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ET DE DÉVELOPPEMENT ÉCONOMIQUES

List of tax jurisdictions at-risk

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Table of contents

Introduction

1. A series of recent tax scandals – UBS, HSBC, 'offshoreleaks', 'luxleaks' among others – and public concern about the extremely low effective tax rates of some MNEs are a dire reminder that much remains to be achieved to put an end to tax evasion and to "aggressive" tax planning worldwide. Civil society groups and trade unions have been doing their part in maintaining the spotlight on tax evasion.

2. Tax evasion comes at a heavy cost for governments and harms society by jeopardizing government funding for essential services and infrastructure. Countries have an obligation to provide transparent information on compliance to international tax regulation so that shareholders may make informed decisions. Identifying cases of tax policy opaqueness or even non-compliance is therefore a key concern for governmental bodies, international organizations like the OECD, and trade unions.

3. Combatting tax evasion requires greater information sharing between tax authorities. There are several international forums and initiatives which aim is promote tax transparency within the corporate and financial sector and between tax authorities. At the international level, the authoritative body is the Global Forum on Transparency and Exchange of Information for Tax Purposes. At the regional level, the European Commission published a list of "non-cooperative jurisdictions" in June 2015[i]. On NGO side, the Tax Justice Network has produced a rating system, the Tax Secrecy Index[ii].

Tax evasion versus tax avoidance

4. A primary distinction needs to be made between aggressive tax planning ('tax avoidance') and tax evasion. While tax evasion clearly is illegal, tax avoidance is typically considered to occur in the "grey area" of compliance. The following table explains the main differences between the two and how to deal with them. To give a practical example, the "offshoreleaks" and "Swissleaks" scandals involve pure tax evasion issues, while the

"Luxleaks" scandal (involving secret deals, called "rulings", between tax authorities and MNEs on an individual base) is a case of tax avoidance.

Distinction between tax evasion & avoidance

	Tax evasion	**Aggressive tax planning & tax avoidance**
Legal compliance	Illegal & criminal behaviour	Subject to interpretation
Problem	Opacity of information on tax; Non-cooperative jurisdictions	Inadequate & "outdated" tax regulation; Mismatch between jurisdictions
Policy issue	Tax transparency; Automatic exchange of information between tax authorities	Tax treatment of transfer pricing, debt, foreign operations, etc. International harmonisation
Key international forum & agenda	The Global Forum peer review process, OECD Standard for automatic exchange of information	G20/ OECD BEPS action plan

The Global Forum on Tax Transparency

5. The main international initiative to curb tax evasion is the OECD-hosted Global Forum on Transparency and Exchange of Information for Tax Purposes, with 127 member countries[iii]. At the request of the G20, the Forum previously published a "grey list" and "black list" of "non-cooperative jurisdictions." This mechanism had positive effects… perhaps "too" positive. The number of countries on the "grey list" fell from 44 in 2009 to 5 in 2011), while the black list – which included 4 countries in 2009 – was emptied during that period. After 2009 however, the Forum replaced this "naming and shaming" technique with a peer review[iv] system against a "standard" for tax transparency. This standard covers 10 elements and is grouped in three categories:

- A: Availability of information, including access to beneficial ownership, record keeping of banking & accounting information;
- B: Access to information, including granting authorities enforcement power;
- C: Exchange mechanisms, including a minimum of 12 bilateral agreements covering "relevant economic partner" countries.

6. The Forum's peer review process consists of two consecutive phases: legal compliance with the standard (Phase 1) and its effective implementation through enforcement and practices (Phase 2). The Countries are "rated" accordingly: fully compliant, partially compliant, or non-compliant. According to the Forum annual report, jurisdictions' compliance with the standard is "generally high". Over 80% of jurisdictions are considered fully compliant or "largely compliant" with the standard. However, when looking at the compliance rating for each of the three categories, some serious differences emerge. In particular less than 50% of the rated jurisdictions scored a "fully compliant" rating regarding "availability of ownership information" (category A).

7. Although the Global Forum no longer produces an official list of "tax havens", its peer review rating process provides some indication of countries where tax opacity remains of concern, including jurisdictions that (i) failed the Phase 1 review because of "serious deficiencies in the legal framework" and therefore "cannot move to Phase 2", or (ii) are rated as non-compliant after having completed both Phase 1 & 2. Countries that pass Phase 1 successfully but are non-compliant with the Standard's A1 criteria (access to beneficial ownership) should also be treated with concern.

The European Commission list and the Tax Justice Network Secrecy Index

8. In June 2015, the European Commission published its first list of 30 non-cooperative jurisdictions as part of a new Action Plan for Fair and Efficient Corporate Taxation in the EU[v]. This list does not consist of a comprehensive assessment, but rather a compilation of the countries listed on at least 10 of the national tax haven lists submitted by EU member countries.

9. The Tax Justice Network (TJN) "Financial Secrecy Index" rates jurisdictions based on their lack of transparency but also their scale of activities. This index gives a quantitative "secrecy score" from 1 to 100 which is based on 15 secrecy indicators[vi] where 100 represents maximum secrecy. A score of 65 or above qualifies the country as a secrecy jurisdiction. Secrecy scores are then weighted based on the share of the financial services industry in order to calculate an overall financial secrecy ranking. The top ten ranking of the 2015 results is:

1. Switzerland
2. Hong Kong
3. USA
4. Singapore
5. Cayman Islands
6. Luxembourg
7. Lebanon
8. Germany
9. Bahrain
10. United Arab Emirates (Dubai)

List of tax jurisdictions at-risk

10. Based on the three sources cited above – Global Forum, EU list and TJN Secrecy index – several countries can be indicated as being at-risk of non-compliance with the required level of tax transparency and information. The outcomes of the three systems of rating are far from being consistent with each other however. Discrepancies highlight the importance of examining the underlying rating criteria. For example:

- 5 countries failed phase 1 of the Global Forum but do not appear on the official EU list. Conversely 18 countries of the EU list are rated as "largely compliant" with the Forum's standard;
- Several OECD countries considered secrecy jurisdictions by the TJN (secrecy score higher than 65) passed the Global Forum peer review and/or are not included on the official EU list.

Table 1: List of tax jurisdictions at-risk (by rating order)

Status of the Global Forum peer review - (26 July 2016)**:**		**Included in the EU list of tax havens** - (June 20125)**:**	**Not included in the EU list, but with a TJN secrecy score of 65 or above** - (November 2015)**:**	**TJN Secrecy Score below 65 or not rated by the TJN:**
Phase 1 failed because of “serious deficiencies in the legal framework”	>	Nauru (79), Vanuatu (87)	Guatemala (76), Lebanon (79),	Kazakhstan (n.a.), Micronesia (n.a.), Trinidad & Tobago (n.a.)
Phase 1 successful, but not compliant with A1 criteria (beneficial ownership)	>	Marshall Islands (79), Liberia (83)	Dominican Republic (65-73),	, Morocco (n.a.), Romania (n.a.)
Phase 1 successful	>	Brunei (83), Panama (72),	, Dominica (76),	
Partially compliant (Phase1&2)	>	Antigua & Barbuda (81), Andorra (77), Anguilla (69), Barbados (78)	Curacao (68), Samoa (86), United Arab Emirates (77)	Costa Rica (55), Indonesia (n.a.), Israel (53), St Maarten (n.a.), Turkey (64)
Largely compliant (Phase1&2)	>	Bahamas (79), Belize (79), Bermuda (66), British Virgin Islands (60), Cayman Islands (65), Cook Islands (76), Grenada (76), Guernsey (64), Hong Kong (72), Liechtenstein (76), Mauritius (72), Monaco (74), Montserrat (67), St Kitts & Nevis (78), St Vincent & Grenadines (78), The Seychelles (71), Turks & Caicos (71), Niue (n.a.)	Aruba (68), Bahrain (74), Ghana (67), Malaysia (75), Gibraltar (67), Jersey (65), Macao (70), , San Marino (70), Singapore (69), Uruguay (71), Botswana (71), Switzerland (73), St Lucia (83)	Mauritania (n.a.)
Not reviewed by the Forum	>	Maldives (76-84), US Virgin Islands (69)	Bolivia (72-80), Gambia (73-81), Macedonia (66), Paraguay (75-83), Tanzania (73-81), Taiwan (67-75), Venezuela (64-72)	

Table 2: List of tax jurisdictions at-risk (by alphabetical order)

Jurisdictions	Status of the GF peer review (26/07/16)	EU official list (2015)	Tax Justice network Secrecy Score (2015)
Andorra	Partially compliant (Phase1&2)	x	77
Anguilla	Partially compliant (Phase1&2)	x	69
Antigua & Barbuda	Partially compliant (Phase1&2)	x	81
Aruba	Largely compliant (Phase1&2)		68
Bahamas	Largely compliant (Phase1&2)	x	79
Bahrain	Largely compliant (Phase1&2)		74
Barbados	Partially compliant (Phase1&2)	x	78
Belize	Largely compliant (Phase1&2)	x	79
Bermuda	Largely compliant (Phase1&2)	x	66
Bolivia	n.a.		72-80
Botswana	Largely compliant (Phase1&2)		71
British Virgin Islands	Largely compliant (Phase1&2)	x	60
Brunei	Phase 1 successful	x	83
Cayman Islands	Largely compliant (Phase1&2)	x	65
Cook Islands	Phase 1 successful	x	76
Costa Rica	Partially compliant (Phase1&2)		55
Curacao	Partially compliant (Phase1&2)		68
Dominica	Phase 1 successful, but A2 not compliant		76
Dominican Republic	Phase 1 successful, but A1 not compliant		65-73
Gambia	n.a.		73-81
Ghana	Largely compliant (Phase1&2)		67
Gibraltar	Largely compliant (Phase1&2)		67
Grenada	Largely compliant (Phase1&2)	x	76
Guatemala	Failed phase1 review because of "serious deficiencies in the legal framework"		76
Guernsey	Largely compliant (Phase1&2)	x	64
Hong Kong	Largely compliant (Phase1&2)	x	72
Indonesia	Partially compliant (Phase1&2)		n.a.
Israel	Partially compliant (Phase1&2)		*53*
Jersey	Largely compliant (Phase1&2)		65
Kazakhstan	Failed phase1 review because of "serious deficiencies in the legal framework"		n.a.
Lebanon	Failed phase1 review because of "serious deficiencies in the legal framework"		79
Liberia	Phase 1 successful, but A1 not compliant	x	83
Liechtenstein	Largely compliant (Phase1&2)	x	76
Macao	Largely compliant (Phase1&2)		70
Macedonia	n.a.		66
Malaysia	Largely compliant (Phase1&2)		75
Maldives	n.a.	x	76-84
Marshall Islands	Phase 1 successful, but A1 not compliant	x	79
Mauritania	Largely compliant (Phase1&2)		n.a
Mauritius	Largely compliant (Phase1&2)	x	72
Micronesia	Failed phase1 review because of "serious deficiencies in the legal framework"		n.a
Monaco	Largely compliant (Phase1&2)	x	74
Montserrat	Largely compliant (Phase1&2)	x	67
Morocco	Phase 1 successful, but A1 not compliant		n.a.
Nauru	Failed phase1 review because of "serious	x	79

Jurisdictions	Status of the GF peer review (26/07/16)	EU official list (2015)	Tax Justice network Secrecy Score (2015)
	deficiencies in the legal framework"		
Niue	Largely compliant (Phase1&2)	x	n.a.
Panama	Phase 1 successful, but A2 not compliant	x	72
Paraguay	n.a.		75-83
Romania	Phase 1 successful, but A1 not compliant		n.a
Samoa	Phase 1 successful		86
San Marino	Largely compliant (Phase1&2)		70
The Seychelles	Largely compliant (Phase1&2)	x	71
Singapore	Largely compliant (Phase1&2)		69
St Kitts & Nevis	Largely compliant (Phase1&2)	x	78
St Lucia	Largely compliant (Phase 1&2)		83
St Maarten	Partially compliant (Phase1&2)		n.a.
St Vincent & Grenadines	Largely compliant (Phase1&2)	x	78
Switzerland	Largely compliant (Phase1&2)		73
Taiwan	n.a.		67-75
Tanzania	n.a.		73-81
Trinidad & Tobago	Failed phase1 review because of "serious deficiencies in the legal framework"		n.a.
Turkey	Partially compliant (Phase1&2)		64
Turks & Caicos	Largely compliant (Phase1&2)	x	71
United Arab Emirates (Dubai)	Partially compliant (Phase1&2)		77
US Virgin Islands	n.a.	x	69
Uruguay	Largely compliant (Phase1&2)		71
Vanuatu	Failed phase1 review because of "serious deficiencies in the legal framework"	x	87
Venezuela	n.a.		64-72

[i] http://ec.europa.eu/taxation_customs/taxation/gen_info/good_governance_matters/lists_of_countries/index_en.htm

[ii] http://www.financialsecrecyindex.com/

[iii] http://www.oecd.org/tax/transparency/ & http://www.oecd.org/tax/transparency/GFratings.pdf

[iv] http://www.oecd.org/tax/transparency/implementingthetaxtransparencystandardsahandbookforassessorsandjurisdictions-secondedition.htm

[v] http://ec.europa.eu/taxation_customs/taxation/gen_info/good_governance_matters/lists_of_countries/index_en.htm & http://europa.eu/rapid/press-release_MEMO-15-5175_en.htm

[vi] Secrecy indicators include: banking secrecy, trusts and foundations register, recorded company ownership, published company ownership, published company accounts, country by country reporting, fit for information exchange, efficiency of tax administration, avoids promoting tax evasion, harmful legal vehicles, anti-money laundering, automatic information exchange, bilateral treaties, international transparency commitments, and international judicial co-operation. http://www.financialsecrecyindex.com/PDF/FSI-Methodology.pdf