensure a narrowing of the tax base is by agreeing on a favourable transfer pricing method with the government as part of a tax ruling. The decision about transfer pricing approaches is made by the tax authority – in part based on information provided by the corporation.¹⁰⁵⁸ However, since the transfer pricing rules are anything but an exact science, the decision on transfer pricing approaches leaves a lot of room for interpretation and discretion within the tax authority.¹⁰⁵⁹ Hence, there is space for negotiation.

When the tax base is narrowed, it means the corporation will be taxed on a lower amount of its income, and thus, the effective tax rate can become much lower than the statutory tax rate. So in terms of the outcome, there is no significant difference between negotiating on the statutory tax rate or the tax base. Therefore, while the Dutch government may not negotiate on the statutory tax rate, it is in fact possible that the Dutch government and a corporation such as Israel Chemicals can discuss how much tax the corporation should be charged in the Netherlands.

The Dutch government also uses other tools to attract multinational corporations. *NRC Handelsblad* revealed that the NFIA has been making regular financial contributions (up to €25,000 each) for tax advice to multinationals that are negotiating a ruling with the Dutch tax authorities.¹⁰⁶⁰ In the past five years, the NFIA has co-financed tax advice for 11 multinationals to the tune of €234,000.¹⁰⁶¹ The Ministry of Economic Affairs states that it is very reticent in making these contributions, and will only do so when there is a significant chance the corporation will move to the Netherlands.¹⁰⁶² In response to these revelations, the Dutch parliament adopted two resolutions calling on the government to immediately abandon this practice of funding tax advice for multinationals.¹⁰⁶³ The Ministry of Economic Affairs says that it will now indeed stop this practice, but also notes that it will 'reflect' on how it can continue to promote the Dutch investment climate.¹⁰⁶⁴

Tax rate

Between 2000 and 2011, the Dutch corporate income tax rate for profits over €200,000 fell from 35 per cent to 25 per cent.¹⁰⁶⁵ The current corporate tax rate is 25 per cent for profits over €200,000 and 20 per cent for profits below €200,000 (the so-called SME-tariff).¹⁰⁶⁶ At the time, the government argued it reduced tax rates because it feared the Netherlands would no longer be competitive in light of other EU member states lowering their rates.¹⁰⁶⁷ Fast forward to 2017, and the newly formed centre-right government will again lower the corporate income tax rate, given the 'developments in neighbouring countries'.¹⁰⁶⁸ The tariff for profits over €200,000 will be reduced to 21 per cent in 2021, and the tariff for profits below €200,000 will go down to 16 per cent. This reduction will, according to the government, be paid for with the increased tax revenue as a result of anti-tax dodging measures.¹⁰⁶⁹

Furthermore, the new government intends to abolish the withholding tax on dividends (currently 15 per cent), likely a result of successful corporate lobbying.¹⁰⁷⁰ This is projected to cost the public purse €1.4 billion from 2020 onwards.¹⁰⁷¹

The government will also introduce some measures that are supposed to combat tax dodging. A withholding tax will be implemented on dividends, interest and royalty payments to low-tax jurisdictions, and 'in abuse situations' (these are not defined, which makes it uncertain when and where this tax will apply). Furthermore, the government would like to increase the tax rate associated with the Dutch patent box from five to seven per cent (however, it should be noted that this rate is still very low). To combat the tax dodging method of earnings-stripping, the government will also, as part of the measures required by the EU's Anti-Tax Avoidance Directive, introduce a limitation on interest deductions.¹⁰⁷²

To what extent these measures will actually curb tax dodging remains to be seen, especially given the government's decision to simultaneously reduce the corporate income tax rate and abolish the withholding tax on dividends – a measure that could open up new opportunities for tax avoidance.

The Netherlands does not provide calculations of government revenue losses due to corporate tax incentives or tax cuts. Research by Oxfam Novib shows that tax revenue in 2011 was €4.3 billion less than in 2000, largely as a result of a 10 per cent cut in the corporate income tax, while corporate profits grew in the same period.¹⁰⁷³ Research by the non-governmental organisation SOMO and the Dutch trade union confederation FNV estimates that, between 2005 and 2014, the Dutch government lost out on €1.5 billion per year, likely as a result of tax dodging by 93 companies listed on the Amsterdam stock exchange.¹⁰⁷⁴

Tax rulings

A major scandal in 2017 revolved around the revelation of an internal government memo from 2015 describing the different possible tax structures most commonly used in two different types of Dutch tax rulings – advance pricing agreements (APAs) and advance tax rulings (ATRs).¹⁰⁷⁵ The memo,¹⁰⁷⁶ obtained through a freedom of information request, describes 10 different corporate ownership and/or financing structures, and why these are important to the Dutch 'fiscal investment climate'. It illustrates how Dutch tax rulings can be used in a variety of ways for tax planning (i.e. tax avoidance) purposes. The Dutch government had never before shared such information with parliament or the public, despite repeated questions by Dutch members of parliament over the years for more detailed information about the content of tax rulings with (foreign) companies in the Netherlands.¹⁰⁷⁷

The then State Secretary for Finance noted in his response to parliament that *'these tax avoidance structures have been tolerated for a long time, but are currently a subject of public debate and can be addressed in the coming years, mainly through improved exchange of information'*. Furthermore he noted: *'formally the EU member states have agreed to exchange rulings, but in reality this happened very rarely to not at all',* including by the Netherlands, because the government deemed it *'not to be relevant for other countries'*. The State Secretary admitted however that *'with today's insights [...] there would have been more exchange of information'*.¹⁰⁷⁸

Regardless of whether tax rulings are exchanged between countries, the information shared with parliaments and the broader public will in all likelihood remain very limited, since such exchange of information is carried out confidentially between tax administrations.¹⁰⁷⁹ Over the last few years, the public has only been informed about the total amount of APAs in force in each EU member state. However, unlike other EU countries, the Netherlands does not even report to the European Commission on the total amount of APAs in force.¹⁰⁸⁰ Instead, the Netherlands has reported the number of APAs granted in the last few years. In 2015, this number was 236, compared to 203 in 2014.¹⁰⁸¹ There has been no reporting on the number of ATRs granted or in force.

During the Paradise Papers scandal, the Dutch tax ruling system once again received attention, this time due to an APA that the Netherlands had given to Procter & Gamble (P&G) in 2008. According to media reports, the APA had ensured P&G a tax break of an estimated US\$169 million (or over €140 million).¹⁰⁸² There were no allegations that the tax ruling as such was illegal, but when it turned out the ruling had only been signed by one inspector, the Dutch Deputy Minister of Finance underlined that this was a violation of Dutch procedures, which requires rulings to be vetted by several people.¹⁰⁸³ In response, the government will be reviewing over 4,000 rulings offered to international corporations between 2012 and 2016.¹⁰⁸⁴

Global solutions

The previous government did not support the establishment of an intergovernmental UN tax body. The Ministry of Finance argued that '*effective international fiscal cooperation is now best pursued in the context of the BEPS Inclusive Framework*',¹⁰⁸⁵ There are no indications that the new government will take a different approach on the issue. The Netherlands is involved in various bilateral¹⁰⁸⁶ and multilateral¹⁰⁸⁷ initiatives to provide technical assistance and capacity development to developing countries on tax matters and involve them in the BEPS Inclusive Framework.¹⁰⁸⁸

Conclusion

In terms of corporate taxation, Netherlands is among the frontrunners in the global race to the bottom, and the tax system in the Netherlands remains an issue of major concern. While announcing an intention to implement a withholding tax on payments of royalties, interests and dividends to low-tax jurisdictions, the new government has at the same time announced new problematic measures, such as the abolishment of the withholding tax on dividends and – not least – the lowering of the statutory corporate tax rate. Furthermore, for the foreseeable future, it does not seem likely that there will be a fundamental reconsideration of harmful tax practices such as the Dutch patent box, or the culture of offering very generous tax rulings to attract even more multinational corporations to the Netherlands.

The Dutch tax treaty system also remains an issue of concern. The total number of treaties with developing countries, as well as the average reduction in tax rates introduced through those treaties, are both above average. Furthermore, a number of Dutch treaties with developing countries qualify as 'very restrictive treaties', which impose relatively high limitations on the taxing rights of developing countries.

While it was positive that the previous government supported full public country by country reporting, the proposal of offering foreign multinationals an opportunity to 'comply or explain' was problematic. It is also problematic that the new government has not yet publicly confirmed that the Netherlands still supports full public country by country reporting.

It would be positive if the Netherlands carries out its plan to introduce a public register of beneficial owners of companies. However, the plan to only allow searches on company names, but not the names of owners, will limit the usefulness of such a register.

Finally, although the position of the new government is still unknown, it is concerning that the previous Dutch government was opposed to the establishment of an intergovernmental UN tax body, which would give developing countries a truly equal say in global decision-making on tax matters.

Norway

"Aggressive tax planning is an unethical way to tap countries for income. All countries are affected by this, but it is especially important for poor countries that most need the income."

Prime Minister Erna Solberg

8 June 2017, Anti-Corruption Conference, Oslo¹⁰⁸⁹

Overview

Early in 2017, a government-appointed commission unveiled its proposal for a Norwegian beneficial ownership registry.¹⁰⁹⁰ However, some transparency campaigners see this as a very weak proposal, since the registry would not be open to the public, would not include listed companies and nominee accounts, and would register only very large shareholders.¹⁰⁹¹

In April 2017, the Norwegian Sovereign Wealth Fund ('the Fund') called for companies around the world to be more transparent about their tax behaviour.¹⁰⁹² The Fund is one of the largest of its kind in the world, with investments in companies worldwide.¹⁰⁹³ In new guidance to the companies in which it invests, the Fund called on companies to pay their taxes where economic value is generated, and furthermore underlined that *'Multinational enterprises should publish country by country breakdowns of how and where their business model generates economic value, where that value is taxed, and the amount of tax paid as a result. Where companies choose not to apply such transparency principles, they should be ready publicly to state why.'*¹⁰⁹⁴

In June 2017, the Fund also announced it would no longer hold its real estate holdings through subsidiaries in Luxembourg and the United States.¹⁰⁹⁵ This followed on the heels of criticism levelled at the Fund for maintaining real estate investments through subsidiaries in these countries in order to benefit from low tax rates and tax exemptions. Instead, the investments will be held directly through a Norwegian subsidiary from now on.¹⁰⁹⁶

Tax and development

Norway is a member of the Addis Tax Initiative (ATI), and has pledged to double its support for domestic revenue mobilisation by 2020.¹⁰⁹⁷ In spite of this, Norway has not yet published a plan on its proposed contribution to reaching this goal. Norway has been a champion of the agenda to combat international capital flight and illicit financial flows, and has helped to build the capacity of civil society organisations in this area. However, according to evaluations conducted by the Norwegian Agency for Development Cooperation (Norad), this work has been accorded less priority since 2013.¹⁰⁹⁸

As a member of the Addis Tax Initiative, Norway has also committed to ensuring policy coherence for development on the issue of taxation.¹⁰⁹⁹ Norway does not yet have a government strategy on this issue, but the government has announced that it will put forward a proposal.¹¹⁰⁰ In its annual budget for the financial year 2016, the Norwegian government committed to significantly reducing by 2030 *'illicit financial and arms flows, [strengthening] the recovery and return of stolen assets and [combating] all forms of organised crime.'*¹¹⁰¹ The government highlighted several ways in which Norway has been contributing to these goals, including through its ownership strategy for large companies; through its action plan on business and human rights; and through the adoption of UN and Organisation for Economic Co-operation and Development (OECD) anti-corruption conventions. On illicit financial flows, Norway highlights that it has pushed the World Bank to be more progressive on this issue; has adopted country by country reporting for the extractive sector; intends to introduce a beneficial ownership registry; and supports the Addis Tax Initiative.¹¹⁰² In 2016, Norway also commissioned an independent study of the country's tax treaties with developing countries.¹¹⁰³

Transparency

Public country by country reporting (CBCR)

In December 2016, Norway amended the Tax Administration Act with the addition of a new article to implement country by country reporting, as required by the OECD's BEPS agreement.¹¹⁰⁴ The first reporting by multinationals will be required from 31 December 2017 onwards, based on figures from the financial year 2016.¹¹⁰⁵ During parliamentary negotiations on the proposed rules, the Norwegian parliament voted to demand that any companies subject to this law would also be required to make this information publicly available. The Norwegian parliament has also asked the government to push for the OECD to make public country by country reporting the standard for all sectors.¹¹⁰⁶ However, the vote by parliament to make information publicly available has not yet been followed up by the Norwegian government.

In 2014, Norway introduced limited country by country reporting for the extractives and logging industries, but civil society organisations argued that this reporting regime was ineffective and had several clear loopholes.¹¹⁰⁷ One important loophole was the fact that corporations were only required to report on their activities in countries where they engage in physical extraction of natural resources, and thus corporations can avoid reporting on their activities in tax havens.

In December 2016, the government published a revised directive on the country by country reporting requirement of extractives and logging companies.¹¹⁰⁸ This strengthened the accounting requirements on several points, notably in that, as a general rule, information in the reports should now come from audited annual accounts. However, the directive has still been formulated in a way that allows companies to avoid publishing figures on their activities in jurisdictions where no resource extraction is taking place, including tax havens.¹¹⁰⁹ In the summer of 2017, the government started on the task of evaluating the effectiveness of this current regime.¹¹¹⁰

Whistleblower protection

Compared to other countries, reports indicate that there are more instances of whistleblowing in Norway. Among those who raise concerns of wrongdoing in their workplace, a higher number of whistleblowers seem to have success in coming forward.¹¹¹¹ However, labour market studies have also found an increase over the last decade in the proportion of employees who face reprisals because of whistleblowing.¹¹¹² Although the government sought to strengthen the legal framework relating to whistleblowing in 2017, critics still claim that legal protection remains very weak.¹¹¹³ One major concern is that the legislation does not take freedom of speech as a starting point. Critics argue that whistleblower legislation actually forbids freedom of speech unless certain conditions are met, for instance that concerns raised are of a serious nature and that the whistleblowing is conducted in a 'responsible manner'.¹¹¹⁴

Ownership transparency

A government-appointed commission unveiled proposals for a Norwegian beneficial ownership registry earlier this year.¹¹¹⁵ The commission's proposals are currently being considered by the Ministry of Finance, which is expected to unveil its plans for next steps between 2017 and 2018. However, civil society organisations have criticised the commission's proposal for a beneficial ownership registry.¹¹¹⁶ Under the proposed rules, the register would not be open to the public, and only those with a 'legitimate interest' will be able to access the information.¹¹¹⁷

Civil society organisations have also expressed concerns that the definition of 'legitimate interest' has been restrictively defined, and will be decided on a case-by-case basis.¹¹¹⁸ For instance, under the current rules, the Norwegian tax authorities would not be given access to the information in most cases. The proposed register will also not include listed companies, and would register only very large shareholders that own over 25 per cent of the company, not the beneficial owners *per se*.¹¹¹⁹ The proposed registry also excludes trusts and other similar legal instruments. Senior managing officials will be allowed to be registered as the beneficial owner, in cases where no beneficial owner can be identified.¹¹²⁰

In 2014, the Norwegian parliament voted to introduce a public shareholder register for Norwegian companies.¹¹²¹ The Norwegian government will be legally required to introduce legislation to establish such a public shareholder register. However, the proposed shareholder register is expected to only cover the formal owners, the registered shareholders, and not necessarily the beneficial owners.¹¹²² The government is expected to propose legislation on the introduction of the register in the first half of 2018.

Taxation

Tax treaties

In total, Norway has 43 tax treaties with developing countries, which is above average (41.77) among the countries covered by this report.¹¹²³ The average reduction of developing country tax rates within those treaties – 2.92 percentage points – is below the average (3.39 percentage points) among the countries covered in this report.¹¹²⁴ Furthermore, following a full assessment of their content, seven of Norway's tax treaties with developing countries were ranked by ActionAid as being 'very restrictive' treaties, which give particular cause for concern due to the strong restrictions they impose on the taxing rights of developing countries (see also table 5 in chapter 4.5 on 'Bilateral tax treaties').¹¹²⁵

Norway is conducting ongoing tax treaty negotiations with several countries, including Egypt, Kuwait, Malaysia, Singapore and Thailand.¹¹²⁶ The treaties are generally based on the OECD model, although treaties with developing countries often include elements from the UN model.¹¹²⁷

International commitments

Norway signed the OECD's BEPS Convention in June 2017.¹¹²⁸ Compared to other countries covered by this report, Norway has submitted very few reservations to the convention. Out of the 11 articles that civil society organisations have called on governments to adopt, the Netherlands has only opted out of two (see table 7 in chapter 5.1.2 on 'Tax sudoku – the OECD's BEPS Convention'). Equally positive, Norway has opted out of one of the articles that civil society organisations have warned against, namely article 18 on secret binding arbitration (see chapter 5.1.2 on 'Tax sudoku – the OECD's BEPS Convention', including table 8).

Harmful tax practices

The corporate tax rate was lowered to 25 per cent in 2016, and to 24 per cent in 2017.¹¹²⁹ The government plans to reduce this further to 23 per cent in 2018.¹¹³⁰ The government's main argument for lowering the corporate income tax rate is that Norway is under pressure from international tax competition.¹¹³¹

Bilateral or multilateral advance pricing agreements (APAs) are awarded by the Norwegian tax authorities. Originally, the APA procedures focused on the pricing of natural gas, but according to tax advisors, Norway is also running a pilot programme in which APAs can be issued for other transfer pricing matters too.¹¹³² Norway does not report publicly on the total number of APAs in force, but publishes yearly information about the number of APAs approved. This data shows that Norway approved four APAs in 2014, one in 2015 and three in 2016.¹¹³³ Since APAs are normally valid for several years, this would in all likelihood mean that a minimum of eight APAs were in force at the end of 2016.

Norway also issues general binding advance tax rulings to individuals as well as companies. Some rulings are published in an anonymous form on the website of the tax administration.¹¹³⁴

According to research conducted at the Norwegian School of Economics, multinationals operating in Norway report on average 24 per cent lower profits than companies with operations in just Norway alone. Even accounting for all other possible explanatory factors, this discrepancy is an indicator of profit shifting by multinationals out of Norway. As a result, the researchers concluded that as much as four per cent of the Norwegian corporate tax take was lost in 2012.¹¹³⁵

Global solutions

Norway did not take a strong public stance in favour of the global tax body at the Financing for Development conference in Addis Ababa in July 2015, perhaps because it was co-facilitating the negotiations.¹¹³⁶ It remains to be seen whether this stance will change following recent elections.

Conclusion

The Norwegian parliament has requested that the government moves forward when it comes to transparency – both by calling on the government to support public country by country reporting, as well as by requesting a legislative proposal to introduce a public shareholder register in Norway. However, the government has yet to follow up, and therefore the situation is currently uncertain.

Meanwhile, the Finance Ministry is currently considering the proposal to establish a register of the real – 'beneficial' – owners of companies and trusts, which was put forward by a government-appointed committee earlier this year. Unfortunately, this proposal did not include a public register of beneficial owners, but rather a register with quite strict limitations on access.

Norway's tax treaty network gives rise to certain concerns, in particular due to a high number of 'very restrictive' treaties with developing countries, which impose significant limitations on the taxing rights of those countries.

When it comes to the corporate tax rate, it seems that Norway has slowly started engaging in the global race to the bottom, by gradually reducing the rate. On a positive note, Norway does not have patent box or other very harmful measures, and the number of advance pricing agreements is still relatively low.

On the issue of establishing an intergovernmental UN tax body, which could give developing countries a truly equal say in global standard-setting on tax matters, Norway's position is currently unclear.

Poland

"Each zloty that is drained from the state through tax fraud and does not reach the budget is a zloty which reduces the state's ability to implement public tasks important for all citizens."

Prime Minister Beata Szydło
July 2016¹¹³⁷

Overview

In 2017, the Polish Ministry of Finance intensified its focus on tackling tax dodging, taking a number of ambitious steps forward as it committed to spending larger sums of government revenue on social programmes.¹¹³⁸ For example, the Polish government has put forward a proposal to introduce a public register of beneficial owners of companies, as well as a new proposal that would require large corporations to publish yearly data on their revenue, expenses, earned income and taxes due.¹¹³⁹

In January 2017, new rules to tackle fraud with value added tax (VAT) through so-called 'VAT carousels' entered into force, closing loopholes and allowing the Polish government to collect more tax revenue.¹¹⁴⁰ Tax fraud through VAT carousel schemes are estimated to cost the Polish state 40 billion zlotys per year (€9.4 billion).¹¹⁴¹ Carousel fraud is carried out by fraudsters who import goods VAT-free from other countries, then sell on the goods to domestic buyers and charge these customers VAT. The selling companies then disappear without paying any taxes owed to the government. The new rules introduce stricter penalties and financial sanctions on VAT fraudsters. Companies can now also be removed from the VAT register, if authorities determine that companies are involved in VAT fraud or choose not to cooperate with the Polish tax authorities.¹¹⁴²

The Polish government also announced in November 2016 that it would close an important loophole in the Polish tax code for investment funds. Since 1 January 2017, closed-end investment funds – which, unlike open-ended funds, issue a fixed number of shares that are not redeemable from the fund – no longer benefit from a general corporate income tax exemption.¹¹⁴³ According to the Finance Ministry, the exemption from tax obligations meant that closed-end investment funds were frequently misused for tax dodging purposes.¹¹⁴⁴ The new rules are expected to generate revenues for the Polish government of 2 to 2.5 billion zlotys (€0.5 to €0.6 billion).¹¹⁴⁵

EU Common Consolidated Corporate Tax Base (CCCTB)

The Polish government supports a prudent approach towards implementing a Common Consolidated Corporate Tax Base. At an Economic and Financial Affairs Council (ECOFIN) hearing in May 2017, the Polish Minister of Economic Development and Finance Mateusz Morawiecki said that there are potential advantages to implementing a CCCTB, including a smaller administrative burden and reduced compliance costs for firms. He also said that any eventual rules that are established would need to safeguard the stability of Polish public finances.¹¹⁴⁶

Tax and development

Poland has identified the fight against problems such as tax avoidance and money laundering as priority issues in its Multiannual Development Cooperation Programme of 2016 to 2020.¹¹⁴⁷ Poland is committed to policy coherence for development, and the Polish Ministry of Finance has committed to drafting an annual action plan in cooperation with the Polish Ministry of Foreign Affairs to deliver on this priority.¹¹⁴⁸

Poland does not have any plans to conduct a detailed impact assessment measuring the effects of its tax policies on developing countries.

Transparency

Public country by country reporting (CBCR)

In June 2017, the Polish Ministry of Finance introduced an amendment to the Corporate Income Tax Act that would require 2,000 of the largest companies in Poland to publicly disclose their tax information. Under the envisaged rules, the targeted companies would be required to disclose: their taxpayer name and identification number; the relevant tax year; revenue; incurred expenses; earned income or loss; and amount of tax due.¹¹⁴⁹ The Polish Ministry of Finance has argued that the new rules will discourage tax avoidance by large multinationals.¹¹⁵⁰

The Polish government's proposal indicates that it supports increased transparency regarding the activities and tax payments of multinational corporations. However, as regards the ongoing EU negotiations about introducing full public country by country reporting at the EU level, Poland's position still is unknown.

Whistleblower protection

In 2016, the Ministry of Justice consulted with stakeholders about the potential to introduce whistleblower protection legislation,¹¹⁵¹ but no proposal has yet been put forward. The Polish Ombudsman, Adam Bodnar, has appealed for whistleblower protection and underlined that it should not be limited to employees, but should also be extended to those working under temporary contracts and the self-employed.¹¹⁵²

Ownership transparency

Poland has not yet transposed the 4th Anti-Money Laundering Directive (AMLD) into Polish law. Although as of late 2017, the legislation was proceeding through the Polish parliament,¹¹⁵³ Under the current draft rules, a person will be considered a beneficial owner of a company if they own 25 per cent or more of the total number of shares of a company.¹¹⁵⁴ If no beneficial owner can be identified, then a senior managing official can be identified as the beneficial owner instead.¹¹⁵⁵ Free access to the public registry is envisaged under the current draft rules, and the information will be made available in an open data format that is machine readable.¹¹⁵⁶

Whereas in previous years the Polish government opposed public access to beneficial ownership registers, the Ministry of Finance has said that it now supports the European Commission's proposal to establish public beneficial ownership registers for companies and business-related trusts in Europe.¹¹⁵⁷ Poland also supports the idea of ensuring that all the national beneficial ownership registers in the European Union are inter-connected.¹¹⁵⁸ Under the current 4th AMLD legislation, Poland has not set up a central register for the beneficial ownership information of trusts. However, following the conclusions of negotiations in the EU on the revised 4th AMLD, Poland intends to implement legislation to centrally register the beneficial owners of trusts who are living in Poland.¹¹⁵⁹

Taxation

Tax treaties

Poland currently has 41 tax treaties with developing countries, which is just below average (41.77) among the countries covered by this report.¹¹⁶⁰ The average reduction of developing country tax rates within those¹¹⁶¹ treaties – 1.9 percentage points – is significantly below the average (3.39 percentage points) among the countries covered in this report.¹¹⁶² However, what the average number does not show is that Poland has several specific treaties that are so-called 'very restrictive treaties', because of the strong limitations they impose on the taxing rights of the developing countries that have signed them. Poland generally follows the OECD model when negotiating tax treaties with developing countries, but may refer to elements from the UN model, depending on the treaty partner.¹¹⁶³

International commitments

Poland has signed the OECD BEPS Convention and submitted relatively few reservations. Out of the 11 articles that civil society organisations have called on governments to adopt, Poland has only opted out of four (see table 7 in chapter 5.1.2 on 'Tax sudoku – the OECD's BEPS Convention'). Another positive fact is that Poland has also opted out of one of the articles that civil society organisations have warned against, namely the commitment to secret binding arbitration (see chapter 5.1.2 on 'Tax sudoku – the OECD's BEPS Convention', including table 8).

Tax practices

Poland provides investment incentives related to business activities carried out in 14 Special Economic Zones (SEZs), where it is estimated that around 1,700 businesses operate.¹¹⁶⁴ In order to enjoy the tax benefits associated with these SEZs, a business must obtain a permit from the Polish Ministry of Economic Development.¹¹⁶⁵ Companies operating within SEZs are able to receive corporate income tax exemptions based on the investment expenditures and their labour costs. The exact tax incentives granted to SEZ companies depend on the project location and the size of the enterprise. For large enterprises, the corporate income tax exemption granted can be as high as 50 per cent of the eligible costs.¹¹⁶⁶ In 2013, the Polish council of ministers chose to extend tax benefits to firms operating within the SEZs to 31 December 2026.¹¹⁶⁷

Tax rate

As of 1 January 2017, a lower corporate income tax was introduced by the Polish government for small companies (whose sales revenue is less than 1.2 million zloty or €0.3 million).¹¹⁶⁸ It is estimated that the reduced corporate tax rate of 15 per cent will benefit 90 per cent of corporate income tax payers, nearly 400,000 companies.¹¹⁶⁹ The standard corporate tax rate is 19 per cent.¹¹⁷⁰

Tax rulings

Polish law allows for advance pricing agreements (APAs), and a special procedure to process APAs is outlined on the Ministry of Finance website.¹¹⁷¹ According to data from the European Commission, Poland had a total of 16 unilateral, and 4 bi- or multilateral, APAs in force at the end of 2015.¹¹⁷²

Global solutions

Poland has a representative acting as an expert in the UN's Committee of Experts on International Cooperation in Tax Matters,¹¹⁷³ and supports UN processes assisting developing countries on tax. However, the government states that it sees a need to analyse the establishment of a UN intergovernmental body on tax before deciding its position.¹¹⁷⁴

Conclusion

Although Poland has not yet introduced a register of beneficial owners, it is very positive that the government has put forward a legislative proposal that would make the future register of company owners public. The fact that Poland intends to expand the register to cover beneficial owners of trusts living in Poland is also welcome.

As regards corporate transparency, it is equally welcome that the government has presented a legislative proposal to ensure public access to key data on business activities and tax liabilities of large corporations operating in Poland. Hopefully, Poland will take the same progressive stand on the issue of introducing full public country by country reporting across the EU.

On the issue of taxation, Poland's tax treaty network remains an issue of concern, in particular since Poland has several 'very restrictive' tax treaties, which impose strong limitations on the taxing rights of the developing countries that have signed them.

Recently, Poland has introduced a number of new initiatives to limit tax dodging. Although Poland issues unilateral advance pricing agreements, the amount of deals with multinational corporations is still limited.

On the question of whether an intergovernmental UN tax body should be established, Poland remains undecided.

Slovenia

"Without the coordinated action of all countries and jurisdictions, it is not possible to prevent the drainage or hiding of assets abroad."

Mateja Vraničar Erman
Minister of Finance, Slovenia¹¹⁷⁵

Overview

2017 has been another year where tax scandals featured high in the media in Slovenia. The Azerbaijani Laundromat scandal¹¹⁷⁶ – a complex money-laundering operation that was uncovered in September 2017 – had a strong impact on Slovenian domestic politics. In the aftermath of the scandal, the head of the Slovenian National Party, Zmago Jelinčič Plemeniti, dropped out of the electoral race for Slovenian president, after it had been alleged that he had received over €25,000 of Azerbaijani money.¹¹⁷⁷ Slovenia also featured in the so-called 'Russian Laundromat' scandal, which broke earlier in 2017. In total, the Organized Crime and Corruption Reporting Project (OCCRP), which exposed the scandal, estimated that over €13 million of laundered money from Russia ended up in Slovenia.¹¹⁷⁸

The Slovenian government has continued its tax reform initiatives, most of which aim to tackle domestic challenges to the tax system. In 2017, the government announced that a measure introduced in 2016 – certified cash registers that are electronically connected to the tax administration¹¹⁷⁹ – generated an extra income of €81 million.¹¹⁸⁰ Over half of this, €43 million, was due to increased payments of value added tax (VAT).

In 2017, the government also increased the corporate income tax rate from 17 to 19 per cent,¹¹⁸¹ which is expected to increase the effective corporate tax rate from 11.5 to 13.2 per cent.¹¹⁸²

EU Common Consolidated Corporate Tax Base (CCCTB)

The Slovenian government supports the rules and provisions in the European Commission's proposal for a CCCTB,¹¹⁸³ but has called for a gradual introduction of the new rules.¹¹⁸⁴ The government also supports the tax incentives that the European Commission has included in the proposal, including the super-deduction for research and development expenses and the new incentives for equity financing.¹¹⁸⁵

Tax and development

Slovenia supports the Centre of Excellence in Finance (CEF),¹¹⁸⁶ an international organisation that builds the capacity of finance officials in South East Europe.¹¹⁸⁷ As a member of the Addis Tax Initiative (ATI), Slovenia supports measures to enhance domestic resource mobilisation in developing countries, predominantly through CEF's work on capacity development. For instance, in 2016, the Slovenian government supported two seminars and workshops on Auditing Multinational Enterprises to Detect and Address BEPS Concerns and Market Value Based Taxation of Real Property.¹¹⁸⁸ Slovenia also gave some small-scale assistance for activities on tax and customs matters to Montenegro and Kosovo in 2014.¹¹⁸⁹

As part of its commitment to the Addis Tax Initiative, Slovenia has committed to ensuring policy coherence for development on the issue of taxation,¹¹⁹⁰ but the government has not yet published an official strategy to set out its approach. However, a strategy on development cooperation and humanitarian aid is currently being prepared, and is expected to elaborate the government's approach to policy coherence for development in more detail.¹¹⁹¹

Slovenia is not planning to carry out an impact assessment on how its tax policies affect developing countries.¹¹⁹²

Transparency

Public country by country reporting (CBCR)

Slovenia supports the European Commission's proposal for public CBCR, based on a threshold for companies with a minimum turnover of €750 million.¹¹⁹³ However, the Slovenian government believes that the reporting requirement for CBCR should be extended to all countries where a multinational corporation is present. The government also supports the Commission's assessment that the CBCR proposal should be treated as an issue of accounting,¹¹⁹⁴ although the Ministry of Finance has been vocal about changing the legal basis of the Directive to a 'tax file'.¹¹⁹⁵ As explained in chapter 5.8.3 on 'Allowing citizens to know what multinationals pay in taxes', a change in legal base would in reality mean that the European Parliament is excluded from decision-making, and the decision will require unanimity among EU member states – a change which is expected to result in a much less ambitious outcome.¹¹⁹⁶

The Slovenian government supports the European Parliament's proposal to require multinationals to publish the data in an open data and machine-readable format.¹¹⁹⁷ The government also favours requiring the publication of the reports in a public registry (such as the current business registry of Slovenia, AJPES, which is also a platform for the developing beneficial ownership register), rather than being on individual companies' websites.¹¹⁹⁸

In line with EU requirements, Slovenia has introduced public CBCR for banks through the Slovenian Banking Act,¹¹⁹⁹ as well as public reporting on payments to governments for extractive industries through the Slovenian Companies Act.¹²⁰⁰

Whistleblower protection

Slovenia has whistleblower protection in its criminal law and in its labour law framework.¹²⁰¹ Article 23 of the Integrity and Prevention of Corruption Act is generally applicable to whistleblower protection, and includes protection in tax matters.¹²⁰² The Slovenian Commission for the Prevention of Corruption supports the notion that whistleblowers who reveal information about multinational corporations' tax avoidance should be protected from legal prosecution. However, the Integrity and Prevention of Corruption Act determines that whistleblowers may send classified information only to criminal law enforcement authorities, or to the Commission for the Prevention of Corruption.¹²⁰³ The Slovenian government does not have an official position on potential EU harmonisation of whistleblower protection, and will only take a position when the Commission publishes such a proposal.¹²⁰⁴

Ownership transparency

In November 2016, the EU's 4th Anti-Money Laundering Directive (AMLD) was transposed into Slovenian national law through the Act on the Prevention of Money Laundering and Terrorist Financing.¹²⁰⁵ The Act establishes a full public beneficial ownership register covering any company or trust that does business or is liable for taxation purposes within Slovenia.¹²⁰⁶ The Slovenian register will not be limited to entities incorporated in Slovenia. Foreign companies that are doing business or are liable to pay taxes in Slovenia, such as companies and trusts registered in the business register or the tax register, will also be required to disclose their beneficial ownership information.¹²⁰⁷ It remains unclear whether data will be published in an open data format. However, the register will be integrated within the existing Slovenian corporate data system through using common registration numbers, which will facilitate the administration and cross-referencing of the data.¹²⁰⁸

Access to the data for name, residence, interest/form of control and date of registration will be public and free of charge, but data on the date of birth and nationality of the beneficial owner will only be accessible to those with a 'legitimate interest'.¹²⁰⁹ However, current Slovenian law does not stipulate how 'legitimate interest' is defined, and it remains unclear who precisely will have full access to the register, which is set to be launched by the end of 2017.¹²¹⁰

The definition of a beneficial owner of a company includes any direct ownership by a natural person of at least 25 per cent of the business share, voting or other rights.¹²¹¹ Slovenian legislation also allows senior managing officials to be registered as beneficial owners, when no beneficial owner can be identified.¹²¹²

In order to avoid the state doing business with people concealing their identity, the new legislation also requires beneficial ownership checks from The Slovenian State Holding Company (SDH) and the Bank for Receivables Management (DUTB) when selling state assets. According to the director of the Office for the Prevention of Money Laundering, Darko Muženič, '*The transaction will not be concluded if this data is not available.*'¹²¹³

Slovenia supports the European Commission's proposal to introduce public beneficial ownership registers for companies and business-related trusts, and to interconnect all national beneficial ownership registers in the European Union.¹²¹⁴ Slovenia also supports extending beneficial ownership transparency to include non-business related trusts and similar legal arrangements.¹²¹⁵ However, the government does not support the European Parliament's proposal to lower the beneficial ownership threshold for companies from 25 per cent to 10 per cent for all companies. It argues that lowering the threshold would increase administrative burdens, could be counterproductive, and would not be in line with international standards.¹²¹⁶ Slovenia does not support the European Parliament's proposal to require all trusts to register their beneficial ownership information, whenever they have a connection point to the EU.¹²¹⁷

Taxation

Tax treaties

In 2016, Slovenia made changes to its treaty with India, and the treaty with Kazakhstan entered into force.¹²¹⁸ Slovenia also ratified new treaties with Morocco¹²¹⁹ and Japan.¹²²⁰ The government states that it plans to negotiate new treaties with developing countries within the next five years, but the list of countries is not publicly available.¹²²¹

In total, Slovenia has 23 tax treaties with developing countries, which is the lowest number of treaties among the countries covered in this report.¹²²² The average reduction of tax rates within those treaties is 3.59 percentage points, which is above the average (3.39 percentage points) among the countries covered in this report.¹²²³

Slovenia has previously stated that its tax treaties generally follow the OECD model. However, the latest response from the Ministry of Finance states that this '*depends on the particular [double taxation agreement]. Usually both models are reflected in the text.*'¹²²⁴

International commitments

When signing the OECD's BEPS Convention, countries are asked to submit a list showing which of their tax treaties they want to see covered by the Convention. Slovenia has requested all 58 tax treaties it has with other jurisdictions be covered by the agreement.¹²²⁵

Slovenia has also submitted relatively few reservations to the articles in the Convention. Out of the 11 articles that civil society organisations have called on governments to adopt, Slovenia has opted out of three (see table 7 in chapter 5.1.2 on 'Tax sudoku – the OECD's BEPS Convention'). At the same time, Slovenia has opted in to both of the articles that civil society organisations have warned against, including secret binding arbitration (see chapter 5.1.2 on 'Tax sudoku – the OECD's BEPS Convention', including table 8).

Tax practices

Slovenia does not strongly promote itself as offering opportunities to avoid taxation. However, the main website for foreign investors, Invest Slovenia, promotes the country's low corporate income tax rate and abundant choice of tax incentives to further reduce the tax base.¹²²⁶ In January 2017, the newspaper *Finance* reported that, according to 2015 figures from the Ministry of Finance, 33,000 companies in Slovenia used tax reliefs worth €1.49 billion. Some 85 per cent of these tax reliefs are for investments, covering past losses and for research and development.¹²²⁷

Tax rate

The corporate tax rate was increased from 17 per cent to 19 per cent as of 1 January 2017.¹²²⁸ There has been no announcement about any further changes to the corporate tax rate. The Ministry of Finance states that the effective corporate tax rate was 11.3 per cent in 2014, 11.5 per cent in 2015 and 11.7 per cent in 2016.¹²²⁹ During a parliamentary debate in September 2016, the Slovenian government highlighted that the effective tax rate would increase from 11.5 to 13.2 per cent in 2017 – still a relatively low rate among EU member

states.¹²³⁰

Tax rulings

Since January 2017, companies have been able to request unilateral, bilateral and multilateral advance pricing agreements (APAs) in Slovenia.¹²³¹ As of April 2017, only one undisclosed company entered into a procedure for concluding an APA with the state.¹²³² APAs will not be publicly available, as they are considered tax secrets. It is not yet known if a list of the number of signed APAs will be made available to the public.¹²³³

Global solutions

The Slovenian government does not support the establishment of an intergovernmental body on tax under the auspices of the UN, and it has not been vocal on this issue. The government states that the OECD's Inclusive Framework on BEPS and the Global Forum for Information Exchange '*are suitable and sufficient forums for the implementation of international taxation standards, and for the success and efficiency of cooperation in this field.*'¹²³⁴

Conclusion

When it comes to transparency, Slovenia has taken some very important steps, not least by introducing a public register of beneficial owners of both companies and trusts. Although there is still room for improvement, such as ensuring that the data will be available in a machine-readable format, Slovenia is among the frontrunners in the EU on this issue. The same is the case for corporate transparency, where Slovenia supports the introduction of full country by country reporting across the EU.

Although Slovenia does not have many tax treaties with developing countries, the reduction of developing country tax rates introduced through those treaties is above average among the countries covered in this report. This, and the fact that Slovenia plans to negotiate more treaties with developing countries without assessing the risk of harmful impacts, is concerning.

Slovenia does not seem to be an active participant in the race to the bottom on corporate tax rates. In fact, by increasing the corporate tax rate, Slovenia is moving in a positive direction. However, the tax rate is still relatively low compared to many other EU countries.

Finally, it is problematic that the Slovenian government does not support the establishment of an intergovernmental UN tax body, which would give developing countries a truly equal say in global decision-making on tax matters.

Spain

'Those who don't obey the tax law are defrauding the rest of society.'

Spanish President Mariano Rajoy¹²³⁵

Overview

In recent years, Spain has experienced multiple tax-related scandals involving politicians, companies and many others.¹²³⁶ Such scandals continued to emerge in 2017. In June, the Spanish anti-corruption prosecutor resigned after it had been revealed that he held a stake in a Panama-based offshore company that was apparently holding property.¹²³⁷ While accepting the resignation, the attorney general stated that he did not believe the anti-corruption prosecutor had violated the law. The 'Football Leaks' scandal also revealed how top football players in the Spanish League were allegedly using tax avoidance schemes, most famously Cristiano Ronaldo, who was accused of moving more than €150 million to tax havens.¹²³⁸ The case is currently being investigated in Spain, and Ronaldo denies breaking the law.¹²³⁹ The Malta Leaks scandal meanwhile allegedly showed that more than €900 million of wealth owned by rich Spanish families was stashed in Malta, mostly linked to personal or family assets.¹²⁴⁰

In 2017, the Spanish Constitutional Court declared that a 'tax amnesty' implemented in 2012, which allowed individuals and companies to return undeclared offshore earning at a reduced tax rate, was illegal and unconstitutional.¹²⁴¹ Over the past two years, the Spanish government also implemented a number of tax reforms. In December 2016, for example, a law was passed introducing new rules on corporate income tax, which restrict the ability of companies with a turnover greater than €20 million to carry forward losses and secure double tax credits.¹²⁴² The government has also recently approved the new Form 232, which updates some companies' reporting obligations involving operations related to transactions with other parties, and with Spanish blacklisted jurisdictions.¹²⁴³

The idea behind the reform is to increase transparency and require companies to publish more information about their operations in tax havens. However, this reporting is not compulsory for intra-company transactions, and the Spanish official blacklist of tax havens is still flawed as jurisdictions can be removed from it quite easily, only requiring one double taxation treaty or an exchange of information agreement. Fifteen jurisdictions have already been removed from the initial list, including Panama, Luxembourg, Jersey and Bermuda.¹²⁴⁴

Spanish civil society groups are actively engaged in tax debates, especially through the Platform for Tax Justice.¹²⁴⁵ This is calling for a comprehensive review of the criteria used when determining whether a tax jurisdiction should be included on the Spanish blacklist of tax havens, and for more stringent rules to dis-incentivise the use of tax havens.¹²⁴⁶

EU Common Consolidated Corporate Tax Base (CCCTB)

In September 2017, Spain joined France and Germany to demand greater reforms to tax digital corporations properly, proposing a tax on their revenues and not just on their declared profits – a method that can easily be circumvented if the corporations shift their profits into low-tax jurisdictions.¹²⁴⁷ The Spanish government also supports the European Commission's proposal for a Common Consolidated Corporate Tax Base.¹²⁴⁸ Spanish Finance Minister Luis de Guindos has said that the proposed framework is essential to help strengthen EU integration, and would help to level the playing field between large corporates and small- and medium-sized enterprises. However, he has voiced concerns about the impact on government tax collection.¹²⁴⁹

Tax and development

At the global level, the Spanish government is involved in the OECD's Tax Inspectors Without Borders initiative.¹²⁵⁰ Under this initiative, Spain has provided an expert to the Costa Rican tax administration to help train 20 new tax inspectors.¹²⁵¹

Regarding automatic exchange of information, the Spanish government has been unable to provide a consistent answer as to whether it will support developing countries receiving information without being required to send information back – a solution that has long been championed by civil society organisations.¹²⁵² In parallel, it will not publish any statistics on the number of bank accounts in Spain that are held by non-residents.¹²⁵³

The government does not have a clear position on whether it is planning to conduct any impact assessments to measure the effects of its taxation regime on developing countries.¹²⁵⁴

Transparency

Public country by country reporting (CBCR)

Spain was the first country to implement the OECD's non-public CBCR in July 2015.¹²⁵⁵ In line with EU requirements, Spain also introduced public country by country reporting for the financial sector,¹²⁵⁶ and data on Spanish financial sector entities can now be found on the Spanish central bank website.¹²⁵⁷

When full public country by country reporting was discussed in the EU earlier in 2016 (as part of the Shareholders' Rights Directive), the Spanish government stated that it did not oppose the proposal.¹²⁵⁸ In December 2016, when asked about the legal and tax implications of the European Commission's proposal on public country by country reporting, Finance Minister Luis de Guindos said the Spanish position was that the more transparency and information given, the better. According to the Minister, the Spanish government supports that multinational corporations should be asked to disclose elements such as their turnover, location of subsidiaries and where they pay their taxes.¹²⁵⁹

However, when asked directly by Oxfam Intermón, the Spanish government has not given a clear answer regarding whether Spain supports full public country by country reporting or not. Therefore, the position of the Spanish government is currently unclear.¹²⁶⁰

Regarding the protection of whistleblowers in relation to tax, the Spanish government does not have a clear position on the issue.¹²⁶¹

Ownership transparency

In Spain, most of the provisions of the EU's 4th Anti-Money Laundering Directive (AMLD) have been transposed into national law, but legislation to establish a central register of beneficial ownership remains yet to be implemented. Under Spanish law, the threshold for being considered a beneficial owner of a company in Spain is 25 per cent of shares,¹²⁶² and the government does not have a clear position on the question of whether to reduce the threshold to 10 per cent.¹²⁶³ Relevant entities such as banks are required to collect information from their customers to determine whether the person is the real – beneficial – owner, or acting on behalf of a third party. Where there is evidence or certainty that clients do not act on their own account, they will be required to collect information to identify the individuals on whose behalf they are acting.¹²⁶⁴

The Spanish government supports the European Commission's proposal to introduce public registries on real beneficial owners of companies and commercial trusts,¹²⁶⁵ and during a December 2016 Economic and Financial Affairs Council (ECOFIN) meeting on the 4th AMLD, Finance Minister de Guindos confirmed that Spain supports the public disclosure of beneficial ownership information. He described the Council of EU Member States' approach to the Directive, which omits the need for public transparency, as 'less ambitious' and a 'lost opportunity' to demonstrate the EU's leading role in global efforts to increase financial transparency.¹²⁶⁶

Taxation

Tax treaties

Spain has 47 tax treaties with developing countries, which is well above the average (41.77 treaties) among the countries covered by this report.¹²⁶⁷ On average, Spanish treaties lower the tax rates in their developing country partners by 4.59 percentage points, which is the second highest among the countries covered by this report, and significantly above average (3.39 percentage points) among countries covered by this report.¹²⁶⁸ While the average reduction is high, Spain does not have any individual treaties that qualify as being 'very restrictive'.¹²⁶⁹

Most Spanish tax treaties follow the OECD model, although specific parts of the UN model have been accepted as long as they do not contradict the OECD's essential principles.¹²⁷⁰ Spain includes anti-abuse clauses (although it does not specify in which treaties), and plans to conclude more treaties with developing countries over the next few years.¹²⁷¹ In 2017, Spain signed a new double taxation treaty protocol with Mexico, prepared the procedure to discuss a new treaty with Cape Verde, and signed and prepared the procedure for a new treaty with Belarus.¹²⁷²

International commitments

Spain is actively involved in the OECD BEPS process and has signed the OECD's BEPS Convention. In this Convention, Spain has submitted relatively few reservations. Out of the 11 articles that civil society organisations have called on governments to adopt, Spain has only opted out of three (see table 7 in chapter 5.1.2 on 'Tax sudoku – the OECD's BEPS Convention'). At the same time, Spain has opted in to the articles that civil society organisations have warned against, including secret binding arbitration (see chapter 5.1.2 on 'Tax sudoku – the OECD's BEPS Convention', including table 8).

Tax practices

Spain provides a model for holding companies called *Empresa de Tenencia de Valores Extranjeros* (ETVE). The Spanish government devised this structure in order to attract foreign direct investment, but it has been criticised for attracting investments without any economic substance in Spain. Dividends, income and capital gains related to foreign companies held by the ETVE are exempt from taxation.¹²⁷³

In 2016, investments channelled through ETVEs increased more than six-fold, from €1.5 billion in 2015 to €9.6 billion in 2016.¹²⁷⁴ Of the €9.6 billion, €3.7 billion came from the Netherlands.¹²⁷⁵ Microsoft was allegedly one of the corporations that benefited from this tax scheme, and according to Spanish media, Microsoft used a Spanish ETVE to bring €450 million back from Europe to the United States without paying US taxes.¹²⁷⁶ In response to the allegations, Microsoft underlined that the ETVE is a structure that is a part of Spanish law, and has been used by other companies as well.¹²⁷⁷

The Spanish autonomous community of the Canary Islands has a special economic and tax regime that is considered 'one of the most profitable tax regimes in Europe' by the global accountancy giant PwC.¹²⁷⁸ For instance, one of the tax benefits offered by the Canary Islands is a corporate tax rate as low as four per cent. Special tax incentives are also offered in the Spanish territories of Ceuta and Melilla.¹²⁷⁹

In October 2015, the Spanish government adopted an amendment to the Spanish patent box regime as part of the General Budget Law 2016.¹²⁸⁰ The objective was to change the patent box regime to be in line with OECD's Modified Nexus Approach (see chapter 4.3 on 'Patent boxes'). According to a study on aggressive tax planning structures, Spain has seven indicators of aggressive tax planning, which is the second lowest among all EU member states (average is 10.6).¹²⁸¹ However, two of these are active, including the Spanish patent box.¹²⁸²

There are no estimates of how much Spain loses through providing corporate tax incentives. However, an Oxfam Intermon study estimates that the use of the top 15 most aggressive corporate tax havens (according to Oxfam's list of most aggressive corporate tax havens) to channel foreign direct investment to the country has generated €1.5 billion in tax losses.¹²⁸³

Tax rate

Over the past three years, the corporate income tax rate has been reduced from 30 per cent (2014) to 28 per cent (2015), before reaching 25 per cent in 2016, where it has remained in 2017.¹²⁸⁴ Oxfam Intermon's research estimates that, from the tax collected by the Spanish state in 2016, 84 per cent of revenues were collected from families, while companies contributed only 13 per cent of total tax revenues.¹²⁸⁵ During 2007 to 2016, while total tax revenue collected fell by seven per cent, and personal income tax fell by 0.3 per cent, collection of value added tax (VAT)¹²⁸⁶ increased by 12 per cent, and corporate income tax collection plummeted by over 51 per cent. As mentioned in chapter 2.2 on 'Someone has to pay', VAT is a type of tax that impacts relatively harder on the poorer parts of societies, compared to other types of taxes such as corporate income tax.

In January 2017, during a Congressional Treasury Committee hearing, Public Finance Minister Cristobal Montoro estimated that large companies in Spain paid an effective corporate tax rate of seven per cent.¹²⁸⁷ However, the tax administration states that the effective tax rate in 2015 was 22.5 per cent.¹²⁸⁸

Tax rulings

Regarding 'tax rulings', Spanish law does not include any provision allowing them. However, there are some provisions that permit their concession.¹²⁸⁹ Regarding the questions of how many advance pricing agreements (APAs) the Spanish Tax Ministry has issued to multinational corporations, the Tax Ministry provided the following numbers:¹²⁹⁰

	Unilateral APAs	Bi- and multilateral APAs
In force at the end of 2016	43	10
Requests received from corporations during 2016	20	34
Number of requests approved during 2016	15	1
Number of requests rejected during 2016	0	0
Number of requests which have been withdrawn during 2016	3	1

The Tax Ministry also confirms that 14 APAs have been exchanged with non-EU-OECD governments.¹²⁹¹ Spain is generally positive towards exchanging this information with third countries which could be affected by the Spanish rulings. However, publishing the APAs is considered problematic due to confidentiality infringements and the risk of revealing industrial and commercial secrets.¹²⁹²

Global solutions

In 2017, the Spanish Council on Development Cooperation, which includes stakeholders and government representatives, approved the Spanish 'Report on policy coherence for development 2015'.¹²⁹³ This report highlights a weakness regarding developing countries' participation in the international tax cooperation structures. Despite this, the Spanish government does not support the proposal for an intergovernmental tax body under the auspices of the UN,¹²⁹⁴ which would allow developing countries truly equal participation in global decision-making on tax. Instead, the government supports the OECD's Inclusive Framework on BEPS, and believes this is the best way to ensure collaboration with developing countries.¹²⁹⁵ This is despite the fact that more than 100 developing countries were excluded when the BEPS package was adopted.¹²⁹⁶

Conclusion

It is very positive that Spain is showing openness on the issue of transparency by openly supporting both public country by country reporting and public registers of beneficial owners. However, Spain has yet to walk the talk by establishing a public register in Spain.

Spanish tax treaties with developing countries continue to be a source of serious concern. This is due to both the high number of treaties that Spain has with developing countries, and the fact that the Spanish treaties impose relatively high restrictions on the tax rates of its developing country partners.

Also as regards harmful tax practices, there are grounds for concern. Both Spanish holding companies (ETVEs) and the Spanish patent box regime can be used by multinational corporations to avoid taxes. In fact, media reports suggest that this has already been the case.

Finally, it is problematic that the Spanish government opposes the establishment of an intergovernmental UN tax body, which would give developing countries a truly equal say in global decision-making on tax matters. If the United Kingdom goes through with its plan on leaving the EU, Spain will become one of the three or four largest countries in the union, and thus the importance of Spain's position will grow. In this context, it is more important than ever that Spain takes a proactive role in the fight against international tax dodging.

Sweden

"In all countries around the world there is a need to raise revenues in order to finance schools, to pay for the salaries of teachers and doctors, to build roads and railways. Given this, we cannot have a global financial elite of very rich people who do not contribute."

Magdalena Andersson

Minister for Finance, Sweden, 3 April 2017¹²⁹⁷

Overview

In the aftermath of the Panama Papers, the government launched a 10-point 'Action Plan' to counter tax evasion, tax avoidance and money laundering.¹²⁹⁸ As part of this plan, Sweden will explore options for imposing an obligation on tax advisors to inform the Swedish tax agency about tax planning schemes, and the government is also successively increasing the capacity of the Tax Agency to combat international tax evasion and avoidance.

EU Common Consolidated Corporate Tax Base (CCCTB)

In response to the European Commission's proposal for a Common Consolidated Corporate Tax Base, the Swedish Ministry for Finance states that it is too early to take a final position, but it has expressed scepticism about the new rules. The Ministry of Finance has said that the proposal would entail a major restriction in the competencies of member states in the area of taxation. It has also raised concerns that the benefits of the proposal could *'outweigh the disadvantages for the member states, which the restriction of the competence would lead to.'* The Ministry of Finance also emphasises that the impact of the proposals on the Swedish economy and the competitiveness of Swedish companies must be carefully examined.¹²⁹⁹

Tax and development

Tax and capital flight as a development issue has been on the Swedish political agenda for some years now. It is now firmly part of the Swedish Policy for Global Development, the national policy coherence for development programme, and is also part of the government's Action Plan. One of the key priorities is to support capacity development in developing countries,¹³⁰⁰ and the government aims to do this through the Swedish development agency, Sida, and the Swedish Tax Agency.¹³⁰¹ The government plans to host an international conference on capacity development within taxation, in May 2018.¹³⁰²

Furthermore, Sweden is one of the signatories of the Addis Tax Initiative (ATI) and, in line with this, will double its support for domestic revenue mobilisation and taxation by 2020. Sweden's total gross disbursement in 2014 was US\$1.74 million (€1.49 million).¹³⁰³ In this initiative, Sweden focuses on low- and middle-income countries, and among other things, bilaterally supports seven countries on tax matters,¹³⁰⁴ as well as the work of civil society organisations such as Tax Justice Network Africa.¹³⁰⁵

In the context of its capacity development efforts, Sweden underlines that *'countries should be encouraged to implement international taxation agreements and reduce the use of inefficient tax incentives.'*¹³⁰⁶ Sweden also believes that the Inclusive Framework of the OECD BEPS and the Global Forum on Transparency and Exchange of Information for Tax Purposes (Global Forum) are the key global bodies on tax cooperation. In particular, Sweden stresses the importance of developing country participation in the OECD BEPS project, and that developing countries are able to implement the results of the BEPS project on the same terms as OECD countries.¹³⁰⁷

However, international standards on information exchange, as well as the BEPS standards, were negotiated through processes led by the OECD, where more than 100 developing countries were excluded from participating (see chapter 5.9 on 'Ensuring truly global decision-making'). As a result the priorities, concerns and interests of these countries are not integrated into the standards. The Inclusive Framework and Global Forum have primarily been set up to implement the adopted standards, and thus, although all developing countries have been invited to come and join the implementation, this does not entail participation on a truly equal footing.¹³⁰⁸

During the Financing for Development negotiations in 2015, a large group of developing countries called for an intergovernmental tax body to be established under the UN, where all countries can participate as equals.¹³⁰⁹ However, Sweden did not support this proposal.¹³¹⁰

Sweden has committed to ensuring policy coherence for development on the issue of taxation as part of its commitment to the Addis Tax Initiative,¹³¹¹ as well as the Swedish Policy for Global Development.¹³¹²

However, Sweden has not carried out any impact assessments to measure the effects of its tax policies on developing countries, although this has been a demand from civil society organisations.¹³¹³

Especially in the context of Sweden's treaty network, this does seem very important, since several of the tax treaties impose strong restrictions on the taxing rights of developing countries.¹³¹⁴

As part of its focus on policy coherence for development, Sweden also joined efforts with other signatories to the Addis Tax Initiative to develop a global standard for automatic exchange of information on beneficial owners of companies and trusts.¹³¹⁵ Despite the fact that Sweden itself has introduced a public register of beneficial owners,¹³¹⁶ the initiative does not focus on enhancing public availability of information about beneficial owners.¹³¹⁷ This can prove problematic for developing countries, since they often have difficulties getting access to automatic information exchange agreements (see chapter 5.8.1. on 'Banking secrecy – still very much alive').

Transparency

Public country by country reporting (CBCR)

The Swedish Ministry of Finance states that it is 'undecided' on supporting the Commission's proposal for public country by country reporting (CBCR).¹³¹⁸ The Ministry of Finance is also undecided on whether the reporting requirements should be extended to cover all countries, which threshold should be applied, and whether a future directive should require reporting in an open and machine-readable format.¹³¹⁹ According to a government memorandum, it is the government's position that there is a risk that public CBCR would jeopardise the global exchange of country by country reports between tax authorities within the OECD BEPS framework.¹³²⁰ The Minister for Finance has also expressed this position in the media.¹³²¹

Sweden does not support the European Commission's assessment that this issue should be treated as an issue of accounting, rather than taxation, and is therefore in favour of changing the legal base of the proposal.¹³²² However, a change in legal base would in reality mean that the European Parliament is excluded from decision-making, and the decision will require unanimity among EU member states.¹³²³ The Swedish government supports this change with the argument that tax rules are first and foremost the responsibility of member states.¹³²⁴ However as explained in chapter 5.8.3 on 'Allowing citizens to know what multinationals pay in taxes', this is likely to result in a much less ambitious outcome in terms of ensuring transparency.

In line with EU requirements, Sweden has introduced a law on full public CBCR for banks,¹³²⁵ as well as public reporting on payments to governments for multinational corporations engaged in extractive industries.¹³²⁶

Despite Sweden's scepticism towards implementing public CBCR, the Ministry of Finance has said that there have been no examples of negative effects following the implementation of full public CBCR for banks 'from a capital adequacy perspective' or for the logging industry, although there has been 'an extra administrative burden' for the extractive industry.¹³²⁷

Whistleblower protection

The Swedish government says that it supports the protection from legal prosecution and punishment of whistleblowers who reveal information to the public about large-scale tax avoidance by multinationals. Sweden has had legislation in place since 1 January 2017 that gives an employee the right to receive compensation for damages if an employer retaliates against the employee for whistleblowing.¹³²⁸ However, the Ministry of Finance notes that *'in order to be protected as a whistleblower there has to be a serious misconduct, i.e. a violation that has at least a prison sentence in the penalty scale (not just fines). Also, the whistle-blower needs to have a warranted reason for blowing the whistle and has to have reasonable grounds for believing that the information of misconduct is correct.'*¹³²⁹ In practice this means that Swedish legislation would not have protected the whistleblowers in the LuxLeaks scandal, or in a similar tax avoidance scandal where there is no clear-cut prison sentence penalty. Corporate tax avoidance is in fact often technically speaking legal, even though it is against the spirit of the law.

Ownership transparency

On 1 August 2017, the Swedish law regulating the registration of beneficial owners entered into force. The law covers companies and trusts, as well as similar legal arrangements. The definition of beneficial owners is based on the 25 per cent threshold.¹³³⁰ Information has to be registered online on the webpage of the Swedish Companies Registration Office (SCRO) no later than 1 February 2018. It will be made publicly available, free of charge, through the online registers of the SCRO using a Mobile Bank ID.¹³³¹

The Swedish government supports the EU Council's negotiating position on the revision of the 4th Anti-Money Laundering Directive (AMLD), *'which if adopted would make it possible for member states to go further nationally with regards to transparency than what is required.'*¹³³² In response to a parliamentary question, the Deputy Minister for Finance said that the government supported the original European Commission proposal on making the registries publicly available, and that the government has acted for the possibility of all EU member states to make their registries publicly available.¹³³³ Sweden also supports extending beneficial ownership transparency to include non-business related trusts and similar legal arrangements.

However, the government does not support lowering the threshold for being identified as the beneficial owner of a company to below 25 per cent. It also does not support the European Parliament's proposal to require all trusts to register their beneficial ownership information whenever they have a connection point to the European Union.¹³³⁴

Taxation

Tax treaties

Sweden's tax treaties with developed countries are based on both the OECD and the UN models, according to the Ministry of Finance.¹³³⁵ Tax treaties are entered into by the government collectively and are subject to ratification, which means that the final agreements are reviewed by parliament without the direct involvement of civil society.¹³³⁶ In response to whether there are any plans to renegotiate existing tax treaties or negotiate new ones, the Ministry of Finance stated that *'it is not Sweden's policy to give information on planned negotiations.'*¹³³⁷

In total, Sweden has 42 tax treaties with developing countries, which is just above average (41.77) among the countries covered by this report.¹³³⁸ The average reduction of developing country tax rates within those treaties – 3.76 percentage points – is also above the average (3.39 percentage points) among the countries covered in this report.¹³³⁹ Furthermore, following a full assessment of their content, four of Sweden's tax treaties with developing countries were ranked by ActionAid as being 'very restrictive' treaties, which give particular cause for concern due to the strong restrictions they impose on the taxing rights of developing countries (see also table 5 in chapter 4.5 on 'Bilateral tax treaties').¹³⁴⁰ ActionAid's assessment also highlights the fact that the treaties significantly reduce the taxes Swedish companies pay in developing countries.¹³⁴¹

Swedish civil society has called for analyses to be made of the tax treaties from the perspective of how they relate to the Swedish Policy for Global Development, and its objectives of promoting policy coherence for development. However, the government has not carried out any such analysis.¹³⁴²

International commitments

Although Sweden has signed the OECD BEPS Convention, the government at the same time submitted a very high number of reservations. Out of the 11 articles that civil society organisations have called on governments to adopt, Sweden has opted out of 10 (see table 7 in chapter 5.1.2 on 'Tax sudoku – the OECD's BEPS Convention'). At the same time, Sweden has opted in to both of the articles that civil society organisations have warned against, including secret binding arbitration (see chapter 5.1.2 on 'Tax sudoku – the OECD's BEPS Convention', including table 8).

Tax practices

Sweden is not known as a country that has a significant amount of harmful tax practices. Ironically, that might be one factor which makes Swedish limited liability companies interesting for foreigners who want to hide money. In September 2017, Swedish newspaper *Dagens Nyheter* revealed how a loophole in the Swedish administration of its limited liability companies ('kommanditbolag') had opened up possibilities for foreigners to set up companies in Sweden without permit or registration.¹³⁴³ *Dagens Nyheter* also revealed examples of how Swedish companies were being marketed by Russians as a good vehicle for hiding money and dodging taxes.¹³⁴⁴

Sweden considers the Code of Conduct on Business Taxation Group to be an effective way to remove harmful tax practices in the EU (see box 5, 'Keep it in the family', in chapter 3.1).¹³⁴⁵

Sweden has not carried out any assessments of the potential revenue loss due to corporate tax incentives.¹³⁴⁶

Tax rate

The corporate statutory tax rate in Sweden for the past three years has been 22 per cent. However, currently there is a government memorandum including a proposal of a reduced corporate income tax rate (from 22 to 20 per cent), subject to public consultation.¹³⁴⁷ Sweden does not keep statistics on its effective corporate tax rate, according to the Ministry of Finance.¹³⁴⁸

Tax rulings

Sweden offers advance tax rulings (ATRs)¹³⁴⁹ as well as bilateral or multilateral advance pricing agreements (APAs),¹³⁵⁰ but does not offer unilateral APAs. According to data from the European Commission, Sweden had seven bi- or multilateral APAs in force at the end of 2015.¹³⁵¹

Global solutions

Sweden did not support the idea of establishing a UN intergovernmental body on tax issues at the negotiations ahead of the 2015 Conference on Financing for Development,¹³⁵² and there are no indications that the government has changed position.

Since 2013, Sweden has contributed to the work of the UN Committee of Experts on International Cooperation in Tax Matters, including by having an expert on the Committee and by pushing for staff reinforcement in the secretariat.¹³⁵³

Conclusion

It is very positive that Sweden has placed tax issues as a key priority for its development work and that Sweden prioritises capacity development on tax matters in developing countries. Unfortunately, however, this position is not accompanied by Swedish support for ensuring that developing countries get a truly equal say in global decision-making on tax, through the establishment of an intergovernmental UN tax body. In fact, Sweden has opposed this idea, going against the stated wishes of a very large group of developing countries. Instead, Sweden seems focused on ensuring that developing countries follow OECD standards, which have been developed in decision-making forums to which the vast majority of the world's developing countries were not invited.

It is also problematic that Sweden's work on policy coherence for development on tax matters is not based on a thorough assessment of potential negative impacts that Swedish tax policies can have on developing countries. In particular, Sweden's tax treaties with developing countries continue to be a cause for concern, since several of them seem to impose high levels of restrictions on the taxing rights of developing countries.

One measure that could be a key element in the work to increase domestic resource mobilisation in developing countries is public country by country reporting. If this was introduced at EU level, it could help developing countries get access to information about the tax planning practices of multinational corporations, and thus support their work to stop corporate tax avoidance. Furthermore, making this information publicly available is crucial for enabling citizens to hold decision-makers and corporations alike to account. At the same time, it would help reinforce the EU's own tax collection from multinational corporations. But unfortunately, Sweden seems very sceptical about introducing public country by country reporting at the EU level.

On a positive note, Sweden is among the frontrunners when it comes to public registers of beneficial owners of companies and trusts – a key measure to prevent money being hidden in tax havens.

United Kingdom

"If we have not made progress by this time next year on reaching a multilateral agreement [on public country by country reporting], we will need to look carefully at the issue once again."

David Gauke

Financial Secretary to the Treasury, 28 June 2016¹³⁵⁴

Overview

There was a political debate on tax in the run-up to the June 2017 general election in the United Kingdom. The manifesto of the ruling Conservative Party called for a continuation of a low-tax, low-spend agenda, and wanted to maintain its commitment to austerity.¹³⁵⁵ The Chancellor of the Exchequer Philip Hammond initially threatened to turn the UK into a low-tax, low-regulation tax haven if Brexit negotiations did not go the UK's way.¹³⁵⁶ However, his stance had softened by July when he told *Le Monde* that the UK had no intention of cutting taxes and regulation after leaving the EU, promising that the UK would raise a similar proportion in taxes after Brexit as the average EU level.¹³⁵⁷ In contrast, some parties, particularly the main opposition Labour Party, made tax justice, and inequality and social justice, a central issue of their election campaign.¹³⁵⁸

Tax avoidance scandals have continued to dominate UK headlines in the past year. The Paradise Papers scandal received very widespread coverage, with the media covering both the international stories and issues directly linked to the UK, such as the ties between the royal family and a fund in the Cayman Islands, which was alleged to be an inappropriate arrangement for the crown.¹³⁵⁹

But this was far from the first scandal of the year. In one major story on the tax arrangements of Premier League footballers, the *Sunday Times* alleged that more than 180 footballers had set up companies to avoid millions of pounds of income tax from 'image rights' payments.¹³⁶⁰

The government's Spring 2017 budget introduced new penalties for enabling another person or business to use a tax avoidance arrangement that is subsequently ruled not allowable by the tax office (HM Revenue and Customs, or HMRC),¹³⁶¹ building on earlier penalties targeting advisors who facilitate tax evasion.

The UK meanwhile played a key role in the Russian Laundromat scandal, which uncovered a complex money laundering system bringing large sums of money out of Russia.¹³⁶² The scandal involved a number of fictitious companies, most of which were registered at Companies House in the UK.¹³⁶³ Since the scheme operated between 2010 and 2014, the UK did not yet have a public register of beneficial company owners, and thus, UK companies could relatively easily be used to hide money.

The UK was also the final destination for US\$738.1 million (€619 million) of the laundered money, some of which was spent on London real estate and on fees for British private schools.¹³⁶⁴ According to media reports, several UK banks processed money that had already been laundered, including the partly government-owned Royal Bank of Scotland (US\$113.1 million, or €134.9 million) and HSBC (US\$545.3 million, or €650.2 million).¹³⁶⁵ Both banks responded to the allegations with statements underlining their strong commitment to fighting financial crime.¹³⁶⁶

The UK also plays a central role as a conduit country, which can be used by multinational corporations to channel profits out of the countries where the business activity is taking place, and into low-tax jurisdictions. In 2017, a research report published in *Nature* identified the UK as the second largest conduit country in the world – only surpassed by the Netherlands.¹³⁶⁷

There was extensive speculation that the UK might become yet more vulnerable to such scandals after Brexit, partly because the Anti-Money Laundering Directive (AML) need no longer apply.¹³⁶⁸ The Laundromat Scandal also generated discussion in both houses of parliament, including criticism of the UK's role in blocking an investigation into HSBC by US authorities in 2012 on the grounds of 'financial stability'.¹³⁶⁹ In September 2017, another scandal known as the 'Azerbaijani Laundromat' once again revealed how opaque UK companies had been being abused for money laundering purposes (once again in the period before the public register of beneficial owners had been introduced).¹³⁷⁰

There has also been criticism of the continued failure of the UK government to improve transparency around trusts, and to improve transparency in its overseas territories.¹³⁷¹ These concerns were reinforced by the Paradise Papers scandal, which showed numerous examples of how trusts and overseas territories can be used to hide money and avoid taxation.¹³⁷² In the leaked data, the International Consortium of Investigative Journalists, which broke the story, found information about more than 2,600 offshore trusts – around two thirds of which were based in the Cayman Islands and Bermuda. These trusts were linked to individuals and companies from more than 100 countries around the world.¹³⁷³

EU Common Consolidated Corporate Tax Base (CCCTB)

The UK government has consistently opposed the EU proposal for a Common Consolidated Corporate Tax Base on the grounds that it would diminish the sovereign right of member states to set and control their own taxes, that it would be ineffective in tackling tax avoidance, particularly at the global level, and that the most effective way of tackling tax avoidance is through implementing the OECD BEPS process to ensure that profits are taxed where they are generated. The government has concerns that UK tax receipts could be impacted if this measure were to change how the tax base is calculated. The government has therefore concluded that the CCCTB *'is neither proportionate, in terms of constraints it puts on Member States' ability to determine their own tax policy, or effective in achieving its policy goals'*.¹³⁷⁴ The House of Commons European Scrutiny Committee published a report on the CCCTB in December 2016, giving a 'reasoned opinion' that broadly agreed with the government's views.¹³⁷⁵

Tax and development

The UK government was the largest bilateral donor to domestic resource mobilisation efforts in developing countries in 2015, disbursing US\$47.5 million (€56.6 million), and is one of the founders of the Addis Tax Initiative (ATI).¹³⁷⁶

The UK Department for International Development (DFID) has supported the establishment of the HMRC Tax Capacity Building Unit, which deploys staff to developing countries to provide technical expertise on tax administration and reform.¹³⁷⁷

The UK has also provided HMRC tax auditors to the Tax Inspectors Without Borders initiative. However, this initiative was the focus of a civil society report from 2016, which among other things raised concerns about the fact that the UK had hired PwC – a company known for providing tax advice to multinational corporations – to manage the pilot project between the UK and Rwanda. The report, which included previously unpublished internal OECD documents about the pilot phase, also raised concerns that the pilot projects seemed to have been driven by the donor countries, and furthermore highlighted significant risks of conflicts of interest associated with the projects.¹³⁷⁸

In the 2016 DFID Bilateral Development Review, the government committed itself to doubling its investment in improving tax collection and management in developing countries by 2020.¹³⁷⁹ However, the UK's Independent Commission for Aid Impact rated DFID's tax capacity development work as 'amber-red' in late 2016, expressing *'doubts that technical assistance on highly specialised international tax issues would have much impact, given the more basic problems with national tax systems'* and *'concerns that the benefits to DFID's partner countries of implementing the new standards may have been oversold'*.¹³⁸⁰

Through the ATI, the UK has committed to ensuring policy coherence for development on the issue of taxation.¹³⁸¹ However, the UK does not have a formal strategy on policy coherence for development, although one of DFID's responsibilities is *'improving the coherence and performance of British international development policy in fragile and conflict-affected countries'*. The government states that its *'work to encourage developing country implementation of tax transparency standards exemplifies the UK's commitment to policy coherence for development'*.¹³⁸² The UK also highlights that it often takes a 'whole of government' approach to specific issues,¹³⁸³ co-ordinating among relevant departments – such as the collaboration on delivering tax capacity assistance between DFID, HM Treasury and HMRC. However, the UK government has not announced any plans to commission an assessment of the impact of its tax treaties on developing countries. The government has also confirmed that it has no plans to conduct a 'spillover analysis' of the effects of lower UK corporate income tax rates on developing countries.¹³⁸⁴

The UK record on supporting global transparency measures that would boost tax revenues in developing countries is mixed, and the government has been criticised by campaigners such as the Tax Justice Network, which claims that *'other branches of the UK government undermine any positive interventions made by DFID'*.¹³⁸⁵

Transparency

Public country by country reporting (CBCR)

The UK government supports introducing public country by country reporting only on a multilateral and not a unilateral basis,¹³⁸⁶ despite the fact that legislation passed in 2016 enables HMRC to introduce such rules unilaterally.¹³⁸⁷ The UK government says it favours a multilateral approach in order to ensure that groups headquartered in the UK are not put at a competitive disadvantage vis-à-vis foreign competitors.¹³⁸⁸ In July 2017, when asked by an opposition member of parliament about what discussions the UK has held with G20 members on the need to tackle tax avoidance through public country by country reporting, British Prime Minister Theresa May said that the UK would continue 'to raise that issue.'¹³⁸⁹ May further explained that she was disappointed at the lack of progress on public country by country reporting, but underlined that a multilateral agreement could only be reached if other countries also committed to the agenda.¹³⁹⁰ While the UK is supportive of a multilateral approach to public country by country reporting, the UK's role in future EU negotiations on the Directive is uncertain, because of ongoing Brexit negotiations.

Whistleblower protection

The issue of the protection of whistleblowers was raised in the UK parliament during the passage of the Criminal Finances Bill. A proposed amendment was discussed in the House of Lords to create an 'Office of the Whistleblower', but the amendment was subsequently withdrawn by Baroness Kramer, the Liberal Democrat Spokesperson on Treasury and Economy in the House of Lords.¹³⁹¹ However, HMRC guidance on the Criminal Finances Act recommends that companies consider 'providing a safe whistleblowing procedure' as part of their approach to tackling tax evasion.¹³⁹²

Ownership transparency

The UK's public beneficial ownership register (the 'register of persons with significant control', or PSC register) was launched in June 2016, and is fully publicly accessible and free.¹³⁹³ However, concerns remain about the way the register functions, including that beneficial owners of companies have to 'self-report', and that individuals owning less than 25 per cent of the shares or voting rights in a company are not required to register as beneficial owners.¹³⁹⁴ Furthermore, the lack of capacity for follow up creates potential loopholes that can be exploited by those determined to hide true ownership. For instance, according to data analysis by the anti-corruption organisation Global Witness, due to the 25 per cent ownership threshold, almost 10 per cent of companies were able to claim that they have no beneficial owner.¹³⁹⁵

The government has failed to put pressure on its overseas territories and crown dependencies to require their registers, which were mandated to be accessible to UK law enforcement by June 2017, to be made public, despite having the powers to do so.¹³⁹⁶ An amendment to the Criminal Finances Bill was tabled by Baroness Stern in April 2017, which would have obliged overseas territories to create fully public registers of the beneficial ownership of companies by 2020.¹³⁹⁷ However, the House of Lords never got to vote on the amendment, despite the support of Lords from all parties and of 80 members of parliament from eight parties in the House of Commons, including a former International Development Secretary.¹³⁹⁸

In 2017, the UK also implemented the 4th Anti-Money Laundering Directive (AMLD) into national law,¹³⁹⁹ and HMRC launched a new beneficial ownership register for trusts anywhere in the world that have UK assets that generate tax consequences.¹⁴⁰⁰ However, beneficial ownership data in this register is only accessible to law enforcement agencies and the UK Financial Intelligence Unit. The government states that while it recognises '*the potential benefits to law enforcement of expanding the registers of trusts and other legal arrangements like Treuhand, fiducies and fideicomiso*', it argues that '*the majority of legal arrangements are used for sensitive, non-commercial purposes*'. It adds: '*if trust registers are to be genuinely effective tools, they need to be able to withstand legal challenge, which may mean providing a different level of access than is appropriate for companies*'.¹⁴⁰¹

Taxation

Tax treaties

The UK has one of the world's largest tax treaty networks, and has recently added two new tax treaties, with Colombia and Lesotho.¹⁴⁰² In total, the UK has 72 tax treaties with developing countries – the highest number among all the countries covered by this report.¹⁴⁰³ The average reduction of developing country tax rates within those treaties – 4.51 percentage points – is also well above the average (3.39 percentage points) among the countries covered in this report.¹⁴⁰⁴ Furthermore, following a full assessment of the content of the treaties, 12 of the UK tax treaties with developing countries were ranked by ActionAid as being 'very restrictive' treaties, which give particular cause for concern due to the strong restrictions they impose on the taxing rights of developing countries (see also table 5 in chapter 4.5 on 'Bilateral tax treaties').¹⁴⁰⁵

Already in 2012, the UK parliament's International Development Committee recommended conducting an assessment of the impact of UK tax treaties on developing countries,¹⁴⁰⁶ but the government has not committed itself to doing so. The Treasury has stated that '*we always negotiate our treaties on their own merits and never tie a tax treaty to the granting of aid or the conclusion of a contract with a UK company*'. It suggests that '*the UK's recent treaties with developing countries demonstrate*' that the UK is an equal partner with those countries when negotiating tax treaties.¹⁴⁰⁷

International commitments

The UK signed the OECD's BEPS Convention in June 2017.¹⁴⁰⁸ Compared to other countries covered by this report, the UK has not submitted a very high number of reservations to the convention. Out of the 11 articles that civil society organisations have called on governments to adopt, the UK has opted out of five (see table 7 in chapter 5.1.2 on 'Tax sudoku – the OECD's BEPS Convention'). However, the UK has also opted in to both of the articles that civil society organisations have warned against, including article 18 on secret binding arbitration (see chapter 5.1.2 on 'Tax sudoku – the OECD's BEPS Convention', including table 8).

Tax practices

After the referendum vote to leave the EU in June 2016, the new Prime Minister, Theresa May, set up the Department for International Trade (which took on the responsibilities of UK Trade and Investment and part of the Department for Business, Innovation and Skills) to negotiate and extend trade agreements with countries outside the EU. The new department is aggressively promoting the UK as an attractive country for overseas investors through, for example, a new website that advertises the UK's low corporate tax rates and extensive tax reliefs and incentives for business, including the patent box system.¹⁴⁰⁹

According to the HMRC, the UK patent box was forecast to cost £875 million (€991 million) in 2016/17.¹⁴¹⁰ The UK government has since reformed the patent box system, in line with the OECD BEPS recommendations on the Modified Nexus Approach.¹⁴¹¹ However, a grandfathering clause will allow UK companies benefiting from the old patent box regime to continue applying the previous rules without any modification until 30 June 2021.¹⁴¹²

Tax rate

The UK has cut the corporate income tax rate from 28 per cent in 2010 to 19 per cent in 2017, and has legislated to reduce the rate to 17 per cent in 2020.¹⁴¹³ The government claims that '*despite recent rate reductions, onshore corporate income tax receipts have increased by 50 per cent over the past six years, rising from £36.2 billion [€40.1 billion] in 2010-11 to £55.4 billion [€62.7 billion] in 2016-17*'.¹⁴¹⁴ However, the Institute for Fiscal Studies points out that cuts to corporate income tax rates announced between 2010 and 2016 have reduced revenues by at least £16.5 billion (€18.7 billion) a year,¹⁴¹⁵ which suggests that any increases in corporate income tax receipts would have been considerably higher if the rates had not been reduced.

Tax rulings

In the UK, advance pricing agreements (APAs) may be sought by any business, but according to HMRC, they will not be provided where an arrangement may be caught by a general anti-abuse rule.¹⁴¹⁶ The UK permits unilateral, bilateral and multilateral APAs. HMRC's guidance on APAs stipulates that unilateral APAs are generally of less value to HMRC as they provide for 'less transparency', and are therefore less likely to be accepted.¹⁴¹⁷ However, according to data from the European Commission, the UK had 94 APAs in force at the end of 2015, of which 44 were unilateral.¹⁴¹⁸ In September 2017, HMRC reported that 32 applications were made for APAs between 2016 and 2017, and that 19 of these were approved.¹⁴¹⁹

Global solutions

The UK remains opposed to the creation of an intergovernmental body on tax under the UN. It states that such a body *'risks duplication and lack of coherence with G20 and OECD work'* and that it is *'unlikely that recent reforms to the international tax system would have happened within a UN structure'*.¹⁴²⁰

Conclusion

When it comes to the global race to the bottom on corporate taxation, the UK is a very active participant. The country is continuously lowering its corporate tax rate, and offers harmful tax incentives such as a patent box. The country also plays a key role as a conduit country, which can be used by multinational corporations as a route to channel profits into tax havens.

On the issue of transparency, the UK's position is complex. On the one hand, the UK was a first mover when it established a public register for the real – beneficial – owners of companies, and that is commendable. However, at the same time, the government has so far been unwilling to introduce public transparency around the beneficial owners of trusts, and has not managed to ensure transparency within its overseas territories. Similarly, its position on public country by country reporting is that of being both for (when it comes to the global level) and against (when it comes to being a first mover).

The UK tax treaty network remains an issue of significant concern. The total number of UK tax treaties with developing countries is higher than any other country covered by this report, and the average reduction of tax rates through those treaties is well above the average among the countries covered by this report. Furthermore, a number of UK treaties with developing countries qualify as 'very restrictive treaties', which impose relatively high limitations on the taxing rights of developing countries. Despite this, the UK is not planning to carry out an impact assessment, which could identify harmful effects of UK tax policies and tax treaties on developing countries.

Finally, it is problematic that the UK government does not support the establishment of an intergovernmental UN tax body, which would give developing countries a truly equal say in global decision-making on tax matters.

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