



Oxfam tax havens stunt outside the EU offices in Brussels. Photo: Tineke D'haese/Oxfam

## BLACKLIST OR WHITEWASH?

What a real EU blacklist of tax havens should look like

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Tax havens deprive countries of hundreds of billions of dollars, fuelling inequality and poverty. The EU will soon release a blacklist of tax havens operating outside the EU, and issue penalties for those appearing on it. However, power politics means that several significant tax havens could be missing from the list. This report shows what a robust blacklist of tax havens would look like if the EU were to objectively apply its own criteria and not bow to political pressure. It also reveals four EU countries that would be blacklisted if the EU were to apply its own criteria to member states. While the EU's criteria are not perfect and will not capture all tax havens, they are a step in the right direction. An objective blacklist, combined with powerful countermeasures, could go a long way towards ending the era of tax havens.

# SUMMARY

The Paradise Papers<sup>1</sup> revelations have once again put tax havens in the spotlight. The global network of secrecy that helps the super-rich and multinational corporations to avoid the tax they owe is a global scandal. Tax havens drive inequality. They allow the rich to avoid tax, and are helping create extremes of wealth that see eight men owning the same as the bottom 3.6 billion people.<sup>2</sup> They deny governments hundreds of billions in tax revenue – revenue that could be spent on live-saving healthcare or education for all.<sup>3</sup>

All over the world, citizens are again demanding that something be done to end tax havens once and for all.

## The EU blacklist: a step forward?

One concrete and powerful way to clamp down on tax havens is to establish an objective list of what they are, and to ensure that those on the list are subject to punitive sanctions. Given this, Oxfam has formerly welcomed and supported<sup>4</sup> the EU's move to establish a joint-EU blacklist.

To work, a blacklist must be based on transparent and objective criteria and be free from any vested interests or political interference. If not, a blacklist can rapidly lose credibility. As powerful tax havens ensure that they are not on the list, it rapidly becomes a whitewash instead. This has been the case with the OECD list created for the G20, which ended up with just one country on it, Trinidad and Tobago.<sup>5</sup>

Sadly, the process of creating an EU tax havens list has been handicapped by the same problems. It has been opaque. Its criteria should be significantly strengthened. The EU should do far more to target tax havens that have corporate tax rates that are zero or close to zero. It could also do a lot more to target the multiple loopholes that allow corporations to avoid paying the tax they owe.<sup>6</sup>

Nevertheless, if the EU at least applies the criteria it has already managed to agree on in an objective way, this could be a meaningful step towards ending tax havens. The EU plans to publish its first list on 5 December 2017. In anticipation of this, Oxfam has identified which countries should be on this list if it is to be objective, effective and credible.

'Recent headlines about Google, Starbucks, or Ikea have underlined that an international tax system needs to work for everybody. [...] *We need a tax system in which ordinary citizens are convinced that multinational companies and wealthy individuals are contributing a fair share to the public purse, to the common good.*'

Christine Lagarde, IMF  
Managing Director; Abu  
Dhabi, 22 February 2016

## Which countries should be on the EU blacklist?

Oxfam has conducted a detailed assessment showing which countries should appear on the EU blacklist of tax havens if the EU were to objectively apply its own criteria, and not bow to any political pressure.

Based on a conservative estimate of scoring countries and territories on the EU criteria, Oxfam assesses that at least the following 35 countries should be expected to feature on the EU blacklist:

Albania	Faroe Islands	Niue
Anguilla	Former Yugoslav Republic of Macedonia	Oman
Antigua and Barbuda	Gibraltar	Palau
Aruba	Greenland	Serbia
Bahamas	Guam	Singapore
Bahrain	Hong Kong	Switzerland
Bermuda	Jersey	Taiwan
Bosnia and Herzegovina	Marshall Islands	Trinidad and Tobago
British Virgin Islands*	Mauritius*	United Arab Emirates
Cook Islands	Montenegro	US Virgin Islands
Cayman Islands	Nauru	Vanuatu
Curacao	New Caledonia	

\*Indicate the jurisdiction has been identified as a conduit tax haven

From the beginning, the EU list aimed to look only at countries outside the EU. This step strongly harms the credibility of the process, as EU member states such as Ireland, Luxembourg and the Netherlands are some of the most powerful tax havens in the world,<sup>7</sup> enabling some of the biggest corporations in the world to pay minimal tax. That this is the case has been confirmed by the European Commission itself as a result of a series of landmark rulings against Apple, Amazon and Starbucks.<sup>8</sup> Some of the same countries have recently appeared again in the new wave of tax revelations, the Paradise Papers.<sup>9</sup> Oxfam believes that the EU should put its own house in order when it comes to fighting tax evasion and tax avoidance and that EU countries should not be left off the list. Therefore, Oxfam also assessed the 28 EU member states and discovered that at least four of them should feature on the EU blacklist if screened against the EU's own criteria:

Ireland \*  
Luxembourg  
Malta  
Netherlands

## Methodology

The EU's listing process uses three sets of criteria to identify tax havens: transparency, fair taxation, and participation in international fora on tax. Importantly, the EU has acknowledged the danger of (extremely) low corporate tax rates and included assessment on this under the 'fair taxation' criteria.<sup>10</sup>

To assess whether countries were transparent according to the first EU criterion, Oxfam looked at latest available documents from the OECD regarding exchange of information.<sup>11</sup> For the second criterion, fair taxation, Oxfam considered the existence of potentially harmful tax regimes as referred to by the OECD<sup>12</sup> and the existence of 0% corporate income tax rates. Oxfam then used comparable data (eight economic sub-indicators) from international public databases (Eurostat,<sup>13</sup> UN Stats,<sup>14</sup> World Bank and IMF<sup>15</sup>) to assess whether a country's profits were significantly out of balance with real economic activity within the country. Finally, Oxfam considered any commitment to minimum standards on base erosion and profit shifting (BEPS).<sup>16</sup>

## Ending tax havens to reduce worldwide inequality

Tax scandals that have recently hit the headlines in Europe have not only harmed European countries. Corporate tax revenue losses are estimated to cost developing countries \$100bn a year.<sup>17</sup> Just one-third of this amount would be enough to pay for the essential healthcare that could prevent the needless deaths of eight million people.<sup>18</sup> Corporate tax continues to be relatively more important to developing countries' government revenues, accounting for 16% of tax receipts compared with a little more than 8% for high-income countries.<sup>19</sup>

Governments have a responsibility to protect and improve corporate tax collection. Limiting tax tricks can simultaneously benefit growth and reduce income inequality. Fairer revenue redistribution tied to education, especially for girls, can reduce gender inequality and boost women's empowerment.<sup>20</sup> While tax havens are ripping off developing countries, they are doing little to benefit local people. The Panama Papers<sup>21</sup> put the Central American republic of Panama<sup>22</sup> under the spotlight, but the vast majority of the population has nothing to do with tax avoidance schemes. In fact, in 2015 almost 32% of Panamanians were still living below the poverty line.<sup>23</sup>

Tax havens and the tax race-to-the-bottom are not benefitting anybody but a small elite composed of rich individuals and large multinationals. It is time to end them.

Political leaders are faced with a choice between ending the harmful impact of tax havens on both the EU and developing countries – or whitewashing tax havens and perpetuating the corporate tax race-to-the-bottom. This should not present a dilemma. Oxfam urges the EU and EU governments to:

- Adopt a clear and ambitious blacklist of tax havens, based on objective criteria and free from political interference. The EU should work towards a gradual improvement of its own criteria to cover all harmful tax practices;
- Introduce transparency regarding the listing process by disclosing the exact methodology used for analysing countries, as well as a summary of third

country interactions with the Code of Conduct Group during the listing process. Greater transparency will ensure that EU member states' decisions are not influenced by diplomatic or economic pressure;

- Adopt strong common and coordinated defensive measures against blacklisted countries to limit base erosion and profit shifting. As a top priority, countries should at least implement stronger controlled foreign company (CFC) rules, enabling countries to tax profit that has been artificially parked in tax havens;
- Take appropriate measures against EU tax havens. This should include adopting new legislation on harmful tax practices, a minimum effective tax rate for risky types of payments such as royalties and interests<sup>24</sup> and adopting common tax rules such as those proposed in Common Consolidated Corporate Tax Base C(C)CTB;<sup>25</sup>
- Provide support and direction to jurisdictions which are heavily dependent on their tax haven status. Such support should aim to build a fairer, more sustainable and diversified economy.

To rebalance the tax system and reduce inequality, the EU and EU governments should:

- Acknowledge that the ongoing race-to-the-bottom is harmful for the sustainability of tax systems, the attainment of the Sustainable Development Goals and the reduction of inequality;
- Governments should promote a listing initiative at the global level that comprehensively assesses the role played by countries in the global tax race-to-the-bottom. Such an initiative could be one measure in the needed new set of global reforms on tax, via a UN convention or a UN tax body, aimed at tackling the issue of tax competition;
- Increase financial transparency by requiring all large multinational corporations to make country-by-country reports publicly available for each country in which they operate, including a breakdown of their turnover, employees, physical assets, sales, profits and taxes (due and paid), to enable accurate assessment of whether they are paying their fair share of taxes.

# 1 MOMENTUM FOR AN EU BLACKLIST

Tax havens facilitate extreme forms of tax dodging and are the ultimate expression of the global corporate tax race-to-the-bottom.<sup>26</sup> The recent Paradise Papers<sup>27</sup> showed once again that tax havens are helping big business to cheat countries and their citizens out of billions of dollars in revenue every year. By starving countries of money needed for education, healthcare and job creation, tax havens are exacerbating poverty and inequality across the world.

It is essential to stop this phenomenon by identifying, transforming and ultimately sanctioning those jurisdictions.

After a number of massive tax scandals such as LuxLeaks<sup>28</sup> and the Panama Papers,<sup>29</sup> both the EU<sup>30</sup> and the G20/OECD<sup>31</sup> committed to produce blacklists of tax havens.

In June 2017, the OECD absurdly reported that only one country – Trinidad & Tobago – had failed to comply with international transparency standards.<sup>32</sup> Meanwhile, the EU decided to draft a blacklist based on more ambitious assessment criteria,<sup>33</sup> which it released in November 2016.<sup>34</sup>

Those criteria, which include a zero percent corporate tax rate indicator<sup>35</sup> and an assessment of the fairness of tax systems, are more comprehensive than those used by the OECD.<sup>36</sup> The first EU list of tax havens, which it calls the ‘list of non-cooperative jurisdictions’, is expected to be released on 5 December 2017.

Although Oxfam welcomes the EU initiative and stronger criteria, Oxfam believes that if, like the OECD, the EU fails to deliver an ambitious, robust and objective blacklist of tax havens, this will legitimize practices of countries that are robbing other countries of resources for development.

## The EU blacklist criteria – time to be hopeful?

The EU’s ambition to produce a blacklist should be seen in the context of other recent initiatives against harmful tax practices. In just a few years, the EU has succeeded in enforcing important new rules such as the exchange of information on cross-border tax rulings<sup>37</sup> and the Anti-Tax Avoidance Directive.<sup>38</sup> Despite some member states blocking progress, the EU has put fair taxation at the top of its political agenda. Its pursuit of fairer tax rules is in tune with strong public demand for action. In fact, almost nine in ten Europeans (86% in July 2017) are in favour of ‘tougher rules on tax avoidance and tax havens’.<sup>39</sup>

The EU correctly points out that it needs stronger instruments to tackle external tax avoidance<sup>40</sup> and to deal with third-country jurisdictions that refuse to play fair. A single EU blacklist will indeed carry much more weight than the current patchwork of national lists, and could have an important dissuasive effect on problematic third-country jurisdictions.<sup>41</sup>

To compile its blacklist, the EU uses three sets of criteria: transparency, fair taxation and participation in international fora on tax. Interestingly, countries with a zero percent<sup>42</sup> corporate tax rate will also be assessed against the criteria to

*‘The OECD has presented its list using less ambitious criteria than our own, but that list leads to recognizing one territory as being non-cooperative. I greatly admire what the OECD is doing, for the impetus the organization has given to fight tax evasion and tax avoidance but I believe our list should be more ambitious if we want it to be credible.’*

Pierre Moscovici, EU Commissioner, ECOFIN, July Public Session (2017)



ensure that the rate is not unduly attracting economic activity which is taking place outside the country. How robustly these criteria will be applied remains to be seen.

Once identified, tax havens need to be tackled. Only a common and coordinated set of countermeasures, together with negotiations with third-country jurisdictions, can really have an impact. The EU is currently considering four types of sanctions: withholding taxes; imposing new controlled foreign company (CFC) rules; eliminating deductible costs such as royalties; and participation exemption limitations.<sup>43</sup> Oxfam urges the EU also to consider limiting access to EU funds or procurement/investment/partnership contracts for those companies with a tax-driven presence in listed tax havens. Most importantly, the EU should implement regional and global initiatives to halt tax competition between countries.

Since decisions on tax issues require unanimous agreement from all 28 EU member states,<sup>44</sup> there is a risk of countries not being listed due to political reasons or a failure to agree on effective countermeasures.

It is now up to the EU to demonstrate that it can produce a robust blacklist to effectively put an end to tax havens – the frontrunners of the current global race-to-the-bottom on corporate tax.

## 2 WHAT THE EU BLACKLIST SHOULD LOOK LIKE

While recognizing that the EU blacklisting criteria fail to capture all corporate tax havens, Oxfam has conducted a fairly conservative assessment showing which countries should at the very least be expected to appear on the EU blacklist of tax havens if the EU were to objectively apply its own criteria and not bow to any political pressure.

Oxfam evaluated the 92 jurisdictions<sup>45</sup> being screened by the EU listing process, against the EU's three criteria.<sup>46</sup>

- **Criterion 1: Tax transparency:** Countries are exchanging information automatically and on request; countries are part of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters.
- **Criterion 2: Fair taxation:** Countries have no harmful preferential tax measures; countries do not facilitate offshore structures or arrangements aimed at attracting profits which do not reflect real economic activity in the jurisdiction. Zero percent tax rate is used as an indicator. It is important to note that the EU did not disclose the exact methodology for how it will assess this criterion. Oxfam therefore used economic indicators aiming at only capturing countries granting tax advantages without any real economic activity taking place in that country. However, the EU should have more information than is publicly available and could therefore list more countries than Oxfam does in this assessment; a move Oxfam would warmly welcome.
- **Criterion 3: Implementation of anti-BEPS measures:** Countries apply or commit to OECD anti-BEPS minimum standards.

This assessment resulted in a list of 35 third countries that should appear on the EU blacklist, as shown in Table 1.

**Table 1: Countries which should at the very minimum appear on the EU blacklist, and why**

<b>Jurisdiction</b>	<b>Fails criterion 1: Tax transparency</b>	<b>Fails criterion 2: Fair taxation</b>	<b>Fails criterion 3: Implementation of anti-BEPS measures</b>
Albania			X
Anguilla			X
Antigua and Barbuda	X		X
Aruba			X
Bahamas		X	X
Bahrain			X
Bermuda		X	
Bosnia and Herzegovina	X		X
British Virgin Islands*		X	
Cook Islands			X
Cayman Islands		X	
Curaçao		X	
Faroe Islands			X
Former Yugoslav Republic of Macedonia	X		X
Gibraltar			X
Greenland			X
Guam	X		X
Hong Kong		X	
Jersey		X	
Marshall Islands			X
Mauritius*		X	
Montenegro	X		X
Nauru			X
New Caledonia	X		X
Niue			X
Oman	X		
Palau	X		X
Serbia	X		X
Singapore		X	
Switzerland		X	
Taiwan	X		X
Trinidad and Tobago	X		X
United Arab Emirates			X
US Virgin Islands	X		X
Vanuatu	X		X

\* Indicates that the jurisdiction has been identified as a conduit tax haven.



To ensure that economic indicators used in this assessment capture only countries granting tax advantages even without any real economic activity in that country, Oxfam used high and conservative thresholds. Some countries, such as Guernsey or Isle of Man, scored just below the thresholds. The EU, having more access to economic information and being in direct contact with the countries assessed, could have a list which includes those jurisdictions as well. If the EU had more information than what is publicly available and which would lead to other jurisdictions listed, Oxfam would welcome that development.

Many more countries than those appearing on this table have harmful tax policies. In 2016, Oxfam identified<sup>47</sup> other countries, such as Barbados, as being corporate tax havens and which are not captured by the current EU criteria, either because the criteria are not strong enough or because the information was not available to the public.

Finally, Oxfam took the EU's willingness to give a specific treatment to developing countries into account. For that reason, low- and middle-income countries which are solely failing the transparency and BEPS criteria do not feature in the final Oxfam list unless they are recognized as financial centres (Malaysia, Marshall Islands, Nauru, Niue, Palau, Panama, Vanuatu are countries considered to be financial centres) or are EU candidate member states, OECD and/or G20 members.

## **But what about EU countries?**

Regrettably, EU countries are outside the scope of its listing process. Oxfam's previous analysis indicated that the Netherlands, Luxembourg, Ireland and Cyprus are among the world's worst corporate tax havens.<sup>48</sup> Citizens have witnessed the important role of several EU member states in multinationals' tax avoidance schemes, as shown by the recent Apple and Amazon tax scandals, which involved Ireland and Luxembourg<sup>49</sup> respectively. Brazil, for example, has recently decided to add Ireland to its national list of tax havens and has assessed some European tax regimes as harmful.<sup>50</sup>

To ensure that it achieves its stated goal of policy coherence for development, the EU needs to address the fact that while it is promoting development policies and providing aid to developing countries, EU tax havens are simultaneously diverting resources that are badly needed to pay for health and education services in the world's poorest countries.

In addition, Europe is the region with the lowest nominal average corporate tax rate in the world.<sup>51</sup> In order to promote fair taxation worldwide, the EU should also address the practices of its own member states.

Oxfam assessed all 28 EU member states according to the EU's own criteria, and found that at least four EU countries would feature on the EU tax havens blacklist if screened (Table 2).<sup>52</sup>

**Table 2: How EU countries perform against the EU’s listing criteria**

<b>Jurisdiction</b>	<b>Fails criterion 1: Tax transparency</b>	<b>Fails criterion 2: Fair taxation</b>	<b>Fails criterion 3: Implementation of anti-BEPS measures</b>
Ireland*		X	
Luxembourg		X	
Malta		X	
The Netherlands		X	

\*Indicates that the jurisdiction has been identified as a conduit tax haven.

The EU should ensure that rules are in place to reform the tax systems of EU countries that fail to meet the EU’s own criteria for being listed as a tax haven. It should also ensure that related territories of member states, such as overseas territories, comply with these standards.

**Box 1: Brexit, the EU blacklist and the tax race-to-the-bottom**

In previous attempts to draw up lists of tax havens, UK Overseas Territories (OTs) and Crown Dependencies (CDs) have often not been classified as tax havens. This may have been due to the political influence of the UK within the EU, and attempts by the UK government to improve some aspects of transparency within the OTs and CDs. None of the OTs or CDs appeared on the recent OECD list of non-cooperative jurisdictions. The UK government has also tended to agree with OTs and CDs that the focus of any blacklist should be on transparency, and has not included criteria related to tax rates or other aspects of tax policy.<sup>53</sup>

However, some OTs and CDs have been at the centre of tax scandals, such as the British Virgin Islands, which hosts by far the largest number of companies uncovered in the Panama Papers.<sup>54</sup> Bermuda has been highlighted in the recent Paradise Papers.<sup>55</sup> A number of OTs and CDs also have a zero percent corporate income tax rate, arguably putting them at the forefront of a global race-to-the-bottom. The UK’s pending withdrawal from the EU may reduce the ability of the UK’s OTs and CDs to stay off the blacklist; indeed, some OT’s leaders have proposed forging new alliances with remaining EU member states.<sup>56</sup> Meanwhile, the UK has been lowering corporate tax rates (currently 19% and due to drop to 17% by 2020<sup>57</sup>) and protecting tax policies aimed at attracting multinationals to the UK, including patent boxes. It is not clear how UK corporate tax rates and policies will change after Brexit. When outside the EU, the UK could set tax policies which run counter to emerging attempts within the EU to agree a common tax base.<sup>58</sup>

**Threats to the EU blacklist**

An effective blacklist must be free from any vested interests or political interference.<sup>59</sup> All countries should be assessed objectively, otherwise multinational companies could simply move their profits to bigger tax havens, such as Singapore,<sup>60</sup> that would be too powerful to be put on a list.

A transparent and clear blacklisting process is fundamental for its legitimacy and effectiveness. Yet the EU’s fight against tax havens, while driven by the European Commission, has been in the hands of one of Brussels’ most secretive working bodies,<sup>61</sup> the so-called Code of Conduct Group.<sup>62</sup> Created in 1998,<sup>63</sup> this preparatory body is composed of national tax officials from

European member states and meets in Brussels two or three times per semester. Its mandate stresses that its work should be confidential, so little is known about the content of the discussions.<sup>64</sup> To the detriment of an informed public debate and trust, it has been impossible to follow the EU listing process. Negotiations happen behind closed doors, and all countries participating in the process refuse to communicate or to release any information.

A major concern is that the whole process will be influenced by economic and diplomatic considerations that threaten its validity.<sup>65</sup> In the past, the drawing up of international lists of tax havens has been extremely political; this has led to jurisdictions such as Hong Kong or Switzerland, which are documented as having been used as tax havens,<sup>66</sup> mysteriously being left off the lists.<sup>67</sup> While Switzerland is a key economic partner of the EU,<sup>68</sup> many EU leaders are also willing to exclude it from its blacklist merely because it is engaging with the EU on issues relating to exchange of financial information.<sup>69</sup>

Meanwhile, aggressive tax jurisdictions such as Bermuda<sup>70</sup> and the Cayman Islands<sup>71</sup> have started to lobby the EU in the press. The lobby from private sector actors has also become visible. A Cayman law firm commented: 'If there is any suggestion that the Cayman Islands is "blacklisted" by the EU, the Cayman Islands government should reassess the importance of the EU to the Cayman Islands and, particularly, in the light of Brexit.'<sup>72</sup>

Countries failing the fair taxation criteria should not be removed from the blacklist until they have abolished their harmful tax measures and stopped facilitating offshore structures. However, the EU formulated some of the criteria on transparency and BEPS<sup>73</sup> measures in such a way that countries can meet them, for the time being, just by making a formal commitment to action. More positively, the EU formulated its fair taxation criteria such that countries can only fulfil them through the actual elimination of unfair tax practices.

If the EU intends to stop extreme tax dodging practices via tax havens, halt the race to the bottom triggered by those tax havens, and avoid the risk of legitimizing tax havens, it needs to apply strong criteria in an objective way. Oxfam has urged the EU to ensure that its blacklisting criteria targets damaging practices that grant substantial tax reductions such as patent boxes, notional interest deductions or harmful holding regimes, as well as targeting jurisdictions with zero percent or very low corporate tax rates.<sup>74</sup> This last recommendation has to some degree been taken on board in the EU's indicators. However, while Oxfam acknowledges this progress, it concludes that the EU's indicators are still not strong enough to identify all corporate tax havens.

## **Tax havens not captured by EU criteria**

In 2016, Oxfam released Tax Battles,<sup>75</sup> a report exposing the world's most aggressive corporate tax havens, which are extreme examples of a destructive race-to-the-bottom on corporate tax. In order of significance, Oxfam identified: Bermuda, the Cayman Islands, the Netherlands, Switzerland, Singapore, Ireland, Luxembourg, Curaçao, Hong Kong, Cyprus, Bahamas, Jersey, Barbados, Mauritius and the British Virgin Islands. The UK did not feature on the list, but four territories for which the UK is ultimately responsible did appear: the Cayman Islands, Jersey, Bermuda and the British Virgin Islands.

While the criteria adopted by the EU follow a similar logic to those proposed by Oxfam in its report (a combination of transparency, fair taxation and participation in international tax cooperation), the EU differs on the definition of unfair tax policies. Oxfam takes a more rigorous approach and considers indicators such as harmful tax practices, including patent boxes, notional interest deduction and excess profit rulings. It also looked at absent, or weak, so-called CFC rules. CFC rules are a very important backstop measure against many corporate tax avoidance structures, as they allow the home country of a multinational to tax the profits of subsidiaries located in other countries that apply a significantly lower tax rate.

As long as the OECD and EU fail to take strong measures to deal with the above policies, they remain instruments in a regional and global corporate tax race-to-the-bottom.<sup>76</sup>

This race-to-the-bottom on corporate tax rates has accelerated in recent years. On average, statutory corporate income tax rates in OECD countries decreased almost a third since 2000, falling from 30.4% to just 22.3% in 2017.<sup>77</sup> When it comes to effective tax rates, the latest studies show that the actual corporate income tax rate of the EU's digital sector, for example, is less than 10%.<sup>78</sup>

The EU's refusal to acknowledge the damaging effects of tax competition between countries has resulted in only limited incorporation of (extremely) low corporate tax rates in its blacklist indicators.<sup>79</sup> The true list of countries participating in the corporate tax race-to-the-bottom through harmful tax policies is therefore longer than the list of countries Oxfam has identified by the EU indicators.

The second EU criterion, 'fair taxation', can be interpreted in several ways. It appears that the EU intends to target jurisdictions that attract and keep profits which do not correspond to real economic activity taking place in the country. The EU states: 'The jurisdiction should not facilitate offshore structures or arrangements aimed at attracting profits which do not reflect real economic activity in the jurisdiction'.<sup>80</sup> However, it should also consider the jurisdictions in which the profits are transiting – i.e. the so-called 'conduit' tax havens – since they also participate in facilitating offshore structures. At the time of publishing, it is unclear whether the EU's criteria will capture conduit tax havens<sup>81</sup> (denoted with an asterisk in the tables). Profits go through such jurisdictions but do not remain there, and eventually end up in a 'sink' tax haven.

According to publicly available data, this is particularly the case for countries such as Mauritius, the British Virgin Islands and Ireland. Ireland, for example, does not appear to be a country in which profits are parked, yet it seems to play a vital role in the global network of tax havens. Oxfam discovered that royalties sent out of Ireland represented more than 26% of the country's GDP in 2015.<sup>82</sup> This is more royalties than are sent out of the rest of the EU combined, and makes Ireland the world's number one royalties provider.

While foreign direct investments (FDIs) are supposed to give a picture of global investments, in some territories such as Malta or the Cayman Islands, FDIs represent more than 1,000% of GDP. Absurdly, FDIs in and out of the British Virgin Islands represent 66,950% and 91,569% of GDP respectively.<sup>83</sup> These figures raise serious questions.

# 3 WHY THE EU NEEDS TO ACT

## Tax havens swindle developing countries

Tax scandals that have hit the headlines in Europe recently have not only harmed European countries. When the European Commission concluded that both the Netherlands and Ireland granted undue tax benefit for Starbucks (€30m) and Apple (€13bn), the main headlines forgot to mention that the tax structures set up in those two countries not only covered sales for the EU but also for the Middle East, Africa and India.<sup>84</sup> Countries from those regions have also potentially lost out on taxable income.

The recent Paradise Papers have also shown how West African development was undermined by the tax practices of multinationals such as Glencore, a Swiss commodity giant. Until 2017, Glencore owned the Nantou mine in Burkina Faso through Merope Holdings Ltd, a Glencore subsidiary in Bermuda. The International Consortium of Investigative Journalists revealed that Glencore would have used tax tricks to reduce its tax bill in Burkina Faso, notably through artificial interest payments to two offshore companies in Bermuda.<sup>85</sup>

In general, while tax avoidance practices by multinational corporations are a global problem that is relevant to all countries in developing and developed countries alike,<sup>86</sup> they remain of greater concern to the Global South. Losses from corporate tax revenues are estimated to cost developing countries \$100bn a year.<sup>87</sup> Just one-third of that amount would be enough to cover the cost of essential healthcare that could prevent the needless deaths of eight million people.<sup>88</sup> Corporate tax continues to be more important for developing countries' exchequers, accounting for 16% of tax receipts compared with a little more than 8% of tax receipts for high-income countries.<sup>89</sup>

Some international organizations, such as the Committee on the Elimination of Discrimination against Women (CEDAW), have started to recognize the harm tax havens cause to the poorest people in the world, the majority of whom are women.<sup>90</sup>

In 2016, CEDAW expressed its concerns about Switzerland's 'financial secrecy policies and rules on corporate reporting and taxation [that] have a potentially negative impact on the ability of other States, [...], to mobilise the maximum available resources for the fulfilment of women's rights'.<sup>91</sup>

Governments have a responsibility to protect and improve corporate tax collection, which is needed to provide public services.<sup>92</sup> Tax avoidance and tax loopholes almost exclusively benefit the rich. Latest estimates by Oxfam show that just eight men own the same wealth as the poorest half of humanity.<sup>93</sup> As growth benefits the richest, the rest of society suffers – especially the poorest people. Fighting tax dodging, and in particular targeting tax havens, is an effective way for governments to reduce inequality and poverty while sustaining growth.<sup>94</sup> Fairer revenue redistribution tied to education, especially for girls, can reduce gender inequality and boost women's empowerment.<sup>95</sup>

Tax havens are ripping off developing countries while bringing few benefits to local people. While the Panama Papers<sup>96</sup> have put the Central American

*'The policeman on the beat, the nurse who is attending to a patient, the teacher who is inspiring young minds, the scientist who is conducting cutting-edge basic research: these are only some of the people who could not do their work without reliable government income.'*

Christine Lagarde, IMF  
Managing Director, Abu  
Dhabi, February 2016

republic of Panama under the spotlight, the vast majority of the population has nothing to do with tax avoidance schemes. In fact, in 2015 almost 32% of Panamanians were still living below the poverty line, with 10.3% in extreme poverty.<sup>97</sup> Ninety percent of citizens living in rural areas of Panama are considered by the United Nations Development Programme (UNDP) to be poor or extremely poor.<sup>98</sup> While Latin American countries spend on average 14.5% of GDP on social public expenditure,<sup>99</sup> Panama spent just 8.4% of its GDP on social public expenditure in 2014, and this has been in continual decline since 2009.<sup>100</sup>

Tax havens and the tax race-to-the-bottom are not benefitting anybody but a small elite composed of rich individuals and large multinationals. In May 2016, 300 economists including Thomas Piketty and Jeffrey Sachs told world leaders: 'Tax havens have no economic justification.'<sup>101</sup> The leading auditing firm PwC<sup>102</sup> recently confirmed that the use of tax havens by companies and individuals to avoid paying tax will soon be 'unacceptable'. For many citizens worldwide, it is already unacceptable. The EU needs to stop the current lose-lose tax competition, starting by adopting an ambitious list of tax havens on 5 December 2017.

## RECOMMENDATIONS

It is time for the EU to take meaningful action to hold multinationals and problematic tax jurisdictions – including some EU member states – to account, to stop resources being diverted from developing countries. Tax havens are the result of a rigged global tax system. They are playing a leading role in the global corporate tax race-to-the-bottom. This must change if we want to finance development and fight inequality around the globe.

### **To efficiently end tax havens, the EU and EU governments should:**

- Adopt a clear and ambitious blacklist of tax havens, based on objective criteria and free from political interference. The EU should work towards a gradual improvement of its own criteria to cover all harmful tax practices;
- Introduce transparency regarding the listing process by disclosing the exact methodology used for analysing countries, as well as a summary of third-country interactions with the Code of Conduct Group during the listing process. Greater transparency will ensure that EU member states' decisions are not influenced by diplomatic or economic pressure;
- Adopt strong common and coordinated defensive measures against blacklisted countries to limit base erosion and profit shifting. As a top priority, countries should at least implement stronger Controlled Foreign Company (CFC) rules, enabling countries to tax profit that has been artificially parked in tax havens;
- Take appropriate measures against EU tax havens. This should include adopting new legislation on harmful tax practices, a minimum effective tax rate for risky types of payments such as royalties and interests<sup>103</sup> and adopting common tax rules such as those proposed in Common Consolidated Corporate Tax Base C(C)CTB;<sup>104</sup>
- Provide support and direction to jurisdictions which are heavily dependent on

their tax haven status. Such support should aim to build a fairer, more sustainable and diversified economy.

**To rebalance the tax system and reduce inequality, the EU and EU governments should:**

- Acknowledge that the ongoing race-to-the-bottom is harmful for the sustainability of tax systems, the attainment of the Sustainable Development Goals and the reduction of inequality;
- Governments should promote a listing initiative at the global level that comprehensively assesses the role played by countries in the global tax race-to-the-bottom. Such an initiative could be one measure in the needed new set of global reforms on tax, via a UN convention or a UN tax body, aimed at tackling the issue of tax competition;
- Increase financial transparency by requiring all large multinational corporations to make country-by-country reports publicly available for each country in which they operate, including a breakdown of their turnover, employees, physical assets, sales, profits and taxes (due and paid), to enable accurate assessment of whether they are paying their fair share of taxes.

## **Annex I**

The database analysing the 92 jurisdictions (shortlisted by the EU) and the 28 EU countries screened by Oxfam and the research methodology are available here [\[link\]](#)



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