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PULLING THE PLUG

HOW TO STOP CORPORATE TAX DODGING IN EUROPE AND BEYOND

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PULLING THE PLUG: HOW TO STOP CORPORATE TAX DODGING IN EUROPE AND BEYOND

Tax dodging has received greater political attention over the past few years in Europe. From enacted corporate transparency legislations to early reflections on a European wealth tax, the European institutions are promoting tax reforms that can potentially reduce economic inequality in Europe and beyond (if well designed and implemented). Recently, the Luxleaks and Swissleaks media scandals, combined with the need to find financial resources to restore European growth, have opened up opportunities for progressive reforms to fight tax evasion and tax avoidance - which costs the European Union around €1 trillion a year¹. The European and global political context has never been so favourable, with new European institutions having to deliver on fighting tax havens, harmonising corporate taxation, improving tax transparency and ensuring greater tax cooperation. This document explores some of the solutions to fight corporate tax avoidance that the European Union should present in 2015, and why it is so timely to adopt them as soon as possible.

Oxfam is calling upon the European institutions, especially the European Commission in its two tax-related proposals for 2015, to:

1. Support the creation of a UN inter-governmental body on tax cooperation, by calling for a Ministerial roundtable on tax during the Financing for Development Conference in Addis Ababa in July 2015.
2. Increase corporate tax transparency by adopting public country by country reporting rules for large companies in all sectors, to build on what has been decided for the European banking sector.
3. Increase corporate tax harmonisation in Europe by ensuring a compulsory common consolidated corporate tax base in all 28 countries, which makes certain that taxes are paid where profits and real economic value is created.
4. Analyse the negative impacts one member state's tax system can have on other European and developing countries, and provide public recommendations for change.

1. INTRODUCTION

In a world where 80 people own as much wealth as the poorest half of the global population², the recognition that growing inequality is a threat for everyone is slowly starting to emerge³. The consequences of this extreme inequality are corrosive to society worldwide. It corrupts politics, hinders economic growth and stifles social mobility. Crucially, the rapid rise of extreme economic inequality is standing in the way of eliminating global poverty. The European Union (EU) remains one of the less unequal regions in the world⁴, but there are worrying signs that inequality has increased in many European countries - even before the 2008 economic crisis.⁵

Making tax fair is one of the key solutions if we want to tackle the growing problem of inequality. Data from 40 countries shows the potential of well-designed, redistributive taxation and corresponding investment by governments to reduce income inequality driven by market conditions. Finland and Austria, for instance, have halved income inequality thanks to progressive and effective taxation accompanied by wise social spending⁶. Unfortunately, at present, almost all countries suffer from increasingly large scale tax dodging schemes used by big multinationals and wealthy individuals. This deprives all governments of much needed resources to finance essential services, but especially affects developing countries⁷.

The European Union has been at the forefront of the fight against tax dodging over the past five years. Since 2011, several tax reforms have been adopted as first steps towards greater tax fairness. Relatively good progress has been made to tackle tax evasion of private wealth (including issues such as automatic information exchange in Europe, and transparency of beneficial owners in the anti-money laundering legislation). However, less attention has been given to putting in place the right legislative measures to tackle corporate tax avoidance, including knowing where companies pay taxes, harmonising tax bases in Europe and supporting ambitious reforms at an international level. Recent corporate tax dodging scandals have unequivocally reminded us that despite some progress, plenty remains to be done if we truly want 'banking secrecy to be over'⁸, 'the end of tax havens'⁹ and a definitive end to tax evasion and avoidance.

THE FIGHT IS ON: EARLY GAINS OF EU TAX POLICY

Fighting tax evasion and avoidance is not easy. There is no magic formula and it requires a combination of several approaches – from adequate transparency standards to efficient sanctions that end complicated schemes allowing tax dodgers to prosper. The European Union has recently made progress in some of these areas, especially tax transparency and exchange of information.

- **TAX TRANSPARENCY:**

In 2013, new legislation¹⁰ was adopted to strengthen the regulation of the European banking sector. It includes a requirement for each credit institution and investment firm to publically disclose on an annual basis key financial information on their economic activities¹¹. The objective is to have enough information to check whether taxes are paid where real economic value is created (and not in tax havens where profits can be artificially shifted). A study authorized by the European Commission confirmed that making this information public will also have a slight positive effect on the economy¹². Unfortunately, an attempt in 2013-2014 to extend this transparency provision beyond the banking sector was not successful. More recently, the EU updated its regulations to fight money laundering and called on Member States to adopt national registries where information on who really owns companies is made available¹³ (to prevent tax dodgers from hiding behind shell companies). However, only a few States have agreed to make this information fully available to the public in order to maximise the deterrent effect.

- **EXCHANGE OF TAX INFORMATION:**

The EU has been a driving force in promoting automatic exchange of tax information between national tax administrations. This has become the new EU standard for a lot of tax information thanks to the revision of the Directive on Administrative Cooperation¹⁴ in 2014. Automatic information exchange is one of the long-awaited requests from civil society organisations to ensure tax dodgers having offshore accounts can no longer use secrecy jurisdictions to hide their money. Unfortunately, little is currently being done by the EU to support developing countries benefiting from this new system. This carries the risk of creating a two-tiered system separating those who will receive information and be better equipped to fight tax dodging and those who won't – mainly developing countries.

- **FIGHTING AGGRESSIVE TAX PLANNING:**

The European Commission is now starting to use a wider range of tools at its disposal to combat tax dodging, namely under European competition law. The current investigations against Luxembourg, Ireland and the Netherlands for alleged cases of state aid¹⁵ explain how tax dodging is not only diminishing governments' resources, but creating unfair competition in the EU and disturbing the internal market. The request of information by the European Commission in December 2014 to all 28 Member States on their tax rulings¹⁶, and new investigations into Belgium's tax rulings system¹⁷ are welcome initiatives. However, more proposals are necessary to prevent companies and governments from signing these rulings in the first place.

Tax dodging knows no borders, as with the Luxleaks case we have a perfect illustration of why we need greater European coordination on fiscal policies. The recommendation on aggressive tax planning annexed to the European action plan to strengthen the fight against tax fraud and tax evasion¹⁸, from December 2012, is not ambitious enough and has received little appetite for implementation by member states. Some of them are currently involved in a tax race to the bottom which is not sustainable in the long term and drives away vital tax revenues in European countries, where citizens already find it hard to cope with the consequences of the financial crisis. Such a race also has negative 'spillover' effects in developing countries, depriving citizens from enjoying basic human rights like universal access to healthcare or education.

Corporate tax avoidance is now under the spotlight, which provides the European Union with a good opportunity to lead by example in the fight against these shocking practices. It must remain committed to end corporate tax avoidance in Europe but should also seek greater coordination beyond its borders so that ultimately all countries and regions act together to end corporate tax dodging and harmful tax competition. This document looks at three main areas of corporate tax avoidance:

1. Greater transparency of multinationals' identity, activities and tax payments
2. Greater tax cooperation in Europe and at an international level
3. Greater attention to the spillover effect of European tax policies on third countries to ensure policy coherence with development commitments.

2. ADOPT A COMPREHENSIVE TRANSPARENCY REPORTING FRAMEWORK FOR LARGE COMPANIES

In the past, greater corporate tax transparency has been limited by European decision-makers to certain sectors, like banks or extractive companies¹⁹. Moreover, there is a growing and worrying trend to interpret transparency in a restricted way, as information is only available to tax authorities and not publicly available, despite European citizens having a right to know who pays and who doesn't pay taxes. Two main issues urgently require the attention of decision-makers when it comes to corporate tax transparency - the transparency of tax rulings granted to big multinationals, and transparency on their economic activities to ensure profits are taxed where they are really made.

2.1 TRANSPARENCY OF TAX RULINGS

THE LUXLEAKS SCANDAL: THE TIP OF THE ICEBERG

In November 2014, the International Consortium of Investigative Journalists (ICIJ) revealed 548 tax rulings signed between over 300 multinationals and the Luxembourgish tax authorities between 2002 and 2010, with the help of the accountancy firm PricewaterhouseCoopers²⁰. Journalists showed how large companies have created subsidiaries in Luxembourg, with the purpose of shifting profits to this country where they could be taxed as low as 0.5 percent - eroding the tax base of other countries in Europe and beyond. The scandal triggered many debates at the European level on tax avoidance in Luxembourg and on aggressive tax planning generally, and the controversy involved the new President of the European Commission Jean-Claude Juncker, who was Luxembourg's Prime Minister at the time these rulings were signed. The European Parliament set up a special committee in February 2015 to look into these tax avoidance schemes and the European Commission has announced a legislative proposal to ensure tax rulings will be exchanged automatically between all Member States in the future.

Tax rulings are a tool for big companies and individual taxpayers to obtain a written interpretation of tax laws by tax authorities in order to know how much tax they will have to pay in a specific country. While tax rulings *per se* are necessary for companies to have legal certainty on what and how much taxes they will pay, a line is crossed when such rulings are misused to minimize corporate taxes, as in the case of the Luxleaks scandal.

Reacting to Luxleaks, the European Commission included in its 2015 work programme a legislative proposal to make all Member States automatically exchange the tax rulings they sign with big corporations²¹. We believe this proposal does not go far enough and will barely help to improve the situation. Tax rulings should actually be made publicly available for three main reasons:

- The public has a right to know about companies' tax practices. Corporate social responsibility guidelines include provisions on tax behaviours, and citizens and consumers can make more informed decisions if they are provided with information about a company's tax practices. Similarly, shareholders or investors can also make better decisions if they are informed on the risks linked with corporate tax avoidance taken by some large companies.
- There is no obstacle to the publication of tax rulings after a certain deadline (e.g. one year after the ruling is made by the tax authority) as tax information can hardly be considered commercially sensitive. Furthermore, rulings are granted to specific companies, which could be seen as privileged treatment (as the European Commission is currently investigating). Competitors or small and medium businesses should know if they are put at a disadvantage by these decisions.
- This is also beneficial for companies themselves. Companies that come under scrutiny for allegations of tax dodging, like McDonalds²² and Amazon²³, can face enormous reputational risk and consumer outrage. Tax rulings not being public perpetuate the culture of secrecy our European leaders have promised to fight. If a multinational is negotiating its tax rate to a minimum in a European country, it should at least do this publicly and be expected to answer criticism.

In addition, with the current fiscal consolidation period, only suggesting automatic information exchange bears the risk that European tax administrations may not have the sufficient means to scrutinise and detect abusive tax rulings. This is especially true considering some tax administrations in Europe already have difficulties dealing with an increasing amount of citizens' requests to regularize their tax situation²⁴.

2.2 TRANSPARENCY OF MULTINATIONALS' ACTIVITIES

Further progress also needs to be made on knowing where big companies pay taxes – to ensure multinationals do not artificially shift profits to tax havens and taxes are paid in countries where real economic activity is carried out. As far back as 2010, civil society organisations were demonstrating that the 50 biggest companies in Europe had 4,748 subsidiaries in tax havens²⁵. While this is not as such breaking the law, it is almost impossible to know what these subsidiaries do and whether they create real economic value for the company.

Country by country reporting (CBCR) is a growingly recognised tool to ensure we know where a multinational has subsidiaries across the world, and where they report profits and pay taxes. This has been in place for the European banking sector since 2013, and should be extended to large companies for all sectors as soon as possible. It has received high level political support within the EU, both from the previous Commission²⁶ and from Vice President Katainen during his Commissioner hearing in front of the European Parliament²⁷. The principle has also been adopted by G20 countries as part of the 'Base Erosion and Profit Shifting' international corporate tax reform currently led by the OECD²⁸. Interestingly, the idea of public reporting is also supported by a majority of CEOs²⁹.

However, the current OECD proposal for country by country reporting is disappointing and will most likely lead to an inefficient system³⁰, mainly for two reasons:

- The OECD is proposing that only large companies with turnover above €750 million will have to produce reports. This is a very high threshold – much higher than the criteria used in the European accounting directive to define large undertakings³¹. In practice, it means many big companies will not have to be more transparent on where they declare profits and pay taxes. For example, such high thresholds means that only 183 companies in Spain will have to report, representing only 0.76 percent of all Spanish large multinationals³².
- Companies' reports will only have to be filed to the tax authorities of the country where the company has its headquarters. Other countries will have to rely on information exchange to get the reported data, which is likely to make the system very complex and less efficient, and exclude many developing countries that won't be exchanging tax information automatically in the short-term as they don't have the capacity to do so.

While OECD proposals are just guidelines, the EU has the possibility to continue being a pioneer and expand on the existing reporting for banks to make country-by-country reporting a reality for all sectors in its 28 Member States. This is why we believe the European Commission should put forward a legislative proposal to amend the accounting directive and propose that information included in the OECD country by country reporting template apply to all large undertakings as defined in the directive. This should also be part of companies' annual financial statements. While this basic financial information can hardly be claimed as commercially sensitive, it would make the proposal apply to all large companies in all sectors, listed or non-listed, creating a level playing field. Moreover, the evaluation report carried out by PricewaterhouseCoopers about similar reporting for financial institutions in Europe highlighted the fact that public information is likely not to have a negative impact on the economy³³. While an impact assessment on CBCR for all sectors should be conducted by the European Commission, there is no reason to *a priori* believe such transparency proposal will have a negative impact on the European economy.

3. INCREASED COOPERATION FOR INCREASED EFFICIENCY

There have been several critics recently on the lack of tax harmonisation in Europe and France, Italy and Germany (among others) have written to the European Commission to request concrete measures beyond new legislation on tax rulings³⁴. In December 2014, EU Heads of State and Government also highlighted "an urgent need to advance efforts in the fight against tax avoidance and aggressive tax planning, both at the global and EU levels". One problem lies with the different approaches member states use to classify which countries are tax havens, and the lack of common sanctions against multinationals deliberately using these countries to avoid paying their fair share of taxes. Creating a public European blacklist of non-cooperative jurisdictions could be a start. It should be accompanied with (commercial or/and financial) sanctions against companies using these countries to put in place complex tax avoidance schemes, therefore not complying with EU tax standards. Such sanctions may include being banned from accessing state or EC aid and public procurement, as called for by the European Economic and Social Committee³⁵. Below are other proposals which could help provide greater tax cooperation in Europe and beyond.

3.1 HARMONISING AND CONSOLIDATING A CORPORATE TAX BASE IN EUROPE

In 2011, the European Commission presented a proposal for a common consolidated corporate tax base in Europe (CCCTB)³⁶, aiming at having only one set of rules for companies operating in several countries within the EU to calculate their taxable profits. The CCCTB would make it possible for companies to consolidate all profits and losses across the EU and to establish a company's tax base, after

which all Member States where the company is active would be entitled to tax a certain portion of that base according to a specific formula. This proposal is beneficial for companies and European Member States.

- **For companies:**

It will make their life and tax returns simpler as they will have to apply just one system for computing their taxable income, rather than having to comply with different rules in each Member State. Also, the European Commission has estimated that this system would be less costly for companies. Current compliance costs could be reduced by 7 percent, which is equivalent to a saving of €700 million across the EU according to the Commission³⁷. €1 billion in reduced costs to expand cross-border and €1.3 billion through consolidation could also be saved according to the same estimation.

- **For member states:**

This proposal for a single set of rules can make the European Union a more attractive place for foreign firms to invest in. The CCCTB will also help prevent profit shifting by large multinationals and will provide greater transparency to ensure more open and fairer tax competition in Europe.

However, discussions between the Member States have been slow over the past four years, despite some renewed momentum lately. Given current discussions, we would like to emphasize the need to:

- **Make the CCCTB proposal a mandatory set of rules** across the European Union, as called for by the European Parliament³⁸. The European Commission argued in 2011 that compulsory CCCTB would be out of line with the principle of subsidiarity. However, voluntary rules bare the risk of adding a 29th system and complicating the whole structure, contrary to the primary objective of simplifying it. SMEs have also criticised the optionality of this proposal³⁹.
- **Ensure profits will be consolidated at the European level.** Consolidation is a crucial aspect of the CCCTB proposal because it will eliminate the possibility for some large multinationals to put in place complex transfer pricing systems, an expensive and burdensome aspect of corporation taxation for companies and a tool leading to artificial profit shifting and corporate tax avoidance.

HOW EUROPEAN TAX POLICIES ARE DECIDED

One of the crucial obstacles to rapid progress on tax in Europe is the unanimity requirement, under the Lisbon Treaty. Contrary to other important issues like competition or internal market, taxation is seen as a sovereign competence of the 28 Member States, which means the European Commission can only make proposals and the European Parliament provides non-binding opinions. Another issue is that even if political will is there, 28 Member States unanimously need to agree on a common text, which allows just one or two of them to block a reform for years. This is why without political will – or massive tax scandals such as Luxleaks – some files can take a very long time before arriving to a unanimous agreement. Moreover, discussions on harmful tax practices in Europe take place within the Code of Conduct on Business Taxation group, a non-binding framework where countries discuss abolishing existing tax measures that constitute harmful tax competition. However, there is little transparency on the discussions in this group and on the progress made since its creation in 1998⁴⁰. The unanimity rule and the lack of transparency enable Member States engaged in this group to promote their own interest over greater European progress in the fight against corporate tax avoidance.

3.2 A UNIFIED VOICE TO SUPPORT AN INTERNATIONAL INTERGOVERNMENTAL BODY ON TAX COOPERATION

The European Union, speaking with one voice at the international level, is also important to ensure stronger cooperation on tax matters beyond European borders. Fortunately, 2015 provides the perfect opportunity for this to happen.

The G20 decided in 2013 to reform international corporate tax rules to avoid countries' base erosion and profits shifting from multinationals (the so-called BEPS reform led by the OECD). Negotiations are ongoing until December 2015 and despite attempts by the OECD Secretariat to include non-OECD countries in the discussions, preliminary proposals show that the reform will most likely benefit rich countries more, leaving developing countries behind⁴¹. Despite agreeing with the OECD diagnosis on the broken international tax system, we believe that new rules cannot be fairer unless the journey to decide them is fair as well⁴². The BEPS negotiations show that an exclusive process – where four-fifths of the world's governments do not have an equal say – will serve the interests of those governments formally engaged in the negotiations, and significantly risks replicating the same defects that have afflicted the current international tax system. Unless we have a truly global instance where all countries can express their priorities and needs, some countries' interests will always prevail over others.

Therefore, 2015 is an important year because ongoing negotiations on financing for development provide an opportunity to set up an inclusive international tax reform process. In July 2015, all countries will be represented in Addis Ababa for the United Nations Third International Conference on Financing for Development (FFD). The FFD discussions will define how sustainable development will be financed for the next 15 years, but has also the potential to be truly transformative for the international tax landscape. Indeed, the draft proposal framing the UN negotiations suggests the establishment of an intergovernmental body on international cooperation in tax matters⁴³, where all countries could participate in future tax reform discussions. So far, during the New York FFD negotiations, the European Union has only asked for a “cost-benefit” analysis of such an upgrade, while the measure is strongly supported by many developing and emerging economies⁴⁴. In Brussels, the European Commission’s proposal for an EU position on FFD is also rather disappointing when it comes to helping developing countries to mobilise their domestic resources. The European Member States when finalising the EU position for Addis in May 2015 should acknowledge that developing countries are more affected by corporate tax dodging, and therefore should be fully involved in international corporate tax reform - which is not the case today. They should call for a Ministerial Roundtable during the Addis conference to allow sufficient time and space to discuss this important matter. Such a roundtable will be the perfect opportunity to support the creation of an intergovernmental body on tax cooperation, and a step in the right direction to make the international tax governance landscape fairer in the future.

WHY WE NEED AN INTERGOVERNMENTAL BODY ON INTERNATIONAL COOPERATION IN TAX MATTERS

The Third Financing for Development Conference in Addis Ababa (13-16 July 2015) will play a critical role in ending extreme poverty and tackling inequalities everywhere. The Conference will also lay the fundamental groundwork for a UN agreement in September on the new Sustainable Development Goals, as well as in December for the COP21 and a global climate agreement. On January 21st 2015, the UN Secretariat General released its “Elements Paper” as a basis for negotiations over the coming months. This Elements Paper contains a series of propositions for the new framework, including the creation of an intergovernmental body on international cooperation in tax matters under UN auspices. Developing countries and civil society organisations support this proposal because the existing UN tax committee, created a few years ago, has reached its limits.

The mandate of this committee is rather limited when compared to the need for new international tax rules. It focuses mainly on double tax treaties, even if it can look at new and emerging issues that could affect tax cooperation. It also has limited resources, with a very small Secretariat and a limited travel budget, allowing for only one working session per year in Geneva. The committee only has 25 members nominated by their governments, but committee members act on their expert capacity and do not represent the views of their country of origin. An intergovernmental body would send a stronger political signal. It would provide an inclusive political framework where all countries could participate in tax negotiations on an equal footing (one country, one vote), and where representatives would have the political mandate to speak on behalf of their governments. Under the objective of strengthening international tax cooperation, this new committee would have a broader mandate than current discussions on base erosion and profits shifting. It would look at issues like tax and investment treaties, tax incentives, taxation of extractive industries, beneficial ownership, transparency of companies, trusts and other similar legal structures, public country by country reporting, automatic exchange of information for tax purposes and alternatives to the “arm’s length principle”.

4. THE NEED FOR PAYING GREATER ATTENTION TO CORPORATE TAX AVOIDANCE IN DEVELOPING COUNTRIES

According to the IMF, developing countries are particularly affected by corporate tax avoidance, as they rely more on corporate income tax for raising revenues than OECD countries⁴⁵. Furthermore, it is estimated that for each dollar developing countries receive, they lose two dollars, a huge part of which is made up of illicit financial flows⁴⁶. At a time when European development cooperation is considering giving a greater role to the private sector through ‘blending’ - using official development assistance to leverage private sector money to invest in developing countries - one must ensure that the private sector adopts an exemplary behavioural manner. This is particularly important when it comes to paying their fair share of taxes in developing countries. Scandalous examples from Zambia, of Glencore’s Mopani project⁴⁷ and ABF’s sugar operations⁴⁸, serve as illustrations of how it is possible for European multinationals to earn huge amounts of profit but pay little in corporate income tax in the country of operation.

THE COST OF ILLICIT FINANCIAL FLOWS IN DEVELOPING COUNTRIES

Developing countries are directly affected by illicit financial flows. A recent estimate of the scale of these flows showed that developing countries lost up to US\$6.6 trillion between 2003 and 2012, with a record amount of US\$991.2 billion lost in 2012 alone⁴⁹. More recently, the High Level Panel on illicit financial flows, led by former South African President Mbeki recently released a report showing that between \$30 and \$60 billion of illicit financial flows leave the African continent each year, twice the amount it receives in official development assistance⁵⁰. Illicit financial flows have a direct negative impact on a developing countries' budget – costing Chad 20 percent of its total GNI for example – while also affecting their ability to finance essential services, such as universal access to quality healthcare and education.

Transfer mispricing by large multinationals (deliberately misreporting the value of a commercial transaction on an invoice) is a form of corporate tax avoidance and constitutes a large part of illicit financial flows. Cases of corporate tax avoidance are unfortunately numerous in developing countries.

In **Bangladesh**, the National Board of Revenue estimates that multinational companies siphon off about \$1.8bn from the country each year due to the weak transfer pricing monitoring mechanism. As a result, the government has been deprived of around \$310m every year in tax revenues. This could pay for around one-fifth of the primary education budget in Bangladesh – vital resources in a country where there is only one teacher for every 75 children old enough to attend primary school.

In **Peru** in 2013, the tax administration managed to audit only a fraction of all transactions involving transfer pricing by multinationals, and already detected evaded taxes equivalent to \$105m; almost enough to fund the whole public maternal neonatal programme. Assuming that authorities could duly monitor and audit all transfer pricing operations, and that the evasion ratio was the same as in the 2013 sample, the Peruvian government could collect an estimated \$3.36bn in additional tax revenues – equivalent to 84 percent of the country's education budget⁵¹.

Recent studies have showed that developing countries are even more affected than rich economies by corporate tax dodging – one more reason for the European Union to stand in solidarity with these countries and ensure its fiscal policies don't undermine their effort to raise domestic resources.

As clearly demonstrated by the Luxleaks scandal, tax policies from one country can negatively influence the revenue collection of other countries in the world. Admitting that tax policies are not neutral is important to understanding that a tax system in country A can have a negative impact on the tax base of country B. When Luxembourg negotiates sweetheart tax deals with multinationals at a very low tax rate, it incentivises companies to shift some of their profits to Luxembourg at the detriment of other European and potentially developing countries.

This is why it is very important to analyse the potential 'spillover' effects of tax regulations in Europe and to ensure special treatment to developing countries, in the same way the European Commission provides preferred rules for low-income countries in trade matters. The IMF again explained that developing countries are particularly affected by tax haven policies, depleting their tax base and preventing them from raising vital domestic resources for their own development⁵².

Another tool reducing the tax collection of developing countries is bilateral tax treaties, which aim at reducing 'double-taxation' and allocate taxing rights between the two signing countries. They have recently become controversial as they are often more protective of developed countries' interests and are used by large companies to shift their profits to jurisdictions where they are able to pay little or no taxes. When signing a bilateral tax treaty with a developing country, the interest of a European country is most often to lower or remove certain types of withholding taxes, which raise revenues for the developing country. According to Eurodad research⁵³, Spain and the UK particularly have negotiated reduced tax rates in their bilateral treaties, leading to a loss of revenues for the signing developing countries.

Such “tax wars” are no longer acceptable, and the European Commission should be given a mandate to analyse national and European tax policies to see whether they have a negative effect on other European countries. As a first step the Commission should undertake a “spillover analysis” of Member States’ corporate tax regimes and bilateral taxation treaties with developing countries, based on full access to the necessary data from Member States (on a confidential or anonymised basis if necessary). For this, the European Commission should have access to all available micro data at Member State’s level (including data from their tax authority, their central bank and their national statistics bureau, even on a temporary basis and under strict confidentiality if necessary). This would allow the production of aggregated results that would not raise confidentiality issues. Without such access to micro-data, any “spillover analysis” carried out will likely be inaccurate or unreliable.

This would put the principle of policy coherence for development – included in the Lisbon Treaty – into practice and ensure that development policies are not undermined by European fiscal practices. Such analysis should be made public and should lead to reforms if found to have a disproportionate spillover impact. The European Semester could be used as the framework for European countries to receive recommendations on their fiscal policies, and implement reforms if necessary.

5. RECOMMENDATIONS TO THE EUROPEAN INSTITUTIONS

The European Union is at a crossroads. European citizens are expecting greater fiscal justice after a series of corporate tax avoidance scandals in the media. Developing countries are demanding to be part of international negotiations to change international corporate tax rules. The European political context has never been so supportive of greater tax transparency, cooperation and coherence at the European level. The European institutions – and especially the European Commission, the upcoming Luxembourgish Presidency of the EU and the European Parliament – should ensure that efficient, fair and ambitious corporate tax reforms are adopted in the EU and at the international level. The path to tax fairness is achievable but the road to achieving it is still a long one.

IMPACT ASSESSMENT

1. **The European Commission should conduct an analysis on the ‘spillover’ effect** on European and developing countries of any new European legislative proposal on tax. It should also analyse the impact of current national and European tax policies, including double tax treaties with developing countries, on the tax base of other European and developing countries and make the outcome of these investigations publicly available.
2. The European Commission should support developing countries, as part of its development assistance programmes, to **conduct analysis on the impact of developing countries’ tax systems on economic and gender inequality, and help them to make their tax systems more progressive.**

POLICY CHANGES

AT THE EUROPEAN LEVEL

3. **The Tax Transparency Package of the European Commission** in March 2015 must go beyond the legislative proposal to amend the Directive on administrative cooperation to provide automatic exchange of tax rulings information. It should at least include:
 - a. A legislative proposal requiring Member States to publish all tax rulings signed with large companies, one year at the most after the ruling is signed by tax authorities.
 - b. An updated guiding framework on tax rulings for Member States to avoid misuse of this practice for corporate tax avoidance.
 - c. A legislative proposal to Member States to amend the accounting directive and adopt public country-by-country reporting for large companies in all sectors, to build on what was adopted for the banking sector in the Capital Requirement Directive.
4. **The non-legislative Action Plan of the European Commission** foreseen for June 2015 should address the unfinished business of corporate tax reforms, and set the list of upcoming ambitious proposals to put an end to harmful tax competition. It should at least include:
 - a. A legislative proposal to Member States (if not included in March), to amend the accounting directive and adopt public country-by-country reporting for large companies in all sectors, to build on what was adopted for the banking sector in the Capital Requirement Directive.
 - b. A proposal to Member States for a mandatory common consolidated corporate tax base in Europe, to ensure taxes are paid where profits and real economic value is created.
 - c. A request to Member States to implement the fourth anti-money laundering directive as soon as possible, and to create fully public national registers providing accessible information on beneficial owners of companies and trusts to European citizens.
 - d. A proposal to establish a common European blacklist of tax havens, together with sanctions towards these jurisdictions and companies not respecting European tax good governance standards.

AT THE INTERNATIONAL LEVEL

- At the G20:** The European Commission and Member States must acknowledge that the current BEPS reform does not allow developing countries to have an equal say in the negotiations, and is not addressing crucial issues for developing countries – such as taxation rights and taxation of the extractive sector. There must be recognition that BEPS is just a first step in negotiations on international corporate tax reforms.
- During the Financing for Development negotiations:** The European Commission and Member States should support the creation of an intergovernmental body on tax cooperation under UN auspices, and should call for a Ministerial roundtable on international taxation during the Financing for Development Conference in Addis Ababa in July 2015.

PROCEDURAL REFORMS

- The European Parliament's special committee on tax rulings and other measures similar in nature or effect shall be granted access by the European Commission and Member States to all documents necessary** for their investigations. Any institutional or non-state stakeholder involved in the European Parliament's research shall provide full cooperation to enable the European Parliament to provide relevant recommendations in the future.
- The European Commission and Member States should consider reviewing how taxation matters are being negotiated at the European level,** especially to ensure more balanced expert groups on taxation and greater transparency on topics discussed and progress made to fight harmful tax competition in the future.

NOTES

- http://ec.europa.eu/taxation_customs/taxation/tax_fraud_evasion/a_huge_problem/index_en.htm
- Oxfam report (2015), 'Wealth: having it all and wanting more', http://www.oxfam.org/sites/www.oxfam.org/files/file_attachments/ib-wealth-having-all-wanting-more-190115-en.pdf
- See for example, World Economic Forum (2014) 'Global Risks 2013', Switzerland: World Economic Forum, p.9, http://www3.weforum.org/docs/WEF_GlobalRisks_Report_2014.pdf
- The EU Gini coefficient averages 31, much lower than Latin America (50), Sub-Saharan Africa (45) or even North America (36). www.indexmundi.com/facts/indicators/SI.POV.GINI
- inequalitywatch.eu/spip.php?article58
- Oxfam report (2014) 'Even It Up: time to end extreme inequality' p 82 http://www.oxfam.org/sites/www.oxfam.org/files/file_attachments/cr-even-it-up-extreme-inequality-291014-en.pdf
- The Global Financial Integrity report (December 2014), 'Illicit Financial Flows from the Developing World: 2003-2012' finds that developing and emerging economies lost US\$6.6 trillion in illicit financial flows from 2003 to 2012, with illicit outflows increasing at an staggering average rate of 9.4 percent per year—roughly twice as fast as global GDP <http://www.gfintegrity.org/report/2014-global-report-illicit-financial-flows-from-developing-countries-2003-2012/>
- <http://www.lejdd.fr/Economie/Pascal-Saint-Amans-Le-secret-bancaire-est-mort-715480>
- http://www.dailymotion.com/video/xdscrq_nicolas-sarkozy-les-paradis-fiscaux_news
- Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32013L0036>
- e.g. name and location of subsidiaries, turnover, number of employees, profit or loss before tax, tax on profit or loss and public subsidies
- http://ec.europa.eu/internal_market/company/docs/modern/141030-cbcr-report_en.pdf
- <http://www.consilium.europa.eu/en/press/press-releases/2015/02/150210-money-laundering-council-endorses-agreement-with-ep/>
- http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ecofin/146126.pdf
- http://europa.eu/rapid/press-release_IP-14-663_en.htm
- http://europa.eu/rapid/press-release_IP-14-2742_en.htm
- http://europa.eu/rapid/press-release_IP-15-4080_en.htm
- http://ec.europa.eu/taxation_customs/resources/documents/taxation/tax_fraud_evasion/com_2012_722_en.pdf
- In 2013, the European institutions amended the accounting directive (2013/34/EU) to include a limited reporting obligation for large companies in the extractive sector (chapter 10) http://europa.eu/rapid/press-release_MEMO-13-546_en.htm
- <http://www.icij.org/project/luxembourg-leaks>
- http://ec.europa.eu/priorities/work-programme/index_en.htm
- <http://thinkprogress.org/economy/2015/02/26/3627483/mcdonalds-international-pressure-brazil-luxembourg/>
- <http://www.theguardian.com/business/2014/may/09/margaret-hodge-urges-boycott-amazon-uk-tax-starbucks>
- http://www.epso.org/IMG/pdf/it_6_LRD_report_cuts_tax_services_Final_-_EN-2.pdf
- http://ccfd-teresolidaire.org/IMG/pdf/ed_english_bdrectifiableau111116_2.pdf
- http://europa.eu/rapid/press-release_MEMO-13-546_en.htm
- <http://www.europarl.europa.eu/ep-live/en/committees/video?event=20141007-1000-COMMITTEE-HEARING2014JK>
- <http://www.oecd.org/ctp/beps-action-13-guidance-implementation-tp-documentation-cbc-reporting.pdf>
- PwC report 2014 'Focus on Tax: Building trust and growth' - Related summary as part of the 17th Annual Global CEO Survey - <http://www.pwc.com/gx/en/ceo-survey/2014/download.jhtml>
- <http://www.oecd.org/ctp/beps-action-13-guidance-implementation-tp-documentation-cbc-reporting>.
- According to the European accounting directive, companies are considered large undertakings if they exceed two of the following criteria: the average number of employees during the financial year which of 250, the balance sheet of €20 million and a net turnover of €40 million. Article 3 - <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0034&from=EN>
- Calculations done by Oxfam Intermon.OECD own estimate shows that this threshold will exclude 85-90% of all MNCs: <http://www.oecd.org/ctp/beps-action-13-guidance-implementation-tp-documentation-cbc-reporting.pdf>

- 33 http://ec.europa.eu/internal_market/company/docs/modern/141030-cbcr-report_en.pdf
- 34 http://www.economie.gouv.fr/files/files/PDF/letter-to-p_moscovici-11282014.pdf
- 35 <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52012IE1289>
- 36 http://ec.europa.eu/taxation_customs/taxation/company_tax/common_tax_base/index_en.htm
- 37 http://europa.eu/rapid/press-release_MEMO-11-171_en.htm?locale=en
- 38 <http://www.europarl.europa.eu/news/en/news-room/content/20120418IPR43390/html/Corporate-taxation-Parliament-pushes-for-a-compulsory-common-base>
- 39 http://www.ueapme.com/IMG/pdf/110316_pr_CCCTB.pdf
- 40 <http://www.consilium.europa.eu/en/council-eu/preparatory-bodies/code-conduct-group/>
- 41 We see two main problems with the current BEPS negotiations. While we welcome the recognition that rules need to be updated, we are concerned that most of developing countries are left out of the negotiation process to amend international tax rules that affect every country. Secondly several critical issues for developing countries, such as taxation of the extractive sector or taxing rights between 'source' and 'residence' country are not included in BEPS, when taxation of the digital economy – a priority for developed countries – is a top priority of the reform agenda.
- 42 http://www.oxfam.org/sites/www.oxfam.org/files/bp185-business-among-friends-corporate-tax-reform-120514-en_0.pdf
- 43 http://www.un.org/esa/ffd/wp-content/uploads/2015/01/FfD_Elements-paper_drafting-session.pdf
- 44 <http://www.un.org/esa/ffd/wp-content/uploads/2015/02/1ds-dpf-Statement-Morocco-Jan2015.pdf>
- 45 <http://www.imf.org/external/np/pp/eng/2014/062514.pdf>
- 46 <http://www.eurodad.org/Entries/view/1546318/2014/12/17/2-lost-for-every-1-dollar-gained-the-single-fact-that-shows-how-the-global-financial-system-fails-developing-countries>
- 47 <http://www.counter-balance.org/wp-content/uploads/2011/03/Mopani-Report-English-Web.pdf>
- 48 <http://www.actionaid.org/publications/sweet-nothings>
- 49 <http://www.gfintegrity.org/report/2014-global-report-illicit-financial-flows-from-developing-countries-2003-2012/>
- 50 <http://www.uneca.org/iff>
- 51 Both examples are mentioned in the Oxfam report (2014) 'Business among friends' http://www.oxfam.org/sites/www.oxfam.org/files/bp185-business-among-friends-corporate-tax-reform-120514-en_0.pdf
- 52 <http://www.imf.org/external/np/pp/eng/2014/062514.pdf>
- 53 <http://eurodad.org/files/pdf/54819867f1726.pdf>



Tax dodging 'fat cats' relax on the Isle of Shady, a pop-up tax haven in central London, ahead of the 2013 G8 Summit. PHOTO © DAVID PARRY / PA

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