

DIRECTORATE-GENERAL FOR INTERNAL POLICIES

**POLICY DEPARTMENT**  
BUDGETARY AFFAIRS **D**

Budgets

Budgetary Control



**European initiatives on  
eliminating tax havens and  
offshore financial transactions  
and the impact of these  
constructions on the Union's  
own resources and budget**

**STUDY**



**DIRECTORATE GENERAL FOR INTERNAL POLICIES**  
**POLICY DEPARTMENT D: BUDGETARY AFFAIRS**

# **European initiatives on eliminating tax havens and offshore financial transactions and the impact of these constructions on the Union's own resources and budget**

## **STUDY**

### **Abstract**

This study reviews the impact of tax havens, secrecy jurisdiction, and similar structures on the EU.

It concludes that the availability of these structures constrains the EU budget and undermines the fiscal recovery of EU Member States. They distort markets by conferring advantages on large companies that engage in transfer pricing.

The study recommends the development of objectively verifiable criteria to identify high risk jurisdictions, combined with mandatory country by country reporting by multinational companies operating in the EU.

This document was requested by the European Parliament's Committee on Budgetary Control. It designated Mr Bart Staes, MEP, to follow the study.

## **AUTHOR**

Blomeyer & Sanz  
c/cerezos 545b - cd 250  
el clavin, es-19163 Guadalajara  
+34 650 480 051  
[rblomeyer@blomeyer.eu](mailto:rblomeyer@blomeyer.eu)  
[www.blomeyer.eu](http://www.blomeyer.eu)

## **RESPONSIBLE ADMINISTRATOR**

Mr Jean-Jacques Gay  
Policy Department D: Budgetary Affairs  
European Parliament  
B-1047 Brussels  
E-mail: [poldep-budg@europarl.europa.eu](mailto:poldep-budg@europarl.europa.eu)

## **LINGUISTIC VERSIONS**

Original: EN  
Translation: Executive summary in DE and FR

## **ABOUT THE EDITOR**

To contact the Policy Department or to subscribe to its newsletter please write to:  
[poldep-budg@europarl.europa.eu](mailto:poldep-budg@europarl.europa.eu)

Manuscript completed in April 2013.  
Brussels, © European Union, 2013.

This document is available on the Internet at:  
<http://www.europarl.europa.eu/studies>

## **DISCLAIMER**

The opinions expressed in this document are the sole responsibility of the author and do not necessarily represent the official position of the European Parliament.

Reproduction and translation for non-commercial purposes are authorized, provided the source is acknowledged and the publisher is given prior notice and sent a copy.

## CONTENTS

<b>LIST OF ABBREVIATIONS</b>	<b>5</b>
<b>LIST OF TABLES</b>	<b>7</b>
<b>LIST OF FIGURES</b>	<b>7</b>
<b>EXECUTIVE SUMMARY</b>	<b>9</b>
<b>ZUSAMMENFASSUNG</b>	<b>14</b>
<b>SYNTHESE</b>	<b>20</b>
<b>1. Introduction</b>	<b>26</b>
1.1. Objectives	26
1.2. Methodology	27
1.3. Report structure	30
<b>2. Background</b>	<b>31</b>
<b>3. Study Area 1 the characteristics, role, usage, and impact of tax havens, and offshore and secrecy jurisdictions</b>	<b>33</b>
3.1. What is the general overall impact of tax havens?	33
3.2. What are the key characteristics of tax havens?	35
3.3. Who is using tax havens and for what purposes?	37
3.4. Which countries and jurisdictions can be considered to be tax havens?	39
3.5. Harmful tax and non-tax practices of tax havens and other jurisdictions	46
3.6. Impact of tax havens on EU financial interests	53
3.7. impact of tax havens on the proposed financial transaction tax	55
<b>4. Study Area 2 - policy and countermeasures of the EU, G-20, OECD, and other international bodies.</b>	<b>57</b>
4.1. Eu legal instruments to tackle the use of tax havens	58
4.2. EU policies and countermeasures regarding tax havens	58
4.3. Policies and countermeasures of other international bodies regarding tax havens etc.	64
4.4. Interaction of EU policies and instruments with relevant international initiatives	73
4.5. Effectiveness of EU policies and instruments addressing tax havens	75
4.6. Coherence of EU approach to addressing tax havens	79
<b>5. Case studies</b>	<b>82</b>
5.1. Greece and Spain	82
5.2. The Netherlands	88
5.3. The UK	91
5.4. Tax havens	94
5.5. VAT fraud case study	100
5.6. The Impact of tax havens on the EU investment climate	105

<b>6. Conclusions and recommendations</b>	<b>106</b>
<b>REFERENCES</b>	<b>111</b>
<b>ANNEX 1 – Data Tables</b>	<b>114</b>
<b>ANNEX 2 - Overseas territories of EU Member States</b>	<b>125</b>
<b>ANNEX 3 - Stakeholders</b>	<b>135</b>

## LIST OF ABBREVIATIONS

<b>AML</b>	Anti-money laundering
<b>APA</b>	Advance Pricing Agreements
<b>ATR</b>	Advance Tax Rules
<b>BBC</b>	British Broadcasting Corporation
<b>BIS</b>	Bank for International Settlements
<b>BOT</b>	British Overseas Territory
<b>CCCTB</b>	Common Consolidated Corporate Tax Base
<b>CFT</b>	Combating the Financing of Terrorism
<b>CI\$</b>	Cayman Islands Dollar
<b>DG</b>	Directorate General
<b>DTC</b>	Double Taxation Convention
<b>EC</b>	European Commission
<b>ECOFIN</b>	Economic and Financial Affairs Council
<b>EEAS</b>	European External Action Service
<b>EU</b>	European Union
<b>FATCA</b>	Foreign Account Tax Compliance Act
<b>FATF</b>	Financial Action Task Force
<b>FSI</b>	Financial Secrecy Index
<b>FTA</b>	Free Trade Agreement
<b>FTT</b>	Financial Transaction Tax
<b>FYR</b>	Former Yugoslav Republic (of Macedonia)
<b>GAAP</b>	Generally Accepted Accounting Principles
<b>GAAR</b>	General Anti-Abuse Rule
<b>GAFI</b>	Groupe d'Action Financière (Financial Action Task Force)
<b>GAO</b>	Government Accountability Office
<b>GDP</b>	Gross Domestic Product
<b>GNI</b>	Gross National Income
<b>HMRC</b>	HM Revenue & Customs (UK Tax Authority)
<b>IBC</b>	International Business Company
<b>IBEX</b>	Spanish Stock Market Index
<b>IMF</b>	International Monetary Fund
<b>IRS</b>	Internal Revenue Service (United States)
<b>LLC</b>	Limited Liability Corporation
<b>MTIC</b>	Missing Trader Intra Community
<b>NBER</b>	National Bureau of Economic Research (United States)
<b>NCCT</b>	Non-cooperative Countries and Territories'
<b>OECD</b>	Economic Co-operation and Development
<b>PCA</b>	Partnership and Cooperation Agreement
<b>PER</b>	Participation Exemption Regime
<b>SAR</b>	Special Administrative Region
<b>SBP</b>	Sound Business Practice
<b>SEPBLAC</b>	Spanish Anti Money Laundering Agency
<b>SGD</b>	Singapore Dollar
<b>TAXUD</b>	Taxation and Customs Union Directorate General
<b>TFEU</b>	Treaty on the Functioning of the European Union
<b>TFGR</b>	Taskforce for Greece
<b>TIEA</b>	Tax Information Exchange Agreement
<b>TUC</b>	Trades Union Congress
<b>UAE</b>	United Arab Emirates

<b>UK</b>	United Kingdom
<b>UKOTA</b>	United Kingdom Overseas Territories Association
<b>UN</b>	United Nations
<b>UNODC</b>	United Nations Office on Drugs and Crime
<b>US</b>	United States
<b>USA</b>	United States of America
<b>USD</b>	United States Dollar
<b>VAT</b>	Value Added Tax

## LIST OF TABLES

Table 1: Top 10 secrecy jurisdictions according to the Financial Secrecy Index.....	44
Table 2: Rankings of EU Member States in the Financial Secrecy Index.....	44
Table 3: Jurisdictions advertised as tax havens.....	45
Table 4: Revenue of the EU-27 by component 2011 .....	47
Table 5: EU Expenditure by component 2007 – 2011 (€ million).....	54
Table 6: DTCs and TIEAs in 2010 .....	65
Table 7: TIEA requests of two Member States in 2011 and 2012 .....	66
Table 8: Covered payments reported by participating jurisdictions (€ millions).....	76
Table 9: Calculated potential tax revenue from a 15% tax (€ millions).....	76
Table 10: Tax lost as a result of the shadow economy in five EU Member States.....	82
Table 11: Singapore agreements with EU Member States not yet in force.....	94
Table 12: Cayman Islands agreements with EU Member States .....	99
Table 13: Offshore jurisdiction comparison chart .....	114
Table 14: Standard VAT rates in Europe (2013) .....	116
Table 15: Jurisdictions receiving special attention from the Global Forum .....	117
Table 16: Jurisdictions included in a US GAO list of tax havens, but not identified as tax havens by the OECD either in 2000, or 2009 .....	118
Table 17: Offshore financial centres not identified as tax havens by the OECD either in 2000, or 2009 .....	119
Table 18: Member States and associated territories with harmful tax measures .....	120
Table 19: Summary of offshore centre liabilities.....	121
Table 20: Bank for International settlements – offshore centres .....	122
Table 21: Agreements signed by Spain, Greece, Portugal, and Italy with tax havens.....	123
Table 22: World's largest 105 companies operating in Spain, Greece, Portugal, and Italy.....	124
Table 23: Country by country reporting of four Spanish and Italian multinationals .....	124
Table 24: British Overseas Territories and Crown Dependencies .....	129
Table 25: French overseas departments and regions and overseas communities .....	132
Table 26: Netherlands territories .....	133

## LIST OF FIGURES

Figure 1: Tax avoidance, tax evasion, and different types of jurisdiction.....	37
Figure 2: The role of trading shell companies .....	49
Figure 3: The role of holding shell companies .....	90
Figure 4: UK financial institutions deposits from offshore jurisdictions .....	130
Figure 5: UK financial institutions lending to offshore jurisdictions .....	130



## EXECUTIVE SUMMARY

This study reviews the problem of tax 'leakage' involving the use of tax havens and similar structures, through legal and illegal means. It assesses the impact this has on the European Union (EU), and what the EU and other international organisations are doing to address it. The study concludes with a series of recommendations.

### Objectives and methodology

The objectives of the study are to:

- Identify the characteristics, role, usage, and impact of tax havens and offshore and secrecy jurisdictions;
- Review the policy and countermeasures of the EU, G-20, OECD, and other international bodies.

The methodology employed to deliver the study combines desk research, stakeholder consultations, case studies, and survey work.

- Stakeholders included representatives of several Commission Directorates General, the OECD Global Forum on Transparency and the Exchange of Information for Tax Purposes (the Global Forum), and Member State (MS) Tax Authorities.
- A survey of FISCALIS contact points resulted in limited feedback. There were no substantive responses to a survey of United Kingdom tax and crime prevention bodies.
- The study includes cases studies on MS, tax havens, VAT fraud, and the impact of tax havens on the EU investment climate.

### Background

In a recent Memo, the Commission quotes estimates of the scale of tax evasion. It notes that the shadow economy in the EU is estimated to amount to some €2 trillion, and that tax evasion is estimated to be around €1 trillion annually. It also notes that recent reports suggest that tens of billions of euros are held offshore, unreported and untaxed.

The Parliamentary Assembly of the Council of Europe recently stated "*Council of Europe member States lose billions every year due to tax avoidance, tax evasion and tax fraud that are facilitated by the offshore financial system including tax havens and secrecy jurisdictions. This massive tax cheating by wealthy individuals and enterprises not only penalises ordinary tax payers, public finances and social spending, but also threatens good governance, macroeconomic stability and social cohesion.*"

Users of tax havens and offshore financial centres, whether for tax evasion (illegal), or transfer pricing or other tax avoidance strategies (legal), benefit from public services, facilities, and infrastructure in the countries where they operate/ live, but make a disproportionately small contribution towards their maintenance, leaving other taxpayers to make a disproportionately large contribution. As highlighted by a 2012 United States Senate Investigation, financial institutions with operations in tax havens also facilitate and profit from the criminal activities of others, thereby contributing to social and security risks, and increasing the cost, to other tax payers, of combatting these problems.

Offshore financial centres are widely perceived to have contributed to the current financial crisis that emerged in 2007. The holding of vast funds in secretive offshore centres enables financial institutions to hide vital information from governments, regulators, ratings agencies, and the public. This means that they escape proper regulation and public scrutiny. This enables them to take greater risks than

would be possible with full transparency, and governments, regulators, ratings agencies, and investors lack the level of information required to make informed decisions. In turn, this leads to financial instability, with taxpayers having to cover the cost of rectifying the resulting problems.

Tax havens and offshore financial centres undermine democracy as the users of these structures (including corporations), which account for a fraction of society, use their significant financial resources to lobby governments to implement or maintain policies that are not necessarily in the interests of the majority of society. Some reports indicate that tax havens tend to stifle the development of civil society where they are located.

## Conclusions

The use of tax havens for transfer pricing and tax evasion has a negative impact on EU revenues by reducing the gross national income (GNI) of Member States. Moreover, lower tax revenues are likely to have a negative impact on the willingness of MS to increase or maintain their contributions to the EU. Tax havens facilitate the activities of tax evaders and criminal organisations. Combating these activities consume resources that could otherwise be used for productive investments. The ability to engage in transfer pricing gives large corporations a significant advantage over smaller companies, and this undermines EU efforts to develop the small and medium enterprise sectors, and may constrain employment creation.

There are no universally agreed definitions of tax havens, secrecy jurisdiction, offshore financial centres, etc. Even within the EU, there are significant differences between the definition adopted by the European Parliament in 2012, and the definition recommended by the Commission in December 2012.

Tax havens are used by many groups. Key among these are powerful financial institutions and multinational corporations; transnational criminal organisations; and high wealth individuals. They use them, respectively, to avoid regulation; reduce tax liabilities through transfer pricing; launder money and engage in other criminal activities; and evade tax.

Many jurisdictions worldwide have, and continue to engage in harmful practices. These include EU MS and territories currently and historically associated with them, as well as other European jurisdictions. Inclusion on, or exclusion from, tax haven lists is often dependent on political considerations.

EU efforts to address leakage to tax havens have so far had limited effect. The original Savings Tax Directive failed to deliver the expected tax revenues to MS because of loopholes. The proposed amendments only partially eliminate these loopholes. Other proposals also face difficulties. Implementation of the Commission's recommendation on a General Anti Abuse Rule will be challenging, as it will involve delineating the often highly complex structures of multinational corporations. In order for the proposed Common Consolidated Corporate Tax Base system to apply to a corporation, it must first opt in to the system. Corporations that choose not to opt in may continue to reduce their tax liabilities in any EU MS by using offshore shell companies. The effectiveness of the Financial Transfer Tax is likely to be constrained unless accompanied by measures to limit the transfer of capital to non-participating jurisdictions, in particular, tax havens.

Effective implementation of the single recommendation addressing tax havens in the Commission's December 2012 Action Plan to strengthen the fight against tax fraud and tax evasion is likely to be problematic. The criteria for identifying tax havens are based in part on the 10 elements developed by the OECD Global Forum for its peer review process, and in part on different tax rates applied to residents and non residents of jurisdictions. These criteria are not clear cut. The Commission's

recommendation relies on individual Member States to judge for themselves. Assessments by MS may differ, and there may be a tendency to fall back on the results of the peer review process, although this does not provide assurance of continuing compliance. The Commission's proposal to report on progress only after three years is also unlikely to enhance the effectiveness of this measure.

The main international organisations dealing with the issue of tax havens are the OECD, and the OECD Global Forum. The Financial Action Task Force is also important, although it was established to address money laundering, rather than tax havens. Despite strong rhetoric on tax havens from the G-20 in 2009, there has been little concrete action, and there have been fewer references to tax havens in subsequent years. The OECD's December 2012 progress report identifies only two tax havens. Much reliance is placed on the work of the Global Forum but this is not a policing body, and it does not provide assurance of continuing compliance.

The increasingly aggressive use of transfer pricing by multinationals (as reported by the OECD), suggests that international efforts to tackle tax havens have not been effective. This assessment is supported by the use of fiscal amnesties in some countries to encourage the repatriation of hidden assets.

The increasing utilisation of tax havens by major emergent economies significantly undermines the ability of the EU to exert influence over these jurisdictions. Coherence of the EU's approach to dealing with tax havens is constrained by the fact that MS deal individually with other jurisdictions. Similarly, some non-EU jurisdictions prefer to deal individually with EU Member States. It is interesting to note the conclusion of a Free Trade Agreement with Singapore, a jurisdiction that is still widely considered a tax haven, and is reportedly attracting banks, other businesses, and capital displaced from other jurisdictions. Overall, the EU's efforts to tackle tax havens is weakened by the fact that some of its own MS engage in harmful practices, or are closely associated with territories that do so, and these practices are harmful not only to jurisdictions outside the EU, but also to other MS. Many jurisdictions generally considered to be tax havens have current or historical links to the United Kingdom, and several are linked to the Netherlands.

Tax havens have proven difficult to influence. Given the lack of consensus and commitment, internationally and within the EU, to eliminate tax havens, it is doubtful that this can ever be fully achieved. However, the EU can more readily influence the behaviour of its citizens and the businesses that operate in the EU, and it is perhaps through focusing more on this, that the harmful affects of tax havens can be significantly mitigated, if not entirely removed.

## Recommendations

The agreements between the United States (US) and select MS covering the implementation of taxpayer account information exchange with the US to support its Foreign Account Tax Compliance Act (FATCA) legislation included a statement that the US intended to agree to reciprocity, that is the US would collect and report *'on an automatic basis to the authorities of the FATCA partner information on the U.S. accounts of residents of the FATCA partner.'* The EU should actively negotiate automatic exchange of information by the US for all Member States in addition to those few with a FATCA agreement.

Member States should implement a general anti-abuse rule as recommended in the EC's Action Plan. With a general anti-abuse rule the presence of an intermediate legal structure registered in a tax haven may be superseded when assessing the tax owed to the state by the taxpayer and in that way negate any benefit otherwise sought by the taxpayer when organising its tax affairs in this manner.

Discouraging the use of jurisdictions that harm the EU (e.g. by facilitating transfer pricing, tax evasion, crime, etc.) requires that such jurisdictions are clearly identified, and in a timely manner. In this regard, it would seem desirable for the Commission and the European Parliament to agree on a set of common, objectively verifiable criteria, based not simply on commitments or the existence of legislation, but on actual performance. It is important to retain flexibility to adjust these criteria to take account of new and emerging factors in a timely manner. If it takes years to introduce modifications (e.g. as in the case of the Savings Tax Directive), the system becomes useless. However, such adjustments must be done objectively, and not on the basis of political considerations. Since different jurisdictions are likely to present different levels of risk to the EU, it would be desirable to categorise them on the basis of the objectively verifiable criteria, as compliant, presenting a moderate risk, or presenting a high risk. For this information to be useful, it should be timely and it should be publicly available. This implies the existence of a monitoring system to collect and analyse the data and publish reports on a regular basis.

Having established clearly which jurisdictions present a risk, it is necessary to understand clearly which EU entities are using them, and for what purposes. This requires mandatory country by country reporting on all activities of EU corporations and related entities (subsidiaries, parents, sibling, etc.) in all jurisdictions in which they operate, and in all sectors. Reporting should clearly indicate the organisational structure of the entity across all jurisdictions in which it operates.

Consideration can then be given to the use of incentives and disincentives to discourage the use of tax havens. For example, EU funding and financial operations could be limited to entities not operating and not having parents or subsidiaries in high-risk jurisdictions. It is important to retain flexibility to modify incentives and disincentives as circumstances require. However, this must be done objectively, rather than on the basis of political considerations.

In the event that country by country reporting is not mandatory, corporations operating in two or more jurisdictions (e.g. by means of related companies) should be incentivised to adopt country by country reporting. At the very least, it would be highly desirable for the Commission to draw up a clear set of financial and operational reporting guidelines for companies operating in two or more jurisdiction through related entities. This should be complemented by the establishment and maintenance of a publicly available register indicating which companies are applying these guidelines, and to what extent.

MS are confronted with structural tax evasion problems that undermine fiscal planning and management. The EU needs to promote structural measures that address the problem in the long-term. Governments are taking short term measures, such as fiscal amnesties. This creates a negative perception among law-abiding citizens and may increase tax evasion in the longer time by creating expectations of future amnesties.

The EU could play a role in strengthening MS tax collection efforts by promoting tax collection guidelines and providing technical assistance to tax authorities, particularly in the areas of debt collection, resolution of tax disputes, implementing e-tools, monitoring large taxpayers, improving tax registration, services and risk analysis.

As foreseen by the EU Treaties, a European Public Prosecutor could provide the tools to address cross-country fiscal fraud. Setting up a European Public Prosecutor's Office could send a strong message to end impunity of tax evasion.

This study has identified a number of areas for potential further research. These include:

- Civil society and governance in non-EU territories associated with EU Member States;
- The use of tax havens by organisations in receipt of EU funding, including grantees; organisations providing works, services, and goods to EU bodies, institutions, and agencies; and financial intermediaries;
- The impact of tax havens on the achievement of the EU's international development objectives (up to €58.7 billion are to be allocated to external policies in 2014-2020, of which 90% will be for development assistance);
- Market distorting effects within the EU of the use of tax havens by large corporations for transfer pricing, and the impact on EU policy objectives in the areas of employment and small and medium enterprise development;
- The type and scale of criminal activity involving tax havens; losses to the EU and Member States; costs at Member State and EU level in fighting these activities and recovering taxes, crime proceeds, and stolen assets; the human impact resulting from the use of tax havens to facilitate criminal activities (e.g. narcotics, weapons dealing, human trafficking);
- Measures undertaken by Member States to address the use of tax havens for tax evasion and transfer pricing.

## ZUSAMMENFASSUNG

Diese Studie untersucht das Problem der „Steuerlecks“, verursacht durch die Nutzung von Steueroasen und ähnlichen Konstruktionen unter Einsatz legaler oder illegaler Mittel. Sie bewertet die Auswirkungen auf die Europäische Union (EU) und prüft, was die EU und andere internationale Organisation in der Auseinandersetzung mit diesem Problem unternehmen. Die Studie schließt mit einer Reihe von Empfehlungen.

### Ziele und Methodik

Die Ziele der Studie sind folgende:

- Ermittlung der Merkmale, Funktionen, Nutzung und Auswirkungen von Steueroasen sowie Offshore-Standorten und Ländern mit strengem Bankgeheimnis;
- Untersuchung der politischen Strategien und Gegenmaßnahmen der EU, G-20, OECD und anderer internationaler Gremien.

Die bei dieser Studie eingesetzte Methodik setzt sich aus Literaturrecherche, der Befragung von Interessenvertretern, Fallstudien und Erhebungen zusammen.

- Zu den befragten Interessenvertretern gehörten unter anderem die Vertreter mehrerer Generaldirektionen der Kommission, das Globale Forum für Transparenz und Informationsaustausch zu Steuerzwecken der OECD (das Globale Forum) und die Steuerbehörden der Mitgliedstaaten (MS).
- Eine Erhebung bei FISCALIS Kontaktstellen erbrachte nur begrenzt Rückmeldungen. Eine Befragung bei den Steuerbehörden und Verbrechensverhütungsstellen des Vereinigten Königreichs ergab keine stichhaltigen Antworten.
- Fallstudien zu MS, Steueroasen, MwSt-Betrug und den Auswirkungen von Steueroasen auf das Investitionsklima in der EU sind ebenfalls Bestandteil der Studie.

### Hintergrund

In einer kürzlich veröffentlichten Mitteilung zitiert die Kommission Schätzungen des Ausmaßes der Steuerhinterziehung. Laut dieser Mitteilung wird die Schattenwirtschaft in der EU auf eine Größenordnung von etwa 2 Billionen Euro veranschlagt und bei der Steuerhinterziehung geht man von etwa 1 Billion Euro pro Jahr aus. Die Kommission stellt auch fest, dass jüngste Berichte darauf hinweisen, dass zweistellige Euro-Milliardenbeträge an Offshore-Plätzen gehalten werden, und zwar weder angemeldet noch versteuert.

Die Parlamentarische Versammlung des Europarats stellte kürzlich fest: „Mitgliedstaaten des Europarats verlieren Jahr für Jahr Milliarden durch Steuerumgehung, Steuerhinterziehung und Steuerbetrug, begünstigt durch das Offshore-Finanzsystem, zu dem auch Steueroasen und Länder mit sehr strengem Bankgeheimnis gehören. *Aus diesen massiven Steuerbetrügereien durch wohlhabende Einzelpersonen und Unternehmen erwachsen nicht nur den normalen Steuerzahlern, den öffentlichen Finanzen und den Sozialausgaben Nachteile, sondern sie gefährden auch die gute Regierungsführung, die gesamtwirtschaftliche Stabilität und den sozialen Zusammenhalt.*“

Wer Steueroasen und Offshore-Finanzzentren nutzt, sei es zur Steuerhinterziehung (illegal) oder zur Verrechnungspreisgestaltung oder für andere Steuerumgehungsstrategien (legal), der nutzt die Vorteile der öffentlichen Dienste, Einrichtungen und der Infrastruktur des Landes, in dem er tätig ist

oder lebt, erbringt aber einen unverhältnismäßig kleinen Beitrag zu deren Erhalt und überlässt es anderen Steuerzahlern, einen unverhältnismäßig hohen Betrag zu leisten. Wie in einer Untersuchung des Senats der Vereinigten Staaten aus dem Jahr 2012 hervorgehoben wird, begünstigen Finanzinstitute mit operativen Einheiten in Steueroasen ebenfalls die kriminellen Aktivitäten Dritter und profitieren von ihnen. Somit tragen sie zu sozialen und Sicherheitsrisiken bei und erhöhen - für andere Steuerzahler - die Kosten für die Bekämpfung dieser Probleme.

Nach weit verbreiteter Auffassung haben Offshore-Finanzzentren zu der aktuellen Finanzkrise, die 2007 ihren Anfang nahm, beigetragen. Indem sie gigantische Geldbestände in Offshore-Zentren halten, die sich dem Bankengeheimnis verschrieben haben, können Finanzinstitute den Regierungen, den Aufsichtsbehörden, den Ratingagenturen und der Öffentlichkeit entscheidende Informationen vorenthalten. Das bedeutet, dass sie einer ordnungsgemäßen Regulierung und dem prüfenden Blick der Öffentlichkeit entgehen. Auf diese Weise können sie größere Risiken eingehen, als dies bei voller Transparenz möglich wäre. Und den Regierungen, Aufsichtsbehörden, Ratingagenturen und Investoren fehlen die entsprechenden Informationen, die sie für informierte Entscheidungen benötigen. Dies wiederum führt zu finanzieller Instabilität, wobei die Steuerzahler die Kosten für die Behebung der entstehenden Probleme tragen müssen.

Steueroasen und Offshore-Finanzzentren untergraben die Demokratie, denn die Nutzer dieser Strukturen (darunter auch Konzerne), die nur einen kleinen Teil der Gesellschaft ausmachen, setzen ihre bedeutenden finanziellen Mittel für die Beeinflussung der Regierungen dahingehend ein, dass diese politische Strategien umsetzen oder aufrecht erhalten, die nicht notwendigerweise im Interesse der Mehrheit der Gesellschaft sind. Einigen Berichten ist zu entnehmen, dass dort, wo sich Steueroasen befinden, die Tendenz besteht, die zivilgesellschaftliche Entwicklung zu unterdrücken.

## Fazit

Die Nutzung von Steueroasen zur Verrechnungspreisgestaltung und Steuerhinterziehung wirkt sich durch die Minderung des Bruttonationaleinkommens (BNE) der Mitgliedstaaten negativ auf die Einnahmen der EU aus. Darüber hinaus werden niedrigere Steuereinnahmen wahrscheinlich auch negative Auswirkungen auf die Bereitschaft der MS haben, ihre Beiträge an die EU zu erhöhen bzw. aufrecht zu erhalten. Steueroasen begünstigen die Aktivitäten von Steuerhinterziehern und kriminellen Vereinigungen. Die Bekämpfung dieser Aktivitäten verbraucht Mittel, die sonst für produktive Investitionen verwendet werden könnten. Durch die Fähigkeit zur Verrechnungspreisgestaltung erhalten große Konzerne einen erheblichen Vorteil gegenüber kleineren Unternehmen. Dies untergräbt die Bemühungen der EU zur Entwicklung des Sektors der mittelständischen und Kleinunternehmen und kann die Schaffung von Arbeitsplätzen behindern.

Universell festgelegte Definitionen für Steueroasen, Länder mit strengem Bankgeheimnis, Offshore-Finanzzentren usw. gibt es nicht. Sogar innerhalb der EU bestehen erhebliche Unterschiede zwischen der vom Europäischen Parlament 2012 verabschiedeten Definition und der Definition, die die Kommission im Dezember 2012 empfahl.

Steueroasen werden von vielen Gruppen genutzt. Die wichtigsten unter ihnen sind mächtige Finanzinstitute und multinationale Konzerne, länderübergreifend agierende kriminelle Vereinigungen und sehr wohlhabende Einzelpersonen. Sie nutzen sie jeweils, um der aufsichtsbehördlichen Regulierung zu entgehen, um mittels Verrechnungspreisgestaltung ihre Steuerverbindlichkeiten zu senken, um Geld zu waschen und um andere kriminelle Aktivitäten zu verfolgen oder um Steuern zu hinterziehen.

Zahlreiche Länder auf der ganzen Welt haben sich auf schädliche Praktiken eingelassen und tun dies auch weiterhin. Zu ihnen zählen auch Mitgliedstaaten der EU und Gebiete, die ihnen aktuell oder

historisch verbunden sind, sowie andere europäische Länder. Ob sie in Steueroasenverzeichnisse aufgenommen werden oder nicht, hängt oft von politischen Erwägungen ab.

Bemühungen der EU zur Eindämmung von Mittelabflüssen in Steueroasen zeigten bisher nur begrenzt Wirkung. Die ursprüngliche Zinsbesteuerungsrichtlinie erbrachte den MS nicht die erwarteten Steuereinnahmen, weil sie Schlupflöcher enthielt. Die vorgeschlagenen Änderungen beseitigen diese Schlupflöcher nur teilweise. Auch bei anderen Vorschlägen bestehen Schwierigkeiten. Die Umsetzung der Empfehlung der Kommission für eine Allgemeine Missbrauchsbekämpfungsvorschrift wird die Beteiligten vor große Herausforderungen stellen, denn sie setzt eine Beschreibung der oft hoch komplexen Strukturen multinationaler Konzerne voraus. Damit die vorgeschlagene gemeinsame konsolidierte Körperschaftssteuer-Bemessungsgrundlage auf einen Konzern angewendet werden kann, muss dieser erst dem System beitreten. Konzerne, die sich gegen einen Beitritt entscheiden, können ihre Steuerverbindlichkeiten in Mitgliedstaaten der EU weiterhin mittels Offshore-Firmenmänteln reduzieren. Die Finanztransaktionssteuer wird nur eingeschränkt wirksam sein, solange sie nicht von Maßnahmen zur Begrenzung des Kapitaltransfers in nicht teilnehmende Länder und Gebiete, insbesondere Steueroasen, flankiert wird.

Die wirkungsvolle Umsetzung der einzigen Empfehlung im Aktionsplan der Kommission vom Dezember 2012, in der es um Steueroasen geht und die auf eine Verstärkung des Kampfes gegen Steuerbetrug und Steuerhinterziehung abzielt, wird sich wahrscheinlich problematisch gestalten. Die Kriterien für die Ermittlung von Steueroasen stützen sich teilweise auf die zehn Elemente, die das Globale Forum der OECD für seinen Begutachtungsprozess (Peer Review) erarbeitet hat, zum Teil beruhen sie aber auch darauf, dass auf Ansässige und Nichtansässige in Ländern unterschiedliche Steuersätze angewendet werden. Diese Kriterien sind nicht eindeutig. Die Empfehlung der Kommission verlässt sich auf das eigene Urteil der einzelnen Mitgliedstaaten. Die Bewertungen durch MS können unterschiedlich ausfallen. Auch kann die Tendenz bestehen, auf die Ergebnisse des Begutachtungsprozesses zurückzugreifen, obgleich dieser keine Gewissheit für anhaltend rechtskonformes Verhalten bietet. Dass der Vorschlag der Kommission, erst nach drei Jahren Fortschrittsberichte vorzulegen, die Wirksamkeit dieser Maßnahme verstärkt, ist ebenfalls unwahrscheinlich.

Die wichtigsten internationalen Organisationen, die sich mit dem Thema Steueroasen befassen, sind die OECD und das Globale Forum der OECD. Auch die Arbeitsgruppe „Bekämpfung der Geldwäsche und der Terrorismusfinanzierung“ spielt eine wichtige Rolle, obgleich sie gegründet wurde, um gegen Geldwäsche vorzugehen, nicht gegen Steueroasen. Obwohl man von den G-20 2009 starke Worte gegen Steueroasen hörte, gab es nur wenig konkretes Handeln und in den anschließenden Jahren wurde auch weniger über Steueroasen gesprochen. Im Fortschrittsbericht der OECD vom Dezember 2012 werden nur zwei Steueroasen genannt. Man verlässt sich sehr auf die Arbeit des Globalen Forums, aber das Forum ist kein Organ polizeilicher Arbeit und bietet keine Gewissheit für anhaltend rechtskonformes Verhalten.

Die zunehmend aggressive Nutzung der Verrechnungspreisgestaltung durch multinationale Unternehmen (über die die OECD berichtet) lässt darauf schließen, dass internationale Anstrengungen, gegen Steueroasen anzugehen, keine Wirkung zeigten. Dieses Urteil wird auch durch den Einsatz von Steueramnestien in einigen Ländern untermauert, mit denen die Rückführung verborgener Vermögenswerte gefördert werden soll.

Die zunehmende Nutzung von Steueroasen durch wichtige Schwellenländer untergräbt die Einflussmöglichkeiten der EU auf diese Länder und Gebiete erheblich. Aufgrund der Tatsache, dass die MS ihren Umgang mit anderen Ländern individuell handhaben, ist ein kohärenter Ansatz der EU beim Umgang mit Steueroasen nur eingeschränkt möglich. Gleichzeitig regeln einige Nicht-EU-Länder ihre Beziehungen zu EU-Mitgliedstaaten lieber individuell. Bemerkenswert ist hier der

Abschluss von Freihandelsabkommen mit Singapur, einem Land, das in weiten Kreisen als Steueroase gilt und angeblich Banken, andere Geschäftsbetriebe und aus anderen Ländern ausgelagertes Kapital anzieht. Insgesamt werden die Anstrengungen der EU zur Eindämmung von Steueroasen dadurch geschwächt, dass einige ihrer eigenen MS schädliche Praktiken ausüben oder eng mit Hoheitsgebieten verbunden sind, die dies tun, und dass diese Praktiken nicht nur Länder außerhalb der EU, sondern auch andere MS beeinträchtigen. Viele Länder, die allgemein als Steueroasen gelten, haben aktuelle oder historische Verbindungen zum Vereinigten Königreich. Mehrere sind auch mit den Niederlanden verbunden.

Steueroasen haben sich als schwer beeinflussbar erwiesen. Angesichts des international und EU-intern herrschenden Mangels an Einigkeit und Engagement bei der Beseitigung von Steueroasen ist zu bezweifeln, dass dies jemals umfassend erreicht werden kann. Die EU kann jedoch ohne Weiteres das Verhalten ihrer Bürger und der in der EU operierenden Unternehmen beeinflussen. Durch eine stärkere Konzentration auf diesen Aspekt ließen sich die schädlichen Auswirkungen von Steueroasen vielleicht wesentlich lindern, wenn nicht gar vollständig beseitigen.

## Empfehlungen

Die Vereinbarungen zwischen den Vereinigten Staaten (USA) und ausgewählten MS über die Durchführung eines Informationsaustausches über Steuerzahlerkonten mit den USA zur Unterstützung von deren Rechtsvorschriften im Rahmen des Foreign Account Tax Compliance Act (FATCA) schlossen eine Erklärung über die Absicht der USA ein, dem Gegenseitigkeitsprinzip zuzustimmen. Das heißt, die USA würden *„automatisch Informationen über die US-Konten der Einwohner des FATCA-Partners erfassen und den FATCA-Partnerbehörden“* melden. Die EU sollte aktiv einen automatischen Datenaustausch der USA mit allen Mitgliedstaaten, zusätzlich zu den wenigen MS mit einer FATCA-Vereinbarung, aushandeln.

Die Mitgliedstaaten sollten eine allgemeine Missbrauchsbekämpfungsvorschrift einführen, wie sie im Aktionsplan der Europäischen Kommission empfohlen wird. Mit einer allgemeinen Missbrauchsbekämpfungsvorschrift kann die Existenz einer zwischengeschalteten, in einer Steueroase angemeldeten Rechtsform bei der Veranlagung der Steuer, die der Steuerzahler dem Staat schuldet, außer Kraft gesetzt werden. Auf diese Weise werden die Vorteile, die der Steuerzahler sonst bei einer solchen Organisation seiner Steuerangelegenheiten anstreben würde, zunichte gemacht.

Eine Voraussetzung für die Abschreckung von der Nutzung von Ländern, die der EU (z. B. durch die Begünstigung von Verrechnungspreisgestaltung, Steuerhinterziehung, Kriminalität, usw.) schaden, besteht darin, solche Länder eindeutig und zeitgerecht zu identifizieren. In dieser Hinsicht wäre es wünschenswert, wenn sich die Kommission und das Europäische Parlament auf einen Satz gemeinsamer, objektiv überprüfbarer Kriterien einigten, die nicht einfach nur auf Verpflichtungen oder der Existenz von Rechtsvorschriften beruhen, sondern auf deren tatsächlicher Erfüllung. Wichtig ist auch die Wahrung von Flexibilität, damit diese Kriterien zeitgerecht an neue, in Zukunft auftretende Faktoren angepasst werden können. Wenn Änderungen Jahre dauern (wie dies beispielsweise bei der Zinsbesteuerungsrichtlinie der Fall ist), wird das System nutzlos. Anpassungen dieser Art müssen jedoch objektiv und nicht aus politischen Erwägungen heraus erfolgen. Da davon auszugehen ist, dass die verschiedenen Länder für die EU unterschiedliche Risiken darstellen, wäre es wünschenswert, diese Länder nach objektiv überprüfbaren Kriterien als rechtskonform bzw. als mäßig oder hochgradig riskant einzustufen. Damit diese Informationen Nutzen bringen können, müssen sie aktuell und öffentlich zugänglich sein. Dies setzt die Existenz eines Überwachungssystems zur Erfassung und Analyse der Daten sowie zur regelmäßigen Veröffentlichung von Berichten voraus.

Sobald eindeutig festgestellt wurde, welche Länder und Gebiete ein Risiko darstellen, muss klar erfasst werden, welche Unternehmen in der EU sie nutzen und zu welchen Zwecken sie dies tun. Dies erfordert eine obligatorische, jedes einzelne Land umfassende Berichterstattung über sämtliche Aktivitäten der Konzerne in der EU und ihrer verbundenen Unternehmen (Tochter-, Mutter-, Schwestergesellschaften, usw.) in allen Ländern und allen Branchen, in denen sie tätig sind. In den Berichten muss der organisatorische Aufbau des Unternehmens quer durch alle Länder und Gebiete, in denen es operiert, klar und deutlich dargestellt werden.

Anschließend ist zu überlegen, ob Positiv- und Negativanreize eingesetzt werden sollen, um von der Nutzung von Steueroasen abzuhalten. Beispielsweise könnten Zuschuss- und Finanzierungsvorhaben der EU auf Unternehmen beschränkt werden, die keine Mutter- oder Tochtergesellschaften in Hochrisikoländern haben. Auch hier ist die Wahrung von Flexibilität wichtig, damit Positiv- und Negativanreize an die jeweiligen Umstände angepasst werden können. Dies muss jedoch objektiv und nicht aus politischen Erwägungen heraus erfolgen.

Falls ein Berichtswesen nach einzelnen Ländern nicht verpflichtend vorgeschrieben ist, sollten Konzerne, die in zwei oder mehr Ländern tätig sind (z. B. mittels verbundener Unternehmen), Anreize erhalten, ein Berichtswesen nach einzelnen Ländern einzuführen. Zumindest wäre es äußerst wünschenswert, wenn die Kommission für Firmen, die mittels verbundener Unternehmen in zwei oder mehr Ländern tätig sind, klare Richtlinien zur finanziellen und operativen Berichterstattung erstellt. Dies sollte durch die Einrichtung und Pflege eines öffentlich zugänglichen Registers ergänzt werden, aus dem hervorgeht, welche Unternehmen diese Richtlinien anwenden und in welchem Umfang sie dies tun.

MS sehen sich strukturellen Steuerhinterziehungsproblemen gegenüber, die ihre Steuerplanung und -verwaltung gefährden. Die EU muss strukturelle Maßnahmen voranbringen, die das Problem langfristig angehen. Regierungen führen kurzfristige Maßnahmen wie Steueramnestien durch. Dies ruft unter gesetzestreuen Bürgern eine negative Wahrnehmung hervor. Darüber hinaus könnte dies auf längere Sicht zu einer Zunahme von Steuerhinterziehung führen, weil Erwartungen in zukünftige Amnestien geweckt werden.

Die EU könnte bei den Anstrengungen der MS zur Steuereinzahlung eine stärkende, unterstützende Rolle spielen, indem sie Steuereinzahlungsrichtlinien voranbringt und Steuerbehörden technische Hilfe leistet. Dies betrifft insbesondere die Bereiche der Beitreibung von Schulden, der Beilegung von Steuerstreitigkeiten, der Einführung elektronischer Instrumente, der Überwachung großer Steuerzahler, der Verbesserung der Steuerregistrierung, der Dienstleistungen und der Risikoanalyse. Wie in den Verträgen über die Europäische Union vorgesehen, könnte ein Europäischer Staatsanwalt die Instrumente zur Bekämpfung länderübergreifenden Steuerbetrugs liefern. Die Einrichtung einer Europäischen Staatsanwaltschaft könnte ein starkes Zeichen für die Beendigung der Straflosigkeit von Steuerhinterziehung setzen.

In der Studie wurde eine Reihe von Bereichen ermittelt, die möglicherweise näher untersucht werden sollten. Hierzu gehören:

- Die Zivilgesellschaft und die Regierungsführung in Territorien, die nicht Mitglied der EU, aber mit EU-Mitgliedstaaten verbunden sind;
- die Nutzung von Steueroasen durch Organisationen, die EU-Mittel einschließlich Bürgschaften erhalten; Unternehmen, die für Organe, Einrichtungen und Behörden der EU Arbeits- und Dienstleistungen erbringen sowie Waren liefern; Finanzmittler;
- die Auswirkungen von Steueroasen auf die Erreichung der internationalen Entwicklungsziele der EU (2014-2020 sollen bis zu 58,7 Mrd. Euro für außenpolitische Maßnahmen zugewiesen

werden. 90 % davon für Entwicklungshilfe);

- innerhalb der EU auftretende, marktverzerrende Auswirkungen der Nutzung von Steueroasen durch große Konzerne für die Verrechnungspreisgestaltung; Auswirkungen auf die politischen Ziele der EU in den Bereichen Beschäftigung und Entwicklung der kleinen und mittelständischen Unternehmen;
- Art und Umfang krimineller Aktivitäten im Zusammenhang mit Steueroasen; Verluste für die EU und ihre Mitgliedstaaten; auf Ebene der Mitgliedstaaten und der EU entstehende Kosten für die Bekämpfung dieser Aktivitäten und die Einziehung von Steuern, Erträgen aus Straftaten und gestohlenen Vermögenswerten; die aus der Nutzung von Steueroasen zur Begünstigung krimineller Aktivitäten entstehenden Auswirkungen auf die Menschen (z. B. Betäubungsmittel, Waffenhandel, Menschenhandel);
- von den Mitgliedstaaten unternommene Maßnahmen zur Unterbindung der Nutzung von Steueroasen zur Steuerhinterziehung und Verrechnungspreisgestaltung.

## SYNTHESE

Cette étude traite du problème des "fuites" fiscales liées aux placements, licites ou illicites, dans des paradis fiscaux et d'autres structures similaires. Elle évalue les retombées de ces fuites sur l'Union européenne (UE) et analyse les moyens que cette dernière et d'autres organisations internationales mettent en œuvre pour y remédier. Enfin, l'étude s'achève sur une série de recommandations.

### Objectifs et méthode

Les objectifs de l'étude sont les suivants:

- identifier les caractéristiques, le rôle, l'utilisation et les répercussions des paradis fiscaux, des juridictions offshore et de celles adeptes du secret bancaire;
- examiner la politique et les contremesures appliquées par l'Union, le G20, l'OCDE et d'autres organisations internationales.

La méthode adoptée pour réaliser cette étude allie recherches documentaires, consultations de parties prenantes, études de cas et enquêtes.

- Les parties prenantes comprennent notamment des représentants de plusieurs directions générales de la Commission, le Forum mondial sur la transparence et l'échange de renseignements à des fins fiscales de l'OCDE, ainsi que les autorités fiscales des États membres.
- L'enquête réalisée auprès des points de contact Fiscalis n'a fourni que des informations limitées et les organismes britanniques de lutte contre la criminalité fiscale n'ont pas obtenu de réponses détaillées à une étude qu'elles ont conduite.
- L'étude comporte par ailleurs des études de cas sur les États membres, les paradis fiscaux, la fraude à la TVA et les répercussions des paradis fiscaux sur le climat d'investissement de l'Union européenne.

### Contexte

Dans une note d'information récente, la Commission fournit des estimations sur l'ampleur de l'évasion fiscale. L'économie parallèle au sein de l'Union européenne représenterait quelque 2 000 milliards d'euros et le volume de l'évasion fiscale s'élèverait à environ 1 000 milliards d'euros par an. La Commission souligne en outre que, selon des rapports récents, des dizaines de milliards d'euros non déclarés et non imposés se trouveraient dans des juridictions offshore.

On peut lire dans une déclaration récente de l'Assemblée parlementaire du Conseil de l'Europe que *"les États membres du Conseil de l'Europe perdent chaque année des milliards du fait de l'évitement fiscal, de l'évasion fiscale et de la fraude fiscale, qui sont facilités par le système financier offshore, notamment les paradis fiscaux et les juridictions adeptes du secret. Cette arnaque fiscale à grande échelle de la part de riches individus et d'entreprises non seulement pénalise les contribuables ordinaires, les finances publiques et les dépenses sociales, mais menace également la bonne gouvernance, la stabilité macroéconomique et la cohésion sociale."*

Les utilisateurs des paradis fiscaux et des centres financiers offshore, qu'ils pratiquent l'évasion fiscale (illégale) ou qu'ils aient recours à l'établissement de prix de transfert ou à d'autres stratégies d'évitement fiscal (légal), jouissent des services, des infrastructures et des équipements publics des pays dans lesquels ils sont actifs ou résident, mais ne participent que de manière

proportionnellement insuffisante à l'entretien de ces services et équipements, et obligent les autres contribuables à fournir des efforts disproportionnés. Comme le souligne une enquête réalisée par le Sénat américain en 2012, les établissements financiers qui opèrent dans des paradis fiscaux facilitent également les activités criminelles d'autres organisations et tirent profit de cette criminalité. Ils accroissent ce faisant les risques sociaux et sécuritaires et contraignent les autres contribuables à déboursier davantage pour combattre ces problèmes.

Nombreux sont ceux qui estiment que les centres financiers offshore ont contribué à la crise financière actuelle, qui a débuté en 2007. Le placement de sommes considérables dans des centres financiers offshore pratiquant le secret bancaire permet aux établissements financiers de dissimuler des informations cruciales aux gouvernements, aux autorités de contrôle, aux agences de notation et au public. Ces établissements échappent ainsi aux réglementations appropriées et au contrôle démocratique. Ils peuvent dès lors prendre des risques plus importants que s'ils agissaient en parfaite transparence et les gouvernements, les autorités de surveillance, les agences de notation et les investisseurs ne disposent pas de suffisamment d'informations essentielles, pour prendre des décisions éclairées. Ces pratiques sont alors sources d'instabilité financière et les contribuables sont tenus de mettre la main à la poche afin de remédier à leurs conséquences fâcheuses.

Les paradis fiscaux et les centres financiers offshore nuisent à la démocratie, car les utilisateurs de ces structures (y compris les entreprises), qui ne représentent qu'une petite partie de la société, se servent de leurs ressources financières considérables pour pousser les gouvernements à mettre en œuvre ou à conserver des mesures qui ne sont pas forcément dans l'intérêt de la majorité de la société. Certains rapports indiquent que les paradis fiscaux ont tendance à freiner le développement de la société civile sur leur territoire.

## Conclusions

Le recours aux paradis fiscaux pour se livrer à des transferts de bénéfices et à l'évasion fiscale a un effet néfaste sur les revenus de l'Union, car il réduit le revenu national brut (RNB) des États membres. De plus, il est probable que la diminution des recettes fiscales ait un impact négatif sur la volonté des États membres d'accroître ou de maintenir leur contribution à l'Union. Les paradis fiscaux facilitent l'évasion fiscale et les activités des organisations criminelles. La lutte contre ces agissements mobilise des ressources qui pourraient être affectées au soutien de la productivité. La possibilité de recourir à l'établissement de prix de transfert procure aux grandes entreprises un avantage considérable par rapport aux sociétés de taille plus modeste, ce qui mine les efforts déployés par l'Union pour développer le secteur des petites et moyennes entreprises et peut entraver la création d'emplois.

Il n'existe pas de définition généralement acceptée du paradis fiscal, de la juridiction adepte du secret bancaire, du centre financier offshore, etc. Même au sein de l'Union, les définitions adoptées par le Parlement européen en 2012 et par la Commission en décembre de la même année divergent fortement.

Les paradis fiscaux comptent diverses catégories d'utilisateurs. Les plus importantes d'entre elles sont les grands établissements financiers et les puissantes multinationales, les organisations criminelles internationales et les grosses fortunes. Ils ont recours aux paradis fiscaux respectivement: pour échapper aux réglementations, pour réduire leurs charges fiscales grâce à l'établissement de prix de transfert, pour blanchir des fonds et se livrer à d'autres activités criminelles et pour échapper au fisc.

Bon nombre de juridictions de par le monde ont exercé des activités préjudiciables et continuent de le faire aujourd'hui. En font partie notamment des États membres de l'Union européenne et des territoires qui leur sont actuellement associés ou historiquement rattachés, ainsi que d'autres

juridictions européennes. Ce sont bien souvent des considérations d'ordre politique qui font qu'une juridiction est ajoutée à la liste des paradis fiscaux ou en est retirée.

Les efforts entrepris par l'Union pour endiguer l'évasion fiscale vers les paradis fiscaux n'ont pour l'instant pas vraiment porté leurs fruits. La version originale de la directive sur la fiscalité de l'épargne présentant des lacunes, celle-ci n'a pas permis aux États membres d'obtenir les recettes fiscales escomptées. Les modifications proposées ne comblent que partiellement ces lacunes. D'autres propositions connaissent aussi des difficultés. La mise en œuvre de la recommandation de la Commission relative à la règle anti-abus générale sera délicate, car il faudra classer clairement les structures souvent très complexes des multinationales. Pour que la proposition de système d'assiette commune consolidée pour l'impôt sur les sociétés soit appliquée à une entreprise, cette dernière doit décider d'intégrer le système. Les entreprises qui prennent la décision de ne pas intégrer le système peuvent continuer à réduire leur charge fiscale dans n'importe quel État membre de l'Union en recourant à des sociétés écrans offshore. La taxe sur les transactions financières aura sans doute une portée limitée, sauf si elle s'accompagne de mesures visant à réduire les transferts de capitaux vers les juridictions non participatives, notamment les paradis fiscaux.

La mise en œuvre efficace de l'unique recommandation relative aux paradis fiscaux contenue dans le plan d'action de la Commission de décembre 2012 pour renforcer la lutte contre la fraude et l'évasion fiscales sera certainement problématique. Les critères d'identification des paradis fiscaux reposent d'une part sur les dix éléments développés par le Forum mondial de l'OCDE aux fins de la procédure d'examen par les pairs et, d'autre part, sur les différents taux d'imposition appliqués aux résidents et aux non-résidents des juridictions. Ces critères ne sont pas clairement définis. La recommandation de la Commission fait appel au jugement des États membres. Les évaluations des États membres peuvent différer et la tendance pourrait être de se référer aux résultats de la procédure d'examen par les pairs, bien que cela ne garantisse pas le respect continu des règles. La proposition de la Commission de ne produire un rapport d'avancement qu'après trois ans ne renforcera sans doute pas l'efficacité de cette mesure.

Les principales organisations internationales traitant du sujet des paradis fiscaux sont l'OCDE et le Forum mondial de l'OCDE. Le Groupe d'action financière est aussi important, même s'il a d'abord été mis en place pour s'attaquer au blanchiment d'argent, et non aux paradis fiscaux. Les condamnations sévères des paradis fiscaux prononcées lors du G20 de 2009 n'ont guère été suivies d'actions concrètes et le sujet n'a pas été souvent abordé au cours des années qui ont suivi. Le rapport d'avancement de l'OCDE de décembre 2012 ne fait état que de deux paradis fiscaux. Les travaux du Forum mondial inspirent une grande confiance, mais cet organisme n'a pas de moyens de coercition et ne peut garantir le respect continu des règles.

Le recours à des stratégies d'établissement de prix de transfert de plus en plus audacieuses par les multinationales (mis en évidence par l'OCDE) laisse penser que les efforts menés au niveau international pour lutter contre les paradis fiscaux ont manqué d'efficacité. Cette constatation est corroborée par l'octroi de l'amnistie fiscale par certains pays qui cherchent à favoriser le retour des avoirs dissimulés.

L'usage de plus en plus fréquent des paradis fiscaux par les principales économies émergentes réduit la capacité de l'Union à exercer une influence sur ces juridictions. La stratégie de l'Union en matière de paradis fiscaux manque de cohérence parce que les États membres entretiennent des relations bilatérales avec les autres juridictions. Au surplus, certaines juridictions hors UE préfèrent traiter individuellement avec les États membres de l'Union. Il est intéressant de souligner qu'un accord de libre-échange a été conclu avec Singapour, alors que ce pays est toujours généralement considéré comme un paradis fiscal et qu'il attirerait des banques, des entreprises et des capitaux déplacés d'autres juridictions. Dans l'ensemble, les efforts accomplis par l'Union européenne pour lutter contre

les paradis fiscaux sont entravés par le fait que certains de ses propres États membres se livrent à des pratiques préjudiciables ou sont étroitement liés à des territoires qui s'adonnent à de telles pratiques, et ces dernières sont non seulement dommageables pour les juridictions hors UE, mais aussi pour les autres États membres. Bon nombre de juridictions généralement considérées comme des paradis fiscaux sont actuellement liées au Royaume-Uni ou lui sont historiquement rattachées, et plusieurs d'entre elles ont des liens avec les Pays-Bas.

Influencer les paradis fiscaux n'est pas chose aisée. Étant donné l'absence de consensus et le manque d'engagement à la fois sur le plan international et au niveau de l'Union européenne pour éliminer les paradis fiscaux, il n'est pas certain que cet objectif puisse un jour être atteint. Toutefois, l'Union est plus à même d'influer sur le comportement de ses citoyens et des entreprises actives sur son territoire et c'est peut-être en se concentrant sur cet objectif qu'elle parviendra à limiter considérablement, voire à éradiquer, les effets nuisibles des paradis fiscaux.

## Recommandations

Les accords conclus entre les États-Unis et certains États membres en ce qui concerne la mise en œuvre du système d'échange d'informations sur les contribuables avec les États-Unis dans le cadre de la loi américaine sur la conformité fiscale des comptes étrangers (FATCA) comprenaient une déclaration des États-Unis selon laquelle les autorités américaines collecteraient et transmettraient *"systématiquement aux autorités des partenaires de la loi FACTA des informations sur les comptes bancaires américains détenus par les résidents des pays partenaires"*. L'Union européenne devrait négocier activement en faveur d'un échange systématique d'informations entre les États-Unis et tous les États membres, c'est-à-dire pas uniquement avec les quelques États qui sont partenaires des États-Unis au titre de la loi FACTA.

Les États membres devraient mettre en œuvre une règle anti-abus générale, comme le suggère le plan d'action de la Commission. Grâce à une telle règle, la présence d'une structure juridique intermédiaire enregistrée dans un paradis fiscal peut être ignorée lors du calcul des impôts dus à l'État par le contribuable, de sorte que celui-ci ne jouisse pas des avantages qu'il a tenté d'acquérir en arrangeant sa fiscalité d'une telle manière.

Pour limiter le recours à des juridictions préjudiciables à l'Union (facilitation de l'établissement de prix de transfert, de l'évasion fiscale, de la criminalité, etc.), il convient de les identifier clairement et sans délai. À cet égard, il serait souhaitable que la Commission et le Parlement européen s'accordent sur une série de critères communs et objectivement vérifiables, qui reposent non seulement sur des engagements ou sur l'existence d'une législation, mais aussi sur des résultats avérés. Il est essentiel de conserver une certaine souplesse pour que ces critères puissent être ajustés en temps utile en fonction de l'émergence de nouveaux facteurs. Le système perd de son utilité s'il faut plusieurs années pour le modifier (par exemple dans le cas de la directive sur la fiscalité de l'épargne). Cependant, de tels ajustements doivent s'effectuer de manière objective, et non en fonction de considérations de nature politique. Étant donné que les juridictions ne présentent probablement pas le même niveau de risque pour l'Union, il serait opportun de les classer en différentes catégories (conformes, à risque modéré ou à risque élevé) selon des critères objectivement vérifiables. Cette information, si elle se veut utile, doit être rendue publique dans les meilleurs délais. Il faut donc mettre en place un système de suivi permettant de collecter et d'analyser les données ainsi que de publier régulièrement des rapports.

Après avoir déterminé clairement quelles sont les juridictions qui représentent un risque, il y a lieu de savoir avec certitude quelles entités de l'Union y font appel, et à quelles fins. Il faut pour ce faire établir obligatoirement des rapports pays par pays sur toutes les activités des entreprises de l'Union et les entités apparentées (filiales, entités mères, entités sœurs, etc.) dans toutes les juridictions et

dans tous les secteurs où elles sont actives. Les rapports devraient présenter clairement la structure organisationnelle de l'entité dans toutes les juridictions où elle opère.

Ensuite, une réflexion pourrait être menée sur le recours à des incitations et à des mesures de dissuasion pour limiter l'utilisation des paradis fiscaux. Ainsi, les opérations de crédit et de financement de l'Union pourraient être limitées aux entités qui n'opèrent pas dans les juridictions à haut risque et qui n'ont pas d'entités mères ou de filiales dans ces juridictions. Il est essentiel de conserver une certaine souplesse pour que les mesures d'incitation et de dissuasion puissent être adaptées selon les circonstances. Cependant, cela doit se faire de manière objective, et non en fonction de considérations de nature politique.

Si l'établissement de rapports pays par pays n'est pas rendu obligatoire, il convient d'encourager les entreprises opérant dans deux juridictions ou plus (par exemple au moyen d'entités assimilées) à rédiger un rapport par pays. Il apparaît à tout le moins hautement souhaitable que la Commission élabore des lignes directrices claires sur les rapports financiers et opérationnels des entreprises qui opèrent dans deux juridictions ou plus au moyen d'entités assimilées. Ces lignes directrices devraient s'accompagner de la création d'un registre public régulièrement mis à jour qui répertorie les entreprises appliquant ces lignes directrices et qui indique dans quelle mesure elles les appliquent.

Les États membres sont confrontés à des problèmes structurels d'évasion fiscale qui entravent la planification et la gestion de la fiscalité. L'Union doit favoriser des mesures structurelles qui permettent de répondre à ce problème sur le long terme. Les gouvernements se contentent de prendre des mesures à court terme, telles que des amnisties fiscales. Cette stratégie ne fait pas bonne impression auprès des citoyens respectueux des lois et pourrait contribuer à accroître l'évasion fiscale à plus long terme, car certains contribuables en viendraient à anticiper de nouvelles amnisties fiscales.

L'Union pourrait contribuer à renforcer les efforts entrepris par les États membres au titre du recouvrement fiscal en encourageant la rédaction de directives concernant le recouvrement fiscal et en fournissant une assistance technique aux autorités fiscales, notamment dans les domaines du recouvrement des créances, de la résolution des litiges fiscaux, de la mise en œuvre des outils informatiques, du suivi des gros contribuables, de l'amélioration de l'identification fiscale, des services et de l'analyse des risques.

Comme le prévoient les traités européens, un Parquet européen pourrait fournir les instruments requis pour lutter contre la fraude fiscale transfrontalière. La création d'un Parquet européen pourrait envoyer un message fort sur la volonté de mettre fin à l'impunité de la fraude fiscale.

L'étude définit une série de domaines pouvant faire l'objet de nouvelles recherches, notamment:

- la société civile et la gouvernance dans les territoires hors UE liés aux États membres de l'Union;
- le recours aux paradis fiscaux par les organisations qui reçoivent un financement européen, notamment les bénéficiaires, les organisations qui effectuent des travaux et fournissent des biens et des services aux organes, institutions et agences de l'Union, et les intermédiaires financiers;
- les répercussions des paradis fiscaux sur la réalisation des objectifs internationaux de développement de l'Union (plus de 58,7 milliards d'euros seront alloués aux politiques externes de 2014 à 2020 et 90 % de cette somme seront consacrés à l'aide au développement);
- les effets de distorsion du marché au sein de l'Union causés par le recours de grandes

entreprises aux paradis fiscaux pour jouer sur les prix de transfert et les répercussions sur les objectifs de l'Union en matière d'emploi et de développement des petites et moyennes entreprises;

- l'ampleur et la nature des activités criminelles impliquant les paradis fiscaux; les pertes essuyées par l'Union et les États membres; les coûts pour l'Union et les États membres de la lutte contre les activités criminelles et du recouvrement des impôts, des produits du crime et des avoirs volés; les conséquences humaines de l'utilisation des paradis fiscaux pour faciliter les activités criminelles (par exemple: le trafic de drogues et d'armements, la traite des êtres humains);
- les mesures prises par les États membres pour lutter contre le recours aux paradis fiscaux à des fins d'évasion fiscale et d'établissement de prix de transfert.

## 1. INTRODUCTION

This study has been prepared by Blomeyer & Sanz.

The study is delivered in response to Order Form IP/D/CONT/IC/2012-071

The introduction briefly presents the study's objectives (section 1.1), the methodology (section 1.2), and the structure of the report (section 1.3).

### 1.1. OBJECTIVES

The existence of tax havens, offshore zones, secrecy jurisdictions, uncooperative jurisdictions, etc., leads to a number of problems:

- Tax rates in industrialised countries are reduced to avoid capital leakage;
- Opacity enables corporate losses to be hidden from regulators, ratings agencies, and shareholders and provides an environment in which major financial actors take risks that lead to financial instability;
- Large corporations and the richest in society take advantage of tax havens to avoid paying tax, thus transferring the burden of taxation to the rest of society;
- Secrecy and minimal regulation in tax havens facilitates tax evasion and transnational crime.

The overall objective of this study is to review European initiatives on eliminating tax havens and offshore financial transactions and the impact of these constructions on the Union's own resources and budget. The Specific Terms of Reference highlight the following seven issues to be evaluated:

- The role and the impact of tax havens, offshore locations and jurisdictions and the related counter-measures of the EU;
- To explain the concept of tax havens and offshore financial centres, referring to the past and current policies on the EU and international level, in particular Economic Co-operation and Development (OECD) and G-20;
- To identify relevant tax havens and tax incentive policies within and outside the EU of relevance for the EU budget;
- To evaluate the role and the impact of tax havens, offshore locations and jurisdictions for the EU budget;
- To assess the (potential) use of tax havens and offshore financial centres for the purpose of tax evasion and financial crime, in particular money laundering, and its potential impact on the EU financial interests;
- To describe the EU measures de lege lata and de lege ferenda to tackle efficiently tax evasion and other offences by using tax havens and offshore financial centers and their interaction with international initiatives;
- To evaluate the role of tax havens and offshore financial centers with regard to the introduction of a Financial Transaction Tax.

This study therefore covers unlawful activities, as well as activities that are lawful but are detrimental to the ability of authorities in one or more states to collect taxes, and/ or to regulate markets. It covers several types of jurisdiction, and their similarities and differences are reviewed later in this report:

- Tax havens;
- Secrecy jurisdictions;
- Offshore zones;
- Uncooperative jurisdictions;
- Jurisdictions with harmful tax practices.

The study covers several groups of users of these jurisdictions:

- Tax evaders, who use them unlawfully to hide their tax liabilities;
- Criminal organisations which, in addition to evading tax, use them to facilitate and implement serious crime, and to launder the proceeds of crime;
- Tax avoiders, who use them lawfully to minimise their tax liabilities in higher tax jurisdictions;
- Financial institutions and multinationals.

In summary, this study reviews the problem of tax 'leakage' through legal and illegal means, the impact it has on the EU, and what the EU and other international organisations are doing to address it. The study concludes with a series of recommendations.

## 1.2. METHODOLOGY

This section outlines the methodology for the development of the present study. We first present the overall approach adopted for delivering this study (structure of questions) (section 1.2.1). We then describe the tools for data collection and assessment (section 1.2.2), and the case studies (section 1.2.3). Finally, we note the main definitions and concepts used by the report (section 1.2.3).

### 1.2.1. Structure of the questions

To facilitate implementation of the study, the study questions have been divided into two groups:

- Study Area 1 - the characteristics, role, usage, and impact of tax havens, and offshore and secrecy jurisdictions;
- Study Area 2 - policy and countermeasures of the EU, G-20, OECD, and other international bodies.

#### **Study Area 1 - the characteristics, role, usage, and impact of tax havens, and offshore and secrecy jurisdictions**

In Study Area 1 we take a broad approach as to the countries and jurisdictions to be considered. We do not restrict the study to any single list of 'tax havens', but also consider (for example): countries high on the Financial Secrecy Index; countries listed as having harmful tax practices but not necessarily included in any formal list of tax havens (e.g. the 1999 ECOFIN report SN 4901/99, although this is now somewhat dated); countries on the list of Financial Action Task Force (FATF) non-cooperative jurisdictions; countries identified in other relevant lists (e.g. United States GAO), etc. In Study Area 1, the following questions are addressed:

- (1) What are the key characteristics of tax havens, offshore financial centres, and secrecy jurisdictions? What are the definitions used by different bodies, and how do differences in the definitions affect the list of jurisdictions that are classified as tax havens? Which countries are overlooked?
- (2) What is the general overall impact (at EU and global levels) of tax havens, offshore financial centres, and secrecy jurisdictions?
- (3) Which countries and jurisdictions, inside and outside the EU, can be considered to be tax havens, offshore financial centres, and secrecy jurisdictions? To what extent is there agreement between different bodies as to which jurisdictions fit into this category? Which countries and jurisdictions are not normally classified as tax havens, but nevertheless have been identified as having harmful tax practices?
- (4) What are the incentives and harmful tax and non-tax practices of tax havens, offshore financial centres, and secrecy jurisdictions, and other countries and jurisdictions inside and outside the EU of relevance to the EU budget? How do they affect the EU budget (e.g. cost and benefit implications for different EU policy areas, such as: business; economy, finance and tax; employment; regions and local development; external relations and foreign affairs)?
- (5) Who is using tax havens, offshore financial centres, and secrecy jurisdictions, and for what purposes, in particular tax evasion, financial crime, and money laundering? What is the extent of these activities (e.g. number of transactions per year, volume of funds held in and passing through these structures, number of entities involved, etc.)? What other types of crime do these activities facilitate? What are the trends, and what new risks are emerging?
- (6) How, and to what extent are EU financial interests affected by the use of tax havens, offshore financial centres, and secrecy jurisdictions for tax evasion, financial crime, and money laundering?
- (7) How and to what extent are tax havens, offshore financial centres, and secrecy jurisdictions likely to affect the effectiveness of the proposed Financial Transaction Tax?

## **Study Area 2 - policy and countermeasures of the EU, G-20, OECD, and other international bodies.**

In this study area, we address the following questions:

- (8) What are the current, past, and proposed/ envisaged policies and countermeasures of the EU with regard to tax havens, offshore financial centres, and secrecy jurisdictions?
- (9) What are the EU legal instruments of relevance to tackling the use of tax havens, offshore financial centres, and secrecy jurisdictions for tax evasion and other offences and crimes? The tenderer will identify existing legislation (*de lege lata*) and proposed/ envisaged legislation (*de lege ferenda*)?
- (10) What are the current and past policies and countermeasures of other international bodies, in particular (but not only) the G-20 and the OECD with regard to tax havens, offshore financial centres, and secrecy jurisdictions and their use for tax evasion and other offences and crimes?
- (11) How and to what extent do EU policies and instruments interact with relevant international initiatives?
- (12) How effective have EU policies and instruments been in addressing the negative impacts of tax havens, offshore financial centres, and secrecy jurisdictions and their use for tax evasion and other offences and crimes?
- (13) To what extent does the EU have a comprehensive, coherent, strategic approach to addressing the negative impacts of tax havens, offshore financial centres, and

secrecy jurisdictions? How will recent and proposed/envisaged developments in policy and legislation alter the picture?

### 1.2.2. Data collection and assessment tools

The data for this study have been collected in several ways. These include:

- Review of a wide range of documents with different sources;
- Consultation with key stakeholders;
- Case studies, which are listed in section 1.2.3. Some of the case studies are included as standalone examples, while others are incorporated into various parts of the text. Several are covered in section 5.
- A survey of FISCALIS contact points was undertaken but this elicited few responses. A survey of several UK crime prevention agencies was conducted but there were no responses. A further survey was sent to 50 stakeholders in the commission and in the tax authorities in several Member States. This also resulted in few responses.

### 1.2.3. Case studies

The study includes case studies on the following:

- Member States;
- Tax havens;
- Links between organised crime and tax havens;
- EU investment climate.

### 1.2.4. Definitions and concepts used by the report

Here we introduce some key concepts. These are further developed later in this study in the context of specific study questions.

- **Harmful tax practices** are those that grant tax advantages even without any real economic activity and substantial economic presence;
- **Tax evasion** is the practice of avoiding the payment of taxes by unlawfully concealing real taxable income levels and/ or the volume, type, and value of assets held;
- **Tax avoidance** is the practice of avoiding the payment of taxes through lawful means. This includes, for example, the practice of transfer pricing, whereby an economic operator (Operator 1) reduces its tax liability in one jurisdiction by transferring profits to a related entity (Operator 2) in another jurisdiction with lower taxes. In order to execute the transfer in a legal manner, Operator 2 may charge Operator 1 for services and goods, often at an inflated price, such that the operating costs of Operator 1 are increased to the point that where they eliminate taxable profit.
- **Tax haven** - the terms tax haven, offshore location, secrecy jurisdiction, and uncooperative jurisdiction are used interchangeably to describe jurisdictions that meet one or more of the following criteria.
  - A jurisdiction with a tax regime involving no or minimal taxation on income and assets of non-residents with the primary purpose of avoiding tax in their home country;
  - A jurisdiction that provides tax advantages to non-resident individuals and corporations that are not generally available to residents of the jurisdiction;

- A jurisdiction that has laws or administrative practices that prevent the effective exchange of relevant information with other governments on taxpayers benefiting from the jurisdiction;
- A jurisdiction that requires minimal or no disclosure on financial dealings and ownership of assets;
- A jurisdiction that does not apply generally accepted minimum standards of corporate governance and accountability;
- A jurisdiction that has not signed at least 12 Tax Information Exchange Agreements (TIEA) or Double Taxation Conventions (DTC).

### **1.3. REPORT STRUCTURE**

This report comprises 5 main sections, including this introduction. The other sections are:

- Section 2 provides the background;
- Section 3 covers Study Area 1;
- Section 4 covers Study Area 2;
- Section 5 provides a series of case studies;
- Section 6 provides the overall conclusions and recommendations.

## 2. BACKGROUND

In a recent Memo, the Commission quotes estimates of the scale of tax evasion.<sup>1</sup> It notes that shadow economy in the EU is estimated to amount to some €2 trillion, and that tax evasion is estimated to be around €1 trillion annually. It also notes that recent reports suggest that tens of billions of euros are held offshore, unreported and untaxed.

The jurisdictions, organisational structures, and other arrangements that tax evaders and criminal organisation use are often the same as those used by tax avoiders. Indeed, tax havens/ secrecy jurisdictions must owe their continuing existence largely to the political influence of tax avoiders - it seems unlikely that they would be tolerated if they served only the interests of tax evaders and criminal organisations.

On 19 April 2012, the **European Parliament** voted to adopt a **resolution on ways to combat tax fraud and tax evasion**.<sup>2</sup> This highlights, among other things: the desirability of generalised automatic exchange of information; the need to strengthen the Savings Tax Directive and other legislation; the desirability of a proposed Common Consolidated Tax Base; the need for increased transparency and tighter control to prevent the use of tax havens.

Specifically, the European Parliament:

- (1) Welcomes the conclusions of the European Council meeting of 1 and 2 March calling on Member States, where appropriate, to review their tax systems with the aim of making them more effective and efficient, removing unjustified exemptions, broadening the tax base, shifting taxes away from labour, improving the efficiency of tax collection and tackling tax evasion, to rapidly intensify the fight against tax fraud and tax evasion, including in relation to third countries, and to report by June 2012;
- (2) Calls on the Commission rapidly to address the issues raised by the review of the EU Savings Taxation Directive and to find a swift agreement with Switzerland and the Member States concerned;
- (3) Highlights the need to generalise automatic information exchange and to extend the scope of the Savings Taxation Directive in order to effectively end banking secrecy;
- (4) Reiterates the need to keep the focus on the key role that the Common Consolidated Corporate Tax Base can play against tax fraud;
- (5) Considers that strengthening the regulation of, and transparency as regards, company registries and registers of trust is a prerequisite for dealing with tax avoidance;
- (6) Welcomes the proposals made by the Commission on country-by-country reporting within the Accounting and Transparency Directives; recalls that country-by-country reporting requirements for cross-border companies are essential for detecting corporate tax avoidance;
- (7) Calls for a review of the Parent-Subsidiary Directive and the Interests and Royalties Directive in order to eliminate evasion via hybrid financial instruments in the EU;
- (8) Calls on the Commission to identify areas in which improvements to both EU legislation and administrative cooperation between Member States can be implemented in order to reduce tax

---

<sup>1</sup> European Commission Memo "Tackling tax fraud and evasion in the EU – frequently asked questions", 27 June 2012.

<http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/12/492&format=HTML&aged=0&language=EN&guiLanguage=en> (Accessed 17 August 2012).

<sup>2</sup> European Parliament resolution of 19 April 2012 on the call for concrete ways to combat tax fraud and tax evasion,

<http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2012-0137&language=EN&ring=B7-2012-0203>

fraud;

- (9) Calls on the Member States to ensure smooth cooperation and coordination between their tax systems in order to avoid unintended non-taxation and tax avoidance and fraud;
- (10) Calls on the Member States to allocate adequate resources to the national services that are empowered to combat tax fraud;
- (11) Calls on the Member States, in accordance with Article 65 of the TFEU, in close cooperation with the Commission and in liaison with the European Central Bank, to take measures to prevent infringements of national law and regulations, in particular in the field of taxation; notes that this is of particular importance as regards Member States experiencing, or threatened with, serious difficulties with respect to their financial stability in the euro area;
- (12) Stresses the importance of implementing new and innovative strategies for combating VAT fraud across the EU;
- (13) Calls on the Member States to review bilateral agreements currently in force between Member States and bilateral agreements between Member States and third countries, insofar as they contribute to tax avoidance and complicate effective source taxation in certain Member States;
- (14) Calls on the Commission to report on the possibility of EU coordination in changing bilateral agreements between Member States with a view to bringing them into line with the objectives of the European Council, thus making tax avoidance more difficult;
- (15) Recalls its request for increased transparency and tighter control to prevent the use of tax havens, which are foreign non-cooperative jurisdictions characterised in particular by no or nominal taxes, a lack of effective exchange of information with foreign tax authorities and a lack of transparency in legislative, legal or administrative provisions, or identified as such by the Organisation for Economic Cooperation and Development or the Financial Action Task Force;
- (16) Instructs its President to forward this resolution to the Council and the Commission.

### 3. STUDY AREA 1 THE CHARACTERISTICS, ROLE, USAGE, AND IMPACT OF TAX HAVENS, AND OFFSHORE AND SECRECY JURISDICTIONS

#### KEY FINDINGS

- There are no universally agreed definitions of tax havens, secrecy jurisdiction, offshore financial centres, etc. There are significant differences between the definition adopted by the European Parliament in 2012, and the definition recommended by the EC in December 2012.
- Tax havens are used by many groups. Key among these are financial institutions, multinational corporations, transnational criminal organisations, and individuals. They use them, respectively, to avoid regulation, reduce tax liabilities through transfer pricing, launder money and engage in other criminal activities, and evade tax.
- Many jurisdictions worldwide have, and continue to engage in harmful practices. These include EU MS and territories currently and historically associated with them, as well as other European jurisdictions. Inclusion on, or exclusion from, tax haven lists is often dependent on political considerations.
- Transfer pricing has a negative impact on EU revenues by reducing the GNI of Member States. Lower tax revenues are likely to have a negative impact on the willingness of MS to increase or maintain their contributions to the EU.
- Tax havens facilitate the activities of tax evaders and criminal organisations. Combating these activities consumes resources that could otherwise be used for productive investments. The ability to engage in transfer pricing gives large corporations a significant advantage over smaller businesses, and this undermines EU efforts to develop the small and medium enterprise sectors.
- The effectiveness of the Financial Transfer Tax is likely to be constrained unless accompanied by measures to limit the transfer of capital to non-participating jurisdictions, in particular, tax havens.

In this section, we describe the definitions, characteristics, and practices of tax havens, offshore financial centres, secrecy jurisdictions, uncooperative jurisdictions, and jurisdictions with harmful tax practices. We review which countries fit into each category, who is using these structures, and for what purposes. Finally, we review the impact that these structures and their use has on the EU budget and financial interests, and how they may impact the proposed Financial Transaction Tax.

#### 3.1. WHAT IS THE GENERAL OVERALL IMPACT OF TAX HAVENS?

**What is the general overall impact (at EU and global levels) of tax havens, offshore financial centres, and secrecy jurisdictions?**

As noted by the Parliamentary Assembly of the Council of Europe, “Council of Europe member States lose billions every year due to tax avoidance, tax evasion and tax fraud that are facilitated by the offshore financial system including tax havens and secrecy jurisdictions. This massive tax cheating by wealthy individuals and enterprises not only penalises ordinary tax payers, public finances and social spending, but also threatens good governance, macroeconomic stability and social cohesion.”

Offshore financial centres are widely perceived to have contributed to the current financial crisis that emerged in 2007. The holding of vast funds in secretive offshore centres enables financial institutions

to hide vital information from governments, regulators, ratings agencies, and the public. This means that they escape proper regulation and public scrutiny. This enables them to take greater risks than would be possible with full transparency, and governments, regulators, ratings agencies, and investors lack the level of information required to make informed decisions. In turn, this leads to financial instability, with taxpayers having to cover the cost of rectifying the resulting problems.

Tax havens and offshore financial centres enable transfer pricing by multinational enterprises. This artificially reduces tax liabilities in higher tax jurisdictions by transferring profits to low or zero tax jurisdictions. This is particularly damaging for developing countries and it undermines the effectiveness and sustainability of external aid of the EU and its Member States.

Users of tax havens and offshore financial centres, whether for tax evasion or transfer pricing, benefit from public services, facilities, and infrastructure in their home countries, but make a disproportionately small contribution towards their maintenance, leaving other taxpayers to make a disproportionately large contribution.

Tax havens undermine real growth by distorting capital markets and diverting investment from 'real' productive onshore activities and projects to unproductive offshore financial instruments. Tax havens also distort competition, as enterprises that 'play fair' are put at a disadvantage.

The secrecy of tax havens and offshore financial centres is attractive not only to multinational enterprises and wealthy individuals, but also to those involved in transnational crime and the financing of terrorism. This poses a threat to security and the rule of law. If part of the higher costs of law enforcement and crime fighting are paid directly or indirectly with the EU resources, expenditure on other more productive areas (such as promotion of growth and innovation) is likely to be constrained.

Onshore jurisdictions are forced to compete with offshore jurisdictions in order to avoid capital flight. This negatively affects other areas of domestic policy that rely on tax revenues.

Tax havens and offshore financial centres undermine democracy as the users of these structures (including corporations), which make up a small fraction of society, use their significant financial resources to lobby governments to implement or maintain policies that are not necessarily in the interests of the vast majority of society (for example, policies that result in the transfer of the burden of taxation from large corporations and particular sectors to other taxpayers). In this context it is interesting to note that British Overseas Territories maintain a lobbying organisation, the United Kingdom Overseas Territories Association, within the British government, (further details are provided in Annex 2). It is also interesting to note criticism by British Crown Dependencies as to how the United Kingdom (UK) represents their interests on the international stage, specifically in the area of international finance.<sup>3</sup> As noted above, tax havens tend to have a stifling effect on the societies in which they operate, and so far as British Overseas Territories are concerned, the British government itself recognises that *"In some instances, the lack of a developed civil society, a strong legislature and/or a vibrant press mean there are few checks on the executive."*<sup>4</sup>

---

<sup>3</sup> House of Commons Justice Committee, 2010, *Crown Dependencies* [online], <http://www.publications.parliament.uk/pa/cm200910/cmselect/cmjust/56/56i.pdf> (Accessed 06 February 2013)

<sup>4</sup> The Telegraph, 2011, *A Guide to the British Overseas Territories* [British government telegram passed to The Telegraph by WikiLeaks] [online], <http://www.telegraph.co.uk/news/wikileaks-files/london-wikileaks/8305236/A-GUIDE-TO-THE-BRITISH-OVERSEAS-TERRITORIES.html> (Accessed 06 February 2013)

Tax evasion and transfer pricing are likely to have a negative impact on the EU budget by reducing the gross national incomes (GNI) of Member States (a major element in calculating Member State contributions) (see section 3.5). Moreover, loss of tax revenues is likely to undermine Member States' willingness to increase the EU budget, or even maintain existing budget levels.

### 3.2. WHAT ARE THE KEY CHARACTERISTICS OF TAX HAVENS?

**What are the key characteristics of tax havens, offshore financial centres, and secrecy jurisdictions? What are the definitions used by different bodies, and how do differences in the definitions affect the list of jurisdictions that are classified as tax havens? Which countries are overlooked?**

#### 3.2.1. OECD

The OECD identifies tax havens as jurisdictions that apply no, or nominal taxes, to non-residents (individuals and corporations) primarily with a view to the avoidance of taxation in their home jurisdictions.<sup>5</sup> Additional factors that can help to identify a jurisdiction as a tax haven are: laws or administrative practices that prevent the effective exchange of relevant information with other governments on taxpayers benefiting from the low or no tax jurisdiction; lack of transparency; and the absence of a requirement for substantive activity in the tax haven jurisdiction.

#### 3.2.2. International Monetary Fund

In 2007, the International Monetary Fund (IMF) identified three recurring characteristics of offshore financial centres based on a literature survey: *"(i) the primary orientation of business toward nonresidents; (ii) the favorable regulatory environment (low supervisory requirements and minimal information disclosure) and; (iii) the low-or zero-taxation schemes."*<sup>6</sup> The IMF itself proposed the following definition: *"...a country or jurisdiction that provides financial services to nonresidents on a scale that is incommensurate with the size and the financing of its domestic economy."* The IMF's methodology identifies offshore financial centres on the basis of the ratio of net financial services exports to GDP.

#### 3.2.3. European Parliament

The European Parliament's resolution of 19 April 2012 describes tax havens as *"...foreign non-cooperative jurisdictions characterised in particular by no or nominal taxes, a lack of effective exchange of information with foreign tax authorities and a lack of transparency in legislative, legal or administrative provisions, or identified as such by the Organisation for Economic Cooperation and Development or the Financial Action Task Force."*<sup>7</sup>

On 28 June 2012, the European Parliament and the Danish EU Presidency reached an agreement on an EU-wide venture capital regime. This incorporates a new definition of tax haven:

- Provides for tax measures which entail no or nominal taxes;

<sup>5</sup> OECD, "Harmful Tax Competition Tax Competition - An Emerging Global Issue", 1998.

<sup>6</sup> Zoromé, A. IMF Working Paper "Concept of Offshore Financial Centers: In Search of an Operational Definition", April 2007. p. 4 and 7.

<sup>7</sup> European Parliament resolution of 19 April 2012 on the call for concrete ways to combat tax fraud and tax evasion, <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2012-0137&language=EN&ring=B7-2012-0203>.

- Grants tax advantages even without any real economic activity and substantial economic presence;
- Is listed as a Non-Cooperative Country and Territory by FATF;
- Has not signed an agreement with the home Member State of the venture capital fund manager and with each other Member State in which the units or shares of the qualifying venture capital fund are intended to be marketed, so that it is ensured that the third country fully complies with the standards laid down in Article 26 of the OECD Model Tax Convention on Income and on Capital and ensures an effective exchange of information in tax matters, including any multilateral tax agreements.

#### **3.2.4. Bank for International Settlements**

The Bank for International Settlements refers to 'offshore centres', which it defines as "...countries with banking sectors dealing primarily with non-residents and/or in foreign currency on a scale out of proportion to the size of the host economy."<sup>8</sup>

#### **3.2.5. Other research**

Other research indicates that tax havens tend to be small, affluent, politically stable, well-governed jurisdictions.<sup>9</sup> One journalist notes that *"The ability to sustain an establishment consensus and suppress troublemakers makes islands especially hospitable to offshore finance, reassuring international financiers that local establishments can be trusted not to allow democratic politics to interfere in the business of making money."*<sup>10</sup>

#### **3.2.6. European Commission**

In its communication of 06 December 2012,<sup>11</sup> the Commission recommends (point No.7) "...the adoption by Member States of a set of criteria to identify third countries not meeting minimum standards of good governance in tax matters and a 'toolbox' of measures in regard to third countries according to whether or not they comply with those standards, or are committed to comply with them."

The Annex to Commission Recommendation C(2012) 8805 specifies two main criteria that countries must meet in order to comply with the standards:<sup>12</sup>

- *"It has adopted legal, regulatory and administrative measures intended to comply with the standards of transparency and exchange of information set out in the Annex, and effectively applies those measures; "* The measures referred to are the 10 elements of the Global Forum's peer review process grouped under three headings: availability of information; access to information; and exchange of information.

---

<sup>8</sup> Bank for International Settlements Monetary and Economic Department, 2012, *Guidelines to the international locational banking statistics* p. 28 [online], <http://www.bis.org/statistics/locbankstatsguide.pdf> (Accessed 05 February 2013)

<sup>9</sup> Dharmapala, D. and Hines, J.R., "Which Countries Become Tax Havens?", May 2009. p. 15.

<sup>10</sup> Shaxson N., 2011, *Treasure Islands - Tax Havens and the Men Who Stole the World* ch.11

<sup>11</sup> European Commission Communication From The Commission To The European Parliament And The Council - An Action Plan to strengthen the fight against tax fraud and tax evasion (COM(2012) 722 final), 06 December 2012.

<sup>12</sup> European Commission, 2012, *Commission Recommendation of 6.12.2012 regarding measures intended to encourage third countries to apply minimum standards of good governance in tax matters* [online], [http://ec.europa.eu/taxation\\_customs/resources/documents/taxation/tax\\_fraud\\_evasion/c\\_2012\\_8805\\_en.pdf](http://ec.europa.eu/taxation_customs/resources/documents/taxation/tax_fraud_evasion/c_2012_8805_en.pdf) (Accessed 11 February 2013)

- *"It does not operate harmful tax measures in the area of business taxation."*

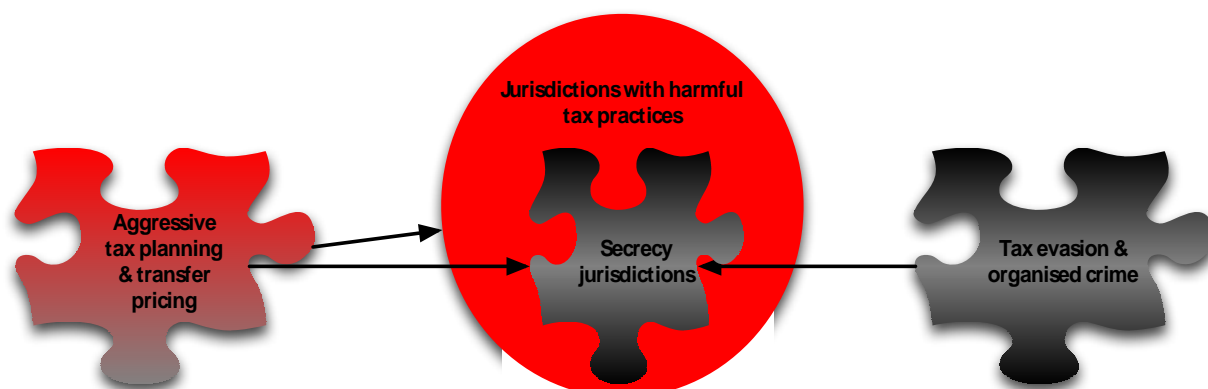
So far as harmful tax measures are concerned, the Recommendation states that *"Tax measures which provide for a significantly lower effective level of taxation, including zero taxation, than those levels which generally apply in the third country in question are to be regarded as potentially harmful."*

### 3.2.7. Conclusions

There is considerable overlap between the concepts of tax havens, offshore financial centres, secrecy jurisdictions, etc. The terms are generally used interchangeably and there are no universally agreed definitions.

Secrecy jurisdictions can be considered a subset of jurisdictions with harmful tax practices (see Figure 1). Aggressive tax planning and transfer pricing may utilise either, whereas tax evasion and organised crime require secrecy in order to evade detection. Aggressive tax planning and transfer pricing are also facilitated by a lack of transparency, as these activities then remain hidden from the public scrutiny. Operators engaged in perfectly legal activities therefore may, and do, make use of secrecy jurisdictions, along with tax evaders and organised criminal gangs, since these jurisdictions offer highly attractive tax regimes and minimum supervision, together with opacity.

**Figure 1: Tax avoidance, tax evasion, and different types of jurisdiction**



Source: Author

The European Commission (EC) recommends the adoption of the criteria developed by the Global Forum for its peer review process, combined with an assessment of whether or not a jurisdiction applies significantly lower tax rates to non-residents. There are, however, significant challenges with this approach. The criteria are by no means clear cut. It will be up to each Member State to judge for itself, and there may be a tendency simply to rely on the findings of the Global Forum's peer review process. This provides limited assurance of continuing compliance, and in some cases the ratings that are to be published towards the end of 2013 may be based on inadequate and out of date information (see section 4.3.2). The Commission proposes to report on progress only after three years. It is also interesting to note that there are significant differences between the Commission's recommendation, and the definition recently adopted by the European Parliament.

### 3.3. WHO IS USING TAX HAVENS AND FOR WHAT PURPOSES?

A wide range of individuals and organisations are using tax havens for legal and illegal purposes.

Individuals and corporations use tax havens to hide assets and income from the authorities in which they are located in order to evade tax. In Spain, for example, it is estimated that up to 25% of GDP

remains untaxed due to tax evasion schemes (see section 5.1.2.1), and €20 billion is estimated to be held by Greeks in secret Swiss bank accounts (see section 5.1.1.1).

Individuals and corporations also use tax havens, perfectly legally, in order to minimise tax liabilities (tax avoidance) through so-called 'aggressive tax planning' and, in the case of corporations, shell companies to facilitate transfer pricing. Recent high profile corporate examples include Google, Starbucks, and Amazon. A recent high profile example is that of British comedian, Jimmy Carr.

A recent OECD study has concluded that "...some multinationals use strategies that allow them to pay as little as 5% in corporate taxes when smaller businesses are paying up to 30%", with "...some small jurisdictions act as conduits, receiving disproportionately large amounts of Foreign Direct Investment compared to large industrialised countries and investing disproportionately large amounts in major developed and emerging economies".<sup>13</sup>

This is discussed further in sections 3.5.2 and 5.2. In this context, it is interesting to note that UK bank, Barclays, has recently announced the closure of a highly profitable unit specialising in planning advice for corporations.<sup>14</sup> This is, of course, not only a problem for EU MS: a recent study by a US organisation suggests that the state of Illinois lost \$2.5 billion to such schemes in 2012.<sup>15</sup>

Research by the TUC in 2009 found that the four major UK banks alone, had between them established them some 1,200 subsidiaries in tax havens.<sup>16</sup> Financial institutions establish subsidiaries in tax havens for various reasons, including to profit from the illegal activities of others. This has been highlighted by a recent United States (US) Senate investigation, which found that HSBC had "...exposed the U.S. financial system to a wide array of money laundering, drug trafficking, and terrorist financing risks due to poor anti-money laundering (AML) controls..."<sup>17</sup> The secrecy of the offshore jurisdictions in which the bank and its affiliates operated meant that the bank itself was unaware of who was using some 60,000 accounts in the Cayman Islands, and for what purposes.<sup>18</sup>

Another reason for the use of tax havens by financial institutions is to circumvent domestic regulation that prevents them from undertaking high risk activities. As with other types of corporation, financial institutions also seek to limit tax liabilities through the use of tax havens.

State owned development finance institutions use tax havens as locations for intermediate holding funds, and to participate in other funds located in those locations.<sup>19</sup> In doing so, they undermine the development objectives that justify their existence.

---

<sup>13</sup> OECD, 2013, *OECD urges stronger international co-operation on corporate tax* [online], <http://www.oecd.org/newsroom/oecd-urges-stronger-international-co-operation-on-corporate-tax.htm> (Accessed 14 February 2013)

<sup>14</sup> Huffington Post UK, 2013, *Barclays Tax Avoidance Unit To Close* [online], [http://www.huffingtonpost.co.uk/2013/02/10/barclays-tax-avoidance-unit-to-close\\_n\\_2655826.html](http://www.huffingtonpost.co.uk/2013/02/10/barclays-tax-avoidance-unit-to-close_n_2655826.html) (Accessed 12 February 2013)

<sup>15</sup> Illinois PIRG, 2013, *Offshore Tax Dodging Blows A \$2.5 Billion Hole in Illinois' Budget* [online], <http://illinoispirg.org/news/ilp/offshore-tax-dodging-blows-25-billion-hole-illinois'-budget> (Accessed 12 February 2013)

<sup>16</sup> TUC, "UK banks must come clean on tax haven activities, says TUC", 29 January 2009, <http://www.tuc.org.uk/economy/tuc-15906-f0.cfm> (Accessed 20 August 2012).

<sup>17</sup> United States Senate Permanent Subcommittee On Investigations - Committee on Homeland Security and Governmental Affairs, "HSBC Exposed U.S. Financial System to Money Laundering, Drug, Terrorist Financing Risks", <http://www.hsgac.senate.gov/subcommittees/investigations/media/hsbc-exposed-us-finacial-system-to-money-laundering-drug-terrorist-financing-risks> (Accessed 20 August 2012).

<sup>18</sup> The Observer, "Bank secrecy masks a world of crime and destruction", <http://www.guardian.co.uk/commentisfree/2012/jul/22/editorial-hsbc-tax-havens-avoidance> (Accessed 20 August 2012).

<sup>19</sup> Murphy, R., 2010, *Investment for Development: Derailed to Tax Havens*, [http://eurodad.org/uploadedfiles/whats\\_new/reports/investment%20for%20development.pdf](http://eurodad.org/uploadedfiles/whats_new/reports/investment%20for%20development.pdf)

Recent reports allege that a political party in Spain has for many years used secret bank accounts in Switzerland to make secret payments (see section 5.1.2.2).

A major worldwide concern is the use of tax havens by transnational criminal organisations (a detailed VAT fraud case study is provided in section 5.5). The United Nations Development Programme's 1999 Human Development Report estimated that organised crime grossed \$1.5 trillion per year.<sup>20</sup> As the United Nations Office on Drugs and Crime (UNODC) website notes, *"Money-laundering is the method by which criminals disguise the illegal origins of their wealth and protect their asset bases, so as to avoid the suspicion of law enforcement agencies and prevent leaving a trail of incriminating evidence."*<sup>21</sup> It currently estimates that global money laundering amounts to between \$800 billion and \$2 trillion per year.<sup>22</sup> The level of money laundering is difficult to estimate due to its clandestine nature.

Due to the secrecy of tax havens, and their lack of cooperation with other countries, the use of tax havens facilitates crime, such as tax evasion, money laundering, financing of terrorism, trafficking, and other types of transnational crime.

Europol's 2011 EU Organised Crime Threat Assessment notes that offshore jurisdictions *"...regularly appear in [money laundering] investigations featuring the use of shell companies. These hubs provide a number of benefits to criminals, most notably strict secrecy laws which facilitate the concealment of beneficial ownership of assets."*<sup>23</sup> The Assessment also notes that there is a clear preference for offshore banking locations (and major financial centres) when it comes to handling criminal proceeds.<sup>24</sup> UNODC links arms trafficking to offshore holding companies.<sup>25</sup>

In 2012, the US State Department identified 66 jurisdictions as 'major money laundering countries'.<sup>26</sup> The list includes approximately half of the offshore centres listed by the Bank for International Settlements, and a number of other jurisdictions that have been classified as tax havens, secrecy jurisdictions, etc. by other organisations in the past 15 years.

### 3.4. WHICH COUNTRIES AND JURISDICTIONS CAN BE CONSIDERED TO BE TAX HAVENS?

**Which countries and jurisdictions, inside and outside the EU, can be considered to be tax havens, offshore financial centres, and secrecy jurisdictions? To what extent is there agreement between different bodies as to which jurisdictions fit into this category? Which countries and jurisdictions are not normally classified as tax havens, but nevertheless have been identified as having harmful tax practices?**

---

<sup>20</sup> United Nations Development Programme, Human Development Report 1999, 1999, p.42.

<sup>21</sup> United Nations Office on Drugs and Crime, "Introduction to money laundering", <http://www.unodc.org/unodc/en/money-laundering/introduction.html?ref=menuaside> (Accessed 22 August 2012).

<sup>22</sup> United Nations Office on Drugs and Crime, "Money Laundering and Globalization", <http://www.unodc.org/unodc/en/money-laundering/globalization.html> (Accessed 22 August 2012).

<sup>23</sup> European Police Office, EU Organised Crime Threat Assessment, 2011, p.43.

<sup>24</sup> Ibid., p.44.

<sup>25</sup> UNODC, The Globalization Of Crime - A Transnational Organized Crime Threat Assessment, 2010, p. 144.

<sup>26</sup> United States Department of State Bureau for International Narcotics and Law Enforcement Affairs, 2012, *International Narcotics Control Strategy Report - Volume II - Money Laundering and Financial Crimes* [online], <http://www.state.gov/documents/organization/185866.pdf> (Accessed 07 February 2013)

### 3.4.1. OECD

A report by the OECD in 2000 identified a number of tax regimes in a number of countries, including EU Member States and (at that time) candidate countries that it considered to be potentially harmful.<sup>27</sup> The same report identified 35 jurisdictions that met the criteria of tax havens provided in its 1998 report.<sup>28</sup> The report noted that a small number of tax haven jurisdictions had made high level commitments to “...eliminate their harmful tax practices and to comply with the principles of the 1998 Report.” These jurisdictions were therefore not included in the list identified in the 2000 report. The 35 jurisdictions that were included were classified as ‘uncooperative tax havens’. Since then, all of the listed tax haven jurisdictions have been removed from the OECD’s list of uncooperative tax havens on the basis of formal commitments to implement the OECD’s standards of transparency and exchange of information.<sup>29</sup>

The jurisdictions listed as tax havens in the OECD’s 2000 report were: Andorra; Anguilla; Antigua and Barbuda; Aruba; Bahamas; Bahrain; Barbados; Belize; British Virgin Islands; Cook Islands; Dominica; Gibraltar; Grenada; Guernsey; Isle of Man; Jersey; Liberia; Liechtenstein; Maldives; Marshall Islands; Monaco; Montserrat; Nauru; Netherlands Antilles; Niue; Panama; Samoa; Seychelles; St. Kitts & Nevis; St. Lucia; St. Vincent and the Grenadines; Tonga; Turks & Caicos Islands; US Virgin Islands; Vanuatu. Tonga and the Maldives were subsequently identified as not meeting the criteria for tax havens.

The OECD’s April 2009 progress report identifies two groups of jurisdictions under the heading “Jurisdictions that have committed to the internationally agreed tax standard, but have not yet substantially implemented”. The first group were categorised as tax havens. These were: Andorra; Anguilla; Antigua and Barbuda; Aruba; Bahamas; Bahrain; Belize; British Virgin Islands; Cook Islands; Dominica; Gibraltar; Grenada; Liberia; Liechtenstein; Marshall Islands; Monaco; Montserrat; Nauru; Netherlands Antilles; Niue; Panama; Samoa; St. Kitts & Nevis; St. Lucia; St. Vincent and the Grenadines; Turks & Caicos Islands; Vanuatu; Bermuda; Cayman Islands; San Marino. This group included 27 jurisdictions that had made commitments to the “internationally agreed tax standard” in 2002 and 2003.

The second group were categorised as “other financial centres”. These were: Austria; Belgium; Brunei; Chile; Guatemala; Luxembourg; Singapore; and Switzerland.

Jurisdictions identified as having not committed to the internationally agreed tax standard were: Costa Rica; Malaysia; Philippines; Uruguay.

The OECD’s December 2012 progress report indicates that 92 jurisdictions have substantially implemented the internationally agreed tax standard.<sup>30</sup> Just two jurisdictions are now classified as tax havens that have committed to the internationally agreed tax standard, but have not yet substantially implemented – Nauru, and Niue. There are no “other financial centres” mentioned here. The report states: “All jurisdictions surveyed by the Global Forum have now committed to the internationally agreed tax standard.” Therefore no jurisdictions are listed under the heading “Jurisdictions that have not committed to the internationally agreed tax standard.”

---

<sup>27</sup> OECD, “Report to The 2000 Ministerial Council Meeting And Recommendations by The Committee Fiscal Affairs - Progress in Identifying and Eliminating Harmful Tax Practices”, 2000. p. 12-14.

<sup>28</sup> Ibid. p. 17.

<sup>29</sup> OECD, “List of Unco-operative Tax Havens”, <http://www.oecd.org/countries/liechtenstein/listofunco-operativetaxhavens.htm> (Accessed 15 August 2012).

<sup>30</sup> OECD, “A Progress Report On The Jurisdictions Surveyed By The OECD Global Forum In Implementing The Internationally Agreed Tax Standard”, 05 December 2012.

The December 2012 Progress Report notes that *"The internationally agreed tax standard...requires exchange of information on request in all tax matters for the administration and enforcement of domestic tax law without regard to a domestic tax interest requirement or bank secrecy for tax purposes."* In practice, this means they have concluded a minimum of 12 TIEAs or DTCs with other jurisdictions. However, the designation of a jurisdiction as having "substantially implemented the internationally agreed tax standard" in the December 2012 report does not indicate that it is actually exchanging information in practice.

### **3.4.2. The OECD Global Forum**

The Global Forum does not publish lists of tax havens. However, the results of its work do identify potentially problematic jurisdictions. However, the published results of its work do not differentiate between, on the one hand, jurisdictions that deliberately and systematically seek to benefit from tax evasion and the processing of organised crime proceeds, and on the other hand, jurisdictions that are genuinely willing to cooperate but lack the capacity to do so. The global forum's progress report to the G-20 in June 2012 notes that while Phase 1 peer reviews cover the legal and regulatory framework, the exchange of information in practice is covered by Phase 2 peer reviews. Some completed peer reviews have combined Phase 1 and Phase 2. However, the majority of Phase 2 reviews are to be undertaken as stand-alone reviews, upon satisfactory completion of the Phase 1 review (see section 4.3.2 for more details on the review process). According to the Global Forum's Exchange of Information portal, none of the stand-alone Phase 2 reviews have so far been completed.<sup>31</sup>

In a small number of cases, deficiencies were considered to be so significant as to delay a jurisdiction from passing to a Phase 2 review until they had been addressed. These were: Brunei; Guatemala; Liberia; Panama; Vanuatu; Costa Rica; Uruguay; United Arab Emirates; Botswana; Lebanon; and Trinidad & Tobago. Three of these were identified as tax havens in the OECD's 2000 report (Liberia; Panama; Vanuatu). It is interesting to note that while the United Arab Emirates was listed in the OECD's April 2009 progress report as substantially implementing the internationally agreed tax standard, the subsequent Phase 1 peer review (commenced in 2011) identified significant deficiencies in its legal and regulatory framework.

The report also noted that the peer review process identified a number of jurisdictions of particular relevance to the work of the Global Forum. These were: Botswana; Lebanon; Trinidad & Tobago; FYR Macedonia; Ghana; Jamaica; Qatar. None of these has been identified by the OECD as a tax haven. None of these has an affiliation with another jurisdiction (i.e. is not a dependency or Overseas Territory of another jurisdiction). A summary of jurisdictions receiving special attention from the Global Forum is provided in Annex 1, Table 15.

---

<sup>31</sup> OECD Global Forum "Schedule of Reviews", <http://eoi-tax.org/keydocs/schedule-of-reviews> (Accessed 24 January 2013).

### **3.4.3. USA**

A 2008 report by the United States Government Accountability Office provided a list of tax havens based on three other lists, including the list in the OECD's 2000 report.<sup>32</sup> The two other lists are derived from a 2006 paper of the National Bureau of Economic Research (NBER),<sup>33</sup> and a US District Court order granting leave for the Internal Revenue Service to serve a "John Doe" summons that included a list of offshore tax haven or financial privacy jurisdictions. Between them, these two lists included 43 jurisdictions, and of these, 14 were not identified as tax havens by the OECD, either in its 2000 report, or in its 2009 progress report. Several were identified in neither OECD document as tax havens.

### **3.4.4. IMF**

An IMF analysis in 2000 identified 63 jurisdictions as offshore financial centres.<sup>34</sup> A 2007 IMF study, using a modified methodology (see 3.2.2) identified 22 jurisdictions as offshore financial centres.<sup>35</sup> The revised list included three countries that were not included in the previous list: Latvia; United Kingdom; and Uruguay. Four jurisdictions included in the 2000 list, which were also covered by the 2007 study, were not identified as offshore financial centres in the 2007 study: Costa Rica; Lebanon; Macau; and Malaysia.<sup>36</sup> The 2007 IMF list includes 13 jurisdictions that were not on the OECD's 2000 list of tax havens, and eight that were not identified by as tax havens in the OECD's 2009 progress report. A summary is provided in Annex 1, Table 17.

18 of the 22 jurisdictions included in the IMF's 2007 list of offshore financial centres were also included in the lists of tax havens identified by the OECD in 2000 (see 3.4.1) or by the United States Government Accountability Office in its 2008 report (see 3.4.3). 42 of the jurisdictions included in the IMF's 2000 list of offshore financial centres were also included in or other of these lists of tax havens. This suggests that there is considerable overlap between the concept of offshore financial centre and the concept of tax haven, even though the criteria for identifying them may be different.

### **3.4.5. ECOFIN Code of Conduct Group (Business Taxation)**

In 1999 the ECOFIN Code of Conduct Group (Business Taxation) identified 65 measures with harmful features in a number of Member States and dependent and associated territories.<sup>37</sup> These are summarised in Annex 1, Table 18.

---

<sup>32</sup> United States Government Accountability Office, "Large U.S. Corporations and Federal Contractors with Subsidiaries in Jurisdictions Listed as Tax Havens or Financial Privacy Jurisdictions", December 2008.

<sup>33</sup> Dhammika Dharmapala and James R. Hines, Jr., "Which Countries Become Tax Havens?" National Bureau of Economic Research, Cambridge, Mass., December 2006.

<sup>34</sup> International Monetary Fund, 2000, *Offshore Financial Centers IMF Background Paper* [online], <http://www.imf.org/external/np/mae/oshore/2000/eng/back.htm>

<sup>35</sup> Zoromé, A. IMF Working Paper "Concept of Offshore Financial Centers: In Search of an Operational Definition", April 2007. p. 14-17.

<sup>36</sup> The sample used in the 2007 study included some, but not all of the jurisdictions listed in the 2000 study.

<sup>37</sup> Report from the Code of Conduct Group (Business Taxation) to the ECOFIN Council on 29 November 1999 Code of Conduct (Business Taxation) SN 4901/99, 23 November 1999. See Annex C.

### **3.4.6. European Commission**

Feedback from DG TAXUD indicates that the Commission does not currently maintain a list of tax havens, secrecy jurisdictions, etc.,. However, COM(2008) 727 final does include a list of jurisdictions that were considered not to "...ensure appropriate and effective taxation of income..." of certain entities and arrangements. These are not, however, referred to as tax havens.

### **3.4.7. Bank for International Settlements**

The Bank for International Settlements lists 21 jurisdictions as offshore centres (see 3.2.4 for definition): Aruba; Bahamas; Bahrain; Barbados; Bermuda; Cayman Islands; Curacao; Gibraltar; Guernsey; Hong Kong Special Administrative Region (SAR); Isle of Man; Jersey; Lebanon; Macao SAR; Mauritius; Netherlands Antilles ; Panama; Samoa; Singapore; Sint Maarten; Vanuatu; West Indies UK.<sup>38</sup> Three are British Overseas Territories, three are British Crown Dependencies, seven are former British colonies or protectorates. West Indies UK includes three more British Overseas Territories (Anguilla, British Virgin Islands, and Montserrat), and two more former British colonies (Antigua and Barbuda, and St. Kitts and Nevis).

British Overseas Territories and British Crown Dependencies account for approximately 58% of total offshore centre liabilities. Former British colonies account for a further 34%. Thus jurisdictions with current or historical links to Britain account for 93% of all offshore centre liabilities recorded by the Bank for International Settlements. The Cayman Islands (a British Overseas Territory) alone accounts for 38%, with liabilities of US\$ 1.5 trillion, which equates to approximately US\$ 25 million per head of population. A summary and details are provided in Annex 1, Table 19 and Table 20 respectively.

### **3.4.8. Financial Action Task Force**

The Financial Action Task Force maintains a list of high-risk and non-cooperative jurisdictions regarding measures to combat money laundering and the funding of terrorism. While tax havens may facilitate money laundering and the financing of terrorism, the countries on the list of the Financial Action Task Force have not been the same as those appearing on lists of tax havens. However, following the revised definition of tax havens agreed by the European Parliament and the Danish EU Presidency on 28 June 2012, countries on this list are automatically classified as tax havens although they do not necessarily exhibit some other tax haven characteristics identified by the OECD and others. The Financial Action Task force currently lists 18 jurisdictions as high risk and uncooperative: Iran; North Korea; Bolivia; Cuba; Ecuador; Ethiopia; Indonesia; Kenya; Myanmar; Nigeria; Pakistan; São Tomé and Príncipe; Sri Lanka; Syria; Tanzania; Thailand; Turkey; Vietnam; and Yemen.

### **3.4.9. Tax Justice Network's Financial Secrecy Index**

The Tax Justice Network's Financial Secrecy Index (FSI) (2011) ranks jurisdictions using a measure, the FSI value, which takes into account both the secrecy of the jurisdiction and financial size and importance of the jurisdiction.

---

<sup>38</sup> Bank for International Settlements Monetary and Economic Department, 2013, *Preliminary International Banking Statistics, third quarter 2012 - External positions of reporting banks vis-à-vis all sectors* [online], [http://www.bis.org/publ/qtrpdf/r\\_qa1303\\_anx6a.pdf](http://www.bis.org/publ/qtrpdf/r_qa1303_anx6a.pdf) (Accessed 05 February 2013)

**Table 1: Top 10 secrecy jurisdictions according to the Financial Secrecy Index**

Rank	Jurisdiction	FSI Value	Secrecy Score	Global Scale Weight
1	Switzerland	1879.2	78	0.061
2	Cayman Islands	1646.7	77	0.046
3	Luxembourg	1621.2	68	0.131
4	Hong Kong	1370.7	73	0.042
5	USA	1160.1	58	0.208
6	Singapore	1118.0	71	0.031
7	Jersey	750.1	78	0.004
8	Japan	693.6	64	0.018
9	Germany	669.8	57	0.046
10	Bahrain	660.3	78	0.003

**Source:** Tax Justice Network Financial Secrecy Index 2011

**Table 2: Rankings of EU Member States in the Financial Secrecy Index**

RANK	Jurisdiction	FSI - Value	Secrecy Score	Global Scale Weight
3	Luxembourg	1621.2	68	0.131
9	Germany	669.8	57	0.046
13	United Kingdom	516.5	45	0.200
15	Belgium	467.2	59	0.012
17	Austria	453.5	66	0.004
20	Cyprus	406.5	58	0.010
31	Ireland	264.2	44	0.030
35	Italy	231.2	49	0.008
48	Denmark	121.7	40	0.008
53	Spain	98.8	34	0.016
54	Malta	98.6	48	0.001
56	Hungary	94.8	47	0.001
57	Latvia	88.9	45	0.001

Note: France has been removed from the Financial Secrecy Index pending a legal review

**Source:** Tax Justice Network Financial Secrecy Index 2011

Ethical Consumer uses a modified version of the FSI, which takes into account the population of each jurisdiction, in order to identify jurisdictions in which financial activity is disproportionate to the size of the population.<sup>39</sup>

<sup>39</sup> Ethical Consumer, , *Ethical Consumer Tax Haven List 2012* [online], <http://www.ethicalconsumer.org/ethicalcampaigns/taxjusticecampaign/taxhavenlist.aspx> (Accessed 12 February 2013)

### 3.4.10. Jurisdictions promoted by offshore company incorporation services

A website that offers company incorporation services lists 42 jurisdictions.<sup>40</sup> A summary is provided in Table 3. The full list is provided in Annex 1, Table 13. Of these, 10 are in the EU and five are in Europe but outside the EU. Eight are British Overseas Territories or Crown Dependencies. 14 are former British colonies, the majority of which have gained independence since the 1960s, and three are Commonwealth countries that gained independence from Britain approximately 100 years ago (Australia, Canada, and New Zealand).

**Table 3: Jurisdictions advertised as tax havens**

Advertised categories of tax haven ➔	Totals	Premiere Offshore	Popular Offshore	Caribbean Offshore	European Offshore	Central & South America Offshore	Australia, New Zealand & Oceania Offshore	USA & Canada
European connection								
EU	10	0	3	0	7	0	0	0
Other European	5	0	3	0	2	0	0	0
British Overseas Territory	6	4	1	1	0	0	0	0
British Crown Dependency	2	0	1	0	1	0	0	0
Former British colony	14	7	5	1	1	0	0	0
Commonwealth	3	0	0	0	0	0	2	1

**Source:** Worldwide Incorporation Services, , *Offshore Jurisdiction Comparison Chart* [online], [http://www.wis-international.com/offshore\\_jurisdictions.html](http://www.wis-international.com/offshore_jurisdictions.html) (Accessed 09 February 2013)

### 3.4.11. Conclusion

Many jurisdictions worldwide have engaged, and continue to engage, in practices that are harmful to other jurisdictions. These include EU Member States, and territories currently or historically associated with them, and other European jurisdictions. The identification, by different bodies, of jurisdictions as tax havens, etc., is dependent on the use of criteria that are based as much on political considerations as on technical considerations. As a result, there are significant differences between lists published by different bodies, and at different times. Thus many jurisdictions that are widely considered to be tax havens, are no longer considered to be so by the OECD. Similarly, while some EU Member States engage in practices that are generally considered harmful to other jurisdictions both inside and outside the EU, these are not generally referred to within the EU as tax havens.

<sup>40</sup> Worldwide Incorporation Services, , *Offshore Jurisdiction Comparison Chart* [online], [http://www.wis-international.com/offshore\\_jurisdictions.html](http://www.wis-international.com/offshore_jurisdictions.html) (Accessed 09 February 2013)

### **3.5. HARMFUL TAX AND NON-TAX PRACTICES OF TAX HAVENS AND OTHER JURISDICTIONS**

**What are the incentives and harmful tax and non-tax practices of tax havens, offshore financial centres, and secrecy jurisdictions, and other countries and jurisdictions inside and outside the EU of relevance to the EU budget? How do they affect the EU budget (e.g. cost and benefit implications for different EU policy areas, such as: business; economy, finance and tax; employment; regions and local development; external relations and foreign affairs).**

Tax havens, offshore financial centres, and secrecy jurisdictions (henceforth “tax havens”) are territories that offer favourable tax rates, lax regulatory policies<sup>41</sup>, and banking and business secrecy<sup>42,43</sup> to foreign investors. Corporate and personal tax rates can be zero, nominal or very low; while secrecy involves a lack of transparency in the implementation of a legal framework, along with lack of effective exchange of tax information with foreign tax authorities.

The OECD has stated that practices of tax havens might be highly harmful as they:

- Can erode national tax bases of other countries;
- May alter the structure of taxation by shifting part of the tax burden from mobile to relatively immobile economic sectors and from income to consumption;
- Can discourage compliance by taxpayers and increase the administrative costs of enforcement; and
- May hamper the application of progressive tax rates and the achievement of redistributive goals.

A list of 42 offshore jurisdictions explicitly advertised for foreign investment is detailed in Annex 1, Table 13 (a summary is provided in Table 3). It also details taxation rates and some business’ legal requirements.

#### **3.5.1. The EU budget**

In this paragraph we consider the possible effects of tax haven practices on the EU budget. The EU budget is financed by:<sup>44</sup>

- Customs duties on imports from outside the EU and sugar levies;
- A standard percentage is levied on the harmonised VAT base of each EU country;
- A standard percentage is levied on the gross national income (GNI) of each EU country.

The GNI-based contribution is the largest part of the revenue accounting for 74% of the total in 2011. Custom duties and VAT contributions were 14% and 12%, respectively (Table 4). Hence, the effects of tax havens on the GNI of Member States will have the largest impact on the EU budget.

---

<sup>41</sup> Hines, J.R., Jr. "Treasure Islands," *The Journal of Economic Perspectives*. 24 (No. 4), 103-126. 2010

<sup>42</sup> Shaxson, N. "Treasure Islands". New York: Palgrave Macmillan. 2011

<sup>43</sup> Schjelderup, G. "Secrecy jurisdictions". Norwegian School of Economics and Business Administration and CESifo mimeo, NHH, Bergen. 2011.

<sup>44</sup> European Commission, "Where does the money come from?", Website European Commission ([http://www.ec.europa.eu/budget/explained/budg\\_system/financing/fin\\_en.cfm](http://www.ec.europa.eu/budget/explained/budg_system/financing/fin_en.cfm)), Viewed in December 2012.

**Table 4: Revenue of the EU-27 by component 2011**

	Revenue (€ million)	% of total revenue
VAT-based own resources	14,798.9	12.3%
GNI-based own resources	88,414.3	73.7%
Custom duties	16,777.7	14.0%
Total own resources	119,994.7	100.0%

Source: <http://www.vatlive.com/vat-rates/international-vat-and-gst-rates>, [www.world.tax-rates.org](http://www.world.tax-rates.org) and [www.taxanalysts.com](http://www.taxanalysts.com)

In the following paragraphs we discuss how tax haven practices might impact these three financing sources of the EU budget.

### 3.5.2. Possible impacts on the GNI of Member States

GNI is defined by Eurostat<sup>45</sup> as “the sum of incomes of residents of an economy in a given period. It is equal to gross domestic product (GDP) *minus* primary income payable by resident units to non-resident units, *plus* primary income receivable from the rest of the world.”. Residents of an economy can be individuals or companies who have their main economic interest in that territory or economy<sup>46</sup>. According to this definition, tax havens could negatively impact the EU budget by reducing the GNI of any Member State. This could happen when tax havens are used to lower the domestic or foreign income of the residents of Member State.

It is not likely that tax haven practices have an impact on the domestic income of residents. If they transfer their domestic earnings to tax havens, these financial transactions are recorded and their income is included in the GNI calculation. Therefore, this type of transactions will not have an impact on the EU budget.

However, there might be situations in which residents’ foreign incomes cannot be fully measured due to the use of tax havens. Individuals might transfer foreign income to bank accounts in tax havens where secrecy is offered and, hence never disclosed, as a result, their full income might not be quantified. This can be labour income earned outside the resident’s country, or financial income on savings accounts and investments made outside the resident’s country.

It is also possible that individuals use companies in tax havens to divert their domestic income and avoid local income taxes. This is the case, for instance, of the Jersey-based K2 scheme<sup>47,48</sup> that has allowed wealthy British residents (including celebrities such as comedian Jimmy Carr) to pay low income tax on large income sums.

Companies can also shift a part of their global income to tax havens and keep this income out of sight through business transactions (of goods/services or use of property, including intangible property) made between related parties under transfer pricing practices. Transfer pricing occurs when a transaction among vertically integrated firms can be used to assign a cost to inputs which might not reflect the actual value of that input<sup>49</sup>. This is a common practice used by related companies, in which

<sup>45</sup> [http://epp.eurostat.ec.europa.eu/statistics\\_explained/index.php/Glossary:Gross\\_national\\_income\\_%28GNI%29](http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Glossary:Gross_national_income_%28GNI%29)

<sup>46</sup> [http://epp.eurostat.ec.europa.eu/statistics\\_explained/index.php/Glossary:Residence\\_-\\_NA](http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Glossary:Residence_-_NA).

<sup>47</sup> <http://www.telegraph.co.uk/finance/9341117/Comedian-Jimmy-Carr-has-3.3m-in-Jersey-tax-avoidance-scheme.html>

<sup>48</sup> <http://www.guardian.co.uk/business/2012/jun/19/tax-scheme-jimmy-carr-hmrc>

<sup>49</sup> Davis, P. and Garcés, E. “Quantitative techniques for competition and antitrust analysis”. Princeton University Press. 2009

they might artificially increase the costs of inputs or reduce the price of goods/services bought or sold among them. More than one-half of international transactions are intercompany transactions, and many transfer prices are, therefore, not determined by market forces<sup>50</sup>.

Transfer pricing transactions help companies to shift income out of high-tax countries to low-tax countries<sup>51</sup> (see examples in Germany<sup>52</sup> and the UK<sup>53</sup>). Normally a “shell” company and three countries are involved during this process: a country of origin, an intermediate country (the tax haven) and the country of destination. Shell companies are defined as companies which do not undertake actual trading, production or distribution activities, but are set up only to transfer payments between companies in two other jurisdictions. They are based in jurisdictions with attractive tax climates, although there might not be a domestic market for their products in such jurisdiction. In that case, the trading subsidiary is a trading shell company.

Figure 2 describes how income shifting and low corporate income tax payments are achieved by choosing favourable “transfer prices”. A company which is based in a jurisdiction with a high corporate tax rate buys goods at a relatively high price from a related trading shell company in a tax haven. This trading shell company has bought the same goods, at market prices, from the actual suppliers in other jurisdictions. This reduces the profits – and thus the corporate income taxes – of the buyer which is based in the jurisdiction with a high corporate income tax rate, while the profits (income) of the trading shell company increase, although these are hardly taxed. As the trading shell company is owned by the buyer, the consolidated income (after tax) of the buyer will increase.

Transfer pricing also works the other way round, where the trading shell company is owned by the supplier. The supplier then sells its goods below market prices to the trading shell company, thereby reducing his income and tax payments. The trading shell company will then sell the goods for normal market prices, resulting in an income which is hardly taxed in the tax haven. As the trading shell company is owned by the supplier, the consolidated income (after tax) of the supplier will increase.

---

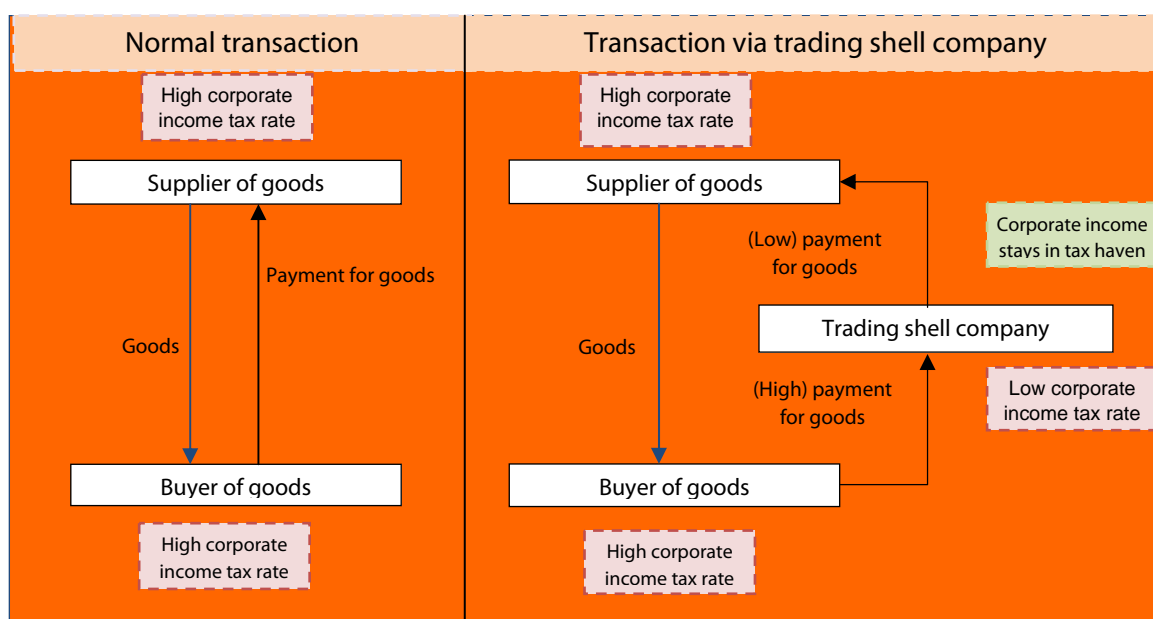
<sup>50</sup> Profundo. “Shell companies in jurisdictions with attractive tax climates used by Indonesian pulp & paper, logging and oil palm companies”. Mimeo

<sup>51</sup> Harris, D. and Morck, R. and Slemrod, J.B. “Income shifting in US multinational corporations”. *Studies in international taxation*, p. 277—308. University of Chicago Press. 1993.

<sup>52</sup> Overesch, M. “Transfer pricing of intrafirm sales as a profit shifting channel-Evidence from German firm data”. *ZEW-Centre for European Economic Research*. Discussion Paper number 06-084. 2006.

<sup>53</sup> Oyelere, P.B. and Emmanuel, C.R. “International transfer pricing and income shifting: evidence from the UK”. *European Accounting Review*, v7:4 p.623-635. 1998.

**Figure 2: The role of trading shell companies**



Source: Author

Most advantageous is the situation in which both supplier and buyer belong to the same corporate group. By channelling its inter-company supplies through a trading shell company in a tax haven, the corporate group can shift a substantial part of its total income to the tax haven, where this income is hardly taxed.

It should be noted that in most cases, the goods are not physically shipped through the jurisdiction in which the shell company is based, as this would be very impractical. The physical shipment takes places directly from the supplier to the customer, while the payment is diverted via the shell company.

Limited transparency in the jurisdiction where the trading shell company is located is an advantage as this the actual difference between the prices paid and received by the trading shell company to be hidden. In this way, the profit realised by the trading shell company, for which the parent company does not have to pay a normal corporate income tax, also remains out of public sight. In summary, the ultimate objective of transfer pricing is reducing the direct taxation of companies by shifting some of their domestic income to foreign (low-tax) countries.

The effects of the use of tax havens on direct income taxes of countries around the world seem to be very large. A recent study<sup>54</sup> calculates that the amount of financial wealth from 139 countries (mostly developing), that is invested in 80 secrecy jurisdictions, is between 21 and 32 trillion US dollars (USD). Assuming a return rate of 3% on these investments, and a tax rate of 30%, the estimated amount of tax that is lost on these investments is around USD 189 billion. Another study, based on Europe<sup>55</sup>,

<sup>54</sup> Henry, J.S. "The Price of Offshore Revisited". Tax Justice Network. July, 2012. Available at: [http://www.tjn-usa.org/storage/documents/The\\_Price\\_of\\_Offshore\\_Revisited\\_-\\_22-07-2012.pdf](http://www.tjn-usa.org/storage/documents/The_Price_of_Offshore_Revisited_-_22-07-2012.pdf)

<sup>55</sup> Murphy, R. "Closing the European Tax Gap. A report for Group of the Progressive Alliance of Socialists & Democrats in the European Parliament". Tax Research LLP. UK. 2012. Available at: [http://www.socialistsanddemocrats.eu/gpes/media3/documents/3842\\_EN\\_richard\\_murphy\\_eu\\_tax\\_gap\\_en\\_120229.pdf](http://www.socialistsanddemocrats.eu/gpes/media3/documents/3842_EN_richard_murphy_eu_tax_gap_en_120229.pdf)

estimates that the annual amount of tax lost due to tax avoidance activities involving tax havens is €150 billion.

On the one hand, these effects seem to be relevant for direct taxation only. Since the EU revenues do not depend on the direct taxes of the Member State, the use of tax havens in this context is important for the Member State themselves, but not for the EU budget.

On the other hand, there will be an indirect effect on the EU revenues due to the difference between corporate and national income accounting practices. In corporate accounting, the income generated by the foreign subsidiaries of a holding company is included (consolidated) in its total income. Transfer pricing practices which increase the income of foreign subsidiaries and decrease the income of the parent company will therefore have a neutral effect on the company's consolidated income. The only effect for the company will be a lower average taxation rate.

But in national accounting, income is calculated differently. As the "residency concept" in the context of national accounts<sup>56</sup> is based on the territory where the company has "predominant economic interest", the income of foreign subsidiaries (including foreign shell companies) is not counted as part of the income of the "resident" parent company. That makes sense, as the income of foreign subsidiaries is counted as part of the GNI of the countries where these subsidiaries are located.

Therefore, the income of foreign subsidiaries (including foreign shell companies) is not included in the GNI calculation of the country where the parent company is located. Transfer pricing practices which increase the income of foreign subsidiaries (in tax havens) and decrease the income of the parent company thus will negatively affect the GNI of the Member State. In turn this will decrease the GNI-based contribution of most Member States to the EU revenues.

This also applies to companies in tax havens that help individuals to divert their income (as explained above). All income transactions made by these companies will not be included in the GNI of Member State if their location is outside the EU.

### **3.5.3. Possible impacts on custom duties and sugar levies**

A customs duty and sugar levies are tariffs, or indirect taxes, that are levied on the importation (usually) or exportation (rarely) of goods (including sugar, isoglucose and inulin syrup). The only way in which tax havens might affect the revenue from these duties is through transfer pricing transactions on the import of goods or services into the EU. Duties are calculated as a percentage of the value of the imported goods (consisting of the product value and the freight & insurance costs). When companies artificially increase the costs of imported inputs to reduce profit margins (as explained above in section 3.5.2), the duty paid for those inputs is higher. Therefore, whenever companies use tax planning and transfer pricing to reduce corporate tax payments, the revenue from import duties will increase and this will positively impact the EU revenues.

---

<sup>56</sup> The residence of each institutional unit is, in the context of national accounts, the economic territory with which it has the strongest connection, in other words, its centre of predominant economic interest.

[http://epp.eurostat.ec.europa.eu/statistics\\_explained/index.php/Glossary:Residence\\_-\\_NA](http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Glossary:Residence_-_NA).

#### 3.5.4. Possible impacts on the VAT base

VAT is an indirect tax collected on the pure value added generated at each stage of production-distribution chains. In many countries the total VAT revenue (actually paid) normally is lower than the amount of tax that fiscal authorities estimate to be paid (based on GDP data). This difference is called the *VAT gap*. Recent studies have attempted to estimate the VAT gap for the EU<sup>57,58</sup> or some of its Member States (UK<sup>59,60</sup>, Sweden<sup>61</sup> and Italy<sup>62</sup>). However, most of them fail to explain the mechanisms through which VAT is lost and most importantly, its relationship to tax havens practices. In addition, it is difficult to assess the accuracy of the estimations due to the lack of relevant data. A case study on VAT fraud is provided in section 5.5.

Countries with low VAT rates might directly affect the VAT base of EU Member States if consumers face low travel/moving costs and low import duties. They can then commute to buy consumer goods in the low-rate country, which reduces the VAT income of their resident country. This might be particularly important for border areas of high-tax countries with low-VAT countries. In Europe, for example, Switzerland's VAT standard rate is low (8%) compared to VAT rates of Member State of the EU (Annex 1, Table 14). This might principally affect the VAT which is levied in border areas of neighbour countries France, Germany and Italy. However, it is also important to remember that customs authorities limit such practices by setting a cap on the amount of goods brought duty-free from abroad. These types of measures will limit the effect of low-VAT countries on VAT revenues in neighbouring countries.

In addition, VAT is also levied at the moment that goods are imported,<sup>63</sup> and, under some circumstances<sup>64</sup> on exports. Therefore, transfer pricing practices (as explained in section 3.5.2) also might have an impact on the VAT revenue of the Member State in two cases:

- EU companies which import raw materials, components or semi-manufactured goods from abroad, using a transfer pricing route via a tax haven. These companies will try to raise the price of their imports as far as possible, to reduce their profits in the EU itself and increase their earnings in the tax haven.

---

<sup>57</sup> Reckon, LLP. "Study to quantify and analyse the VAT gap in the EU-25 member states". Report for DG Taxation and Customs Union, September 2009. Available at: <http://www.reckon.co.uk/item/cb5873cb>.

<sup>58</sup> Murphy, R. "Closing the European Tax Gap. A report for Group of the Progressive Alliance of Socialists & Democrats in the European Parliament". Tax Research LLP. UK. 2012. Available at:

[http://www.socialistsanddemocrats.eu/gpes/media3/documents/3842\\_EN\\_richard\\_murphy\\_eu\\_tax\\_gap\\_en\\_120229.pdf](http://www.socialistsanddemocrats.eu/gpes/media3/documents/3842_EN_richard_murphy_eu_tax_gap_en_120229.pdf)

<sup>59</sup> Murphy, R. "The Missing Billions: The UK Tax Gap", London: Trade Union Congress. Available at:

<http://www.tuc.org.uk/touchstone/Missingbillions/1missingbillions.pdf>.

<sup>60</sup> Deloitte Touche Tohmatsu Limited. "Understanding Corporate Usage of British Crown Dependencies and Overseas Territories". Available at: [http://webarchive.nationalarchives.gov.uk/+/http://www.hm-treasury.gov.uk/d/foot\\_review\\_deloitte.pdf](http://webarchive.nationalarchives.gov.uk/+/http://www.hm-treasury.gov.uk/d/foot_review_deloitte.pdf)

<sup>61</sup> Swedish National Tax Agency. "Tax Gap Map for Sweden". Report no. 2008:1B. 2008. Available at:

[http://www.skatteverket.se/download/18.225c96e811ae46c823f800014872/Report\\_2008\\_1B.pdf](http://www.skatteverket.se/download/18.225c96e811ae46c823f800014872/Report_2008_1B.pdf)

<sup>62</sup> R. Convevole and S. Pisani "Le basi imponibili IVA Un'analisi del periodo 1982-2001", Working paper 2003/1 of Agenzia Entrate, Ministero dell'Economia e della Finanze, Italy. 2003. Available at:

<http://www1.agenziaentrate.gov.it/ufficiostudi/pdf/2003/basi%20imponibili%20IVA%2082-01.pdf>.

<sup>63</sup> European Commission. [http://ec.europa.eu/taxation\\_customs/taxation/vat/how\\_vat\\_works/index\\_en.htm](http://ec.europa.eu/taxation_customs/taxation/vat/how_vat_works/index_en.htm)

<sup>64</sup> EU companies do not pay VAT on exports outside the EU. If the "export" is within the EU it is considered an "intra-Community supply". Companies pay VAT only if the recipient is not a VAT-registered company. They do not pay VAT if the recipient company is genuinely registered for VAT in the destination EU. <http://www.hmrc.gov.uk/vat/managing/international/exports/goods.htm>  
[http://ec.europa.eu/taxation\\_customs/taxation/vat/how\\_vat\\_works/index\\_en.htm](http://ec.europa.eu/taxation_customs/taxation/vat/how_vat_works/index_en.htm)

- As VAT is an indirect tax, the initial effect is similar to custom duties (see section 3.5.3): the VAT paid on imports will be higher than in a free market situation. However, these VAT payments are transferred to customers on the final sale of imported goods and services. Customers will pay the VAT that corresponds to the full value added of goods. The full value added of goods is determined by market forces and will not be different from a free market situation without transfer pricing. Transfer pricing practices just change the distribution of this total value added between the different companies in the international production chain. In this case, transfer pricing practices will, therefore, not have a substantial impact on VAT revenues of the Member State and on the EU revenue.

EU companies which export raw materials, components or semi-manufactured goods abroad, using a transfer pricing route via a tax haven will try to reduce the price of their exports as far as possible, to reduce their profits in the EU itself and increase their earnings in the tax haven. EU companies do not pay VAT on exports outside the EU. VAT is paid only if the "export" (or intra-Community supply) is within the EU and the recipient is not a VAT-registered company. Under these circumstances, the tax benefits are not high enough to encourage transfer pricing as VAT rates are very similar for all EU Member States (Table 14). Therefore, VAT revenue would not be affected in this case.

### 3.5.5. Recent developments to tackle transfer pricing

As noted in section 5.1.3, there is limited country by country reporting amongst the largest multinationals operating in Spain, Portugal, Greece, and Italy, for example. Section 5.2 discusses the incentives offered by the Netherlands which enable companies to engage in transfer pricing.

In October 2011, the EC published proposals for adapting the Transparency Guideline and the Reporting Guideline.<sup>65</sup> The proposals include an obligation for companies operating in the oil, gas and mining industries, and in the primary forestry industry, to publicly report on their payments to governments, broken down per country. The obligation would apply to listed companies, and to larger non-listed companies. The proposals have not yet been accepted.

The European Parliament and the tax services of Canada, France, the UK, and South Africa have all recently spoken in favour of requiring all multinationals to report on tax payments per country.<sup>66</sup> They indicate this should not be restricted to specific sectors, but should apply to all companies operating in more than one country.

The OECD states:<sup>67</sup>

*Many of the existing rules which protect multinational corporations from paying double taxation too often allow them to pay no taxes at all. These rules do not properly reflect today's economic integration across borders, the value of intellectual property or new communications*

---

<sup>65</sup> European Commission, 2011, *Proposal for a Directive of The European Parliament and of The Council amending Directive 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and Commission Directive 2007/14/EC* [online], [http://ec.europa.eu/internal\\_market/securities/docs/transparency/modifying-proposal/20111025-provisional-proposal\\_en.pdf](http://ec.europa.eu/internal_market/securities/docs/transparency/modifying-proposal/20111025-provisional-proposal_en.pdf)

<sup>66</sup> Goodall A., 2012, *Country by country reporting is essential for detection of tax avoidance, say MEPs* [online], <http://www.taxjournal.com/tj/articles/country-country-reporting-essential-detection-tax-avoidance-say-meps-45771> (Accessed 14 February 2013). Shaheen S., 2012, *Tax authorities back country-by-country reporting to prevent transfer pricing abuse* [online], <http://www.tpweek.com/Article/3095364/Tax-authorities-back-country-by-country-reporting-to-prevent-transfer-pricing-abuse.html> (Accessed 14 February 2013)

<sup>67</sup> OECD, 2013, *OECD urges stronger international co-operation on corporate tax* [online], <http://www.oecd.org/newsroom/oecd-urges-stronger-international-co-operation-on-corporate-tax.htm> (Accessed 14 February 2013)

*technologies. These gaps, which enable multinationals to eliminate or reduce their taxation on income, give them an unfair competitive advantage over smaller businesses. They hurt investment, growth and employment and can leave average citizens footing a larger chunk of the tax bill.*

*The practices multinational enterprises use to reduce their tax liabilities have become more aggressive over the past decade. Some, based in high-tax regimes, create numerous off-shore subsidiaries or shell-companies, each time taking advantage of the tax breaks allowed in that jurisdiction. They also claim expenses and losses in high-tax countries and declare profits in jurisdictions with a low or no tax rate.*

The OECD has announced its intention to draw up an Action Plan, developed in co-operation with governments and the business community, which will further quantify the corporate taxes lost and provide concrete timelines and methodologies for solutions to reinforce the integrity of the global tax system.

### **3.5.6. Conclusion**

Because of the widespread use of tax havens for income shifting and transfer pricing, it seems likely that tax haven practices have a significant impact on EU revenues. Transfer pricing practices will have a negative impact on the EU revenues by reducing the GNI of Member States (see section 3.5.2). However, transfer pricing will also have a positive impact on the revenues of the EU, by increasing customs duties (see section 3.5.3). The effect on the VAT income of Member States (see section 3.5.4) will be neutral. Whether the negative impacts of transfer pricing outweigh the positive impacts is not certain, but it does seem likely. Loss of tax revenues by Member States' due to transfer pricing and tax evasion is likely reduce the willingness of Member States to increase the percentage of their GNI that they are willing to contribute to the EU, or conversely to encourage Member States to seek reductions in their contributions.

## **3.6. IMPACT OF TAX HAVENS ON EU FINANCIAL INTERESTS**

**How, and to what extent are EU financial interests affected by the use of tax havens, offshore financial centres, and secrecy jurisdictions for tax evasion, financial crime, and money laundering?**

The concept of "EU financial interests" is grounded in the "Convention on the Protection of the European Communities' financial interests" of July 1995. Based on this Convention, the European Union aims to combat fraud affecting its expenditure and revenue by taking appropriate criminal-law measures, such as criminalisation of fraud, criminal penalties, criminal liability of heads of businesses and rules on jurisdiction.

Tax havens can play a role in enabling fraud affecting both the expenditure and revenue of the European Union. The impact of tax havens on EU revenues is discussed in section 3.5. In this section we look at the impact of tax havens on EU expenditures. Table 5 provides a breakdown of the EU expenditures by activity.

**Table 5: EU Expenditure by component 2007 – 2011 (€ million)**

Component		2007	2008	2009	2010	2011
1	Sustainable Growth	43,477.6	45,158.9	43,978.8	48,016.9	53,805.1
1.1	Competitiveness for Growth and Employment	6,503.0	9,604.2	10,046.2	10,838.2	11,426.8
1.2	Cohesion For Growth And Employment	36,974.5	35,554.7	33,932.6	37,178.7	42,378.2
2	Preservation And Management Of Natural Resources	54,490.8	54,645.7	55,728.7	56,504.0	57,213.3
3	Citizenship, Freedom, Security And Justice	1,035.7	1,295.6	1,976.3	1,356.8	1,805.0
3.1	Freedom, Security And Justice	212.0	389.4	683.8	683.0	866.2
3.2	Citizenship	823.7	906.2	1,292.5	673.8	938.8
4	The EU as a Global Partner	2,734.3	2,532.2	2,689.5	2,145.4	1,927.3
5	Administration	6,629.7	7,101.6	7,421.4	7,685.6	8,205.9
6	Compensations	444.6	206.6	209.1	0.0	0.0
Total Expenditure		108,812.7	110,940.6	112,003.8	115,708.7	122,956.6

Source: [http://ec.europa.eu/budget/figures/interactive/index\\_en.cfm](http://ec.europa.eu/budget/figures/interactive/index_en.cfm)

### 3.6.1. Potential impacts on EU expenditures

The use of tax havens might have a number of effects on EU expenditures. The first potential impact originates from the final effect of tax havens on EU revenues. If EU revenues are lower due to the use of tax havens, the available resources for EU expenditures are also smaller.

Another possible effect is the misuse of certain EU expenditures by channelling them through tax havens. These special territories offer, along with secrecy, other non-tax benefits (passports, car and ship registration, banking licenses, internet domains and phone numbers) which reduce crime costs and promote international unlawful activities, such as terrorism and money laundering.<sup>68,69</sup> It is conceivable that certain EU expenditures are channelled via tax havens and misused for criminal activities. However, if this happens in practice is highly dependent on the control mechanisms which the EU has in place to control its expenditures. Projects or companies to which EU funds are disbursed should not be given the opportunity to transfer these funds to tax havens.

A further possible effect of the use of tax havens by companies and individuals based in Europe, or having relationships with Europe, is a change in the composition of the EU expenditure. As tax havens

<sup>68</sup> Schjelderup, G. "Secrecy jurisdictions". Norwegian School of Economics and Business Administration and CESifo mimeo, NHH, Bergen. 2011.

<sup>69</sup> Hampton, M.P. and Christensen, J. "Offshore pariahs? Small island economies, tax havens, and the re-configuration of global finance". World Development, vol. 30:9 p. 1657–1673. 2002.

facilitate crime, money laundering and the financing of terrorism, their existence increases the costs of crime fight and prevention for all countries including the EU Member State. They also increase administrative costs of tax compliance, and thus promote tax-related corruption and more pressure on legal and prosecution systems.

Companies engaging in transfer pricing gain a significant advantage over smaller companies by reducing their tax liabilities (see section 3.3 and 3.5.5). This directly undermines EU efforts to promote the development of the small and medium enterprise sectors, and investment and job creation by these sectors is therefore constrained.

### 3.6.2. Conclusions

The EU expenditure mainly supports sustainable growth and environmental preservation projects and activities (Table 5). If part of the higher costs of law enforcement and crime fighting are paid directly or indirectly with the EU resources, then the expenditure on other more productive areas (such as promotion of growth and innovation) might be threatened. Moreover, EU efforts to promote the small and medium enterprise sectors are directly undermined by the advantages that large corporations gain from utilising transfer pricing.

## 3.7. IMPACT OF TAX HAVENS ON THE PROPOSED FINANCIAL TRANSACTION TAX

**How and to what extent are tax havens, offshore financial centres, and secrecy jurisdictions likely to affect the effectiveness of the proposed Financial Transaction Tax (FTT).**

On 28 September 2011, the Commission presented a proposal for the introduction of a financial transaction tax from 01 January 2014.<sup>70,71</sup> The tax would be levied on “...on all transactions on financial instruments between financial institutions when at least one party to the transaction is located in the EU.” The Commission proposes taxing the exchange of shares and bonds at 0.1%, and derivatives at 0.01% and it estimates that this would raise €57 billion per year. The proposed tax is justified by the fact that some parts of the financial sector are involved in risky operations that are considered to have contributed to the current financial crisis, and that tax payers have subsequently had to support the financial sector during the current crisis. Moreover, some Member States national tax instruments along these lines and it is important to maintain coherence between Member States in order to avoid distortion of the financial markets. In January 2013, it was announced that the tax would be applied by 11 Member States.<sup>72</sup>

A dominant political drive behind the FTT is the expected increase in tax revenues. However, the FTT also needs to tackle key factors that have contributed to the financial crisis. The current proposal risks that “transactions subject to a tax will relocate to non-cooperating countries.”<sup>73</sup>

<sup>70</sup> European Commission Press Release, “Financial Transaction Tax: Making the financial sector pay its fair share”, <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/11/1085&format=HTML&aged=0&language=en&guiLanguage=en> (Accessed 20 August 2012).

<sup>71</sup> European Commission Proposal for a Council Directive on a common system of financial transaction tax and amending Directive 2008/7/EC COM(2011) 594 final, 28 September 2011.

<sup>72</sup> KPMG, 2013, *ECOFIN gives green light to FTT enhanced cooperation initiative* [online], <http://www.kpmg.com/lu/en/issuesandinsights/articlespublications/pages/luxembourgtaxnews-issue2013-01.aspx> (Accessed 10 February 2013)

<sup>73</sup> Arbak E., 2011, *Will the financial transaction tax (FTT) enhance stability?* [online], [http://aei.pitt.edu/32553/1/Commentary\\_Oct\\_Emrah\\_Arbak\\_on\\_FTT-3.pdf](http://aei.pitt.edu/32553/1/Commentary_Oct_Emrah_Arbak_on_FTT-3.pdf) (Accessed 10 February 2013)

Whether or not the Commission's target will be achieved depends on the Commission's approach to avoidance and relocation. On top of this, other tax policy alternatives could also play a key role. Examples are the Financial Activity Tax and the Financial Stability Contribution. The first refers to taxing supra-normal profits and remuneration and the latter to taxing un-insured liabilities. For now, these measures have been left to the EU Member States.

According to Arbak (2011) there are three lessons learned from the current financial crisis.<sup>74</sup> First, the financial crisis has shown that 'too-big-to-fail' institutions jeopardize the financial stability of EU Member States and the Eurozone as a whole. These institutions are indirectly protected through guarantees of a bail-out. As a result they are incentivized to take risks, a moral hazard. The moral hazard rests upon the fact that public authorities have the fiscal space and motive to bail the weak financial institutions out. On top of this there are "*no credible resolution mechanisms to prevent messy bankruptcy procedures*".<sup>75</sup>

Second, tougher regulations do not automatically enhance stability when financial institutions have as an option to avoid taxes and relocate capital. Having the risks of global financial institutions moved to offshore jurisdictions, which are less regulated, has in the past not prevented the emergence and spread of financial crises. In other words, a tax instrument such as the FTT should be accompanied by measures to avoid tax evasion.

Third, the over-leveraging of financial institutions through short-term debt has introduced systemic externalities, counterparty and propagation risks. The crisis has shown us that speculation has become a problem, especially when borrowed money was used. The main reasons given for financial institution to engage in investing with borrowed money has been weak monetary policies, limited growth potential through traditional forms of funding, and incentives to use short-term debt to cover asset valuations. In other words, a tax instrument should address the problem of incentives to take on more leverage through short-term debts.

The FTT could address some of these issues if it is globally coordinated. However, if this is not the case it is likely to increase tax avoidance and relocations. The FTT is likely to be undermined by scepticism within the UK and other G-20 countries, including the US. Possible relocation as a result of the FTT will also add to the enforcement and monitoring work of national watchdogs. On top of this, the FTT does not address the problem of debts being tax-deductible which incentivizes financial institutions to over-leverage through borrowed money instead of equity.

Looking at the other optional mechanisms mentioned above, the Financial Activity Tax could correct incentives for risk-taking through the limitation of excessive earnings. It could in fact close the gap left by VAT, which does not apply to financial services. The Financial Stability Contribution could address the tax avoidance of financial institutions given that it could cover any activity arising from the use of offshore entities to the offloading of taxable debt.

### **3.7.1. Conclusion**

There is a risk that financial institutions will seek to minimise exposure to the FTT by undertaking more transactions in offshore locations.

---

<sup>74</sup> Ibid.

<sup>75</sup> Ibid.

#### **4. STUDY AREA 2 - POLICY AND COUNTERMEASURES OF THE EU, G-20, OECD, AND OTHER INTERNATIONAL BODIES.**

##### **KEY FINDINGS**

- The original Savings Tax Directive failed to deliver the expected tax revenues to EU Member States because many individuals transferred assets to intermediate bodies that were not covered by the Directive. Also, there were significant geographic loopholes in the Directive. The proposed amendments should eliminate the 'legal person' loophole, but they do not address interest-bearing accounts held by natural persons in jurisdictions not covered by the existing Directive.
- Effective implementation of the single recommendation addressing tax havens in the Commission's December 2012 Action Plan to strengthen the fight against tax fraud and tax evasion is likely to be problematic.
- Implementation of the Commission's recommendation on a GAAR will be challenging as it will involve delineating the often highly complex structures of multinational corporations.
- In order for the proposed CCCTB system to apply to a corporation, it must first opt in to the system. Corporations that choose not to opt in may continue to reduce their tax liabilities in any EU Member State by using offshore shell companies.
- The main international organisations dealing with the issue of tax havens are the OECD, and the OECD Global Forum. The Financial Action Task Force is also important, although it was established to address money laundering, rather than tax havens. Despite strong rhetoric on tax havens from the G-20 in 2009, there has been little concrete action, and there have been fewer references to tax havens in subsequent years have diminished. The OECD's December 2012 progress report identifies only two tax havens. Much reliance is placed on the work of the Global Forum but this is not a policing body, and it does not provide assurance of continuing compliance.
- The increasingly aggressive use of transfer pricing by multinationals (as reported by the OECD), suggest that international efforts to tackle tax havens have not been effective. This may explain is increasing emphasis on eliminating the practices that utilise tax havens (e.g. transfer pricing) rather than on eliminating tax havens.
- The increasing utilisation of tax havens by major emergent economies significantly undermines the ability of the EU to exert influence over these jurisdictions.
- Coherence of the EU's approach to dealing with tax havens is constrained by the fact that MS can, and do, deal individually with other jurisdictions. Similarly, some non-EU jurisdictions prefer to deal individually with EU Member States.

In this section, we review policies, legal instruments, and counter-measures of the EU and other key actors, such the G-20 and the OECD, regarding tax havens, offshore financial centres, secrecy jurisdictions, and uncooperative jurisdictions. We examine how EU initiatives interact with other international initiatives, and how effective they have been. Finally, we review the extent to which the EU has comprehensive, coherent, strategic approach in this area.

#### 4.1. EU LEGAL INSTRUMENTS TO TACKLE THE USE OF TAX HAVENS

**What are the existing (*de lege lata*) and proposed/ envisaged (*de lege ferenda*) EU legal instruments of relevance to tackling the use of tax havens, offshore financial centres, and secrecy jurisdictions for tax evasion and other offences and crimes?**

The existing legislation with relevance to EU efforts to deal with the illegal use of tax haven services:

- Council Directive 2003/48/EC of 3 June 2003 taxation of savings income in the form of interest payments (OJ L series 157).

Legislation currently proposed to address weaknesses:

- Proposal for a Council Directive amending Directive 2003/48/EC on taxation of savings income in the form of interest payments, COM(2008) 727 final;
- Proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB), COM(2011) 121 final;
- Action Plan to strengthen the fight against tax fraud and tax evasion, COM(2012) 722 final;
- Recommendation regarding measures intended to encourage third countries to apply minimum standards of good governance in tax matters, C(2012) 8805 final;
- Recommendation on aggressive tax planning, C(2012) 8806 final.

#### 4.2. EU POLICIES AND COUNTERMEASURES REGARDING TAX HAVENS

**What are the current, past, and proposed/ envisaged policies and countermeasures of the EU with regard to tax havens, offshore financial centres, and secrecy jurisdictions?**

In June 2012, the Commission issued a communication addressing the issue of tax fraud and evasion, including matters relating to third countries.<sup>76</sup> Among other things, it identified the need for better cooperation and exchange of information between tax authorities, including the possibility of a European Tax Identification Number. The Commission noted that it will develop a strategy for tackling aggressive tax planning. It highlights the need for better cooperation between tax administrations and other authorities, in particular anti-money laundering, social security and judicial authorities, both at national and international level. It notes the desirability of the adoption and application of equivalent standards by EU partner countries regarding the taxation of savings, and in this context it notes the need to negotiate amendments to the existing EU savings agreements with Switzerland, Andorra, Monaco, Liechtenstein and San Marino.

On 31 July 2012, the European Economic and Social Committee issued an “*Opinion of the European Economic and Social Committee on ‘Tax and financial havens: a threat to the EU’s internal market’ (own-initiative opinion)*”.<sup>77</sup> This concluded, among other things, that:

---

<sup>76</sup> European Commission, Communication from The Commission to The European Parliament and The Council on concrete ways to reinforce the fight against tax fraud and tax evasion including in relation to third countries COM(2012) 351 final, 27 June 2012.

<sup>77</sup> European Economic and Social Committee, “Opinion of the European Economic and Social Committee on ‘Tax and financial havens: a threat to the EU’s internal market’ (own-initiative opinion)”, 31 July 2012.

- The EU must urgently step up its action within the G-20, the OECD and the Financial Action Task Force to eradicate opaque tax jurisdictions as quickly as possible and to oblige Member States to combat the crime originating in many of these jurisdictions;
- The EU should be prepared to apply stricter rules than those provided by the OECD and the G-20 in order to recover capital moved abroad through illegal activities;
- All of the EU's institutions should adopt measures to clamp down on holding companies that establish 'bogus' companies in tax havens in order to avoid paying taxes in the countries where their real activities take place;
- The Commission should include "...tax- related crime arising from the exploitation of tax havens within the scope..." of the proposed directive on the freezing and confiscation of proceeds of crime in the European Union.<sup>78</sup>
- The introduction of criminal offences should not be ruled out with regard to destabilising opacity, tax evasion and corruption involving tax havens.
- "All obstacles to the automatic exchange of bank information must be removed so that the authors of transactions and owners of bank accounts can be easily identified. Multinational companies must be required to draw up statements of account, broken down by country, stating the scale of their activities, the number of employees and the profits made in each country."
- Progress in regulation in this area requires international cooperation, in particular involving the United States. However, any delays or difficulties in establishing an international plan of action should not delay or slow down action by the European Union.
- There is a need for a coordinated strategy to strengthen the fight against tax evasion "...and particularly against abusive practices, and to restrict the right to free establishment in the case of completely bogus businesses set up exclusively for tax purposes."

On 6 December 2012, the Tax Commissioner Algirdas Šemeta, presented to the public a Communication containing the EC's 'Action Plan to strengthen the fight against tax fraud and tax evasion' accompanied by two Recommendations.<sup>79</sup> The first Recommendation proposes measures to be initiated by the Member States in order to encourage third countries to introduce measures of good governance in tax matters similar to the EU.<sup>80</sup> The second recommendation more directly addresses the problem of aggressive tax planning, in particular for those instances where the taxpayer engages in tax arbitrage between the tax regimes of two or more jurisdictions.<sup>81</sup> This Communication represents the latest measures proposed to deal with issues of tax competition and cooperation in a pattern that stretches back to the early days of the European Economic

---

<sup>78</sup> European Commission, Proposal for a Directive of The European Parliament and of The Council on the freezing and confiscation of proceeds of crime in the European Union COM(2012) 85 final, 13 March 2012.

<sup>79</sup> European Commission, *An Action Plan to strengthen the fight against tax fraud and tax evasion*, COM(2012) 722 final, [http://ec.europa.eu/taxation\\_customs/resources/documents/taxation/tax\\_fraud\\_evasion/com\\_2012\\_722\\_en.pdf](http://ec.europa.eu/taxation_customs/resources/documents/taxation/tax_fraud_evasion/com_2012_722_en.pdf). The Commission's web page for all communications and reports on taxation is [http://ec.europa.eu/taxation\\_customs/common/publications/com\\_reports/taxation/index\\_en.htm](http://ec.europa.eu/taxation_customs/common/publications/com_reports/taxation/index_en.htm), and the webpage dedicated to the 'Fight against tax fraud and tax evasion' is [http://ec.europa.eu/taxation\\_customs/taxation/tax\\_fraud\\_evasion/index\\_en.htm](http://ec.europa.eu/taxation_customs/taxation/tax_fraud_evasion/index_en.htm). A webpage containing a set of questions and answers for the Commission's work on tax evasion and avoidance is [http://europa.eu/rapid/press-release\\_MEMO-12-949\\_en.htm](http://europa.eu/rapid/press-release_MEMO-12-949_en.htm).

<sup>80</sup> European Commission, *Recommendation regarding measures intended to encourage third countries to apply minimum standards of good governance in tax matters*, C(2012) 8805 final, [http://ec.europa.eu/taxation\\_customs/resources/documents/taxation/tax\\_fraud\\_evasion/c\\_2012\\_8805\\_en.pdf](http://ec.europa.eu/taxation_customs/resources/documents/taxation/tax_fraud_evasion/c_2012_8805_en.pdf).

<sup>81</sup> European Commission, *Recommendation on aggressive tax planning*, C(2012) 8806 final, [http://ec.europa.eu/taxation\\_customs/resources/documents/taxation/tax\\_fraud\\_evasion/c\\_2012\\_8806\\_en.pdf](http://ec.europa.eu/taxation_customs/resources/documents/taxation/tax_fraud_evasion/c_2012_8806_en.pdf).

Community.<sup>82</sup> After outlining the features for these measures the discussion will review Council Directive 2003/48/EC on the taxation of savings income in the form of interest payments and the 2008 Proposal made to amend the Directive.<sup>83</sup> The latter proposal is intended to address the loopholes present in the original Directive on savings income taxation and they will be identified in the following discussion. In particular, many of the world's tax havens operate outside the ambit of the Directive. This section closes with a brief introduction for the proposal to establish a Common Consolidated Corporate Income Tax (CCCTB) programme for the EU.<sup>84</sup>

#### **4.2.1. Action Plan against tax fraud and tax evasion**

When presenting the new Action Plan Commissioner Šemeta stated that it identified thirty new measures (out of a total of 34 measures listed) intended to close existing loopholes and to increase tax information exchange.<sup>85</sup> Included in the list of measures are several encouraging the adoption by the Member States of proposals previously advanced by the Commission, including the proposal to revise the Savings Tax Directive. Other measures address necessary steps for the cooperation on tax matters among the Member States, such as the introduction and use of standard formats for taxpayer information exchange requests, developing software supporting the automatic exchange of taxpayer information, and the creation of an EU-level unique taxpayer identification number to facilitate the identification of taxpayers with cross-border tax obligations.<sup>86</sup> Collectively, many of the identified measures are grouped by anticipated timeframe for completion, thus seven are listed as near term action (for accomplishment in 2013), eleven are listed as medium term actions (by 2014), while three are identified as long term to be accomplished at some time after 2014. It should be noted that the tax havens are specifically identified only in action item 7, concerning the Recommendation to encourage good governance in tax matters by third countries.<sup>87</sup>

#### **4.2.2. Recommendation on minimum standards of good governance in tax matters**

After presenting the background and situation for the introduction of this Recommendation, it lists the minimum standards expected in the area of good governance, the measures to implement against third countries determined by a Member State as not meeting those minimum standards and the measures that should apply for those third countries evaluated as meeting, or committed to reaching, compliance with the minimum standards.<sup>88</sup> The challenge here is that the evaluation of third countries is to be undertaken by each Member State as it produces its national blacklist of tax havens, which will result in some duplication of effort in the EU as a whole. Alternatively, Member States may choose simply to look to those Member States with a national blacklist and follow their lead. Naturally each Member State would be expected to evaluate those third countries with which it has substantial economic relations, such that not all third countries would be evaluated by all

---

<sup>82</sup> Katharina Holzinger, 'Tax Competition and Tax Co-Operation in the EU: The Case of Savings Taxation', *Rationality and Society* vol. 17, no. 4 (2005): 475 – 510, pp. 481 – 487.

<sup>83</sup> European Council, *Council Directive 2003/48/EC of 3 June 2003 taxation of savings income in the form of interest payments* (OJ L series 157), 2003, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:157:0038:0048:en:PDF>; European Commission, *Proposal for a Council Directive amending Directive 2003/48/EC on taxation of savings income in the form of interest payments*, COM(2008) 727 final, [http://ec.europa.eu/taxation\\_customs/resources/documents/taxation/personal\\_tax/savings\\_tax/savings\\_directive\\_review/com\(2008\)727\\_en.pdf](http://ec.europa.eu/taxation_customs/resources/documents/taxation/personal_tax/savings_tax/savings_directive_review/com(2008)727_en.pdf).

<sup>84</sup> European Commission, *Proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB)*, COM(2011) 121 final, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0121:FIN:EN:PDF>.

<sup>85</sup> EurActiv.com, 'Commission moves to close tax fraud, evasion loopholes', 7 December 2012, <http://www.euractiv.com/euro-finance/brussels-acts-close-tax-loophole-news-516513>.

<sup>86</sup> COM(2012) 722 final, pp. 8, 11, 12.

<sup>87</sup> COM(2012) 722 final, pp. 5 – 6.

<sup>88</sup> C(2012) 8805 final.

Member States. The press release of the Commission on the Action Plan and Recommendations anticipates that this Recommendation's common criteria will result in the identification of tax havens with their placement on a national blacklist of countries that do not meet the minimum standards for good tax governance. It further expects that the measures identified in the Recommendation will 'persuade these non-EU countries to apply EU governance standards'.<sup>89</sup> By definition, those territories associated with a Member State which are not themselves a Member State are a 'third country', a group that includes the Overseas Territories of Denmark, France, Netherlands, and United Kingdom and contains a number of jurisdictions identified elsewhere as tax havens. The Member States are to report to the Commission on their implementation of the Recommendation and the Commission in turn will publish a report on the progress of the Recommendation after the passage of three years.<sup>90</sup> The action proposed against any third country placed on a national blacklist is to 'renegotiate, suspend or terminate' the double taxation treaty in force between the Member State and the third country. This reprisal action, however, will be limited to any already existing double taxation treaty. The range of treaties between Member States and any third countries that are likely not to satisfy the minimum standards of good governance is found in the survey data contained in this report.

#### 4.2.3. Recommendation on aggressive tax planning

The Recommendation on aggressive tax planning addresses the use of differences between two jurisdictions' tax regimes to minimise the taxpayer's aggregate tax owed, and in particular the tax minimisation practices of multinational corporations (though these practices are also available for use by natural persons, specifically the high net worth individuals able to afford them). In essence the Recommendation encourages Member States to review their double taxation treaties to assure that in those instances where the Member State 'committed not to tax a given item of income' that the other party to the treaty does treat that item as taxable income. Where the other party does not treat the income item as taxable the Member State is encouraged to ensure that the income item in question is properly taxed.<sup>91</sup> Further, the Recommendation encourages Member States to enact a 'general anti-abuse rule' (GAAR), such that where the presence of an arrangement or series of arrangements in a taxpayer's business affairs appear to accomplish nothing beyond minimising the tax owed to the Member State then that Member State's tax administration will ignore the arrangement(s) and properly tax any income.<sup>92</sup> As with the previous Recommendation, Member States are to report to the Commission concerning their implementation of the Recommendation and the Commission will publish a report on its progress after three years. A challenge confronting the implementation of this Recommendation with regards to multinational corporations and tax havens is that it will involve delineating the organisational structure of the multinational corporation, which for historical or business reasons, as much as for tax planning purposes, may be structured in multiple, inter-related subsidiaries and operating companies. The nature of the 'global firm' and its organisational structure was analysed by Mihir A. Desai of Harvard University, as a situation reflecting the 'decentring' of the firm away from a specific, core national identity in response to globalisation and the growth of *global* markets. While this situation may not be the case for Amazon, Google or Starbucks (as demonstrated in a hearing before the Public Accounts Committee of the British Parliament in November 2012), it does reflect the varied selection of examples offered in his study.<sup>93</sup>

---

<sup>89</sup> European Commission, *Clamping down on tax evasion and avoidance: Commission presents the way forward*, IP/12/1325, 6 December 2012, [http://europa.eu/rapid/press-release\\_IP-12-1325\\_en.htm](http://europa.eu/rapid/press-release_IP-12-1325_en.htm).

<sup>90</sup> C(2012) 8805 final, p. 6.

<sup>91</sup> C(2012) 8806 final, p. 4.

<sup>92</sup> C(2012) 8806 final, pp. 4 – 5.

<sup>93</sup> Mihir A. Desai, 'The Decentering of the Global Firm', *The World Economy*, vol. 32, no. 9 (2009): 1271 – 1290; Vanessa Houlder, 'US groups grilled over low tax payments' *Financial Times*, 12 November 2012.

Corporations, however, as legal persons were not covered by the Savings Tax Directive and as such represent one of the loopholes in that Directive.

#### 4.2.4. EU Savings Tax Directive

The final text of the Savings Tax Directive represents the compromises necessary to finally agree a text that was acceptable to all Member States in 2003 after 16 years of negotiation; it went into force on 1 July 2005. The Directive concerns the 'taxation of savings income in the form of interest payments' specifically for the foreign interest-bearing accounts of individual EU citizens. It provides for two options to the participating jurisdictions: to either automatically exchange taxpayer account details or to collect a graduated withholding tax. This compromise essentially reflects differences between Member States with a financial centre and those Member States with residents that fail to report interest-generating assets located in a foreign jurisdiction. Because capital moves easily between jurisdictions in this time of economic globalisation, negotiators placed an emphasis on securing the cooperation of six non-Member jurisdictions (Andorra, Liechtenstein, Monaco, San Marino, Switzerland, and United States) as well as assuring that the Member States 'apply these provisions ... [in] all relevant or associated territories (the Channel Islands, Isle of Man, and all dependent or associated territories in the Caribbean)'.<sup>94</sup> Immediately one will realise the Directive possesses a significant geographic loophole, in which reside any number of other recognised tax havens in the Caribbean and Asia, including Hong Kong SAR and Singapore, both identified as a destination for significant European capital flows shortly after the Directive went into effect.<sup>95</sup> Furthermore, the Commission failed to gain the cooperation of the United States to implement either option of the Directive for EU nationals with an interest-generating account in the United States, instead the Commission took the official position that the United States at that time exercised 'equivalent measures' consistent with the objectives of the Directive.<sup>96</sup> In addition to this geographic loophole, the Directive possesses a structural loophole, because it applies solely to the interest-generating assets of the 'natural' person, which means that it may be expediently avoided through the transfer of those assets to a 'legal' person. In other words, by transferring legal ownership of the interest-generating asset to a corporate vehicle, trust or foundation that in turn is owned by the natural person.<sup>97</sup> (Further assessment on the effectiveness of the Directive is provided below in section 4.5.).

#### 4.2.5. Proposal to amend the Savings Tax Directive

Turning to the Proposal for a Council Directive amending Directive 2003/48/EC on taxation of savings income in the form of interest payments (COM(2008) 727 final), it is intended to address the above identified loopholes in the Savings Tax Directive. The proposal is item 2 in the Commission's Action Plan which 'urges the Council to adopt these proposals without delay' and indicates that some of the difficulties in negotiating the original Directive persist in delaying the effort to amend the Directive.<sup>98</sup> Among the proposed changes to the Directive is the definition of 'interest', for the purposes of this Directive it would be extended to reflect the innovation of investment products available to EU residents, to address, for example, income 'from certain life insurance products that are comparable

---

<sup>94</sup> OJ L/157, p. 45.

<sup>95</sup> George Parker, Florian Gimbel, and John Burton 'EU tax officials set sights on Asia', *Financial Times*, 3 September 2006; Edward Taylor, and Chris Prystay, 'Swiss Fight Against Tax Cheats Aids Singapore's Banking Quest', *Wall Street Journal*, 6 February 2006, sec. A, p. 1.

<sup>96</sup> J. C. Sharman, 'Regional Deals and the Global Imperative: The External Dimension of the European Union Savings Tax Directive', *Journal of Common Market Studies*, vol. 46, no. 5 (2008), pp. 1049 – 1069, p. 1062.

<sup>97</sup> Adolfo Martín Jiménez, 'Loopholes in the EU Savings Tax Directive', *Bulletin for International Taxation*, vol. 60, no. 12 (2006): 480 – 494.

<sup>98</sup> European Council, 'Background: Economic and Financial Affairs Council', 15 January 2010, pp. 3 – 4,

[http://www.consilium.europa.eu/ueDocs/cms\\_Data/docs/pressData/en/ecofin/112324.pdf](http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ecofin/112324.pdf).

to debt claim products.<sup>99</sup> The detailed definition for what comprises an 'interest payment' subject to the provisions of the Directive are outlined in a replacement Article 6 (COM(2008) 727 final, pp. 19 – 22). Instrumental to the proposed amendments as a means for minimising additional administrative burdens on the firms satisfying the definition of a paying agent (COM(2008) 727 final, pp. 16 – 19) is the utilisation of the information already gathered under anti-money laundering requirements. In this way paying agents are expected to use the information to 'look through' the legal person or similar arrangement and identify the ultimate beneficial recipient as well as determine whether they are otherwise subject to the Savings Tax Directive. The anti-money laundering information collected on all account holders is expected to be kept current, in particular the taxpayer's permanent address, and this information also should be used to assure the taxpayer's current tax residence status for compliance with the Savings Tax Directive.<sup>100</sup>

These measures should help to reduce, if not eliminate, the use of a legal person arrangement to avoid the taxation of interest income, even where the legal person entity is located in a third country. The amendment to the Savings Tax Directive would introduce an Annex containing a list of jurisdictions and the name/type of legal entity that may be registered and managed in that jurisdiction and consequently should be 'looked through' to determine if the ultimate beneficial owner is a EU taxpayer. The jurisdictions listed were determined to be those 'which do not ensure appropriate and effective taxation of income obtained by such entities and arrangements.'<sup>101</sup> While addressing the use of legal entities located in a tax haven, these measures will not resolve the geographic loophole in which the taxpayer maintains an interest-generating account in their own name in a jurisdiction that is not otherwise covered by the scope of the Directive, e.g. Singapore. Nonetheless, the Member States' expanding network of tax information exchange agreements (TIEAs) will serve to cover some of these gaps.

#### **4.2.6. Proposal for an EU common consolidated corporate income tax base**

The other aspect to the difficulty experienced by tax administrations with legal entities registered in tax havens involves their use by multinational corporations. As suggested above, the presence of a subsidiary or other legal entity in the organisational structure of the multinational corporation may serve purposes other than to reduce the multinational corporation's aggregate corporate income tax obligation, but that usage is the only point of concern here. The Proposal for a Directive on a Common Consolidated Corporate Income Tax Base (CCCTB) serves to determine the tax base for a company or group of companies, including the subsidiaries of third country firms located in the EU, based on their business operations in the EU.<sup>102</sup> The Proposal contains a Chapter covering the 'anti-abuse rules' to address situations where a multinational corporation might use an associated entity located in a third country in a manner intended to reduce its tax base in the EU. These measures should serve to address the leakage attributed to practices such as transferring royalty payments to an affiliated company registered in a tax haven, or in a jurisdiction with a tax regime with low or no tax applied on royalty payments.<sup>103</sup> It is important to note that once approved, the CCCTB strategy for multinational corporations operating in the EU is a matter of choice. In order for the rules laid out in the Directive to apply, the company/group of companies must first 'opt-in'. As a result, firms that

---

<sup>99</sup> COM(2008) 727 final, pp. 2 – 3.

<sup>100</sup> COM(2008) 727 final, pp. 3 – 4.

<sup>101</sup> COM(2008) 727 final, pp. 3, 28 – 32.

<sup>102</sup> COM(2011) 121 final. The Proposal and its associated documents clearly state that the proposed Directive would determine the tax *base* and the calculation for apportioning the tax base to the Member States in which the company/group of companies operate. It does not determine the applicable tax *rate*, which remains to be determined by each individual Member State.

<sup>103</sup> COM(2011) 121 final, pp. 46 – 48.

presently utilise entities registered in a tax haven to minimise their corporate income tax base in any individual Member State may continue to do so by not choosing to join the CCCTB system.

#### 4.2.7. Conclusion

Only one of the 34 action items listed in the Commission's December 2012 Action Plan to strengthen the fight against tax fraud and tax evasion specifically address tax havens ("*...measures intended to encourage third countries to apply minimum standards of good governance in tax matters*"). Effective implementation of the Commission's recommendation is likely to be problematic, since it envisages that each Member State will make its own assessment of compliance by other jurisdictions with a set of criteria that are not clear cut. Since these criteria are based largely on the criteria developed by the Global Forum, it is likely that Member States will rely largely on the results of the Global Forum's peer review process, which does not offer assurance of continuing compliance and may, in some cases, be based on incomplete and out of date information.

Implementation of the Commission's recommendation on a GAAR will be challenging in that it will involve delineating the often highly complex structures of multinational corporations, which are subject to frequent modification. Moreover, there is the possibility of differing interpretations by different Member States.

The proposed amendments to the Savings Tax Directive should eliminate the 'legal person' loophole, but they do not address interest-bearing accounts held by natural persons in jurisdictions not covered by the existing Directive (the geographic loophole).

In order for the proposed CCCTB system to apply to a corporation, it must first opt in to the system. Corporations that choose not to opt in may continue to reduce their tax liabilities in any EU Member State by using offshore shell companies. The risk is that the financial incentives for remaining outside the system will deter corporations from opting in. On the other hand, this does offer another means for the public and civil society organisations to assess corporate responsibility, and this in turn may encourage corporations to participate.

#### 4.3. POLICIES AND COUNTERMEASURES OF OTHER INTERNATIONAL BODIES REGARDING TAX HAVENS ETC.

**What are the current and past policies and countermeasures of other international bodies, in particular (but not only) the G-20 and the OECD with regard to tax havens, offshore financial centres, and secrecy jurisdictions and their use for tax evasion and other offences and crimes?**

This section outlines the OECD initiatives to address tax competition and harmful tax practices, including the 1998 *Harmful Tax Competition* report (and its follow-up reports), which led to the creation of the Global Forum on Transparency and Exchange of Information for Tax Purposes and its recent activity on tax haven issues. The discussion notes the implementation difficulties encountered, particularly with regards to the role of state sovereignty in seeking cooperation from jurisdictions that are not members of the OECD or G-20. It then looks at the role of the G-20 and the guidance it provided to the OECD in 2009. One difficulty here is the tension among members of the G-20 that constrains international cooperation and limits the effectiveness of the proposed/implemented measures. Finally, this section introduces the Financial Action Task Force (FATF), which revised its Forty Recommendations (International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, published February 2012) and now explicitly identify 'tax crimes' among the 'designated categories of offences' for money laundering. This change by the FATF offers a potential tool for action against tax evasion via the international measures established against money laundering.

#### 4.3.1. OECD

The OECD notes that as of 05 December 2012, 69 jurisdictions had "...substantially implemented the internationally agreed tax standard".<sup>104</sup> In order to meet this standard, jurisdictions were required to sign a minimum of 12 bilateral TIEAs.

Recent research suggests that the large number of bilateral agreements and other developments since 2009 have not so far led to the expected increases in transparency and collection of taxes, and deposits held by foreigners in tax havens have remained unchanged since the 2009 London G-20 summit, at approximately \$2.7 trillion.<sup>105</sup> A key limitation is that jurisdictions are required to sign only 12 bilateral agreements in order to be "whitelisted". Thus tax havens can escape blacklisting by signing bilateral agreements with each other without any obligation to share information with other jurisdictions. Furthermore, the tax authorities in one jurisdiction can request information from another jurisdiction only on the basis of well-documented suspicion of tax evasion. So-called 'fishing' for information about suspicious individuals or organisations is not permitted. This implies the need for tangible evidence. However, hiding such evidence is often precisely why individuals and organisations make use of tax havens/ secrecy jurisdictions, and the requesting jurisdiction is therefore likely to encounter difficulty in furnishing relevant evidence.

Moreover, data on the on the OECD's Exchange of Information Portal indicates that of the 664 TIEAs signed by 2010 (relating to 51 jurisdictions), only 26% (relating to 31 jurisdictions) had been brought into force.<sup>106</sup> This information is summarised in Table 6. The slow pace of TIEA ratification is noted in a mid-2012 Global Forum report to the G-20.<sup>107</sup>

**Table 6: DTCs and TIEAs in 2010**

	DTC signed	TIEA Signed	DTC in force	Per cent of DTC in force	TIEA in force	Per cent of TIEA in force
<b>Number of agreements</b>	2,489	664	2,203	89%	170	26%
<b>Number of jurisdictions</b>	62	51	55	89%	31	61%

**Source:** OECD Global Forum on Transparency and Exchange of Information for Tax Purposes (2010).

Table 6 shows the sum of all agreements signed by all jurisdictions. Thus the actual number of TIEAs in existence in early 2013 is somewhat less – 518 (since each TIEA has two, and in some cases three signatories).<sup>108</sup>

Nevertheless, survey feedback from one Member State suggests that TIEA's are useful. It reports that in 2011 it recovered the equivalent of approximately €10 million, and in 2012 €54 million, of unpaid taxes as a result of information exchanged in the context of TIEAs with non-EU jurisdictions.

<sup>104</sup> OECD "A Progress Report On The Jurisdictions Surveyed By The OECD Global Forum In Implementing The Internationally Agreed Tax Standard", <http://www.oecd.org/tax/transparency/progress%20report%205%20december%202012.pdf> (Accessed 22 January 2013).

<sup>105</sup> Johannesen, N. and Zucman, G., "The End of Bank Secrecy? An Evaluation of The G-20 Tax Haven Crackdown", 31 January 2012.

<sup>106</sup> OECD Global Forum on Transparency and Exchange of Information for Tax Purposes, 2010 Tables – Table A. Agreements Statistics, <http://eoi-tax.org/library#tables> (Accessed 22 January 2013).

<sup>107</sup> OECD Global Forum on Transparency and Exchange of Information for Tax Purposes, Progress Report to the G-20 - Los Cabos, Mexico, June 2012, p.14.

<sup>108</sup> OECD, "Tax Information Exchange Agreements (TIEAs)", <http://www.oecd.org/ctp/exchangeofinformation/taxinformationexchangeagreementstieas.htm> (Accessed 22 January 2013).

**Table 7: TIEA requests of two Member States in 2011 and 2012**

	Year	Member State A		Member State B	
		2011	2012	2011	2012
Number of TIEA information requests to non-EU jurisdictions		52	63	0	0
Number of non-EU jurisdictions to which TIEA requests were submitted		10	12	0	0
Tax recovered (million euro equivalent)		10	54	NR	NR
Note: 'NR' = No Response					

Source: survey feedback.<sup>109</sup>

#### 4.3.2. The OECD Global Forum

The difficulties with its initial approach led the OECD to expand participation in the formative discussion to include non-OECD member states and in particular the tax havens. The Global Forum on Transparency and Exchange of Information for Tax Purposes pursues an inclusive strategy to co-opt non-OECD member states into a multilateral framework advancing the OECD agenda.<sup>110</sup> It serves, in OECD parlance, to craft a *"level-playing field approach [that] ensures diverse input and balanced outcomes from its broad membership."*<sup>111</sup> As of April 2012, the Global Forum had 108 member countries and territories,<sup>112</sup> and by early 2013 membership had grown to 120.<sup>113</sup> The Global Forum's current mandate expires in 2015.

The Global Forum produced the model for the Tax Information Exchange Agreement (TIEA) and it is the venue for the tax haven work requested by the G-20 in April 2009 (see 4.3.4 for the G-20 on tax havens). Another step was to revise its Model Tax Convention, incorporating the requirement for transparency and information exchange into practice through bilateral conventions. The revised text outlining information exchange procedures were incorporated in the OECD's Model Tax Convention at §26 (in 2005), echoing the Model Agreement on Exchange of Information on Tax Matters produced by the OECD in 2002. The Harmful Tax Practices project itself was retargeted to solicit international cooperation for transparency and the exchange of taxpayer information for those bilateral relationships without a double taxation treaty, using a Tax Information Exchange Agreement.<sup>114</sup> Recognising that signing a Tax Information Exchange Agreement in itself does not assure compliance with information exchange requests the Global Forum is coordinating a peer review process on the implementation of the tax transparency standards; reports on completed peer reviews are available from the Global Forum website.<sup>115</sup>

Peer reviews assess jurisdictions' ability to co-operate with other tax administrations in accordance with the internationally agreed standard. *"The standard of transparency and exchange of information that have been developed by the OECD are primarily contained in the Article 26 of the OECD Model Tax*

<sup>109</sup> All Member States were invited to participate in the survey. Five responded. Two provided responses to questions about TIEAs.

<sup>110</sup> See <http://www.oecd.org/tax/transparency>.

<sup>111</sup> OECD, *The Global Forum on Transparency and Exchange of Information for Tax Purposes: Information Brief*, 2011, p. 2. This statement is no longer present in the current version of this OECD document, available at <http://www.oecd.org/dataoecd/32/45/43757434.pdf>.

<sup>112</sup> Ibid.

<sup>113</sup> OECD Global Forum on Transparency and Exchange of Information For Tax Purposes "Members of the Global Forum," <http://www.oecd.org/tax/transparency/membersoftheglobalforum.htm> (Accessed 22 January 2013).

<sup>114</sup> OECD, *Tax Co-operation - towards a level playing field*, 2006, <http://www.oecd.org/tax/transparency/44430286.pdf>.

<sup>115</sup> <http://www.oecd.org/tax/transparency/peerreviewreports.htm>

*Convention and the 2002 Model Agreement on Exchange of Information on Tax Matters.*"<sup>116</sup> The standards are embodied in the 10 elements of the Global Forum's peer review process.

Peer review is carried out in two Phases. Phase 1 assesses the extent to which the necessary regulatory and legal framework is in place, while Phase 2 assesses the information exchange in practice. Some of the reviews carried out up to mid-2012 were combined Phase 1 and Phase 2 reviews. Standalone Phase 2 reviews were scheduled to commence in the second quarter of 2012.<sup>117</sup> Publication of the first Phase 2 reviews was forecast for 2013, and the Global Forum expected that 50 stand alone Phase 2 reviews will have been completed by the end of 2013. The Phase 2 reviews will lead to "...overall ratings of jurisdictions' compliance with the standards," although before these are finalised, "...Phase 2 reviews for a subset of jurisdictions representing a geographic and economic cross-section of the Global Forum will need to be completed ..."

Feedback from the Global Forum suggests that assessment of jurisdictions on the basis of whether or not they have signed 12 signed TIEA's is an out-dated concept, since most jurisdictions have now signed far more. This criterion was in any case intended to provide only a rough approximation of cooperation and compliance, and it is a criterion that was established by the OECD, not the Global Forum, which has not itself issued a declaration of 'substantial implementation'. So far as the Global Forum is concerned, compliance with the international tax standard is embodied in the peer review process, which covers 10 elements, and it is acknowledged that there is a range of compliance.

While the Phase 1 reviews comment on, and where necessary make recommendations on, each of the 10 assessable elements of the legal and regulatory framework, there has been no ranking, or rating on the basis of the Phase 1 assessments.

The Global Forum will, however, start to publish rankings on the basis of Phase 2 reviews in 2013 (i.e. on the basis of information exchange in practice). A possible weakness in this regard is that there will be no re-assessment of jurisdictions that were subject to early combined Phase 1 + Phase 2 reviews. This is potentially problematic because, in the case of Jersey, for example, the combined Phase 1 + Phase 2 peer review was carried out in 2010, and the assessors make it clear that that information exchange was at that time new for Jersey and there was limited basis for making a judgment.<sup>118</sup> Thus, any rating that is issued in 2013 will be based on an out of date and incomplete of assessment of Jersey's information exchange in practice.

Feedback from the Global Forum stresses, however that it is not a policing or monitoring body, and neither the peer reviews, nor the rating system are intended as a "name and shame" instrument. The role of the Global Forum is to ensure a 'level playing field' by helping its members to achieve relevant standards. So far as developing countries are concerned, the Global Forum has sought to engage with them early and to schedule Phase 1 reviews as late as possible in order to give them adequate of time to make the necessary legal and regulatory adjustments.

Of the 79 jurisdictions covered by a completed Phase 1 peer review by mid-2012, 47 were found to have all the necessary regulatory and legislative elements in place, although in most cases, one or more elements needed improvement. Only 12 of these 47 jurisdictions were considered not to need

---

<sup>116</sup> The OECD Global Forum on Transparency and Exchange of Information For Tax Purposes "Information Brief", 16 April 2012.

<sup>117</sup> OECD Global Forum on Transparency and Exchange of Information for Tax Purposes, Progress Report to the G-20 - Los Cabos, Mexico, June 2012.

<sup>118</sup> Global Forum on Transparency and Exchange of Information for Tax Purposes "Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Jersey 2011 - Combined: PHASE 1 + PHASE 2", 2011, [http://eoi-tax.org/peer\\_reviews/0808de06412eefa3fa88d35fe27ef737](http://eoi-tax.org/peer_reviews/0808de06412eefa3fa88d35fe27ef737) (Accessed January 2013).

improvement. These were Australia, China, France, India, Ireland, Isle of Man, Italy, Japan, Malta, Norway, Qatar, and the Seychelles.

33 of the 79 jurisdictions were found to be missing one or more critical elements. 11 of these were found to have two or more elements missing and will not progress to a Phase 2 review until they have implemented recommendations addressing critical weaknesses in their legal and regulatory frameworks. These are Botswana, Brunei, Costa Rica, Guatemala, Lebanon, Liberia, Panama, Trinidad and Tobago, United Arab Emirates, Uruguay and Vanuatu.

Initially, six more jurisdictions (Antigua and Barbuda, Barbados, the British Virgin Islands, the Seychelles, Turks and Caicos Islands and San Marino) were included in this category, but they subsequently introduced improvements enabling them to move to a Phase 2 review.

#### **4.3.3. The United Nations on tax agreements**

The United Nations Committee of Experts on International Cooperation in Tax Matters (formerly the Ad Hoc Group of Experts on International Cooperation in Tax Matters) worked on revising the 2001 United Nations (UN) Model Double Taxation Convention between Developed and Developing Countries for several years, a task that included the incorporation of Article 26 and other aspects of the OECD Model Tax Convention. The revisions and associated commentary for Article 26 were agreed in 2008 for inclusion in the next version of the UN Convention, released in 2011.<sup>119</sup> While substantial portions of the OECD text have been transposed into the UN Convention those aspects that were changed in the course of the transposition reflect the differences in overall objective between these two model conventions. In particular, the Chief of the International Tax Cooperation and Trade Section with the Financing for Development Office at the UN observed in a 2009 article that some developing countries are concerned that the flow of taxpayer information between developing and developed countries will be mostly one-way, from developing countries to developed countries. The emergence of 'double standards in this and other areas of tax cooperation' reflect the economic power of developed states and a desire to protect their own tax base, which serves to reinforce the role for the UN to balance against the powerful economic actors on behalf of the less powerful developing states.<sup>120</sup>

*The OECD principles have evolved from the perspective of only developed countries since they were prepared by the OECD countries, and many issues relating to developing countries have not been taken into consideration.*<sup>121</sup>

The perception is that limited membership of the OECD does not adequately reflect the concerns of developing countries within its Model Tax Convention, consequently the continued need for the United Nations to maintain an independent capacity reflecting its more inclusive membership and particularly developing countries.<sup>122</sup>

---

<sup>119</sup> Committee of Experts on International Cooperation in Tax Matters, *United Nations Model Double Taxation Convention between Developed and Developing Countries*, <http://www.un.org/esa/ffd/tax/unmodel.htm>.

<sup>120</sup> Michael Lennard, 'The UN Model Tax Convention as Compared with the OECD Model Tax Convention – Current Points of Difference and Recent Developments', *Asia-Pacific Tax Bulletin*, vol. 15, no. 1 (2009): 4 – 11, p. 10.

<sup>121</sup> Permanent Mission of India to the United Nations, 'Transmitting – Comments on the United Nations Model Double Taxation Convention Between Developed and Developing Countries', 13 August 2012, [http://www.un.org/esa/ffd/tax/LetterIndia\\_13aug12.pdf](http://www.un.org/esa/ffd/tax/LetterIndia_13aug12.pdf)

<sup>122</sup> United Nations Economic and Social Council, *Strengthening of institutional arrangements to promote international cooperation in tax matters, including the Committee of Experts on International Cooperation in Tax Matters – Report of the Secretary-General*, E/2011/76, 18 March 2011, <http://www.un.org/esa/ffd/tax/2011SGReport/index.htm>.

#### 4.3.4. The G-20 on tax havens

Similar concerns emerged at the April 2009 G-20 Heads of Government meeting at which tax havens were an action item on the agenda. The final communiqué stated, [we agree]

*to take action against non-cooperative jurisdictions, including tax havens. We stand ready to deploy sanctions to protect our public finances and financial systems. The era of banking secrecy is over. We note that the OECD has today published a list of countries assessed by the Global Forum against the international standard for exchange of tax information;*<sup>123</sup>

The G-20 called on all jurisdictions to "... adhere to the international standards in the prudential, tax, and AML/CFT areas."<sup>124</sup> It further called on all countries to adopt the international standard for information exchange endorsed by the G-20 in 2004 and reflected in the UN Model Tax Convention. The G-20 declared its readiness to "...take agreed action against those jurisdictions which do not meet international standards in relation to tax transparency." In this regard, it identified a number of possible counter measures:

- Increased disclosure requirements on the part of taxpayers and financial institutions to report transactions involving non-cooperative jurisdictions;
- Withholding taxes in respect of a wide variety of payments;
- Denying deductions in respect of expense payments to payees resident in a non-cooperative jurisdiction;
- Reviewing tax treaty policy;
- Asking international institutions and regional development banks to review their investment policies; and,
- Giving extra weight to the principles of tax transparency and information exchange when designing bilateral aid programs.

The G-20 called on "...appropriate bodies to conduct and strengthen objective peer reviews..." In this context, the Financial Action Task Force was required to revise and reinvigorate the review process for assessing compliance by jurisdictions with standards for combating money laundering and the financing of terrorism.

However, tax havens quickly fade from subsequent communiqués, they retained a brief reference in the 'Leaders' Statement' released at the September 2009 Pittsburgh Summit and then again in the June 2010 Toronto Summit, but they are absent from the 'Leaders Statement' from the November 2010 Seoul Summit and interestingly were not in the communiqués released from meetings of the Finance Ministers and Central Bank Governors.<sup>125</sup> Following on from the parliamentary and media attention focused on large multinational corporations and their use of tax havens to minimise their global tax obligations, and particularly the organisational structures used by American multinational corporations operating in Europe and Australia, it is now expected that the G-20 will announce its

---

<sup>123</sup> G-20, 'London Summit - Leaders' Statement', 2 April 2009, p. 4, <http://www.G-20.org/documents/>.

<sup>124</sup> G-20, 2009, *Declaration on Strengthening the Financial System* [online], [http://www.mofa.go.jp/policy/economy/G-20\\_summit/2009-1/annex2.html](http://www.mofa.go.jp/policy/economy/G-20_summit/2009-1/annex2.html) (Accessed 07 February 2013).

<sup>125</sup> Allison Christians, 'Taxation in a Time of Crisis: Policy Leadership from the OECD to the G-20' *Northwestern Journal of Law and Social Policy*, vol. 5, no. 1 (2010): 19 – 40.

intentions to reinvigorate its efforts on tax havens at the next meeting of the G-20 Finance Ministers.<sup>126</sup>

The present situation may indicate continuing tension among the member states of the OECD over the appropriate strategy for dealing with tax havens. For example, media reports from the 2009 G-20 meeting in London, revealed a disagreement between China and the other members of the G-20 (specifically France and Germany) over the inclusion of Hong Kong and Macau on a 'tax haven blacklist'. Press reports suggested that the problem centred on the fact that the tax haven blacklist as well as the strategy for defensive measures against the jurisdictions listed as tax havens would reside with the OECD, and China is not a member of that organisation.<sup>127</sup> As a result, the G-20 Communiqué only 'noted' that the OECD had published 'a list of countries assessed by the Global Forum against the international standard for exchange of tax information' on that date, 2 April 2009. On the initial list, titled 'A Progress Report on the Jurisdictions Surveyed by the OECD Global Forum in Implementing the Internationally Agreed Tax Standard', Hong Kong and Macau were referenced indirectly in a footnote attached to China as a compliant jurisdiction, indicating that it excluded 'the Special Administrative Regions, which have committed to implement the internationally agreed tax standard'.<sup>128</sup> This construction of the initial international tax standard compliance list would suggest an acknowledgement for sensitivities in dealing with China on the issue, however, the most recent list, dated 5 December 2012, contains both Hong Kong and Macau as separate entries in the 'whitelist' group of 'Jurisdictions that have substantially implemented the internationally agreed tax standard'.<sup>129</sup> An alternative explanation, at least for the case of Macau, is that the OECD's action was consistent with the production of the list of identified tax havens contained in its 2001 Report. That list did not contain the names of six jurisdictions (Bermuda, the Cayman Islands, Cyprus, Malta, Mauritius, and San Marino) which had provided an advanced commitment to the OECD to cooperate with its project.<sup>130</sup> Similarly the Macau Financial Services Bureau indicated in a press release dated 22 March 2009 its intention to seek the amendment of domestic legislation in order to permit taxpayer information exchange and after that action was completed it would then proceed to negotiate tax information exchange agreements.<sup>131</sup> The following day the OECD publicly announced its receipt of this commitment to implement the OECD standards and noted that Macau joined 'Hong Kong, Singapore and other major financial centres' in making a commitment at that time.<sup>132</sup> Observe that the release of the initial version of the OECD's list occurred two weeks later.

<sup>126</sup> Vanessa Houlder, 'Taxation: Unsafe offshore', *Financial Times*, 13 January 2013; Neil Hume, 'Australian minister attacks Google over tax', *Financial Times*, 22 November 2012.

<sup>127</sup> Stephen Fidler and Andrew Batson, 'Beijing Exercises Its Global Leverage', *Wall Street Journal*, 6 April 2009, <http://online.wsj.com/article/SB123896756914390613.html>; Mathieu Robbins, 'Tax havens under siege amid new consensus over sanctions', *The Independent*, 4 April 2009.

<sup>128</sup> OECD, 'A Progress Report on the Jurisdictions Surveyed by the OECD Global Forum in Implementing the Internationally Agreed Tax Standard', 2 April 2009, <http://www.oecd.org/ctp/42497950.pdf>.

<sup>129</sup> OECD, 'A Progress Report on the Jurisdictions Surveyed by the OECD Global Forum in Implementing the Internationally Agreed Tax Standard', 5 December 2012, <http://www.oecd.org/tax/transparency/progress%20report%205%20december%202012.pdf>.

<sup>130</sup> OECD 2000, p. 17.

<sup>131</sup> Financial Services Bureau, Financial Services Bureau Press Release, 22 March 2009, <http://www.oecd.org/ctp/harmfultaxpractices/42409279.pdf>.

<sup>132</sup> OECD, 'Macao, China announces plans to implement OECD standards', 23 March 2009, <http://www.oecd.org/countries/macaochina/macaochinaannouncesplanstoimplementoecdstandards.htm>.

#### 4.3.5. Financial Action Task Force

"The Financial Action Task Force is an inter governmental policy making body, comprised of over 30 countries, that has a ministerial mandate to establish international standards for combating money laundering and terrorist financing."<sup>133</sup> The Financial Action Task Force has developed a set of standards (the Recommendations) to help countries combat money laundering and the financing of terrorism. Some 180 jurisdictions have committed themselves to implementing the standards and having relevant systems assessed. The standards were revised in early 2012.<sup>134</sup>

The International Co-operation Review Group of the Financial Action Task Force monitors implementation of the standards. The Review Group publishes lists of high-risk and non-cooperative jurisdictions.<sup>135</sup> As of mid-2012, international counter-measures applied to Iran and North Korea, while a further 18 countries were identified as having deficiencies in relevant systems and *"...that have not made sufficient progress in addressing the deficiencies or have not committed to an action plan developed with the FATF to address the deficiencies."* Three of these countries were identified as having made insufficient progress since June 2011 and therefore at risk of countermeasures.

The publication of international 'blacklists' of non-cooperative states and territories over the past decade and a half has been quite contentious, particular for those jurisdictions placed on the list.<sup>136</sup> The first prominent use of a blacklist by an international organisation that included tax havens was the FATF, or Groupe d'Action Financière, (GAFI) list of 'non-cooperative countries and territories' (NCCT) in 2000.<sup>137</sup> It was created in 1989 to study the techniques used to launder money by drug traffickers and tasked to create procedures to prevent or to discover money laundering. In October 2001 its responsibilities were expanded to include the financing of terrorism. At present the FATF has 36 members, including the EC, and it should be noted that Hong Kong is a member separate from China, it joined the FATF in 1991 while still under British administration; China became a member of the FATF in 2007.<sup>138</sup> It had sixteen founding members in 1989 and subsequent new member states passed through a probationary period that allowed them to legislate any new laws necessary in order to comply with the FATF Recommendations to counter money laundering and terrorist financing, as well as to establish any institutions or agencies necessary to implement these new laws. Within the organisation's membership the FATF determines and imposes its recommendations for remedial action amongst the members through a process of mutual evaluation, also known as peer review. To perform these evaluations, the FATF produced a set of evaluation criteria for determining the susceptibility of any firm, agency or national financial system to money laundering activities known as the Forty Recommendations. The first version of the Forty Recommendations was released in 1990 and they have been revised twice, most recently in 2012. In addition to consolidating the Special Recommendations on Terrorist Financing created in 2001 into the core set of recommendations this

<sup>133</sup> Financial Action Task Force, "An introduction to the FATF and its work",

<sup>134</sup> Financial Action Task Force, International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation - the FATF Recommendations, <http://www.fatf-gafi.org/topics/fatfrecommendations/documents/fatfrecommendations2012.html>.

<sup>135</sup> Financial Action task Force, FATF Public Statement - 22 June 2012, <http://www.fatf-gafi.org/topics/high-riskandnon-cooperativejurisdictions/documents/fatfpublicstatement-22june2012.html>.

<sup>136</sup> For one academic analysis see J. C. Sharman, 'The Bark is the bite: International organisations and blacklisting', *Review of International Political Economy*, vol. 16, no. 4 (2009): 573 - 596.

<sup>137</sup> FATF, *Report on Non-Cooperative Countries or Territories*, 14 February 2000, [http://www.fatf-gafi.org/media/fatf/documents/reports/Initial%20Report%20on%20NCCTs%202002\\_2000.pdf](http://www.fatf-gafi.org/media/fatf/documents/reports/Initial%20Report%20on%20NCCTs%202002_2000.pdf).

<sup>138</sup> For the membership of the FATF, see <http://www.fatf-gafi.org/pages/aboutus/membersandobservers/>.

revision introduced 'tax crimes (related to direct taxes and indirect taxes)' to the list of 'Designated categories of offences' or predicate crimes for the act of money laundering.<sup>139</sup> Depending on the legislative approach taken by any country, this designation can mean that a criminal charge of tax evasion would be joined by a criminal charge of money laundering. Conceptually this action makes sense, as any measure taken by a taxpayer to conceal income from tax serves to conceal the origins of that income, which by definition is money laundering.<sup>140</sup>

#### 4.3.6. The FATF blacklist

The FATF produced the first NCCT list in 2000 because at the time the effort to counter money laundering was limited to the national financial systems of the members of the FATF, leaving the financial systems of other countries potentially open to the introduction of criminal money that might then be transferred through the banking system to a FATF member state, which would circumvent their efforts to counter money laundering. Having determined that international cooperation against money laundering was inconsistent, the FATF felt it was necessary to place pressure on non-member states to take action against money laundering. Based on evaluations it conducted on data collected for 29 suspected non-member jurisdictions the FATF published a list of 15 jurisdictions that it determined to be non-cooperative with the Forty Recommendations against money laundering in June 2000.<sup>141</sup> The effective result from the publication of that list was that all FATF member states were to treat any transaction made with a bank or financial institution located in one of the listed territories as suspicious and potentially criminal.<sup>142</sup> Most of these jurisdictions responded quickly, working with the FATF to rewrite their laws in order to satisfy the organisation's money laundering concerns. The same situation and response was the case for the additional eight jurisdictions evaluated and declared by the FATF to be uncooperative in 2001 and 2002. From the total list of 23 jurisdictions that were identified as non-cooperative the last ones to be delisted were Nigeria and Myanmar in 2006, apparently because they had succeeded in satisfying the FATF of good progress with implementing the necessary legislation against money laundering and terrorist finance.<sup>143</sup>

The latter decision by the FATF indicates the inherent political nature for determining compliance and cooperation with anti-money laundering standards, further reflected in the revival for a list by the FATF to identify 'high-risk and non cooperative jurisdictions'.<sup>144</sup> This situation in 2013 is different from 2000 because where the membership of the FATF and its affiliated FATF-style Regional Bodies (e.g. the Council of Europe's MONEYVAL) was limited in 2000, today all states (whether or not a member of one of these organisations) are expected to comply with United Nations Security Council Resolution 1617, which

---

<sup>139</sup> FATF, *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation - the FATF Recommendations*, February 2012, p. 113, <http://www.fatf-gafi.org/topics/fatfrecommendations/documents/internationalstandardscombatingmoneylaunderingandthefinancingofterrorismproliferation-thefatfrecommendations.html>.

<sup>140</sup> European Parliament and Council of the European Union, *Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing*, OJ L 309/20, 2005, Article 1, paragraph 2.

<sup>141</sup> FATF 2000.

<sup>142</sup> The initial list included the Bahamas, Cayman Islands, Cook Islands, Dominica, Israel, Lebanon, Liechtenstein, Marshall Islands, Nauru, Niue, Panama, Philippines, Russia, St. Kitts and Nevis, and St. Vincent and the Grenadines.

<sup>143</sup> FATF, *Annual Review of Non-Cooperative Countries or Territories 2006 – 2007: Eighth NCCT Review*, 12 October 2007, <http://www.fatf-gafi.org/media/fatf/documents/reports/2006%202007%20NCCT%20ENG.pdf>.

<sup>144</sup> <http://www.fatf-gafi.org/topics/high-riskandnon-cooperativejurisdictions/>.

---

*Strongly urges all Member States to implement the comprehensive, international standards embodied in the Financial Action Task Force's (FATF) Forty Recommendations on Money Laundering and the FATF Nine Special Recommendations on Terrorist Financing;*<sup>145</sup>

The expectations of the FATF and its member states for compliance and cooperation with its recommendation to counter money laundering and terrorist financing are justifiable, and they now include tax crimes as a predicate offense to money laundering. While the FATF has included tax crimes and the data collected under anti-money laundering legislation requirements for due diligence is to be used help meet the objectives of the Savings Tax Directive, it remains important to keep in mind that the core mission of the FATF is to deal with threats to the global financial system due to money laundering and terrorist finance. It should not be understood as a significant actor in efforts to tackle the use of tax havens for tax evasion.<sup>146</sup>

#### **4.3.7. Conclusion**

The main international organisations dealing with the issue of tax havens are the OECD, and the Global Forum. The Financial Action Task Force is also important, although it was established to address money laundering, rather than tax havens. Despite strong rhetoric on tax havens from the G-20 in 2009, there has been little concrete action, and there have been fewer references to tax havens in subsequent years have diminished.

The mention of tax havens is almost absent from the OECD's December 2012 progress report. However, this reflects only the fact that nearly all jurisdictions of interest have signed at least 12 bilateral TIEA's, and it does not reflect whether or not they are in fact sharing tax information with the authorities in other jurisdictions. Nor does it indicate the extent to which jurisdictions engage in harmful practices, in addition to secrecy. The Global Forum has established detailed criteria for assessing compliance with international tax standards. Its Phase 1 peer reviews have assessed the legal and regulatory frameworks, and Phase 2 reviews will assess information exchange in practice. Many recommendations have been issued to, and implemented by, jurisdictions as a result of the Phase 1 work. Rankings will be published following Phase 2 reviews, towards the end of 2013. It is important to bear in mind that the Global Forum is neither a policing nor a monitoring body. Peer reviews provide a snapshot, rather than an assurance of continuing compliance, and the Global Forum's current mandate is due to expire in 2015 once the peer review process has been finalised – a process which will have taken five years to complete.

#### **4.4. INTERACTION OF EU POLICIES AND INSTRUMENTS WITH RELEVANT INTERNATIONAL INITIATIVES**

##### **How and to what extent do EU policies and instruments interact with relevant international initiatives?**

This section introduces the problems created by globalisation and national sovereignty for progress on international cooperation in measures to counter tax evasion and tax havens.

---

<sup>145</sup> United Nations Security Council, *Resolution 1617 (2005)*, S/RES/1617, 2005, p. 3, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N05/446/60/PDF/N0544660.pdf?OpenElement>.

<sup>146</sup> FATF, 'Who we are', <http://www.fatf-gafi.org/pages/aboutus/>.

#### 4.4.1. Globalisation and sovereignty

A number of publications have argued that globalisation limits the ability of states to control their domestic economies and in particular their tax administrations. The measures taken by corporations to minimise their tax obligations in any (and every) specific state, and increasingly the related methods used by individuals, has been a focus for much of this literature.<sup>147</sup> Related to the position that globalisation limits the ability of the state to act, is an argument that it is state sovereignty itself which limits the ability of a state to collect tax on its residents' foreign assets and income.<sup>148</sup> State sovereignty in this view exists as fiscal sovereignty, that is, a jurisdiction is free to choose its domestic tax structure and at the same time it is not obligated to collect tax on behalf of another jurisdiction. The state container becomes a barrier, obstructing the flow of information desired by a foreign government concerning the investment activities of its residents in that state (and sub-state, e.g. Cayman Islands) container. The work of the Global Forum in recent years has been to overcome this barrier through the creation of the internationally agreed tax standard and the production of the model tax information exchange agreement.

For Diane Ring concepts of state sovereignty are essential to understanding the debate over international tax competition. It is, in sum, a conflict between one state's sovereign right to collect income tax from its residents for their collective benefit and another state's sovereign right also to craft tax legislation intended to benefit its residents. One question posed in her analysis – 'What if one state justifies its tax policies as necessary to preserve its sovereign control over tax and fiscal powers, but another state argues that those very policies infringe on *its* sovereign right to design tax and fiscal rules beneficial to its citizens?'<sup>149</sup> Which state is *more* correct in its claim, and should one state be privileged by international tax conventions over other states? In other words, 'Is there a priority of certain sovereignty claims over others?'<sup>150</sup> Ring goes on to explore these questions in the context of the OECD's harmful tax competition project, which set the sovereignty claims of OECD member states (while emphasising the need for a global dialogue, see e.g. OECD 1998, p.10) against the sovereignty rights of other states (predominantly the small developing economies it characterised as tax havens). It is this tension over fiscal sovereignty that animates the discourse and motivates the exercise of power in the international by leading state actors. Perceptions for a relative shift in state power (e.g. conceding to Chinese reservations about characterising Macau and Hong Kong as tax havens) influenced the treatment of tax havens at the 2009 G-20 meeting in London, as already mentioned.

#### 4.4.2. Influence on international cooperation

A discussion of globalisation and sovereignty may appear to be an obscure approach to addressing this section's question. They are, however, two critical factors in the operation of both EU and international measures and are central to the nature of international taxation and global finance. State sovereignty as a practice for inter-jurisdictional relations may hamper the ability of a state or international organisation to elicit the cooperation of other states, both jurisdictions with harmful tax practices as well as tax havens. The issue pivots around the point identified by Ring, which country's sovereign choices are to be privileged in the decision-making process/negotiations involving

<sup>147</sup> Including: Philipp Genschel, 'Globalization and the welfare state: a retrospective' *Journal of European Public Policy*, vol. 11, no. 4 (2004): 613 – 636; Philipp Genschel and Peter Schwarz, 'Tax competition: a literature review', *Socio-Economic Review*, vol. 9, no. 2 (2011): 339 – 370; Ronen Palan, Richard Murphy, and Christian Chavagneux *Tax Havens: How Globalization Really Works*, Ithaca and London: Cornell University Press, 2010.

<sup>148</sup> Ramon J. Jeffery, *The Impact of State Sovereignty on Global Trade and International Taxation*, The Hague: Kluwer Law International, 1999.

<sup>149</sup> Diane M. Ring, 'What's at Stake in the Sovereignty Debate: International Tax and the Nation-State', *Virginia Journal of International Law*, vol. 49, no. 1 (2008): 155 – 233, at p. 179, emphasis in the original.

<sup>150</sup> Ring 2008, p. 179.

multiple countries? International society today is hesitant to use coercive measures unless confronted by violence and even then we may be unable to achieve an international response, as demonstrated by the present situation in Syria. The problem with *agreeing* international measures on taxation, harmful tax practices and information exchange is minimised when undertaken by an organisation with limited membership, such as the OECD. The achievements of the Global Forum must, however, be understood in the context of the global economic situation in 2009 and since then, along with the threat of exclusions from the major global financial centres that faces any country that chooses not to cooperate with the Global Forum (and behind it the OECD). The fact that the EU, with a more homogenous membership than the OECD, has not yet amended the recognised loopholes in the Savings Tax Directive shows the difficulties facing efforts to reach a cooperative agreement. In other words, absent the global financial crisis the progress made with the OECD's international standard and the expanded membership of the Global Forum is not likely to have occurred as it has over the past three years.

The tension present during the London G-20 meeting in 2009 noted above remains present, a point raised in a January 2013 *Financial Times* article on taxation and tax havens.

*The existing rules on international taxation "only take care of the interest of developed countries", the Indian government told the UN in March 2012, a sign of frustration over multinationals' ability to siphon off profits through royalties and management fees and deposit them in tax-friendlier locales.*<sup>151</sup>

Differing, and potentially conflicting, national policies constrain any forceful action against tax havens. As a direct response to the question posed for this section, EU policies and instruments are in line with the measures of the OECD and FATF where they involve taxation. The apparent limited impact from these measures, collectively, is a reflection of the global economy as constructed by sovereign states. All of which suggests that individual states should implement a general anti-abuse rule as recommended in the Action Plan.<sup>152</sup> With a general anti-abuse rule the presence of an intermediate legal structure registered in a tax haven may be over-written when assessing the tax owed to the state by the taxpayer and negate any benefit otherwise sought by the taxpayer when organising its tax affairs in this manner.

#### 4.5. EFFECTIVENESS OF EU POLICIES AND INSTRUMENTS ADDRESSING TAX HAVENS

**How effective have EU policies and instruments been in addressing the negative impacts of tax havens, offshore financial centres, and secrecy jurisdictions and their use for tax evasion and other offences and crimes?**

This section considers the effectiveness of EU measures as analysed by academic studies and studies prepared for the EC on compliance with the Savings Tax Directive (2003/48/EC). The problems identified with the Savings Tax Directive are felt to be indicative for the potential challenges facing any new EU-specific measures (chief among which is the cooperation of non-Member States). And

<sup>151</sup> Houlder 2013. It should be understood that India is also expressing its frustration with a specific case regarding unpaid tax by a foreign multinational firm over the acquisition of Indian assets that was conducted 'offshore'; see, e.g. Eric Bellman and Kenan Machado, 'Vodafone Dealt Big Tax Setback in India', *Wall Street Journal*, 9 September 2010, <http://online.wsj.com/article/SB10001424052748703453804575479171220046144.html>; Kenan Machado, 'India Puts Vodafone Tax Bill at \$3.75 Billion', *Wall Street Journal*, 9 May 2012, <http://online.wsj.com/article/SB10001424052702304070304577393450403229624.html>; Hema Ramakrishnan, 'Post Vodafone verdict, India should spearhead debate on tax laws', *The Economic Times*, 26 January 2012, [http://articles.economictimes.indiatimes.com/2012-01-26/news/30666661\\_1\\_tax-laws-avoidance-capital-gains-tax](http://articles.economictimes.indiatimes.com/2012-01-26/news/30666661_1_tax-laws-avoidance-capital-gains-tax).

<sup>152</sup> COM(2012) 722 final, p. 6.

through a brief consideration of the relationship of China with tax havens the suggestion that the EU and OECD will have declining influence over the international governance of tax havens.

#### 4.5.1. Effectiveness of the Savings Tax Directive

In a study produced for the EC's Directorate-General for Taxation and Customs Union in 2009, the authors assessed the economic impact of the Directive in its first few years of implementation. The report found that there were 'no measurable effects on the development of different investments' covered by the Directive, offering several explanations why the expected tax increase failed (at least in the data available to the authors) to influence economic decisions. The initial explanation listed was the existence of the loopholes noted above that made 'it easy for investors to circumvent taxation on foreign-source interest.'<sup>153</sup> This circumstance is reflected also by the fact that the revenue collected in the initial years following implementation failed to match the amounts anticipated by proponents of the Directive prior to its implementation. Aggregating the data on interest payments and withholding tax contained in Hemmelgarn and Nicodème produced the sums in Table 8 and Table 9 (recognising that not all data for all jurisdictions were available for all years, see Hemmelgarn and Nicodème, pp. 21 – 26).

**Table 8: Covered payments reported by participating jurisdictions (€ millions)**

	2005 (2nd half)	2006	2007
Hemmelgarn and Nicodème (2009) Table 2 totals	12,740.53	11,911.22	14,409.61
Hemmelgarn and Nicodème (2009) Table 3 totals	884.31	2,128.89	1,435.62
Total reported payments	13,624.84	14,040.11	15,845.23

Source: Hemmelgarn and Nicodème, pp. 22 – 24.

**Table 9: Calculated potential tax revenue from a 15% tax (€ millions)**

	2005 (2nd half)	2006	2007
Hemmelgarn and Nicodème (2009) Table 2	1,911.08	1,786.68	2,161.44
Hemmelgarn and Nicodème (2009) Table 3	132.65	319.33	215.34
Total potential tax revenue	2,043.73	2,106.01	2,376.78

Source: Hemmelgarn and Nicodème, pp. 22 – 24.

In Table 8 is the aggregation of interest payments made in those jurisdictions reporting taxpayer information to other EU Member States. The two separate lines represent the two categories of interest payments defined in the Savings Tax Directive.<sup>154</sup> Clearly the savings interest and other payments covered by the Directive aggregated in Table 8 were subject to the tax rate for the account holder's residence jurisdiction. If instead of the local tax rate the same 15% withholding tax rate that was applied in those jurisdictions that do not exchange taxpayer information is applied to the

<sup>153</sup> Thomas Hemmelgarn and Gaëtan Nicodème, *Tax Co-ordination in Europe: Assessing the First Years of the EU-Savings Taxation Directive*. Luxembourg: Office for Official Publications of the European Communities, 2009, p. 5.

<sup>154</sup> OJ L/157, pp. 41 – 42.

reported payments data it produces a crude figure for the potential tax revenue collected under the Directive, as shown in

Table 9.: For those jurisdictions that collected a withholding tax, the total payments passed to the relevant EU Member States (less the 25% processing charge) for the second half of 2005 was €171.9 million, for 2006 it was €552.86 million and for 2007 it was €634.56 million.<sup>155</sup> As Sharman noted, this data does not compare to the hundreds of billions in savings thought to be evading taxes that were expected to provide billions in additional tax revenue under the Savings Tax Directive; '\$12 billion annually for Germany alone.'<sup>156</sup>

#### 4.5.2. The Cayman Islands and the Savings Tax Directive

While it is true that the loopholes in the Directive permit easy avoidance, it also may be that actually existing foreign assets in some of the covered jurisdictions do not in fact generate as much taxable income as expected by some observers. Certainly for the case of the Cayman Islands, media exemplar for a tax haven, there were far fewer individual bank accounts in the name of EU Member State residents than anticipated. Because income taxes, and thus data on individual potential income taxpayers, are not collected in the Cayman Islands it was necessary for the government to create a Tax Information Authority for the collection, management and reporting of data in order to fully implement the Savings Tax Directive. In the report for the first six months of the Directive (1 July – 31 December 2005) the Cayman Islands Tax Information Authority listed 8,886 accounts with US\$10.96 million in covered interest payments while in the report covering calendar year 2009, there were 7,397 accounts with US\$12.2 million in covered interest payments.<sup>157</sup> Similarly, for 2010 (the most recent available data) the figures were 7,161 accounts with US\$6.95 million in covered interest payments.<sup>158</sup> To put this into the larger context, the Bank for International Settlements reports in their Quarterly Review (Table 6A: External positions of reporting banks vis-à-vis all sectors) that total foreign assets on deposit with the Cayman Islands in December 2009 was US\$1,733,082 million and in December 2010 it was US\$1,726,006.<sup>159</sup> For the case of the Cayman Islands this situation reflects the fact that its financial centre works predominantly with corporate accounts (mutual funds, hedge funds and other financial firms) rather than individual natural persons.

#### 4.5.3. Second review of the Savings Tax Directive

The report for the second review of the Savings Tax Directive similarly utilised data on financial flows from the Bank for International Settlements along with data from the European Central Bank and the Swiss National Bank to assess potential EU assets evading the Savings Tax Directive.<sup>160</sup> This data served to support the claim that offshore financial centres (tax havens in this study) were home to intermediary structures with 'a significant share of non-bank deposits in Member States, and in

---

<sup>155</sup> Hemmelgarn and Nicodème, p. 25.

<sup>156</sup> Sharman 2008, p. 1065, citing 'Taxing Matters', *Economist*, 3 April 1997.

<sup>157</sup> Tax Information Authority, *Reporting of Savings Income Information Statistics - European Union, Reporting Period 2005 - 2006*. Cayman Islands, 2008; *Reporting of Savings Income Information Statistics - European Union, Reporting Period 2009*, Cayman Islands, 2010, <http://www.tia.gov.ky>.

<sup>158</sup> Tax Information Authority, *Reporting of Savings Income Information Statistics - European Union, Reporting Period 2010*, Cayman Islands, 2011, <http://www.tia.gov.ky>.

<sup>159</sup> Bank for International Settlements, *BIS Quarterly Review: Statistical Annex*, Basel: Bank for International Settlements, June 2011, <http://www.bis.org>.

<sup>160</sup> European Commission, *Report from the Commission to the Council in accordance with Article 18 of Council Directive 2003/48/EC on taxation of savings income in the form of interest payments*, COM(2012) 65 final, [http://ec.europa.eu/taxation\\_customs/resources/documents/common/publications/com\\_reports/taxation/com\(2012\)65\\_en.pdf](http://ec.europa.eu/taxation_customs/resources/documents/common/publications/com_reports/taxation/com(2012)65_en.pdf).

jurisdictions within the network of the Savings Agreements'.<sup>161</sup> Because the Savings Tax Directive is not applicable to these intermediate structures the expectation is that some portion of these non-bank deposits represents the assets of EU residents evading the Savings Tax. Consequently the significant analytical conclusion to the report was that its economic analysis supports the need to approve and implement the proposal (COM(2008) 727 final) to amend the Savings Tax Directive in order to close the loopholes, to include the introduction of 'looking through' these intermediate structures.<sup>162</sup> A detailed presentation of the economic analysis behind the Report is presented in a Commission Staff Working Document (SWD(2012) 16 final).<sup>163</sup>

#### 4.5.4. China and the tax havens

Research on the financial flows between tax havens and China suggests that assumptions made over the beneficial ownership of non-bank holdings in the EU from legal structures registered in a tax haven should be approached cautiously. Significant, and increasing, flows of capital in and out of China are intermediated through legal entities registered in tax haven jurisdictions. The reasons for this practice are more than simply to avoid tax and represent Chinese individuals and firms investing outside of China, including Europe.<sup>164</sup> The more important point related to this strong presence of China in the tax haven financial sector has implications for EU efforts to regulate and control tax havens. As J.C. Sharman states succinctly in his article's abstract, 'The fortunes of tax havens are thus indicative of a tectonic shift: the rise of developing economies is producing a relative decline in the ability of core G7 states to dominate global economic governance.'<sup>165</sup> As already suggested, this decline in influence is reflected in the tension over tax havens in the G-20 and tensions over international taxation at the United Nations.

#### 4.5.5. Conclusion

The original Savings Tax Directive failed to deliver the expected tax revenues to EU Member States. In part this was because the amount held by individuals in cooperating tax havens was significantly less than anticipated. Many assets were held by intermediate, non-bank, structures (presumably on behalf of individuals, including EU citizens) and these were not covered by the Directive. And there were significant geographic loopholes in the Directive.

The increasing utilisation of tax havens by major emergent economies significantly undermines the ability of the EU to exert influence over these jurisdictions. A number of prominent tax havens have close constitutional links to some Member States, such as the UK and the Netherlands. 'Closing down' such tax havens, while desirable, may simply shift the problem to jurisdictions entirely beyond the reach of the EU.

---

<sup>161</sup> COM(2012) 65 final, pp. 6 – 7.

<sup>162</sup> COM(2012) 65 final, p. 12.

<sup>163</sup> European Commission, *Commission Staff Working Document presenting an evaluation for the second review of the effects of the Council Directive 2003/48/EC*, SWD(2012) 16 final, pp. 26 – 56, [http://ec.europa.eu/taxation\\_customs/resources/documents/common/publications/com\\_reports/taxation/swd\(2012\)16\\_en.pdf](http://ec.europa.eu/taxation_customs/resources/documents/common/publications/com_reports/taxation/swd(2012)16_en.pdf).

<sup>164</sup> J. C. Sharman, 'Chinese capital flows and offshore financial centers', *The Pacific Review*, vol. 25, no. 3 (2012): 317 – 337; William Vlcek, 'Byways and highways of direct investment: China and the offshore world', *Journal of Current Chinese Affairs*, vol. 39, no. 4 (2010): 111 – 142, <http://hup.sub.uni-hamburg.de/giga/jcca/article/view/359>; William Vlcek, 'From Road Town to Shanghai: Situating the Caribbean in Global Capital Flows to China', *British Journal of Politics and International Relations* (forthcoming).

<sup>165</sup> J. C. Sharman, 'Canaries in the Coal Mine: Tax Havens, the Decline of the West and the Rise of the Rest', *New Political Economy*, vol. 17, no. 4 (2012): 493 – 512.

#### 4.6. COHERENCE OF EU APPROACH TO ADDRESSING TAX HAVENS

**To what extent does the EU have a comprehensive, coherent, strategic approach to addressing the negative impacts of tax havens, offshore financial centres, and secrecy jurisdictions? How will recent and proposed/ envisaged developments in policy and legislation alter the picture?**

##### 4.6.1. Tax havens as a collective action problem

The substance of the EU's approach for addressing the negative consequences of tax havens is limited in form to the extent that it may successfully contend with a collective action problem. In other words, the problem is to convince all participants first of the collective benefit resulting from a specific action, along with a willingness on the part of each participant to bear the cost from taking that action. Even where the Commission may achieve agreement on the collective benefit from acting on the problem of tax havens (and any other related harmful tax practices), it then faces the difficulty of convincing all Member States to bear the cost of the action. Consequently, at the level of the individual Member State each may be expected to perform a cost-benefit analysis which in some cases will indicate that the benefits to that Member State will not outweigh its costs. This situation has been amply demonstrated in this study, first by the extensive period of negotiations necessary to achieve the Savings Tax Directive, and second from the fact that notwithstanding the recognition for its weaknesses the Proposal to amend the Savings Tax Directive remains to be approved. The requirement for unanimity demonstrates the nature of the collective action problem for the EU, which led to the introduction of qualified majority voting for some policy areas. Within the EU the collective action problem concerning tax havens is further complicated by the domestic policies of some Member States which facilitate tax minimisation policies (e.g. the corporate income tax policies of Ireland, Luxembourg and the Netherlands) while the constitutional relationship of the UK with the Crown Dependencies and Overseas Territories also permits the creation of the tax haven/offshore financial centre in those jurisdictions with substantial independence from the UK government (although most citizens of Overseas Territories hold British citizenship, and the UK is responsible for ensuring good governance). Extending the point to the international community and action against tax havens is similarly constrained, most especially since the small countries that operate as a tax haven benefit from the status quo and have little incentive to cooperate when it entails the loss of that benefit.<sup>166</sup>

##### 4.6.2. American extra-territoriality

The challenge is that while the Commission and Parliament can legislate for the Single Market, these international tax issues involve the rest of the world, China, India, the other members of the OECD in addition to the tax havens. National self-interest may preclude cooperation with EU proposals for addressing the problems with international taxation created by the tax havens, as has been the case for several decades. In a world of sovereign states, some countries chose to deal directly with individual Member States rather than with the EU collectively. This situation may reduce the negotiating position of the Commission to present a comprehensive and coherent strategy on tax havens. For example, in the midst of present efforts on tax evasion and tax havens the EU (as the representative for the Single Market) has been excluded from the bilateral initiative of the United States against tax evasion. Over the past several years the US has aggressively pursued the foreign accounts of its citizens by targeting the financial institutions providing the accounts. One aspect of

<sup>166</sup> Adam H. Rosenzweig, 'Thinking Outside the (Tax) Treaty', *Wisconsin Law Review*, vol. 2012, no. 3, 2012, pp. 717 – 786, at pp. 721 – 724, <http://wisconsinlawreview.org/wp-content/files/1-Rosenzweig.pdf>; Philipp Genschel and Thomas Plümper, 'Regulatory competition and international co-operation', *Journal of European Public Policy* vol. 4, no. 4 (1997): 626 – 642, at 635ff; Holzinger 2005.

this effort is the extraterritorial enforcement of a new US law mandating banks to collect and report to the US Internal Revenue Service (IRS) account details for any US citizen holding an account with them.<sup>167</sup> The US legislation involved is the Foreign Account Tax Compliance Act (FATCA) signed into law in 2010, and it requires foreign financial institutions to provide the IRS account information on accounts maintained by US citizens. Failure to provide this information will be penalised with a 30 percent withholding tax on the proceeds (interest, dividends or sale) of all US assets owned by the financial firm.<sup>168</sup>

This legislation elicited a robust response from the banking sector in Europe, which raised a concern over customer privacy rights in addition to the expense from helping the US enforce its tax laws beyond its territorial borders. Progress over the past year has led to a compromise solution, negotiated by the US with five Member States (France, Germany, Italy, Spain and the UK) and announced in July 2012.<sup>169</sup> In January 2013 the US Treasury announced the release of the final regulations for the implementation of FATCA, along with indicating that seven countries had 'signed or initialled model agreements' with the US (including the Member States of Denmark, Ireland, Norway, Spain and UK)<sup>170</sup>

The change indicated by this announcement for the US to begin exchanging taxpayer account information is important, because the United States has been effectively a tax haven for non-resident non-citizens. The US does not withhold tax from those accounts, nor does it collect and retain account details about the accounts. However, in the joint announcement made in July 2012 was the statement,

*'2. In consideration of the foregoing, the United States would agree to: e. Commit to reciprocity with respect to collecting and reporting on an automatic basis to the authorities of the FATCA partner information on the U.S. accounts of residents of the FATCA partner.'*<sup>171</sup>

A note of caution is in order, because the historical experience has been that any time a suggestion to change the banking regulation and force US financial institutions to report account details on accounts held by non-resident non-citizens immediately leads to a herd of lobbyists descending on Washington to protest the proposal. There is, for example, a significant amount of undeclared capital from Latin America on deposit with institutions in Florida and Texas. The concern is that if financial institutions were required to start collecting and reporting account details the reaction of account holders would see those assets relocating to a jurisdiction that won't exchange information with their

---

<sup>167</sup> This action has in turn led to banks summarily terminating accounts held by US citizens in order to avoid the requirement to comply with the legislation and its attendant reporting costs. It has also brought to light the fact that *all* citizens, including those that possess citizenship by birth from one US citizen parent but who have never lived in the US themselves, are subject to the US's worldwide income tax regime. Vanessa Houlder, 'US tax net closes on Americans living in Britain', *Financial Times*, 20 September 2012; Vanessa Houlder, 'Tax compliance bill drives expat to despair of US', *Financial Times*, 13 June 2012.

<sup>168</sup> Kate Burgess, 'Industry concerned at extraterritorial tax clampdown plan', *Financial Times*, 8 May 2012.

<sup>169</sup> US Treasury, 'Joint Statement from the United States, France, Germany, Italy, Spain and the United Kingdom Regarding an Intergovernmental Approach to Improving International Tax Compliance and Implementing FATCA', 2 July 2012, <http://www.treasury.gov/resource-center/tax-policy/treaties/Documents/FATCA-Joint-Statement-US-Fr-Ger-It-Sp-UK-02-07-2012.pdf>. For the current list of bilateral agreements see the Internal Revenue Service webpage for FATCA at <http://www.treasury.gov/resource-center/tax-policy/treaties/Pages/FATCA.aspx>.

<sup>170</sup> US Treasury, 'Treasury and IRS Issue Final Regulations to Combat Offshore Tax Evasion', 17 January 2013, <http://www.treasury.gov/press-center/press-releases/Pages/tg1825.aspx>.

<sup>171</sup> US Treasury, 'Joint Statement from the United States, France, Germany, Italy, Spain and the United Kingdom Regarding an Intergovernmental Approach to Improving International Tax Compliance and Implementing FATCA', 2 July 2012, <http://www.treasury.gov/resource-center/tax-policy/treaties/Documents/FATCA-Joint-Statement-US-Fr-Ger-It-Sp-UK-02-07-2012.pdf>.

home country.<sup>172</sup> Should the US introduce transparency for non-resident non-citizens holding accounts in its financial sector and begin to exchange account information with other countries it would be a significant step forward. It is also worth noting that the similar joint statement with Switzerland announcing a framework on FATCA did not include the information exchange provision.<sup>173</sup>

#### **4.6.3. Conclusion**

Coherence of the EU's approach to dealing with tax havens is constrained by the fact that its members are sovereign states that may prefer to deal individually with other jurisdictions (e.g. the agreements by Germany and the UK with Switzerland, which are considered to undermine the Commission's ability to negotiate an EU-wide agreement with Switzerland). Moreover, some non-EU jurisdictions prefer to deal individually with EU Member States (e.g. the exclusion by the USA of the bilateral initiative on tax havens).

---

<sup>172</sup> See, e.g., Vanessa Houlder and Shahien Nasiripour, 'US rethinks offshore tax evasion reporting rules', *Financial Times*, 29 January 2012; Ken Stier, 'Foreign Tax Cheats Find U.S. Banks a Safe Haven', *Time*, 29 October 2009, <http://www.time.com/time/business/article/0,8599,1933288,00.html>.

<sup>173</sup> US Treasury, 'Joint Statement from the United States and Switzerland Regarding a Framework for Cooperation to Facilitate the Implementation of FATCA', 21 June 2012, <http://www.treasury.gov/resource-center/tax-policy/treaties/Documents/FATCA-Joint-Statement-US-Switzerland-06-21-2012.pdf>.

## 5. CASE STUDIES

### 5.1. GREECE AND SPAIN

This case study examines the role of tax havens in the present economic and financial crisis faced by Greece and Spain.

Greece, Spain, Italy, and Portugal have been gravely affected by the economic and financial crisis. The countries suffer growing debts to GDP, rising unemployment and serious budget deficits. On top of this, there is a growing mistrust of national parliaments and governments. According to Eurobarometer data, the mistrust of Greek citizens towards their government increased from 50% in November 2003 to 90% in May 2012. The Special Eurobarometer 374 shows that in Italy, Greece, Spain and Portugal, more than 50% of the respondents feel that corruption has increased from 2009 to 2011. Also when asked whether there is corruption in national institutions, 95% in Italy fully agreed this is the case, against 93% in Spain, 91% in Portugal and 99% in Greece. Such figures do not enhance the willingness of citizens to pay taxes and could increase avoidance. On the other hand, with unemployment rates around 25% in Spain and Greece, 10% in Italy, and 16% in Portugal (Eurostat, 2012) labour supply might shift towards the shadow economy, affecting tax revenues.

According to a study of Tax Research UK, in 2009 the Spanish shadow economy was estimated to constitute 22.5% of the total economic activity. With a GDP in 2009 of €1,063,000 million, the size of the shadow economy reflects an estimated €239,175 million. An average tax burden of 30.4% means that the shadow economy costs the country a total of €72,709 million on a yearly basis. The data for other countries is provided in Table 10.

**Table 10: Tax lost as a result of the shadow economy in five EU Member States**

Country	GDP 2009	Size of shadow economy	Tax burden 2009	Size of shadow economy	Tax lost as result of shadow economy
	Million €	%	%	Million €	Million €
Spain	1,063,000	22.5	30.4	239,175	72,709
Italy	1,549,000	27.0	43.1	418,230	180,257
Portugal	173,000	23.0	31.0	39,790	12,335
Greece	230,000	27.5	30.3	63,250	19,165
Ireland	156,000	15.8	28.2	24,648	6,951
EU average	12,271,200	22.1	35.9	2,258,223	864,282

Source:

[http://www.socialistsanddemocrats.eu/gpes/media3/documents/3842\\_EN\\_richard\\_murphy\\_eu\\_tax\\_gap\\_en\\_120229.pdf](http://www.socialistsanddemocrats.eu/gpes/media3/documents/3842_EN_richard_murphy_eu_tax_gap_en_120229.pdf)

#### 5.1.1. Greece

In the aftermath of tough austerity measures taken in Greece to combat the financial and economic crisis, popular mistrust is growing, with increasing perception of rampant corruption, waste of resources, and tax fraud. The mistrust of Greek citizens is particularly fuelled by scandals reaching the media. Such a recent scandal in October 2012 was a list published with more than 2,059 names of Greeks said to have Swiss bank accounts.<sup>174</sup> This list contained names of former ministers, civil

<sup>174</sup> [http://www.nytimes.com/2012/10/28/world/europe/list-of-swiss-accounts-turns-up-the-heat-in-greece.html?\\_r=1&](http://www.nytimes.com/2012/10/28/world/europe/list-of-swiss-accounts-turns-up-the-heat-in-greece.html?_r=1&)

servants and prominent business leaders. Although having a bank account in Switzerland is not against the law, Greece recognised the problem of tax evasion using such accounts.

#### **5.1.1.1. Tax havens and current financial difficulties**

For years the country has negotiated a bilateral treaty with Switzerland aiming to get insight on the estimated billions of euros that Greeks deposited in Swiss accounts.<sup>175</sup> Exact figures are not known. However, of the €200 billion in Greek private savings accounts in 2009, an estimated €70 billion found its way abroad according to the Greek National Bank. This either to avoid taxes or just out of fear that the country would leave the eurozone. The Swiss finance broker *Helvea* estimates that Greeks have approximately €20 billion in Switzerland of which 99% is not reported to the Greek tax authorities. A bilateral agreement between the two countries would mean that between 20% to 30% of non-declared assets abroad could be taxed. However, bilateral tax treaties (such as the ones between Switzerland and Germany, Britain and Austria) do not guarantee increased tax revenues.<sup>176</sup> Experts estimate that enough loopholes exist for Swiss banks to remain secretive. Moreover, the EC has expressed doubt about such treaties, arguing that bilateral agreements weaken the position of Brussels to come to an EU-wide agreement with Switzerland. So far as Greece is concerned, the assets abroad that are expected to be taxable would not necessarily cover the budget deficit. Therefore, bilateral treaties need to be accompanied by systematic enhancement of the tax system in Greece.

#### **5.1.1.2. Measures to combat the use of tax havens**

Institutional reforms in the tax administration have for this reason been a key priority of the programmes initiated to support Greece in their fight against the crisis. The EC is providing technical assistance to Greece through a Task Force for Greece (TFGR). The TFGR focuses on three challenges:

- Supporting growth, employment and competitiveness;
- Enabling growth through reform of the public administration;
- Maintaining progress towards fiscal consolidation.

EU efforts to address the second challenge support the Greek public administration to implement public policy, deliver services to citizens, and follow through effective structural reforms. Within these efforts, the TFGR aims to assist the Greek authorities in effectively deploying e-government solutions, e-procurement and enterprise-resource planning in order to reduce fraud. Moreover, measures against delays and inefficiency in the judicial system have also been prioritised. The EC refers to an estimated backlog of 165,000 pending tax cases representing approximately €30 billion in unpaid taxes. The third challenge deals with supporting the Greek authorities in financing and implementing the reform agenda in the area of tax administration and public finance management.

According to the first quarterly report of the TFGR, €60 billion are outstanding in unpaid taxes (of which 50% is covered by pending court cases, some of which have started over a decade ago). The EC suggests that the recovery of these taxes is unlikely. In order to address this issue, the EC recommended a fairer, simpler and more stable tax system that would spread the economic adjustment burden and limit tax evasion and avoidance.

---

<sup>175</sup> <http://www.spiegel.de/international/europe/greece-and-switzerland-set-to-sign-tax-treaty-a-852526.html>

<sup>176</sup> [http://www.swissinfo.ch/eng/business/Swiss-Greek\\_tax\\_deal\\_dismissed\\_as\\_fig\\_leaf.html?cid=31396434](http://www.swissinfo.ch/eng/business/Swiss-Greek_tax_deal_dismissed_as_fig_leaf.html?cid=31396434)

In order to anticipate the structural reforms demanded by the EU/IMF adjustment programme, an action plan has been developed to reform tax collection procedures. The initial activities of the TFGR included an analysis of the Greek system of direct and indirect taxation. This identified the need for further technical assistance to simplify tax legislation, draft a unified code, and provide a clear set of rules to improve tax administration.

The IMF assisted Greece in analysing the tax administration prior to the establishment of the TFGR. It combined an anti-evasion plan to combat rampant tax abuse and a medium-term structural reform programme to modernise tax administration and enhance overall tax compliance. Working methods were introduced focusing on debt collection, identification of candidates for tax audits, and closer monitoring of large tax payers. As a result, in the first half of 2011, €112 million in tax arrears were collected using minimal additional resources. An increase in the 14% VAT filing rate was observed. Following the work of the IMF, DG TAXUD and the Greek authorities identified various key areas of interest in order to ensure rapid progress. These include debt collection, large taxpayers, dispute resolution and tax audits. Areas of interest for more structural reforms were also identified, namely management and organization of the tax administration, risk and revenue analysis, and tax payer services. The need was also identified to address Greek offshore savings in order to increase tax revenues. Emphasis was placed on savings in Switzerland and the difficulty for the Greek authorities to monitor possible tax evasion through tax havens.

In October 2011, nine policy areas and two cross-cutting areas were identified by the TFGR, the Greek authorities, and the IMF:

- Strengthening debt collection and management;
- Strengthening tax dispute resolution systems;
- Revising the taxpayer audit function;
- Enhancing control of large tax payers;
- Enhancing control of high wealth individuals and high income self-employed;
- Improving registration, filing and payment enforcement;
- Improving taxpayer services;
- Improving risk and revenue analysis capacity;
- Rebuilding the tax administration organization;
- Cross-cutting areas:
  - Exchange of information with other countries as a tool to enhance the fight against tax evasion;
  - the set-up of a land register which will improve revenue collection and tax audit, especially when targeting high wealth individuals and high income self-employed.

In March 2012 the second quarterly report of the TFGR was published giving a first impression of the work conducted in Greece. Some interesting observations were made regarding challenges such as the need to strike an appropriate balance between addressing short-term needs and investing in organizational reform. The latter also requires involvement of high-level state actors, in other words, political will. Another weakness in the Greek administration was the lack of monitoring, reporting and control systems to effectively implement policies. The second quarterly report also states that some developments have been made with regard to the structural reforms in taxation. In early 2011, the collectible tax arrears were estimated to be around €8 billion, of which €400 million was targeted to be collected in that year. Instead, €946 million was collected by the end of 2011, more than double the target. For 2012, more ambitious targets were set – in relation to a law that passed in February 2012 allowing the administration to outsource the collection of certified tax debt.

The third quarterly report, published in December 2012, gives an overview of the progress made in

the technical assistance provided to Greece. According to the report, many measures were cancelled due to the election period in May and June 2012. Nevertheless some actions commenced in the second half of the year focusing primarily on improving debt collection. The benchmarks set for the year 2012 were partly met despite the lack of political leadership during election period. The Greek Financial Intelligence Unit reported to the tax authorities 418 cases of suspected tax evasion in 2012. 267 cases were confirmed and sent to the Public Prosecutor after which €94.5 million in assets were frozen.

### **5.1.2. Spain**

Similar to Greece, Spain is also experiencing growing popular mistrust of politicians against a background of severe austerity measures to combat the economic and financial crisis. In particular, the Spanish construction and urban planning sector, for decades the driving forces behind economic growth, is characterised by opacity, mismanagement and fraud. Tax evasion is seen as a serious problem that has deprived the government of billions of euros in revenue.

#### **5.1.2.1. Tax havens and current financial difficulties**

In 2007, before the crisis, Spanish companies made record profits with the result that the Finance Ministry expected increased tax revenues.<sup>177</sup> However, in 2008 the tax authorities reported that, contrary to expectations, tax revenue decreased by 18%. The main reason given was tax evasion. VAT and company tax revenues fell in 2008 and 2009 by €46 billion. Although VAT revenues recovered, company tax revenues did not. The economic crisis partially explains this, given that millions of jobs vanished and the shadow economy increased. However, the crisis did not explain the drop in company tax revenues, particularly in 2008. The tax inspectors (Inspectores de Hacienda) therefore concluded that tax evasion had increased especially among large corporate groups, multinationals and high-wealth individuals. The Union of Tax Workers (Gestha) estimates that on a yearly basis 23% of the GDP is lost due to tax evasion schemes.<sup>178</sup> This means an estimated €240 billion per year, or in other words, one out of every four taxable euros is hidden from the authorities. With rising debts to GDP and large budget deficits, the Spanish government urgently needs tax revenue. It can therefore be argued that tax havens are a threat to the country's financial stability.

From 2000, Spain's economy grew, on average, by 3.5% per year. In 2007 investment in the construction sector accounted for 15.7% of GDP compared to 9% in Germany, France, UK and Italy. At one point, construction accounted for one in five jobs in Spain. When the crisis hit Spain, 781,000 construction workers lost their jobs, and unemployment has continued to rise since then.

Weak accountability mechanisms, lack of transparency and citizen participation are identified throughout the Spanish integrity system.<sup>179</sup> In particular, linkages between developers, politicians, civil servants and financial institutions raise concerns about possible conflicts of interest. The OECD has warned Spain several times to step up actions to prevent money laundering.<sup>180</sup> In fact, SEPBLAC, the agency fighting money laundering, states that the communication of suspicious transactions in Spain is among the lowest among developed countries.<sup>181</sup> It indicates that money laundering is a serious problem in Spain. The crisis appears to have catalysed anti-money laundering efforts, as the Spanish government has promised to address the issue.

<sup>177</sup> [http://elpais.com/elpais/2012/10/31/inenglish/1351688183\\_737563.html](http://elpais.com/elpais/2012/10/31/inenglish/1351688183_737563.html)

<sup>178</sup> <http://www.gestha.es/index.php?seccion=informacion&sub=monograficos&apartado=&buscarEn=10>

<sup>179</sup> [http://issuu.com/tispain/docs/spain\\_nis\\_en](http://issuu.com/tispain/docs/spain_nis_en)

<sup>180</sup> <http://www.oecd.org/daf/briberyininternationalbusiness/SpainPhase3ReportEn.pdf>

<sup>181</sup> Comisión de Prevención de Blanqueo de Capitales e Infracciones Monetarias, [http://www.sepblac.es/espanol/home\\_esp.htm](http://www.sepblac.es/espanol/home_esp.htm)

### 5.1.2.2. Measures to combat the use of tax havens

The Spanish government recognizes the problem of tax havens and has taken measures to combat fraud and evasion. The most controversial measure has been the fiscal amnesty for offshore accounts, approved by the current government. By offering a low tax rate of 10% to anyone declaring hidden income, the Spanish government aimed to raise €2.5 billion. By the end of the period in 2012, €1.2 billion had been collected, less than half of the expected amount.<sup>182</sup> The measure's legitimacy may be compromised by this, and by related corruption scandals. It has been argued that the amnesty would send the wrong message to law-abiding taxpayers and favour the wealthy individuals that already made their fortunes through suspicious means. The criticism of the measure intensified when, in January 2013, the newspaper *El Mundo* published an article implicating a senior former party treasurer in a major corruption scandal.<sup>183</sup> Swiss authorities reported that the politician allegedly had bank accounts worth €22 million. Political parties have verbally committed to enhancing efforts in the fight against corruption.

The new anti-fraud law that entered into force end October 2012 provides an example of this commitment. The law aims to prevent fiscal fraud by, for example limiting cash payments to €2,500 between businesses and professionals. It also obliges taxpayers to declare all accounts located in foreign financial institutions together with immovable assets, rights, securities, insurance and annuities deposited, managed or obtained abroad. Failure to comply with the requirements may result in heavy fines and may be considered a tax crime. With the law, the government partly transposed Council Directive 2011/16/EU on administrative cooperation in the field of taxation into Spanish law. Nevertheless, critics have highlighted several weaknesses in this new legislation, in particular, the lack of human resources to effectively implement the tasks of the tax authority. Although calculations indicate that every euro invested in tax authorities is multiplied in revenue by twelve, it is unlikely that more resources will be allocated to them.<sup>184</sup> Another important weakness is that the cash payment limitation does not include transactions between individuals (e.g. the sale of real estate between private individuals). Also, critics argue that the law does not address problems such as fictitious organizational structures, figureheads and other structures established to avoid taxes. The law needs to be complemented with changes in labour law and in the criminal code. The government has therefore announced that reforms will be made to enable pursuit and sanctioning of economic crimes.

The lack of trust in political institutions in Spain might be one of the reasons why tax evasion is a common problem in Spain and citizens are reluctant to declare taxable income. However, studies also point to the lack of transparency, accountability and integrity in the corporate sector.<sup>185</sup> As mentioned above, the OECD warns that weak accountability mechanisms in Spain risk money laundering. It recommends the Spanish authorities to *"raise awareness among companies of all sizes and sectors of the implementations of art. 31bis Criminal Code<sup>186</sup> and the risk of corporate liability for bribery of foreign public officials, along with the corresponding need to put in place an effective anti-bribery compliance programme"*. The OECD also states that the Spanish authorities should actively promote the implementation of the Annex II Good Practice Guidance in the private sector.<sup>187</sup> In other

<sup>182</sup> <http://www.elmundo.es/elmundo/2012/12/03/economia/1354545992.html>

<sup>183</sup> EL MUNDO (2013) Bárcenas pagó sobresueldos en negro durante años a parte de la cúpula del PP [WWW]. Available from: <http://www.elmundo.es/elmundo/2013/01/18/espana/1358536985.html> [Accessed 16 January 2013].

<sup>184</sup> <http://www.expansion.com/accesible/2011/10/11/economia/1318355722.html>

<sup>185</sup> [http://issuu.com/tispain/docs/spain\\_nis\\_en](http://issuu.com/tispain/docs/spain_nis_en)

<sup>186</sup> Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal, <https://www.boe.es/buscar/act.php?id=BOE-A-1995-25444>

<sup>187</sup> Good Practice Guidance on Internal Controls, Ethics, and Compliance, <http://www.oecd.org/investment/briberyininternationalbusiness/anti-briberyconvention/44884389.pdf>

words, the OECD warns that the corporate sector in Spain does not adequately implement anti-corruption and fraud mechanisms.

Nevertheless some progress has been made. Studies<sup>188</sup> show a clear change in the implementation of anti-corruption policies among the companies listed on the IBEX-35<sup>189</sup> stock market index.<sup>190</sup> In 2005 almost 43% did not have any anti-corruption policy while in 2009 this fell to only 6%. Also in 2005, 43% of the companies had an advanced policy in place, compared to 74% in 2009. 14% of the IBEX-35 companies in 2005 implemented integrity training programmes which increased to 48.5% in 2009. In 2005, 31% of the companies implemented whistle-blower mechanisms that guaranteed confidentiality and clear escalation paths to the responsible persons within the company. In 2009 this increased to 63%. This increase is most likely the result from the obligations of the Sarbanes-Oxley Act of 2002,<sup>191</sup> monitored by the Securities Exchange Commission.<sup>192</sup> Despite this progress, the information available to the public is still often limited.

The Spanish agency in charge of supervising and inspecting the Spanish stock markets (Comisión Nacional del Mercado de Valores),<sup>193</sup> monitors compliance with the laws that affect the companies on the IBEX-35. According to the agency the most common ethics breaches are those concerning transparency and organization (especially remuneration) of company boards. The organization Observatorio de Responsabilidad Social Corporativa states in its research that there is an inconsistency between the public commitment regarding sustainability and actual business decisions.<sup>194</sup> Although Spain has a number of rules and regulations in place addressing the transparency of business activities, there are loopholes that could permit irregularities. Spain's main weakness for possible irregularities in the private sector is, according to the Observatorio de la Responsabilidad Social Corporativa, the extensive use of tax havens by the IBEX-35 companies. Approximately 28 listed companies use subsidiaries or affiliated companies registered in tax havens.

### 5.1.3. Multinationals in Spain

Larger taxpayers are a crucial target in the fight against tax evasion, tax avoidance, and the use of tax havens. Most Spanish companies registered on the stock market use offshore jurisdictions. Companies with aggressive tax policies are seen as a problem in most EU countries. Transparent, public corporate reporting is essential to ensure that multinationals pay taxes in the countries where they operate. This means for example that information should be disclosed on their corporate holdings. Transparency would be greatly enhanced by reporting on a country-by-country basis. This allows stakeholders to monitor the activities of a company in each country. Transparency International has taken a closer look at the world's biggest 105 companies.<sup>195</sup>

Table 22 (Annex 1) shows that many of these multinationals operate in Spain, Greece, Portugal, and Italy. However, most do not publicly disclose financial information regarding their activities in each country. Table 23 (Annex 1) shows that the four multinationals on this list that originate from Spain and Italy score relatively low on country-by-country reporting. Given the fact that these

<sup>188</sup> Fundación Ecología y Desarrollo, <http://www.ecodes.org>

<sup>189</sup> Bolsa de Madrid, <http://www.bolsamadrid.es/esp/aspx/Mercados/Precios.aspx?indice=ESI100000000&punto=indice>

<sup>190</sup> Negocios limpios, desarrollo global: El rol de las empresas en la lucha internacional contra la corrupción, <http://ecodes.org/responsabilidad-social/negocios-limpios-desarrollo-global-el-rol-de-las-empresas-en-la-lucha-internacional-contra-la-corrupcion-lavances-en-la-prevencion-de-la-corrupcion-por-parte-de-las-empresas-espanolas-del-ibex35-2005-2009r-informe-2009#.URLquaVMK2w>

<sup>191</sup> Sarbanes-Oxley Act, <http://www.sec.gov/about/laws/soa2002.pdf>

<sup>192</sup> Securities Exchange Commission, <http://www.sec.gov>

<sup>193</sup> Comisión Nacional del Mercado de Valores, <http://www.cnmv.es/portal/home.aspx>

<sup>194</sup> Observatorio de Responsabilidad Social Corporativa, <http://www.observatoriorsc.org>

<sup>195</sup> [http://www.transparency.org/whatwedo/pub/transparency\\_in\\_corporate\\_reporting\\_assessing\\_the\\_worlds\\_largest\\_companies](http://www.transparency.org/whatwedo/pub/transparency_in_corporate_reporting_assessing_the_worlds_largest_companies)

multinationals operate in most EU countries, common efforts to address the transparency issue is desirable.

#### **5.1.4. Conclusion**

EU residents, and corporations operating in the EU make significant use of tax havens for tax evasion and transfer pricing. Tax evasion in some Member States has been facilitated by inadequate legislation, systems, and resources. Doubts have been expressed about the adequacy of financial resources allocated to implementing new measures in Spain. While there is limited evidence, it seems likely that the use of tax havens is undermining the ability of some Member States to cut budget deficits, and this in turn has contributed to the Euro crisis. Amnesties allowing the repatriation of hidden assets, at low rates of tax, may help to recover some tax in the short term. However, amnesties are seen as a reward to people and organisations who have not played by the rules, and could increase reluctance amongst the general population to pay taxes. This, together with the expectation of future amnesties, may lead to increased tax evasion and use of tax havens in the longer term.

### **5.2. THE NETHERLANDS**

This case study reviews the potential harmful tax practices of The Netherlands and its links to tax havens.

#### **5.2.1. Incentives**

The Netherlands has designed a “highly competitive fiscal climate” with the aim to attract foreign investors and businesses.<sup>196</sup> Its tax regime offers a series of benefits which can be summarized as follows:

- Innovation incentives resulting in an effective corporate tax rate of 5% for qualifying profits.
- The possibility to carry forward losses for nine years and to carry them backward for one year.
- No upfront payment of VAT on imports.
- *Advance tax rulings* (ATR): These rulings attract international investors by providing certainty on tax structures and allowing companies to negotiate multi-year rulings with the tax authorities<sup>197</sup>. ATR also include Advance Pricing Agreements (APA) on transfer pricing transactions, in accordance with OECD’s guidelines.
- *Participation exemption regime* (PER): it is design to avoid double taxation on profits distributed by a subsidiary to its parent company. Under PER all benefits gained from shareholdings are exempt from corporate income taxes, covering both profits (dividends and hidden profit distributions) and losses. Profits realised on the sale of a participation are also exempt from taxes. The Dutch participation exemption applies to shareholdings in which there is an interest of at least 5% of the nominal paid up capital that are not considered as portfolio investment.
- *Tax treaty network*: also aims to avoid double taxation and reduce withholding taxes on dividends, interests and royalties (for interest and royalties often to 0%). Along with PER provides a fiscal unity regime which allows tax consolidation of companies within a corporate group. This freely offsets profits and losses among group members.
- No statutory withholding tax on outgoing interest and royalty payments.

---

<sup>196</sup> Netherlands Foreign Investment Agency (NFIA). “Why invest in Holland?... because Holland offers a highly competitive fiscal climate”. [http://www.nfia.nl/files/publications/WiH\\_fiscal\\_Oct12.pdf](http://www.nfia.nl/files/publications/WiH_fiscal_Oct12.pdf), 2012.

<sup>197</sup> Deloitte Touche Tohmatsu Limited. “Taxation and investment in Netherlands 2011. Reach, relevance and reliability”. 2011

- Taxable profits must be calculated on the basis of "sound business practice" (SBP) a concept that may differ from generally accepted accounting principles (GAAP). Under the SBP principle businesses can charge unrealised losses but unrealised profits may be deferred until actually realised.

• These benefits encourage tax planning opportunities that provide large tax gains. For instance, Dutch multinationals end up having an effective tax rate (ETR) of 8% to 20%<sup>198</sup> – lower than the EU average corporate tax of 22.6%<sup>199</sup>.

### 5.2.2. Holding companies

Additionally, the Netherlands have become a very attractive place as a holding jurisdiction.<sup>200</sup> This type of jurisdiction serves to set up shell companies that own shares of one or more other companies. A holding company may be an efficient way to manage a group of subsidiaries in a particular region, by centralizing financing, licensing and management activities. This helps corporations to pass their income on to tax havens without being questioned (see examples from Deloitte<sup>201,202</sup> and ITPS<sup>203</sup>).

Although the Netherlands and other countries design such favourable regimes to attract investments in production and distribution companies, the holding company often is set up, for tax reasons, in a jurisdiction different to the one in which actual investments take place. In this case the holding company is a holding shell company. The purpose of this holding shell company is to reduce withholding taxes on dividend payments and/or capital gains, in addition to channel payments to reduce corporate income tax payments by the corporate group (parent company and all subsidiaries) as a whole. Figure 3 illustrates one of the multiples ways on how holding shell companies are used for tax planning activities.

Holding shell companies are based mostly in jurisdictions with low withholding tax rates on dividends and capital gains and with an extensive tax treaty network, as in the Netherlands.

---

<sup>198</sup> Deloitte Touche Tohmatsu Limited. "The Netherlands\_As an Intermediary". 2011. Available at: [http://www.deloitte.com/assets/Dcom-Azerbaijan/Site%20SMF/EN/Events/The%20Netherlands\\_As%20an%20Intermediary.pdf](http://www.deloitte.com/assets/Dcom-Azerbaijan/Site%20SMF/EN/Events/The%20Netherlands_As%20an%20Intermediary.pdf)

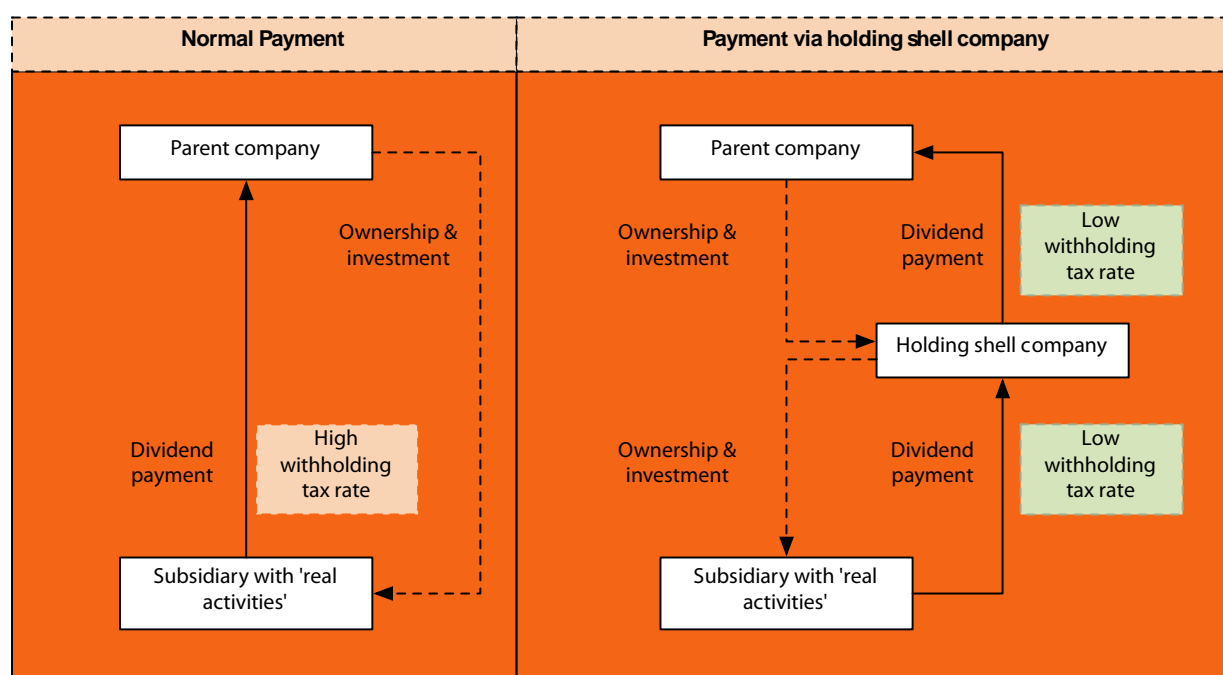
<sup>199</sup> KPMG. Corporate tax rates table. <http://www.kpmg.com/global/en/services/tax/tax-tools-and-resources/pages/corporate-tax-rates-table.aspx>

<sup>200</sup> <http://www.lowtax.net/lowtax/html/offon/netherlands/nethold.html>

<sup>201</sup> Deloitte Touche Tohmatsu Limited. "The Netherlands\_As an Intermediary". 2011. Available at: [http://www.deloitte.com/assets/Dcom-Azerbaijan/Site%20SMF/EN/Events/The%20Netherlands\\_As%20an%20Intermediary.pdf](http://www.deloitte.com/assets/Dcom-Azerbaijan/Site%20SMF/EN/Events/The%20Netherlands_As%20an%20Intermediary.pdf).

<sup>202</sup> Deloitte Touche Tohmatsu Limited. "International Tax Planning in Azerbaijan". 2011. Available at: <http://www.deloitte.com/assets/Dcom-Azerbaijan/Site%20SMF/EN/Events/International%20Tax%20Planning%20in%20Azerbaijan.pdf>.

<sup>203</sup> ITPS Group, The. "ITPS Product Portfolio. The Netherlands: Tax Planning Opportunities". October 2012. <http://www.itps-group.com/uploadfiles/file/pdf/ITPS%20Products%20-%20The%20Netherlands.pdf>.

**Figure 3: The role of holding shell companies**

Source: Author

Professional tax advisors<sup>204,205</sup> explicitly describe how Dutch private companies (Dutch B.V.) are often used as holding companies in international structures. These companies offer an efficient exit route for profits of subsidiaries, that otherwise would cause high tax payments in the subsidiary's residence country. On the application of Dutch tax treaties, holding companies can significantly reduce the tax at source, and legally defer or even avoid taxation in the original home country.

This is the mechanism through which large corporations such as Starbucks, Amazon, Google<sup>206</sup> and Bain Capital<sup>207</sup> have avoided corporate tax payments in the UK and in the United States (US).

Starbucks reported uninterrupted annual losses to UK tax authorities since its constitution in 1998. However, during the same period of time, the information given to investors and analysts revealed a very profitable business, which model was imitated in the US, the largest market where the company operates.<sup>208</sup> The Chief Financial Officer justified the loss on the basis of payments that the UK subsidiary had to make to other companies within the group:

- A royalty fee for the use of its 'intellectual property' (such as its brand and business processes) to the Amsterdam-based Starbucks Coffee EMEA BV (SCEMEA) – apparently its headquarters in Europe (holding company), although the president is actually based in London;
- The allocating of some funds generated in the UK to other subsidiaries in its supply chain, especially to Starbucks Coffee Trading Co. (based in Switzerland) and a Dutch roasting subsidiary

<sup>204</sup> TAXCI web page. [http://tax-consultants-international.com/read/Using\\_Netherlands\\_tax\\_planning](http://tax-consultants-international.com/read/Using_Netherlands_tax_planning).

<sup>205</sup> <http://www.wealthprotectionreport.co.uk/public/134.cfm>

<sup>206</sup> <http://www.taxresearch.org.uk/Blog/2012/11/13/starbucks-google-and-amazon-the-tax-crash-of-monday-afternoon/>

<sup>207</sup> [http://www.huffingtonpost.com/2012/11/05/mitt-romney-taxes-netherlands\\_n\\_2077754.html](http://www.huffingtonpost.com/2012/11/05/mitt-romney-taxes-netherlands_n_2077754.html)

<sup>208</sup> Reuters. "Special Report: How Starbucks avoids UK taxes". 15 October 2012. Available at: <http://www.reuters.com/article/2012/10/15/us-britain-starbucks-tax-idUSBRE89E0EX20121015>.

located in Amsterdam, but independent from SCEMEA. The subsidiary in Switzerland supposedly supplies coffee beans that are then roasted in Amsterdam and finally sent to the UK for final consumption.

- It is not clear how the allocation of these funds was done but it is very likely that it was through transfer pricing transactions, with price setting among subsidiaries. As we explained above, these types of transactions are used as a way to reduce tax payments and shift income.

The royalty fee payments and costs of coffee beans reduce Starbucks taxable income in the UK. All in all, it is believed that the big revenues are held in Switzerland, as the two Dutch companies reported very small profits of less than 1% of their revenues. Corporate tax of commodity trading companies can be as low as 5% in Switzerland.

Bain Capital is another example of how a large asset management firm based in the US (founded by Mitt Romney) benefited from the exemptions of the Dutch tax system to avoid fiscal responsibilities in their home country.<sup>209,210</sup> Bain Capital invested in an Irish pharmaceutical company (Warner Chilcott) in 2004. In 2010, the management of this investment was moved to the Netherlands, and took advantage of the participation exemption in which no taxes have to be paid on all income derived from those shares (dividends or profits on the sale of the equity interest). Since then, Bain has saved US\$77 million approximately in dividend withholding taxes, and also saved capital gains taxes after selling US\$ 334 million of shares.

### 5.3. THE UK

This case study examines the relationships between Britain and numerous tax haven jurisdictions with a current or historical link to Britain (British Overseas Territories and Crown Dependencies, and former British colonies, respectively). The case study goes on to examine the emergence of tax havens in jurisdictions using a legal systems based on the British system. The concepts of British Overseas Territories and Crown Dependencies, and their relationship with Britain are reviewed in Annex 2.

As noted above, British Overseas Territories, British crown possessions, and former British colonies accounted for 93% of offshore centre liabilities as of September 2012, as reported to the Bank for International Settlements (see 3.4.7).

#### 5.3.1. UK - harmful tax practices, links to tax havens, impact of tax havens

The UK (and in particular the City of London) has been an international financial centre for several centuries, while its history with 'offshore' finance dates from the emergence of the Eurodollar markets in the 1950s.<sup>211</sup> To understand this case it is helpful to place it in historical context as well as to recognise the role played by English common law. Together these two factors help to explain the linkages between the UK and tax havens and the complexities confronting the efforts of the UK government to deal with the impact of the tax haven phenomenon for its domestic economy.

<sup>209</sup> [http://www.huffingtonpost.com/2012/11/05/mitt-romney-taxes-netherlands\\_n\\_2077754.html](http://www.huffingtonpost.com/2012/11/05/mitt-romney-taxes-netherlands_n_2077754.html)

<sup>210</sup> <http://www.dailykos.com/story/2012/11/05/1155970/-How-Mitt-and-Bain-avoid-paying-taxes-via-the-Dutch-Route>

<sup>211</sup> Ronen Palan, 'Symbiotic sovereignties: The untold story of the British Overseas Territories' *European Integration and Postcolonial Sovereignty Games: The EU Overseas Countries and Territories*, Rebecca Adler-Nissen and Ulrik Pram Gad, eds., London and New York: Routledge, 2013, pp. 102 – 114.

### 5.3.2. The genesis of British tax havens

The growth of offshore financial services as an economic development strategy among small jurisdictions emerged in conjunction with formal decolonisation from the UK in the 1960s. Among the first jurisdictions in 1967 was the current exemplar of an offshore financial centre, the Cayman Islands, while in late 1966 *The Sunday Times* (London) contained an article titled 'Bahamas: the tax-free haven'.<sup>212</sup> In 1960 the Cayman Islands Legislative Assembly forwarded a proposal to the UK government outlining a plan to follow the developing financial services industries of the Bahamas and Bermuda and to enact a companies law with the purpose of attracting foreign capital. The successful implementation of the proposal means that the Cayman Islands has been financially independent of the UK and has never collected any form of income tax.<sup>213</sup> The latter point has come under pressure in recent years with, for example, a proposal to introduce a payroll tax on foreign workers in the Cayman Islands last July.<sup>214</sup> The complexities of the political relationship between the UK and its Crown Dependencies and Overseas Territories in conjunction with its domestic politics influence government policy toward tax havens in the UK (see Annex 2).

### 5.3.3. The influence of English common law

The flexibility of English common law is instrumental in the competitive relationship among the global financial centres (i.e. Hong Kong, London and New York) because it permits the creation of new financial practices and instruments when not already explicitly forbidden in law. This feature of English common law is central (if unmentioned) to public discourse on legal tax minimisation juxtaposed against claims for 'fair' and 'moral' tax compliance by multinational corporations. The fundamental difference lies in the treatment of the practice not mentioned in law. For the continental legal system the default condition is that the unmentioned practice is banned (illegal) while in the English common law system the default condition is that anything not already explicitly banned is therefore permitted until the law is changed.<sup>215</sup> Academic research has found the differences between these two legal traditions to have a strong influence over the structure and enforcement of property rights, especially in financial markets.<sup>216</sup> It also provides one explanation for why most tax havens are countries with a legal system in the English common law tradition.

### 5.3.4. The UK and action on tax havens today

For 2013 and the UK's presidency of the G8 the UK Prime Minister has a simple message concerning 'tax'.

*The UK's G8 Presidency will focus on strengthening international tax standards and working on greater international tax information exchange to tackle tax havens. This will build on work that is already underway in the Organisation for Economic Co-operation and Development (OECD) and maintain the momentum set by the G-20. And we will work with developing countries to enable them to collect tax that is due to them.*<sup>217</sup>

---

<sup>212</sup> United Kingdom. Public Record Office, "Tax Havens," (London: 1967 - 1969).

<sup>213</sup> William Vlcek, 'Sovereignty games and global finance in the Cayman Islands' *European Integration and Postcolonial Sovereignty Games: The EU Overseas Countries and Territories*, Rebecca Adler-Nissen and Ulrik Pram Gad, eds., London and New York: Routledge, 2013, pp. 115 - 129, p. 116 - 117.

<sup>214</sup> Cayman News Service, 'Payroll tax for expats only', 25 July 2012, <http://caymannewsservice.com/politics/2012/07/25/payroll-tax-expats-only>.

<sup>215</sup> Vlcek 2008, pp. 21 - 23.

<sup>216</sup> Edward L. Glaeser and Andrei Shleifer, 'Legal origins', *Quarterly Journal of Economics*, vol. CXVII, no. 4 (2002), pp. 1193 - 1229.

<sup>217</sup> 'The UK's G8 priorities', 1 January 2013, <https://www.gov.uk/government/news/the-uks-g8-priorities>.

His speech to the World Economic Forum on 24 January 2013 did not offer any more details on actual measures or proposals for action. Rather, with a reference to the tax practices of Starbucks in the UK he spoke of the need to act against tax avoidance. 'If there are options for more multilateral deals on automatic information exchange to catch tax evaders we need to explore them.'<sup>218</sup> As discussed elsewhere in this report both international cooperation and coordinated action on tax haven issues is far from simple. There is, for example, the complete absence in these remarks for Britain's role in the tax haven industry and the location of some of its Crown Dependencies and Overseas Territories as among the world's leading tax havens. Nonetheless, there is a media report on a proposal for action against the Crown Dependencies' tax haven operations via the medium of the US's FATCA law. As discussed above this law requires financial institutions to report data to the US Internal Revenue Service on US citizen account holders. The Channel Islands stated their intention to negotiate an intergovernmental agreement with the US similar to the agreements negotiated by other European countries. Because any intergovernmental agreement involving the Crown Dependencies (and also the Overseas Territories) requires the approval of the UK government, this agreement presents the UK government with the opportunity to 'demand the same level of transparency as the US.'<sup>219</sup>

The UK is undertaking action in other areas as well to deal with the impact of tax havens in the domestic economy. In addition to an increase in the staffing for tax investigations in HMRC there was a public consultation on a General Anti-Abuse Rule (GAAR) in 2012. The consultation led to the establishment of an Interim General Anti-Abuse Rule (GAAR) Advisory Panel to assist with the development of guidance for the GAAR legislation which is part of the 2013 Finance Bill.<sup>220</sup> While it may be no panacea, the introduction of a GAAR is expected to deal with some of the practices used by multinational corporations to minimise their UK tax obligation. As mentioned earlier, a UK Parliamentary committee confronted executives for three large multinational firms (Amazon, Google, and Starbucks) in November 2012 concerning their corporate income tax minimisation practices in the UK.<sup>221</sup> The public reaction to the corporate positions and justifications given at that hearing clearly supports stronger action against corporate tax avoidance; Starbucks, for example, responded by announcing three weeks after the hearing its intentions to make an income tax payment of £10million in each of the next two years, notwithstanding the amount of profit or loss its UK subsidiary experiences in that time.<sup>222</sup> Consequently, if the proposed GAAR legislation is enacted it will offer the means to counter the use of tax havens for corporate income tax avoidance in the UK.

### 5.3.5. Conclusion

The tax practices of some Member States provide opportunities for multi-national corporations to significantly reduce their tax liabilities in other EU and non-EU jurisdictions, often involving the use of holding or shell companies. The use of holding companies in low tax Member States makes it difficult to establish where taxes are payable.<sup>223</sup>

---

<sup>218</sup> 'Prime Minister David Cameron's speech to the World Economic Forum in Davos'. 24 January 2013, <http://www.number10.gov.uk/news/prime-minister-david-camerons-speech-to-the-world-economic-forum-in-davos/>.

<sup>219</sup> Vanessa Houlder, Andrew Bounds and James Pickford, 'Islands' tax secrets face disclosure', *Financial Times*, 23 November 2012.

<sup>220</sup> Calum Fuller, 'GAAR not panacea, Aaronson tells Lords', *Accountancy Age*, 22 January 2012, <http://www.accountancyage.com/aa/news/2237977/gaar-not-panacea-aaronson-tells-lords>.

<sup>221</sup> Vanessa Houlder, 'US groups grilled over low tax payments', *Financial Times*, 12 November 2012.

<sup>222</sup> Vanessa Houlder, Jim Pickard, Louise Lucas and Barney Jopson, 'Starbucks to pay £20m UK corporate tax', *Financial Times*, 6 December 2012.

<sup>223</sup> *Corriere Della Sera*, 2012, *Tax Evasion Alleged over Valentino Sale* [online], <http://www.corriere.it/International/english/articoli/2012/11/06/valentino%20.shtml> (Accessed 12 February 2013)

Many tax havens have current or historical links to the UK. The emergence of these jurisdictions as tax havens is due both to London's historical role as an international financial centre, and to the nature and influence of English common law, from which the legal systems of these jurisdictions are derived. While the British government is keen to clamp down on tax evasion and avoidance in the UK, it is not clear that this necessarily implies any intention to clamp down on tax havens, except in so far as they undermine UK tax revenues.

#### 5.4. TAX HAVENS

This case study looks at two jurisdictions, Singapore and the Cayman Islands.

##### 5.4.1. Singapore

Singapore was a British colony for approximately 135 years, from 1824 until 1963 (it was occupied by Japan for four years during World War II).

Singapore has signed 73 DTCs, 6 DTC Protocols, and one TIEA. 26 of the DTCs and three of the DTC Protocols are with EU Member States. There are no TIEAs with Member States. It has signed agreements with all Member States apart Greece. However, 13 of the 26 DTCs signed with EU Member States are classified by the Global Forum as not meeting the standard, and a further five have not been reviewed. 15 of the DTCs with Member States do not incorporate Paragraphs 4 and 5 of the updated Article 26 of the OECD's model tax convention on exchange of tax information.<sup>224</sup>

The first DTC with an EU Member State was signed with Sweden in 1968 (17 years before it joined the EU) and it entered into force in 1969. The most recent agreements listed on the Global Forum's Exchange of Information portal were signed in late 2012 (a DTC with Poland, and a DTC Protocol with Portugal). Besides these last two, four agreements signed with Member States are not yet in force (see Table 11).

**Table 11: Singapore agreements with EU Member States not yet in force**

Member State	Agreement	Date Signed	Days since signature (as of 07 February 2013)
Belgium	DTC Protocol	16 July 2009	1,302
Malta	DTC Protocol	20 November 2009	1,175
Ireland	DTC	28 October 2010	833
Spain	DTC	13 April 2011	666
Portugal	DTC Protocol	28 May 2012	255
Poland	DTC	4 November 2012	95

**Source:** OECD Global Forum on Transparency and Exchange of Information for Tax Purposes 07 February 2013

In its December 2012 progress report, the OECD classifies Singapore (along with some 89 other jurisdictions) as a jurisdiction that has "...substantially implemented the internationally agreed tax standard". In its 2009 progress report, the OECD classified Singapore as an "other financial centre ...committed to the internationally agreed standard" but which had "...not yet substantially

<sup>224</sup> OECD Global Forum on Transparency and Exchange of Information for Tax Purposes, *Exchange of Information Portal - Agreements - Singapore* [online], <http://eoi-tax.org/jurisdictions/SG#agreements> (Accessed 07 February 2013)

implemented" it. It was categorised by the IMF as an offshore financial centre in 2000<sup>225</sup> and 2007.<sup>226</sup> Singapore was included in two lists of tax havens cited by the United States Government Accountability Office in 2008 (see 3.4.3). It is ranked sixth on the Tax Justice Network's 2011 Financial Secrecy Index (see Table 1).

In 2006, a senior Asian economist was reported as stating that "...Singapore's success came mostly from being the money laundering center for corrupt Indonesian businessmen and government officials."<sup>227</sup>

A 2011 blog article noted that "Singapore does not tax bank deposits of non-residents. A pure offshore company like an LLC or IBC can easily open a bank account in Singapore, especially if it's incorporated in one of the English speaking jurisdictions. English is the business language in Singapore, another reason why it's attracting Americans and Brits."<sup>228</sup> However, in a follow-up blog in January 2013, Singapore is no longer considered to be "an attractive banking haven".<sup>229</sup> This is due to Singapore having "...rolled over far more than Switzerland ever did" under pressure from "high tax" countries, and opening a bank account there is reportedly no longer so straightforward.<sup>230</sup>

Singapore and Germany signed a DTC in June 2004, which entered into force in December 2006. However, this was evidently unsatisfactory. The Chairman of the German Tax Union referred to it as "rudimentary and fragmentary".<sup>231</sup> Concerned that its citizens would move funds from Switzerland to Singapore in anticipation of a new tax treaty between Germany and Switzerland, in late 2012 Germany negotiated the introduction of tax information exchange provisions into its DTC with Singapore.<sup>232</sup> "Over the past three years, Singapore has upgraded half of its 70 tax treaties with other countries to make it easier to exchange information on possible tax dodgers. From next year, bankers who help clients evade tax risk ending up in court on money laundering charges. The new rules are part of "efforts to protect the integrity and reputation of Singapore as a trusted international financial centre," the Monetary Authority of Singapore (MAS), the central bank and financial regulator, said last week."<sup>233</sup>

Nevertheless, Singapore continues to be promoted as a tax haven, for example one website notes: "Singapore Personal Income Tax structure is one of the friendliest and most competitive in the world."<sup>234</sup> Another website points out that "TIEAs do, though, allow Singapore to reject requests for information that are spurious or frivolous, or are mere "fishing expeditions". Information regarding a customer's bank

---

<sup>225</sup> International Monetary Fund, 2000, *Offshore Financial Centers IMF Background Paper*, <http://www.imf.org/external/np/mae/oshore/2000/eng/back.htm>

<sup>226</sup> Zoromé A., 2007, *Concept of Offshore Financial Centers: In Search of an Operational Definition*, <http://www.imf.org/external/pubs/ft/wp/2007/wp0787.pdf>

<sup>227</sup> Ismail N., 2012, *Morgan Stanley Fallout From Andy Xie Costs More Jobs (Update1)* [online], <http://www.bloomberg.com/apps/news?pid=newsarchive&sid=aiuUiQM8zpwE> (Accessed 05 February 2013)

<sup>228</sup> Macfarlane P., 2011, *Singapore Tax Information Exchange Treaties?* [online], <http://www.qwealthreport.com/blog/tag/singapore-tiea/> (Accessed 05 February 2013)

<sup>229</sup> Macfarlane P., 2013, *Offshore Bank Accounts and Second Citizenship in 2013* [online], <http://www.qwealthreport.com/blog/?s=singapore&x=0&y=0> (Accessed 05 February 2013)

<sup>230</sup> Richardson A., 2013, *UPDATED FOR 2013: How to Open an Offshore Bank Account in Singapore (you may be surprised)* [online], <http://www.qwealthreport.com/blog/?s=singapore&x=0&y=0> (Accessed 05 February 2013)

<sup>231</sup> Reuters, , *New rules, tough talk as Singapore seeks to end tax haven image* [online], <http://www.reuters.com/article/2012/10/14/us-singapore-tax-idUSBRE89D0GM20121014> (Accessed 05 February 2013)

<sup>232</sup> Ibid.

<sup>233</sup> Ibid.

<sup>234</sup> RIKVIN Singapore Company Registration Specialists, 2012, *Singapore Personal Income Tax* [online], <http://www.rikvin.com/taxation/personal-tax/> (Accessed 05 February 2013)

*account can only be disclosed under a court order. Any disclosure that fails to meet Singapore's banking secrecy rules can result in a SGD78,000 [approximately €46,000] fine or three years' imprisonment."*<sup>235</sup>

Singapore is one of 21 jurisdictions listed as an offshore centre by the Bank for International Settlements, and in September 2012, Singapore banks had liabilities (foreign assets on deposit) of approximately US\$ 496 billion, accounting for approximately 13% of total offshore centre liabilities (see sections 3.2.4 and 3.4.7, and Table 20).

In March 2010, negotiations were initiated on a free trade agreement (FTA) between Singapore and the EU.<sup>236</sup> Negotiations were concluded on 16 December 2012. The press release made no mention of tax issues. DG TRADE notes that it took 11 rounds of negotiation to reach agreement.<sup>237</sup> In October 2012 the European Council "...encouraged the negotiating partners to try to complete negotiations over the coming months." While key issues on the negotiating agenda included "...better access to services and procurement markets, tariffs, technical barriers to trade, the protection of intellectual property rights like geographical indications, as well as trade and sustainable development", tax governance was not included, although in 2011, the Commission had "...decided that, prior to conclusion of an FTA and related PCA [Partnership and Cooperation Agreement] with Singapore, it will evaluate the degree to which Singapore is providing sufficient cooperation in the field of taxation of savings."<sup>238</sup>

Feedback from DG TRADE indicates that the text of the draft EU-Singapore FTA is currently subject to legal review by both sides, and not yet public. It is anticipated that the review process will be finalised in spring 2013, and that representatives of both sides can then initial the draft agreement, at which point the texts are expected to be made public. DG TRADE confirms that the issue of tax governance is not addressed in the EU-Singapore FTA. However, it is covered in the draft Partnership and Cooperation Agreement (PCA), which is managed by the European External Action Service (EEAS). The EEAS confirms that the draft PCA includes a provision on cooperation in the tax area, which affirms the principle of good governance in the tax area.

Since May 2008, when the Council adopted a specific clause on taxation, PCAs include provisions on good governance in the area of tax, along the lines agreed on by the Council *"With a view to strengthening and developing economic activities while taking into account the need to develop an appropriate regulatory framework, the Parties recognize and commit themselves to implement the principles of good governance in the tax area as subscribed to by Member States at Community level. To that effect, without prejudice to Community and Member States' competences, the Parties will improve international cooperation in the tax area, facilitate the collection of legitimate tax revenues, and develop measures for the effective implementation of the above mentioned principles."*<sup>239</sup> This implies that concrete steps may follow, but are not included in the PCA itself.

---

<sup>235</sup> LOWTAX Global Tax & Business Portal, 2013, *Singapore: Table of Statutes* [online],

[http://www.lowtax.net/lowtax/html/singapore/singapore\\_table\\_of\\_statutes.asp](http://www.lowtax.net/lowtax/html/singapore/singapore_table_of_statutes.asp) (Accessed 06 February 2013)

<sup>236</sup> European Commission DG TRADE, 2012, *Press release - EU and Singapore agree on landmark trade deal* [online],

<http://trade.ec.europa.eu/doclib/press/index.cfm?id=855> (Accessed 06 February 2013)

<sup>237</sup> European Commission DG TRADE, 2012, *Singapore* [online], <http://ec.europa.eu/trade/creating-opportunities/bilateral-relations/countries/singapore/> (Accessed 06 February 2013)

<sup>238</sup> European Commission, 2011, *Minutes of the 1947th meeting of the Commission held in Brussels (Berlaymont) on Wednesday 9 February 2011 (morning)*

<sup>239</sup> Council of the European Union, 2008, *Press Release 2866th Council Meeting Economic and Financial Affairs*, [http://www.consilium.europa.eu/ueDocs/cms\\_Data/docs/pressData/en/ecofin/100339.pdf](http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ecofin/100339.pdf)

### 5.4.2. Cayman Islands

The Cayman Islands is a British Overseas Territory (the concept of Overseas Territories, and their relationship to Britain are explained in Annex 2). It has been a British possession since the late 17<sup>th</sup> Century. It is a "...parliamentary democracy with judicial, executive and legislative branches."<sup>240</sup> The islands have a population of 54,397 and an area of 264 square kilometres.<sup>241</sup> The government of the Cayman Islands reports a 2010 GDP of CI\$2,335.8 million<sup>242</sup> (€2.2 billion at 2010 exchange rates). This equates to a per capita GDP of €42,692 (for comparative purposes, the per capita GDP of the UK in 2010 was approximately €29,464).<sup>243</sup>

*As of December 2010, the banking sector had \$1.73 trillion in assets. There were approximately 250 banks, 150 active trust licenses, 730 captive insurance companies, nine money service businesses, and more than 85,000 companies licensed or registered in the Cayman Islands.*<sup>244</sup>

According to the BBC in 2011, there were also 9,000 hedge funds operating there.<sup>245</sup>

*As of September 2012, UK financial institution lending to the Cayman Islands stood at \$235 billion, and deposits from the Cayman Islands in UK financial institutions stood at \$120 billion (see **Source:** IMF and DG TAXUD*

The British economy focuses strongly on financial service delivery. With more than 500 banks, the City of London is the world's largest foreign exchange market. The City of London is criticised for its lack of transparency and accountability. British overseas territories and crown dependencies are among the favourite destinations for British capital when offshoring. The following figures show financial flows between the United Kingdom and countries or territories considered financial offshore centres.

---

<sup>240</sup> Cayman Islands Government, , *About Government* [online], [http://www.gov.ky/portal/page?\\_pageid=1142,1481287&\\_dad=portal&\\_schema=PORTAL](http://www.gov.ky/portal/page?_pageid=1142,1481287&_dad=portal&_schema=PORTAL) (Accessed 07 February 2013)

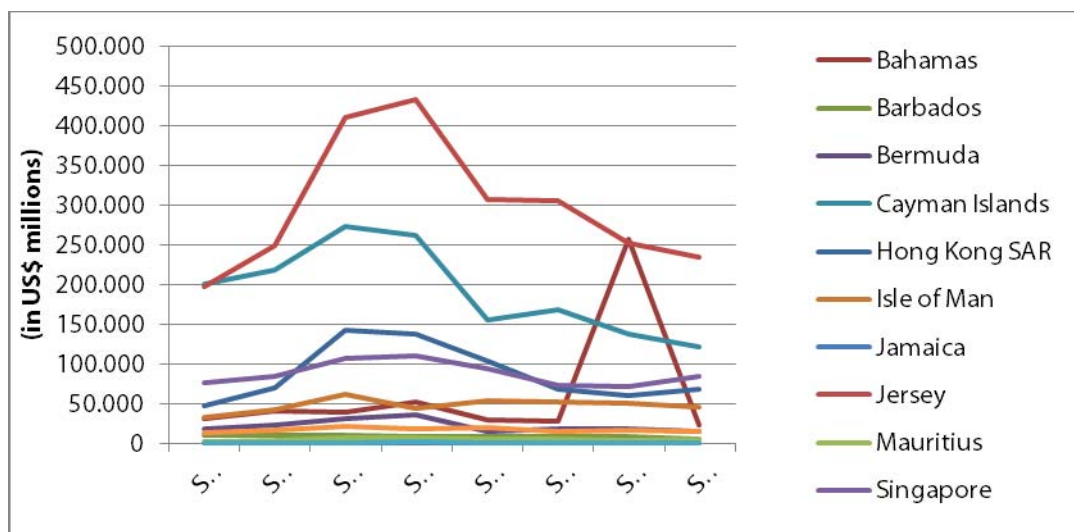
<sup>241</sup> Cayman Islands Government, , *About Cayman* [online], [http://www.gov.ky/portal/page?\\_pageid=1142,1481068&\\_dad=portal&\\_schema=PORTAL](http://www.gov.ky/portal/page?_pageid=1142,1481068&_dad=portal&_schema=PORTAL) (Accessed 07 February 2013)

<sup>242</sup> Ibid.

<sup>243</sup> The UK figure is based on data from The World Bank, 2013, *GDP per capita (current US\$)* [online], <http://data.worldbank.org/indicator/NY.GDP.PCAP.CD> (Accessed 2013)

<sup>244</sup> United States Department of State Bureau for International Narcotics and Law Enforcement Affairs, 2012, *International Narcotics Control Strategy Report - Volume II - Money Laundering and Financial Crimes* [online], <http://www.state.gov/documents/organization/185866.pdf> (Accessed 07 February 2013)

<sup>245</sup> BBC, 2011, *Regions and territories: Cayman Islands* [online], [http://news.bbc.co.uk/1/hi/world/americas/country\\_profiles/3709816.stm](http://news.bbc.co.uk/1/hi/world/americas/country_profiles/3709816.stm) (Accessed 07 February 2013)

**Figure 4: UK financial institutions deposits from offshore jurisdictions**

**Source:** Bank of England interactive data base, dataset VPQB254 (countrycode); as of February 2013.

**Note:** This data does not include a number of other financial instruments, e.g. derivatives contracts. West Indies UK includes Anguilla, Antigua and Barbuda, British Virgin Islands, Montserrat and St Christopher/St Kitts-Nevis.

The Cayman Islands committed itself to implement the OECD's international tax standard in 2002. In total, it has signed one DTC and 29 TIEAs.<sup>246</sup> The first TIEA, with the USA, was signed in 2001, but did not enter into force until 2006. The most recent, with China, was signed in November 2012. Nine agreements are not yet in force, and five of these were signed in 2009. Five agreements have not yet been reviewed and one does not meet the standard. All but one incorporate Paragraphs 4 and 5 of the updated Article 26 of the OECD's model tax convention on exchange of tax information.

Eleven agreements have been signed with EU Member States (one DTC and 10 TIEAs). The first was signed in 2009 with Sweden and the most recent was signed with Italy in 2012. All incorporate Paragraphs 4 and 5, and all but two meet the standard (two have not yet been reviewed).

<sup>246</sup> OECD Global Forum on Transparency and Exchange of Information for Tax Purposes, , *Exchange of Information Portal - Agreements - Cayman Islands* [online], <http://eoi-tax.org/jurisdictions/KY#agreements> (Accessed 07 February 2013)

**Table 12: Cayman Islands agreements with EU Member States**

Member State	Agreement	Date signed	Date entered into force	Days between signing and entering into force
Sweden	TIEA	1 April 2009	27 December 2009	270
Denmark	TIEA	1 April 2009	6 February 2010	311
Finland	TIEA	1 April 2009	31 March 2010	364
United Kingdom	DTC	15 June 2009	20 December 2010	553
Ireland	TIEA	23 June 2009	9 June 2010	351
Netherlands	TIEA	8 July 2009	29 December 2009	174
France	TIEA	5 October 2009	13 October 2010	373
Portugal	TIEA	13 May 2010	18 May 2011	370
Germany	TIEA	27 May 2010	20 August 2011	450
Czech Republic	TIEA	9 November 2012		
Italy	TIEA	3 December 2012		

**Source:** OECD Global Forum on Transparency and Exchange of Information for Tax Purposes 07 February 2013

The Cayman Islands is ranked second out of 71 jurisdictions, after Switzerland, on the Tax Justice Networks 2011 Financial Secrecy Index (see 3.4.9).

As noted above (see 3.4.7), the Cayman Islands is one of 21 jurisdictions classified by the Bank for International Settlements as an offshore centre. It alone accounts for 38% of all offshore centre liabilities, with liabilities of US\$ 1.5 trillion, which equates to approximately US\$ 25 million per head of population.

The US State Department has linked the Cayman Islands to fraud and drug trafficking,<sup>247</sup> and a recent US Senate investigation linked it to "...a wide array of money laundering, drug trafficking, and terrorist financing risks due to poor anti-money laundering (AML) controls."<sup>248</sup>

### 5.4.3. Switzerland

Entrenchment of secrecy in Swiss law banking since 1934, has meant that Switzerland has, for many decades, been the largest tax haven of all. In 2011, an estimated \$2.1 trillion of private wealth was held in offshore Swiss accounts. The Boston Consulting Group notes that while it remains the preeminent offshore destination, it others are gaining ground, including the UK, the Caribbean and Panama, and Hong Kong and Singapore.<sup>249</sup>

<sup>247</sup> United States Department of State Bureau for International Narcotics and Law Enforcement Affairs, 2012, *International Narcotics Control Strategy Report - Volume II - Money Laundering and Financial Crimes* [online], <http://www.state.gov/documents/organization/185866.pdf> (Accessed 07 February 2013)

<sup>248</sup> United States Senate Permanent Subcommittee On Investigations - Committee on Homeland Security and Governmental Affairs, 2012, *HSBC Exposed U.S. Financial System to Money Laundering, Drug, Terrorist Financing Risks*, <http://www.hsgac.senate.gov/subcommittees/investigations/media/hsbc-exposed-us-finacial-system-to-money-laundering-drug-terrorist-financing-risks>

<sup>249</sup> Boston Consulting Group, 2012, *Global Wealth 2012 The Battle to Regain Strength* [online], [http://www.freemontgroup.com/wp-content/uploads/2012/10/BCG\\_The\\_Battle\\_to\\_Regain\\_Strength\\_May\\_2012.pdf](http://www.freemontgroup.com/wp-content/uploads/2012/10/BCG_The_Battle_to_Regain_Strength_May_2012.pdf) (Accessed 14 February 2013) p.11

Due the financial crisis, Swiss banks have come under pressure from the authorities in other countries to disclose information about foreign account holders, most notably from the USA. The US Internal Revenue Service accused Swiss bank UBS of hiding money. UBS settled with the Justice Department and handed over thousands of names of suspected tax evaders. According to the American authorities these accounts at one point held some €18 billion. While the Foreign Account Tax Compliance Act will impede individual US tax evaders, large multinationals will still be attracted to Switzerland by its low tax rates, experienced bankers, and stable currency.

In August 2011, Switzerland reached agreements with the UK and Germany that enabled its banks to maintain secrecy, in return for a one-off holding tax, and a contribution from future income. This is considered to have undermined EU moves to a system of automatic information exchange.<sup>250</sup>

#### **5.4.4. Conclusion**

Neither Switzerland, nor Singapore, nor the Cayman Islands are classified by the OECD as tax havens. Singapore has information exchange agreements with all but one Member State, while just 11 of the Cayman Islands' bilateral agreements are with EU Member States. Some of these agreements have taken considerable time to enter into force, and some have not yet done so. The effectiveness of some of these agreements may be questionable, and while Singapore may be considered by some to have become a less attractive offshore location in recent years, this is clearly by no means a universal assessment. The EU's Partnership and Cooperation Agreements have, since 2008, included a clause on good tax governance, but it is unclear what this means in practical terms for Singapore, with whom the EU has recently concluded a Free Trade Agreement.

#### **5.5. VAT FRAUD CASE STUDY**

This case study examines links between organised crime in the EU and tax havens/ secrecy jurisdictions, and the implications for the EU. It looks at a VAT fraud that involves transfers between Member States and tax havens/ secrecy jurisdictions. Specifically, this case study focuses on Operation Euripus in the UK.

It is almost inevitable that any gaps or weaknesses in the financial regulatory regimes operated by state authorities will be targeted for exploitation by those with criminal intentions. The more relaxed or insecure a regulatory regime is, the more exposed it will be to the threat of manipulation by organised criminal gangs. Moreover, the tendency of criminal gangs to operate both within and across state boundaries, and therefore across different regulatory regimes, simply adds to the complexity and degree of risk borne by the relevant state authorities.

The general impact of tax havens and offshore financial centres on the EU's overall resources and budget are well rehearsed in other parts of this study. From a specific organised crime perspective, the principal attraction of tax havens, given their secrecy and minimal levels of regulation, is the opportunity they offer to be able to hide, camouflage or launder the monetary proceeds of illegal activities with the lowest possible risk of detection and recovery by the investigating and/or prosecuting authorities.

---

<sup>250</sup> Shaxson N., 2012, *A scheme designed to net trillions from global tax havens is being scuppered* [online], <http://www.guardian.co.uk/commentisfree/2012/nov/22/scheme-trillions-tax-havens-scuppered> (Accessed 14 February 2013)

There is a wealth of case law to support the assertion that tax havens are used by organised criminal gangs to facilitate their illegal activities, and the crimes concerned cover a wide spectrum of lawlessness including drug dealing and wide scale fraud. One particular type of fraud which illustrates the use of tax havens in masking the proceeds of criminal activity is a fraud known as Missing Trader Intra Community (MTIC) fraud (more commonly referred to as VAT Carousel fraud). Even within this single type of fraud, there are many examples which could be used to demonstrate the nature and scale of the problem. Within the UK alone, recent examples have included Operation Inertia (which resulted in a VAT loss estimated at £176million) and three linked Operations - Shepherd, Emersed and Shoot (total VAT losses estimated at £138 million).

#### **5.5.1. Operation Euripus**

Operation Euripus was the codename given by Her Majesty's Customs and Revenue (HMRC) to a 10 year investigation into the activities of a criminal network involved in a sophisticated MTIC fraud between 18 June 2001 and 28 July 2003 which led to a loss of £250 million to the UK revenue.<sup>251</sup> On 2 July 2003 the enforcement agencies involved made 42 arrests (plus 3 at a later date), searched 96 premises, seized 250 computers and 500,000 documents. The arrests led to 6 separate trials over the ensuing 10 years, and resulted in 15 offenders being convicted and imprisoned for a total of almost 100 years. The last of the 6 trials did not conclude until December 2011.

The perpetrators of the fraud made extensive use of businesses and bank accounts in tax havens in an attempt to cover their tracks and protect their profits.

#### **5.5.2. What is MTIC Fraud?**

MTIC frauds can take various forms but the most common example, and the modus operandi adopted in Operation Euripus, contains the following elements. First, a VAT registered organisation, or an organisation that misappropriates the VAT registration of an established trader, purchases goods from abroad (typically high value but low volume – e.g. mobile phones) and imports them free of VAT (zero rated) as the VAT regulations allow where the trade is legitimate. The importing trader then sells the goods on within the same EU State, charging VAT at the appropriate rate on the sale to an intermediary company known as a "buffer". The goods then pass through a series of sale and purchase transactions involving other intermediary/buffer companies each of whom properly charges and reclaims VAT. The final buffer company in the chain then sells the goods to a "broker" who sells the goods abroad (often to the company, or an associate, who exported the goods in the first place) and reclaims from the tax authorities the VAT paid to the final buffer company in the chain. Meanwhile, the importing trader disappears (hence "missing trader") having failed to account for the VAT they charged the first buffer company. In practice the conspirators (i.e. the individuals behind the importing, buffer and broker companies) seek to create as complicated a trading pattern as possible, in terms of the number of companies, bank accounts and resident jurisdictions etc., in order to disguise the true purpose of their activities. But what they need most to support the scam is paperwork which purports to show a genuine audit trail of transactions (except for the missing trader), including properly accounting for VAT.

---

<sup>251</sup> BBC, 2011, *Gang of 15 jailed for £250m VAT fraud* [online], <http://www.bbc.co.uk/news/uk-england-16262390> (Accessed 06 February 2013)

### **5.5.3. MTIC Modus Operandi**

The investigation by HMRC identified a complex set of arrangements and deals involving the purported import and export of mobile phones across EU boundaries. In the vast majority of cases there was no physical transaction in that either the mobile phones did not exist or the shipment (if one did take place) consisted of obsolete, low or no value IT/communications equipment. But the goods themselves were not relevant in terms of making the VAT fraud work. What really mattered in the latter respect was the existence of a paper trail to support the apparent movement of the phones and the accounting for VAT by the buffer and broker companies.

Typically, a company operated by one or more of the conspirators in Spain (usually Barcelona or Majorca) would purport to export quantities of mobile phones to one of a number of companies in the UK which had either been temporarily established, and VAT registered, for the purpose or were masquerading as a genuine, and completely innocent, VAT registered trader whose identity and VAT registration had been misappropriated (i.e. in either case, the “missing trader”). The importing company would then proceed to sell the phones to a buffer company operated by a fellow conspirator in the UK, who would then sell onto other buffer companies within the conspiratorial network. Finally, the last buffer company in the chain would sell to the identified broker who then sold to the original exporting company or a close associate. In accordance with standard MTIC practice, the importing company failed to account for the VAT due on the first onward sale in the UK and disappeared from the chain.

The mark up on the phones as they moved between the buffer companies was negligible and made no commercial sense (i.e. if genuine they would have been loss making transactions), but escalated significantly at the point of sale between the final buffer and broker companies. This made sense from the point of view of the fraud as the amount of VAT charged to the broker was the amount it reclaimed from HMRC, and therefore the amount which represented the tax loss to the revenue. It was not unusual for all of the transactions in the chain – from the Spanish exporter and back to the final purchaser – to take place within a single day.

To complicate matters, and help camouflage their tracks, many of the conspirators operated numerous companies, both in their country of residence and elsewhere (e.g. UK, Spain, Ireland, Belgium, Gibraltar, Hong Kong, United Arab Emirates (UAE)). In the majority of cases the companies were little more than a shell, with no trading premises or assets. Furthermore, freight forwarding companies needed to be operated, within the criminal network, in order to give the operation a degree of credibility. But again there was little of substance to these companies beyond the bare minimum needed to suggest a viable concern (e.g. small rented premises, a few vehicles, some stock etc.).

### **5.5.4. The Movement of Fraud Proceeds and Use of Tax Havens**

As already indicated, the proceeds from these illegal activities were substantial (i.e. £250 million in just over two years), and ways had to be found to move large sums of money around without suspicion en route to being lodged in a safe haven (i.e. tax haven). Between them the conspirators operated business bank accounts in London and Spain in which the companies purporting to trade in the import and export of mobile phones would deposit and withdraw funds to ostensibly reflect the nature of the transactions. But the pattern of the financial transactions did not always make logical sense. For example, it was not unusual for one of the buffer companies, with no apparent link to the Spanish exporter, to make third party payments into the exporter’s London bank account on behalf of another company in the chain. Payment in respect of some of the deals was also broken up and spread across a number of companies, again in ways which made no logical or commercial sense. The principal reason for operating in this way would have been to avoid raising the suspicions of EU Member State financial institutions (and other relevant professions, such as lawyers) who have a legal

obligation to report suspicious financial activities to the appropriate law enforcement agencies through the submission of Suspicious Transaction Reports, Suspicious Activity Reports (SARs) or Unusual Transaction Reports (depending on the regulations and mechanisms operating within individual Member States).

In a typical monetary flow, funds would be deposited into the Spanish exporter's London bank account from where it would be transferred to company bank accounts in Spain. From there monies were transferred on a regular basis to bank accounts held in a number of tax havens. The normal pattern was for funds to be transferred to accounts held in Hong Kong, where those responsible for managing the accounts would typically charge 1% of the funds deposited for their services. From Hong Kong monies were transferred to accounts held in other tax havens, principally the UAE but occasionally also Pakistan. But whilst this was the normal pattern, it was not followed systematically. For example, it was not unusual for funds to be transferred directly from the London accounts to those in Hong Kong, or from the Spanish accounts to those in the UAE. It is also possible that some transfers were effected in cash by conspirators travelling between the various countries concerned. In each case, however, the clear aim of those involved in the conspiracy and movement of funds was to secure maximum protection for the proceeds of their crimes by lodging them in jurisdictions where provenance is not routinely questioned and where the reach of the EU enforcement agencies is severely limited.

#### **5.5.5. Organised Crime and the use of Tax Havens : the Overall Scale of the Problem**

It is difficult to assess the true scale of the problem posed by criminal gangs exploiting the lax financial regimes operated by tax havens. This is largely because no specific or definitive records appear to be maintained by the relevant authorities within Member States. In this regard, and as part of this study, Member State authorities were surveyed on, among other things, the number of criminal gangs both known and estimated to have laundered money through tax havens in the last five years, and the total sums involved. Unfortunately, the survey prompted very few responses, and none that could be said to offer a reliable snapshot of the scale of the problem.

However, some higher level and more generic data does exist on the estimated cost of crime (including fraud) perpetrated by organised criminal gangs. This helps provide a broad indicator of the wider context. For example, the UK Organised Crime Strategy ("Local to Global: Reducing the Risk from Organised Crime"), published on 28 July 2011, referred to the annual cost of organised crime to the UK being estimated at between £20 billion and £40 billion.<sup>252</sup> It also said that an estimated 38,000 individuals, operating within 6,000 organised crime groups, are targeting the UK. Within the annual cost of between £20 billion and £40 billion, the National Fraud Authority's Annual Fraud Indicator, published in March 2012, suggested that £9.9 billion can be attributed to organised criminal activity involving fraud.<sup>253</sup> Moreover, of the £14 billion of tax revenues lost to all fraud in 2009/10 (i.e. that perpetrated by organised gangs and fraudsters more widely), £6 billion can be attributed to MTIC and other frauds involving the use of false identities. It would be misleading, of course, to attempt to extrapolate these statistics to provide an estimate for the wider EU, but the figures do, at least, provide a very broad indicator of the level of magnitude.

---

<sup>252</sup> HM Government, 2011, *Local to Global: Reducing the Risk from Organised Crime*, <http://www.homeoffice.gov.uk/publications/crime/organised-crime-strategy?view=Binary>

<sup>253</sup> National Fraud Authority, 2012, *Annual Fraud Indicator*, <http://www.homeoffice.gov.uk/publications/agencies-public-bodies/nfa/annual-fraud-indicator/annual-fraud-indicator-2012?view=Binary>

Given that the motivation behind organised crime is often financial gain (e.g. fraud, human trafficking, drug smuggling, trade in illegal guns, robbery, blackmail, extortion etc.), and that the significant profits need to be hidden from the investigative eyes of EU law enforcers to reduce the risk of detection, the attractiveness to criminal gangs of secretive tax havens, where few if any questions are asked about provenance, is all too clear.

#### **5.5.6. Implications for the EU**

Although it is not possible, in the absence of specifically related information, to be definitive about the scale of the tax haven problem as it relates to the activities of organised criminal gangs, and therefore the precise impact on the EU, the alternative sources described above do offer a good indicator of the nature and effect of the challenges created for the EU and its citizens.

For example, the sums of money defrauded and laundered in individual cases can be vast, as can the costs to EU Member States (and therefore citizens) of investigating and prosecuting the related criminal activity, and then attempting to recover the sums lost from the perpetrators of such crimes. In the case of Operation Euripus, described in Section 2 above, the costs of investigating and prosecuting the fraud over a period of 10 years needs to be added to the £250 million of VAT estimated to have been lost between June 2001 and July 2003 to gain a true reflection of the drain on public funds. Again, no accurate record exists of the total costs, but these will have been significant. By way of illustration, 350 enforcement officers were deployed on the arrest phase of the operation alone, and the conduct of the 6 separate trials will have involved the participation of senior prosecuting lawyers, publicly funded defence teams, expert witnesses, judges and other court officials, in addition to those engaged on the case within the various enforcement agencies throughout the length of the trials. Beyond that, there is also the cost of attempting to recover the proceeds of the crimes (made more complex and problematic through the purchase of assets (e.g. property) and use of bank accounts by the criminal gangs in secretive tax havens), and maintaining those convicted within the prison system.

#### **5.5.7. Conclusion**

The loss of such significant amounts of revenue, and the costs of investigating and prosecuting the criminal activity (once detected), and attempting to recover the lost revenue from assets held (including within tax havens), can only be met by adding to the tax burden of EU citizens and businesses.

It is not possible, on the basis of the limited information available, to assess what the level of organised criminal activity would be if the financial regimes operating in tax havens and offshore financial centres were as robust as those that operate in the EU and elsewhere. However, it is difficult to escape the conclusion that the much more relaxed and secretive regimes associated with tax havens, and the protections they afford to the criminally inclined, do act as a tangible incentive or comfort to organised crime gangs.

Removing or reducing that incentive or comfort through the adoption of more rigorous financial regimes would undoubtedly have a detrimental impact on the relative ease with which organised criminal gangs are currently able to launder and hide the proceeds of their crimes. It would also enhance the capabilities of the enforcement agencies to detect, investigate and prosecute such crimes. Furthermore, it would bring benefits from an EU citizen perspective in making it more difficult for the criminal gangs to protect their profits leading, by extension, to a less attractive operating environment, fewer victims and lower prevention and enforcement costs.

## 5.6. THE IMPACT OF TAX HAVENS ON THE EU INVESTMENT CLIMATE

This section considers the potential impact of tax havens on the EU investment climate. Investment climate is defined by the World Bank as “the policy, institutional and regulatory environment in which firms operate”.<sup>254</sup> Key factors that affect the investment climate are corruption, taxation, regulatory framework, quality of bureaucracy, legal environment, availability and quality of infrastructures, availability and cost of finance, factor markets (labour and capital), technological and innovation support.<sup>255</sup>

Tax havens might affect the investment climate in different ways. The most important impact originates from the fact that the use of tax havens enables European companies and individuals to reduce their tax payments in their own Member State. This leads to a significant loss of tax income.<sup>256,257,258,259</sup> The reduction on the tax base and, thus, on the potential amount of tax that might be collected, might affect public investment in infrastructure and social areas. Improvements in the physical and social infrastructure might take longer due to lower flows of public funds. Less government funding will be available to set up an R&D infrastructure, to improve schooling, to build industry clusters and to create all preconditions to attract further investments by domestic and foreign investors. The most vulnerable groups of society might be largely affected as social investments can also be delayed, while they continue to fulfil their fiscal responsibilities. Population at the lower end of the income distribution will never have access to tax havens practices while those with high income are benefiting from them. This affects the social environment of the economy that is key for the investment climate.

The second impact arises from the competitive pressure which tax havens generate on the investment climate of Member States.<sup>260</sup> Not so much in a direct sense, as no foreign company will consider establishing a factory or distribution centre which is targeting the European market in a tax haven outside the European Union. But more in an indirect sense, as it intensifies the internal competition between Member State to attract (foreign) investments.

Lowering their corporate taxes is one instrument Member States use in their competition amongst each other and with countries outside the EU to attract new investments. This tendency exists and will continue, also without the existence of tax havens, especially in periods of economic downturn. But as tax havens are used so much by international companies, they increasingly expect countries to have favourable fiscal links with as many other countries as possible (including tax havens) to enable them to set up transfer pricing, dividend and interest schemes. Increasingly Member States are offering this international fiscal network to (foreign) companies as part of their investment climate.

---

<sup>254</sup> World Bank (2005), World Development Report 2005: A Better Investment Climate for Everyone, World Bank and Oxford University Press, Washington, D.C.

<sup>255</sup> Kinda, T. and Plane, P. and Végazonès-Varoudakis, M.A. “Firms' productive performance and the investment climate in developing economies: an application to MENA manufacturing”. *World Bank Policy Research Working Paper Series*. Policy Research Working Paper No. 4869. 2009.

<sup>256</sup> Díaz-Berrio, J.L.E. “The fight against tax havens and tax evasion Progress since the London G-20 summit and the challenges ahead”. *Fundación Alternativas*. Working paper no. 59/2011

<sup>257</sup> Gravelle, J.G. “Tax Havens: International Tax Avoidance and Evasion”. *Congressional Research Service*. 7-5700. [www.crs.gov](http://www.crs.gov). CRS Report for Congress R4062. USA, September 3, 2010.

<sup>258</sup> Henry, J.S. “The Price of Offshore Revisited”. Tax Justice Network. July, 2012. Available at: [http://www.tjn-usa.org/storage/documents/The\\_Price\\_of\\_Offshore\\_Revisited\\_-\\_22-07-2012.pdf](http://www.tjn-usa.org/storage/documents/The_Price_of_Offshore_Revisited_-_22-07-2012.pdf)

<sup>259</sup> Murphy, R. “Closing the European Tax Gap. A report for Group of the Progressive Alliance of Socialists & Democrats in the European Parliament”. Tax Research LLP. UK. 2012. Available at:

[http://www.socialistsanddemocrats.eu/gpes/media3/documents/3842\\_EN\\_richard\\_murphy\\_eu\\_tax\\_gap\\_en\\_120229.pdf](http://www.socialistsanddemocrats.eu/gpes/media3/documents/3842_EN_richard_murphy_eu_tax_gap_en_120229.pdf)

<sup>260</sup> [http://tax-consultants-international.com/read/\\_dutch\\_holding\\_Company?submenu=3686&sublist=3274&subsublist=3300](http://tax-consultants-international.com/read/_dutch_holding_Company?submenu=3686&sublist=3274&subsublist=3300)

The Netherlands, Ireland and Luxembourg are the most prominent in this respect. At the one hand, this generates some investments, employment and tax income in these Member State, but at the other hand - because of the nature of the fiscal routes which are facilitated - it inevitably reduces the tax income in other countries (both Member States and foreign countries) as is shown by the Netherlands example in section 5.2.

Furthermore, it is doubtful if this strategy to improve the investment climate of a Member State really brings lasting and relevant economic benefits. These “highly competitive fiscal” schemes might attract *flight capital* without actually encouraging new productive investments in the EU, generating only minimal extra employment. This capital might also increase the volatility of financial markets in the region.

As we discuss in section 3.6.1, tax havens do also stimulate illegal practices and promote international crime. This affects the legal environment of Member States, as more resources are needed to prevent and penalise these practices. Tax havens also encourage tax evasion and avoidance, which will increase tax-related corruption and public spending to tackle these tax practices.

Finally, the increasing use of tax havens implies that improvements in the investment climate of Member States will bring less benefit to their economy and government income than expected. By using transfer pricing strategies and holding structures in tax havens, companies are able to invest in a Member State with an excellent investment climate without contributing much to the tax income which is necessary to maintain this investment climate. See the Starbucks example in section 5.2. Improving the investment climate will still attract businesses and generate employment, but will yield less tax income than expected.

### **5.6.1. Conclusion**

The potential benefits of tax havens on the investment climate are outweighed by their disadvantages. The additional flows of capital that they attract are not always translated into productive activities and do not yield as much tax income as expected, but in contrast, additional public funds need to be spent to confront their negative effects. Consequently, these funds cannot be invested in productive activities that promote a better investment climate and boost economic growth.

## **6. CONCLUSIONS AND RECOMMENDATIONS**

### **6.1.1. Conclusions**

The use of tax havens for transfer pricing and tax evasion has a negative impact on EU revenues by reducing the GNI of Member States. Moreover, lower tax revenues are likely to have a negative impact on the willingness of MS to increase or maintain their contributions to the EU. Tax havens facilitate the activities of tax evaders and criminal organisations. Combating these activities consumes resources that could otherwise be used for productive investments. The ability to engage in transfer pricing gives large corporations a significant advantage over smaller companies, and this undermines EU efforts to develop the small and medium enterprise sectors.

There are no universally agreed definitions of tax havens, secrecy jurisdiction, offshore financial centres, etc. Even within the EU, there are significant differences between the definition adopted by the European Parliament in 2012, and the definition recommended by the EC in December 2012.

Tax havens are used by many groups. Key among these are powerful financial institutions and multinational corporations; transnational criminal organisations; and high wealth individuals. They

use them, respectively, to avoid regulation; reduce tax liabilities through transfer pricing; launder money and engage in other criminal activities; and evade tax.

Many jurisdictions worldwide have, and continue to engage in harmful practices. These include EU MS and territories currently and historically associated with them, as well as other European jurisdictions. Inclusion on, or exclusion from, tax haven lists is often dependent on political considerations.

EU efforts to address leakage to tax havens have to date delivered limited results. The original Savings Tax Directive failed to deliver the expected tax revenues to EU MS because many individuals transferred assets to intermediate bodies that were not covered by the Directive. Also, there were significant geographic loopholes in the Directive. The proposed amendments should eliminate the 'legal person' loophole, but they do not address interest-bearing accounts held by natural persons in jurisdictions not covered by the existing Directive.

Other proposals also face difficulties. Implementation of the Commission's recommendation on a General Anti Abuse Rule will be challenging as it will involve delineating the often highly complex structures of multinational corporations. In order for the proposed Common Consolidated Corporate Tax Base system to apply to a corporation, it must first opt in to the system. Corporations that choose not to opt in may continue to reduce their tax liabilities in any EU MS by using offshore shell companies. The effectiveness of the Financial Transfer Tax is likely to be constrained unless accompanied by measures to limit the transfer of capital to non-participating jurisdictions, in particular, tax havens.

Effective implementation of the single recommendation addressing tax havens in the EC's December 2012 Action Plan to strengthen the fight against tax fraud and tax evasion is likely to be problematic. The criteria for identifying tax havens are based in part on the 10 elements developed by the OECD Global Forum for its peer review process, and in part on different tax rates applied to residents and non residents of jurisdiction. These criteria are not clear cut. The EC's recommendation relies on individual Member States to judge for themselves. Assessments by MS may differ, and there may be a tendency to fall back on the results of the peer review process, although this does not provide assurance of continuing compliance. The EC's proposal to report on progress only after three years is also unlikely to enhance the effectiveness of this measure.

The main international organisations dealing with the issue of tax havens are the OECD, and the OECD Global Forum. The Financial Action Task Force is also important, although it was established to address money laundering, rather than tax havens. Despite strong rhetoric on tax havens from the G-20 in 2009, there has been little concrete action, and there have been fewer references to tax havens in subsequent years. The OECD's December 2012 progress report identifies only two tax havens. Much reliance is placed on the work of the Global Forum but this is not a policing body, and it does not provide assurance of continuing compliance.

The increasingly aggressive use of transfer pricing by multinationals (as reported by the OECD), suggests that international efforts to tackle tax havens have not been effective. This assessment is supported by the use of fiscal amnesties in some countries to encourage the repatriation of hidden assets.

The increasing utilisation of tax havens by major emergent economies significantly undermines the ability of the EU to exert influence over these jurisdictions. Coherence of the EU's approach to dealing with tax havens is constrained by the fact that MS can, and do, deal individually with other jurisdictions. Similarly, some non-EU jurisdictions prefer to deal individually with EU Member States. It is interesting to note the conclusion of a Free Trade Agreement with a jurisdiction that is still widely considered a tax haven, and is reportedly attracting banks, other businesses, and capital displaced

from other jurisdictions.<sup>261</sup> Overall, the EU's efforts to tackle tax havens is weakened by the fact that some of its own MS engage in harmful practices, or are closely associated with territories that do so, and these practices are harmful not only to jurisdictions outside the EU, but also to other MS.

Tax havens have proven difficult to influence. Given the lack of consensus and commitment, internationally and within the EU, to eliminate tax havens, it is doubtful that this can ever be fully achieved. However, the EU can more readily influence the behaviour of its citizens and the businesses that operate in the EU, and it is perhaps through focusing more on this, that the harmful affects of tax havens can be significantly mitigated, if not entirely removed. The US FATCA is an example of such an approach.

### **6.1.2. Recommendations**

The agreements between the US and select MS covering the implementation of taxpayer account information exchange with the US to support its FATCA legislation included a statement that the USA intended to agree to reciprocity, that is the US would collect and report 'on an automatic basis to the authorities of the FATCA partner information on the U.S. accounts of residents of the FATCA partner.' The EU should take this statement as an opportunity to actively negotiate automatic exchange of information by the USA for all Member States in addition to those few with a FATCA agreement.

Member States should implement a general anti-abuse rule as recommended in the EC's Action Plan. With a general anti-abuse rule the presence of an intermediate legal structure registered in a tax haven may be superseded when assessing the tax owed to the state by the taxpayer and in that way negate any benefit otherwise sought by the taxpayer when organising its tax affairs in this manner.

Discouraging the use of jurisdictions that harm the EU (e.g. by facilitating transfer pricing, tax evasion, crime, etc.) requires that such jurisdictions are clearly identified, and in a timely manner. In this regard, it would seem desirable for the EC and the European Parliament to agree on a set of common, objectively verifiable criteria, based not simply on commitments or the existence of legislation, but on actual performance. Such criteria might include, for example, among other things:

- The ratio of resident to non-resident tax rates for businesses and individuals. Non-resident in this instance would include corporations that are registered in a jurisdiction but do not engage in substantive activity there, and this could be ascertained by reference to statistics such as:
  - The population of the jurisdiction in which the entity is registered;
  - The number of staff employed by the entity in the jurisdiction in which it is registered
- The time taken to respond to TIEA requests submitted by EU MS; the number of responses provided; the quality of the information provide.

It is important to retain flexibility to adjust these criteria to take account of new and emerging factors in a timely manner. If it takes years to introduce modifications (e.g. as in the case of the Savings Tax Directive), the system becomes useless. However, such adjustments must be done objectively, and not on the basis of political considerations.

---

<sup>261</sup> Singapore

Since different jurisdictions are likely to present different levels of risk to the EU, it would be desirable to categorise them on the basis of the objectively verifiable criteria, for example:

- Green – no risk;
- Amber – moderate risk;
- Red – high risk.

For this information to be useful, it should be timely and it should be publicly available. This implies the existence of a monitoring system to collect and analyse the data and publish reports on a regular basis.

Having established clearly which jurisdictions present a risk, it is necessary to understand clearly which EU entities are using them, and for what purposes. This requires mandatory country by country reporting on all activities of EU corporations and related entities (subsidiaries, parents, sibling, etc.) in all jurisdictions in which they operate, and in all sectors. Reporting should clearly indicate the organisational structure of the entity across all jurisdictions in which it operates.

Consideration can then be given to the use of incentives and disincentives. For example:

- Payments to entities and individuals in jurisdictions based in red-listed jurisdictions to be ineligible expenses for procurement involving the use of EU funds, including Structural and Cohesion Funds;
- EU institutions, agencies, and bodies to limit, or cease cooperation with financial institutions (including financial intermediaries) operating in red-listed jurisdictions, or with a subsidiary, parent, or other related entity operating in these jurisdictions.

It is important to retain flexibility to modify incentives and disincentives as circumstances require. However, this must be done objectively, rather than on the basis of political considerations.

In the event that country by country reporting is not mandatory, corporations operating in two or more jurisdictions (e.g. by means of related companies) should be incentivised to adopt country by country reporting for example by:

- Considering country by country reporting the default position and automatically deducting points during tender evaluations where offers are submitted by companies that have not adopted country by country reporting, where this is relevant;
- Alternatively, where a choice has to be made between two companies, each of which operates in two or more jurisdictions, additional points could automatically be allocated to a company if it carries out country by country reporting.

This approach could also be applied to encourage the uptake of the Common Consolidated Corporate Tax Base system.

At the very least, it would be highly desirable for the EC to draw up a clear set of financial and operational reporting guidelines for companies operating in two or more jurisdiction through related entities. This should be complemented by the establishment and maintenance of a publicly available register indicating which companies are applying these guidelines, and to what extent.

With regard to tax recovery and the prosecution of tax-related crimes, some stakeholder feedback indicates the desirability of EU initiatives to promote the provision, by higher education institutions and/ or professional bodies, of specialist courses and qualifications relating to tax investigation and

prosecution. Similarly, initiatives to promote and support groups and associations of specialist investigators and prosecutors dealing with tax-related matters may be useful.

MS are confronted with structural tax evasion problems which undermine fiscal planning and management. The EU needs to promote structural measures that address the problem in the long-term. Governments are taking short term measures, such as fiscal amnesties. This creates a negative perception among law-abiding citizens and may increase tax evasion in the longer time by creating expectations of future amnesties.

The EU could play a role in strengthening MS tax collection efforts by promoting tax collection guidelines and providing technical assistance to tax authorities, particularly in the areas of debt collection, resolution of tax disputes, implementing e-tools, monitoring large taxpayers, improving tax registration, services and risk analysis.

As foreseen by the EU Treaties, a European Public Prosecutor could provide the tools to address cross-country fiscal fraud. Setting up a European Public Prosecutor's Office could send a strong message to end impunity of tax evasion.

The Financial Transaction Tax may raise tax revenues, but it does not necessarily tackle key factors that have contributed to the financial crisis. Alternative mechanisms, such as the Financial Activity Tax and the Financial Stability Contribution, could correct incentives for risk-taking, address the value-added tax which does not apply to financial services, and avoid tax evasion.

This study has identified a number of areas for potential further research. These include:

- Civil society and governance in non-EU territories associated with EU Member States;
- The use of tax havens by organisations in receipt of EU funding, including grantees; organisations providing works, services, and goods to EU bodies, institutions, and agencies; and financial intermediaries;
- The impact of tax havens on the achievement of the EU's international development objectives (up to €58.7 billion are to be allocated to external policies in 2014-2020, of which 90% will be for development assistance);<sup>262</sup>
- Market distorting effects within the EU of the use of tax havens by large corporations for transfer pricing, and the impact on EU policy objectives in the areas of employment and small and medium enterprise development;
- The type and scale of criminal activity involving tax havens; losses to the EU and Member States; costs at Member State and EU level in fighting these activities and recovering taxes, crime proceeds, and stolen assets; the human impact resulting from the use of tax havens to facilitate criminal activities (e.g. narcotics, weapons dealing, human trafficking);
- Measures undertaken by Member States to address the use of tax havens for tax evasion and transfer pricing.

---

<sup>262</sup> European Council, 2013, *European Council 7/8 February 2013 Conclusions (Multiannual Financial Framework)*, [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/ec/135344.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/135344.pdf) (Accessed 15 February 2013)

## REFERENCES

- Council of the European Union, 2010, *Council Directive 2010/24/EU of 16 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures*, Official Journal of the European Union, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:084:0001:0012:EN:PDF>
- Council of the European Union, 1999, *Report from the Code of Conduct Group (Business Taxation) to ECOFIN Council on 29 November 1999*, SN 4901/99, [http://ec.europa.eu/taxation\\_customs/resources/documents/primarolo\\_en.pdf](http://ec.europa.eu/taxation_customs/resources/documents/primarolo_en.pdf)
- European Commission, 2012, *Communication from The Commission to The European Parliament and The Council - An Action Plan to strengthen the fight against tax fraud and tax evasion*, COM(2012) 722 final, [http://ec.europa.eu/taxation\\_customs/resources/documents/taxation/tax\\_fraud\\_evasion/com\\_2\\_012\\_722\\_en.pdf](http://ec.europa.eu/taxation_customs/resources/documents/taxation/tax_fraud_evasion/com_2_012_722_en.pdf)
- European Commission, 2012, *Tackling tax fraud and evasion in the EU - frequently asked questions*, MEMO/12/492, [http://europa.eu/rapid/press-release MEMO-12-492\\_en.htm](http://europa.eu/rapid/press-release_MEMO-12-492_en.htm)
- European Commission, 2012, *Communication from The Commission to The European Parliament and The Council on concrete ways to reinforce the fight against tax fraud and tax evasion including in relation to third countries*, COM(2012) 351 final, [http://ec.europa.eu/taxation\\_customs/resources/documents/common/publications/com\\_reports/taxation/com\(2012\)351\\_en.pdf](http://ec.europa.eu/taxation_customs/resources/documents/common/publications/com_reports/taxation/com(2012)351_en.pdf)
- European Commission, 2012, *Proposal for a Directive of The European Parliament and of The Council on the freezing and confiscation of proceeds of crime in the European Union*, COM(2012) 85 final, [http://ec.europa.eu/home-affairs/news/intro/docs/20120312/1\\_en\\_act\\_part1\\_v8\\_1.pdf](http://ec.europa.eu/home-affairs/news/intro/docs/20120312/1_en_act_part1_v8_1.pdf)
- European Commission, 2011, *Financial Transaction Tax: Making the financial sector pay its fair share*, IP/11/1085, [http://europa.eu/rapid/press-release IP-11-1085\\_en.htm](http://europa.eu/rapid/press-release_IP-11-1085_en.htm)
- European Commission, 2011, *Proposal for a COUNCIL DIRECTIVE on a common system of financial transaction tax and amending Directive 2008/7/EC*, COM/2011/0594 final, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52011PC0594:EN:NOT>
- European Commission, *Where does money come from?*, [http://ec.europa.eu/budget/explained/budg\\_system/financing/fin\\_en.cfm](http://ec.europa.eu/budget/explained/budg_system/financing/fin_en.cfm)
- European Commission, *Proposal for a Council Directive on a Common Consolidated Corporate Tax (CCCTB)*, COM(2011) 121/4, [http://ec.europa.eu/taxation\\_customs/resources/documents/taxation/company\\_tax/common\\_tax\\_base/com\\_2011\\_121\\_en.pdf](http://ec.europa.eu/taxation_customs/resources/documents/taxation/company_tax/common_tax_base/com_2011_121_en.pdf)
- European Communities, 1995, *Convention on the Protection of the European Communities' financial interests*, Official Journal of the European Communities, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:1995:316:0048:0057:EN:PDF>
- European Economic and Social Committee, 2012, *Opinion of the European Economic and Social Committee on 'Tax and financial havens: a threat to the EU's internal market' (own-initiative opinion)*, (2012/C 229/02), Official Journal of the European Union, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2012:229:0007:0012:EN:PDF>

- European Parliament, 2012, *European Parliament resolution of 19 April 2012 on the call for concrete ways to combat tax fraud and tax evasion*,  
<http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2012-0137&language=EN&ring=B7-2012-0203>
- European Union, 1995, *Council Act of 26 July 1995 drawing up the Convention on the protection of the European Communities' financial interests*, (95/C 316/03), Official Journal of the European Communities,  
[http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31995F1127\(03\):EN:NOT](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31995F1127(03):EN:NOT)
- EUROPOL, 2011, *OCTA 2011 EU Organised Crime Threat Assessment*,  
[https://www.europol.europa.eu/sites/default/files/publications/octa\\_2011\\_1.pdf](https://www.europol.europa.eu/sites/default/files/publications/octa_2011_1.pdf)
- Financial Action Task Force, 2012, *FATF Public Statement - 22 June 2012*, <http://www.fatf-gafi.org/topics/high-riskandnon-cooperativejurisdictions/documents/fatfpublicstatement-22june2012.html>
- Financial Action Task Force, 2012, *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation - the FATF Recommendations*, <http://www.fatf-gafi.org/topics/fatfrecommendations/documents/internationalstandardsoncombatingmoneylaunderingandthefinancingofterrorismproliferation-thefatfrecommendations.html>
- Financial Action Task Force, 2010, *An introduction to the FATF and its work*, <http://www.fatf-gafi.org/media/fatf/documents/brochuresannualreports/Introduction%20to%20the%20FATF.pdf>
- G-20, 2009, *London Summit Leaders' Statement 2 April 2009*,  
[http://www.imf.org/external/np/sec/pr/2009/pdf/G-20\\_040209.pdf](http://www.imf.org/external/np/sec/pr/2009/pdf/G-20_040209.pdf)
- International Monetary Fund, 2012, *The IMF and the Fight Against Money Laundering and the Financing of Terrorism*, <http://www.imf.org/external/np/exr/facts/aml.htm>
- Johannesen N., Zucman G., 2012, *The End Of Bank Secrecy? An Evaluation Of The G-20 Tax Haven Crackdown*, [http://www.parisschoolofeconomics.eu/docs/zucman-gabriel/sub\\_jan31.pdf](http://www.parisschoolofeconomics.eu/docs/zucman-gabriel/sub_jan31.pdf)
- OECD, 2012, *The Global Forum On Transparency And Exchange Of Information For Tax Purposes Information Brief 16 April 2012*, <http://www.oecd.org/ctp/harmfultaxpractices/43757434.pdf>
- OECD, 2012, *Tax: OECD to simplify transfer pricing rules*,  
<http://www.oecd.org/newsroom/taxoecdtoSimplifytransferpricingrules.htm>
- OECD, 2000, *Towards Global Tax Co-operation - Report to The 2000 Ministerial Council Meeting and Recommendations by The Committee On Fiscal Affairs - Progress in Identifying and Eliminating Harmful Tax Practices*, <http://www.oecd.org/tax/harmfultaxpractices/2090192.pdf>
- OECD, 1998, *Harmful Tax Competition Tax Competition - An Emerging Global Issue*,  
<http://www.oecd.org/tax/harmfultaxpractices/1904184.pdf>
- OECD, *List of Unco-operative Tax Havens*, <http://www.oecd.org/countries/liechtenstein/listofunco-operative-taxhavens.htm>
- Picciotto, S., 2012, *Towards Unitary Taxation of Transnational Corporations*,  
[http://www.taxjustice.net/cms/upload/pdf/Towards\\_Unitary\\_Taxation\\_1-1.pdf](http://www.taxjustice.net/cms/upload/pdf/Towards_Unitary_Taxation_1-1.pdf)
- Sharman, J.C., 2010, *Shopping for Anonymous Shell Companies: An Audit Study of Anonymity and Crime in the International Financial System*, *Journal of Economic Perspectives*, Volume 24, Number 4, Fall 2010, Pages 127–140,

- 
- [http://www98.griffith.edu.au/dspace/bitstream/handle/10072/36463/66516\\_1.pdf?sequence=1](http://www98.griffith.edu.au/dspace/bitstream/handle/10072/36463/66516_1.pdf?sequence=1)
  - Sharman, J.C., 2011, *Testing the Global Financial Transparency Regime*, International Studies Quarterly 55, no. 4 (2011): 981 - 1001, [http://www98.griffith.edu.au/dspace/bitstream/handle/10072/42551/74437\\_1.pdf?sequence=1](http://www98.griffith.edu.au/dspace/bitstream/handle/10072/42551/74437_1.pdf?sequence=1)
  - Sharman, J.C., 2012, *Canaries in the Coal Mine: Tax Havens, the Decline of the West and the Rise of the Rest*, New Political Economy 17, no. 4 (2012): 493 - 512
  - The Observer, 2012, *Bank secrecy masks a world of crime and destruction*, The Observer, <http://www.guardian.co.uk/commentisfree/2012/jul/22/editorial-hsbc-tax-havens-avoidance>
  - Trades Union Congress, 2009, *UK banks must come clean on tax haven activities*, says TUC, <http://www.tuc.org.uk/economy/tuc-15906-f0.cfm>
  - United Nations Development Programme, 1999, *Human Development Report 1999*, [http://hdr.undp.org/en/media/HDR\\_1999\\_EN.pdf](http://hdr.undp.org/en/media/HDR_1999_EN.pdf)
  - United Nations Office on Drugs and Crime, 2010, *The Globalization of Crime - A Transnational Organized Crime Threat Assessment*, [http://www.unodc.org/documents/data-and-analysis/tocta/TOCTA\\_Report\\_2010\\_low\\_res.pdf](http://www.unodc.org/documents/data-and-analysis/tocta/TOCTA_Report_2010_low_res.pdf)
  - United Nations Office on Drugs and Crime, *Introduction to money-laundering*, <http://www.unodc.org/unodc/en/money-laundering/introduction.html?ref=menuaside>
  - United Nations Office on Drugs and Crime, *Money-Laundering and Globalization*, <http://www.unodc.org/unodc/en/money-laundering/globalization.html>
  - United States Government Accountability Office, 2008, *Report to Congressional Requesters - International Taxation - Large U.S. Corporations and Federal Contractors with Subsidiaries in Jurisdictions Listed as Tax Havens or Financial Privacy Jurisdictions*, GAO-09-157, <http://www.gao.gov/assets/290/284522.pdf>
  - United States Senate Permanent Subcommittee On Investigations - Committee on Homeland Security and Governmental Affairs, 2012, *HSBC Exposed U.S. Financial System to Money Laundering, Drug, Terrorist Financing Risks*, <http://www.hsgac.senate.gov/subcommittees/investigations/media/hsbc-exposed-us-finacial-system-to-money-laundering-drug-terrorist-financing-risks>
  - Zoromé, A., 2007, *Concept of Offshore Financial Centers: In Search of an Operational Definition*, WP/07/87, IMF Working Paper WP/07/87, <http://www.imf.org/external/pubs/ft/wp/2007/wp0787.pdf>

## ANNEX 1 – DATA TABLES

**Table 13: Offshore jurisdiction comparison chart**

Jurisdiction/ Type of Company	Taxation	Local directors required	Publicly accessible record of directors	Audit requirements	Requirement to file accounts
<b>Premier Offshore Jurisdictions</b>					
Anguilla	Nil	No	No	No	No
Bahamas	Nil	No	Yes	No	No
Belize	Nil	No	No	No	No
British Virgin Islands (BVI)	Nil	No	No	No	No
Cayman Islands	Nil	No	No	No	No
Cook Islands	Nil	No	No	No	No
Dominica	Nil	No	No	No	No
Marshall Islands	Nil	No	No	No	No
Nevis	Nil	No	No	No	No
Panama (Non Resident)	Nil	No	Yes	No	No
Samoa	Nil	No	No	No	No
Seychelles	Nil	No	No	No	No
St Vincent	Nil	No	No	No	No
Turks and Caicos Islands	Nil	No	No	No	No
UAE (RAK Offshore)	Nil	No	No	No	No
Vanuatu	Nil	No	No	No	No
<b>Popular Offshore Jurisdictions</b>					
Cyprus	10%	Advisable	Yes	Yes	Yes
Gibraltar (Non Resident)	Nil	No	Yes	Yes, but small company exceptions	Yes
Isle of Man	Various (normally 0%-10%)	No	Yes	No	Depends
Hong Kong	Nil on Foreign Profits	No	Yes	Yes	Yes
Liechtenstein	12,50%	No	No	No	Yes
Luxembourg	Normal rates	Advisable	Yes	Yes	Yes

<b>Jurisdiction/ Type of Company</b>	<b>Taxation</b>	<b>Local directors required</b>	<b>Publicly accessible record of directors</b>	<b>Audit requirements</b>	<b>Requirement to file accounts</b>
Mauritius	0% - 3%	Yes	No	Yes	Yes
New Zealand	0% - 30%	Yes	Yes	No	Yes
Singapore	Nil on Foreign Profits	Yes	Yes	Yes but small exemptions	Yes but small exemptions
United Kingdom (London)	Various	Varies	Yes	Yes but small company exceptions	Yes
<b>Caribbean Offshore Jurisdictions</b>					
Barbados	1% - 2.5%	No	Yes	Yes	Yes
Bermuda (Exempt)	Nil	Yes	No	Yes	Yes
<b>European Offshore Jurisdictions</b>					
Bulgaria	10%	Yes	Yes	No	Yes
Denmark	0% - 25%	Yes	Yes	No	Yes
Hungary	10%	Yes	Yes	No	Yes
Ireland	12.5%	No	Yes	Yes	Yes
Jersey	0% - 10%	No	No	No	No
Malta	5% - 35%	No	Yes	Yes	Yes
Netherlands	20%-25%	No	Yes	Yes	Yes
Scotland (LP )	Fiscally transparent	Not applicable	Not applicable	No	No
Switzerland	Yes/ Varies	Yes	Yes	Yes	Yes
<b>Central &amp; South America Offshore Jurisdictions</b>					
Costa Rica	Nil	No	Yes	No	No
<b>Australia, New Zealand &amp; Oceania Offshore Jurisdictions</b>					
Australia	30%	Yes	Yes	Varies	Varies
New Zealand	0% - 30%	Yes	Yes	No	Yes
<b>Usa &amp; Canada</b>					
Canada (Ontario, New Brunswick)	11%-16,5% (also local rates)	Yes	Yes	No	Yes
USA - Delaware	Fiscally transparent	No	On formation	No	No

**Source:** [http://www.wis-international.com/offshore\\_jurisdictions.html](http://www.wis-international.com/offshore_jurisdictions.html). The Tax Justice Network calculates a Financial Secrecy Index for these jurisdictions that can be found here <http://www.financialsecrecyindex.com/2009results.html>.

**Table 14: Standard VAT rates in Europe (2013)**

Country	Rate (%)
Hungary	27.0
Denmark	25.0
Norway	25.0
Sweden	25.0
Finland	24.0
Romania	24.0
Greece	23.0
Ireland	23.0
Poland	23.0
Portugal	23.0
Belgium	21.0
Czech Republic	21.0
Italy	21.0
Latvia	21.0
Lithuania	21.0
Netherlands	21.0
Spain	21.0
Austria	20.0
Bulgaria	20.0
Estonia	20.0
Slovakia	20.0
Slovenia	20.0
United Kingdom (UK)	20.0
France	19.6
Germany	19.0
Cyprus	18.0
Malta	18.0
Luxembourg	15.0
Switzerland	8.0

Source: <http://www.vatlive.com/vat-rates/international-vat-and-gst-rates>, [www.world.tax-rates.org](http://www.world.tax-rates.org) and [www.taxanalysts.com](http://www.taxanalysts.com)

**Table 15: Jurisdictions receiving special attention from the Global Forum**

Jurisdiction	OECD Tax Haven List 2000	Status in 2009 OECD Progress Report	Phase 2 peer review deferred	"Relevant to work of Global Forum"
Botswana			X	X
Brunei		Other financial centre committed to international standard	X	
Costa Rica		Tax haven not committed to the standard	X	
FYR Macedonia				X
Ghana				X
Guatemala		Other financial centre committed to international standard	X	
Jamaica				X
Lebanon			X	X
Liberia	X	Tax haven committed to international standard	X	
Panama	X	Tax haven committed to international standard	X	
Qatar				X
Trinidad & Tobago			X	X
United Arab Emirates		Substantially implementing international tax standard	X	
Uruguay		Tax haven not committed to the standard	X	
Vanuatu	X	Tax haven committed to international standard	X	

**Source:** Global Forum and OECD

**Table 16: Jurisdictions included in a US GAO list of tax havens, but not identified as tax havens by the OECD either in 2000, or 2009**

Jurisdiction	OECD Tax Haven List 2000	Status at 2009 OECD Progress Report	US District Court	US NBER 2006
Bermuda		Tax haven committed to international standard	X	X
Cayman Islands		Tax haven committed to international standard	X	X
Costa Rica		Tax haven not committed to the standard	X	
Cyprus		Substantially implementing international tax standard	X	X
Hong Kong			X	X
Ireland				X
Jordan				X
Latvia			X	
Macao				X
Maldives	X			X
Malta		Substantially implementing international tax standard	X	X
Singapore		Other financial centre committed to international standard	X	X
Switzerland		Other financial centre committed to international standard	X	X

**Source:** OECD and United States Government Accountability Office

**Table 17: Offshore financial centres not identified as tax havens by the OECD either in 2000, or 2009**

Jurisdiction	IMF OFC List 2007	OECD Tax Haven List 2000	Status at 2009 OECD Progress Report
Bermuda	X		Tax haven committed to international standard
Cayman Islands	X		Tax haven committed to international standard
Cyprus	X		Substantially implementing international tax standard
Hong Kong	X		
Ireland	X		
Latvia	X		
Luxembourg	X		
Malta	X		Substantially implementing international tax standard
Mauritius	X		Substantially implementing international tax standard
Singapore	X		Other financial centre committed to international standard
Switzerland	X		Other financial centre committed to international standard
United Kingdom (London)	X		
Uruguay	X		Tax haven not committed to the standard

**Source:** OECD and IMF. **Note:** OFC – offshore financial centre.

**Table 18: Member States and associated territories with harmful tax measures**

Jurisdiction	Harmful Measures Identified in 1999
Netherlands	10
Isle of Man	6
Belgium	5
Guernsey	5
Ireland	5
Luxembourg	5
Aruba	4
France	4
Gibraltar	3
Netherlands Antilles	3
Spain	3
Austria	2
British Virgin Islands	1
Denmark	1
Finland	1
Germany	1
Greece	1
Italy	1
Portugal	1

**Source:** ECOFIN Code of Conduct Group (Business Taxation), 1999

**Table 19: Summary of offshore centre liabilities**

Relationship to the UK or other country	BIS - Offshore Centre Liabilities September 2012 (US\$)	Percent of Total BIS Offshore Centre Liabilities	Population	Average Liabilities Per Head of Population (US\$)
British Overseas Territory	1,588,583,000,000	40.14%	153,293	9,009,787
Former British Colony	1,343,266,000,000	33.94%	15,541,534	218,622
British Crown Dependency	566,969,000,000	14.33%	236,768	2,386,813
West Indies UK	144,030,000,000	3.64%	199,153	723,213
Constituent country of the Kingdom of the Netherlands	84,728,000,000	2.14%	291,510	200,730
Former Portuguese Colony	53,435,000,000	1.35%	575,541	92,843
Former French Mandate (Lebanon)	42,436,000,000	1.07%	4,810,063	8,822
Former British Protectorate	32,935,000,000	0.83%	1,399,749	23,529
Formerly under New Zealand control	11,161,000,000	0.28%	183,599	60,790
Former British/ French Colony	491,000,000	0.01%	266,437	1,843

**Source:** Bank for International Settlements Monetary and Economic Department, 2013, Preliminary International Banking Statistics, third quarter 2012 - External positions of reporting banks vis-à-vis all sectors. Helder S., World Gazetteer, The States of Guernsey Policy Council, Guernsey Facts and Figures 2012.

**Note:** West Indies UK includes Anguilla, Antigua and Barbuda, British Virgin Islands, Montserrat and St Christopher/St Kitts-Nevis. Three are British Overseas Territories and two are former British colonies.

**Table 20: Bank for International settlements – offshore centres**

Jurisdiction	Relationship to UK or other country	Independence	Transfer to China	BIS Liabilities September 2012 (US\$)	Percent of total liabilities	Population	Liabilities per head of population (US\$)
Cayman Islands	British Overseas Territory			1,499,263,000,000	38%	59,004	25,409,515
Hong Kong	Former British Colony		1997	496,719,000,000	13%	7,237,176	68,634
Singapore	Former British Colony	1963		495,878,000,000	13%	6,349,572	78,096
Jersey	British Crown Dependency			340,667,000,000	9%	88,887	3,832,585
Bahamas	Former British Colony	1973		295,645,000,000	7%	367,324	804,862
Guernsey	British Crown Dependency			161,068,000,000	4%	62,915	2,560,089
West Indies UK	West Indies UK (3 British Overseas Territories & 2 former British Colonies)			144,030,000,000	4%	199,153	723,213
Panama				89,188,000,000	2%	3,814,117	23,384
Curacao	Constituent country of the Kingdom of the Netherlands			82,790,000,000	2%	144,056	574,707
Bermuda	British Overseas Territory			76,235,000,000	2%	64,914	1,174,400
Isle of Man	British Crown Dependency			65,234,000,000	2%	84,966	767,766
Macao	Former Portuguese Colony		1999	53,435,000,000	1%	575,541	92,843
Lebanon	Form French Mandate	1943		42,436,000,000	1%	4,810,063	8,822
Barbados	Former British Colony	1966		35,370,000,000	1%	279,623	126,492
Bahrain	Former British Protectorate	1971		32,935,000,000	1%	1,399,749	23,529
Mauritius	Former British Colony	1968		19,654,000,000	0%	1,307,839	15,028
Gibraltar	British Overseas Territory			13,085,000,000	0%	29,375	445,447
Samoa	Formerly under New Zealand control	1962		11,161,000,000	0%	183,599	60,790
Aruba	Constituent country of the Kingdom of the Netherlands			1,302,000,000	0%	105,432	12,349
Sint Maarten	Constituent country of the Kingdom of the Netherlands			636,000,000	0%	42,022	15,135
Vanuatu	Former British/ French Colony	1980		491,000,000	0%	266,437	1,843

**Source:** Bank for International Settlements Monetary and Economic Department, 2013, *Preliminary International Banking Statistics, third quarter 2012 - External positions of reporting banks vis-à-vis all sectors*. Population data are 2013 estimates from Helders S., *World Gazetteer*, except for Guernsey, which is from The States of Guernsey Policy Council, *Guernsey Facts and Figures 2012*.

**Table 21: Agreements signed by Spain, Greece, Portugal, and Italy with tax havens**

Tax havens	 SPAIN		 GREECE		 PORTUGAL		 ITALY	
	TIEA	Date entered into force	TIEA	Date entered into force	TIEA	Date entered into force	TIEA	Date entered into force
Aruba	✓	27.1.2011	x		x		x	
Bahamas	✓	11.9.2011	x		x		x	
Bahrain	x		x		x		x	
Barbados	DTC	14.10.2011	x		DTC	Not yet in force. Signed on 22.10.2010	x	
British Virgin Islands	x		x		x		x	
Cayman Islands	x		x		✓	18.5.2011	✓	Not yet into force. Signed on 3.1.2012
Gibraltar	x		✓	Not yet in force. Signed on 31.1.2013	x		✓	Not yet into force. Signed on 2.10.2012
Guernsey	x		✓	Not yet in force. Signed on 8.10.2010	✓	Not yet in force. Signed on 9.7.2010	✓	Not yet into force. Signed on 14.1.2013
Hong Kong	DTC	Not yet into force. Signed on 1.4.2011	x		DTC	3.6.2012	DTC	Not yet into force. Signed on 5.9.2013
Isle of Man	x		x		✓	18.1.2012	x	
Jersey	x		x		✓	9.11.2011	✓	Not yet into force. Signed on 13.3.2012
Macao	x		x		x		x	
Malaysia	DTC	28.12.2007	x		x		DTC	18.4.1986
Mauritius	x		x		x		DTC	28.4.1995
Netherlands Antilles	x		x		x		x	
Panama	DTC	25.7.2011	x		DTC	10.6.2012	DTC	Not yet into force. Signed on 30.12.2010
Singapore	DTC	Not yet into force.13.4.2011	x		DTC	7.9.1999	DTC	12.1.1979

Tax havens	 SPAIN		 GREECE		 PORTUGAL		 ITALY	
	TIEA	Date entered into force	TIEA	Date entered into force	TIEA	Date entered into force	TIEA	Date entered into force
Turks and Caicos Islands	x		x		✓	Not yet in force. Signed on 20.12.2010	x	
United Arab Emirates (Dubai)	DTC	2.4.2007	DTC	Not yet in force. Signed on 18.1.2010	DTC	16.7.2011	DTC	5.11.1997
Uruguay	DTC	10.4.2011	x		DTC	13.9.2012	x	

Source:

Table 22: World's largest 105 companies operating in Spain, Greece, Portugal, and Italy

Country	Companies of the study operating in the country	Revenue	Income tax
	How many companies operate in the country?	How many companies publicly disclose revenues or sales in the country via their website?	How many companies publicly disclose income taxes paid in the country via their website?
Spain	66/105	7	2
Greece	43/105	2	0
Portugal	48/105	2	1
Italy	62/105	9	1

Source: Transparency International

Table 23: Country by country reporting of four Spanish and Italian multinationals

Country	Company	Industry	Index (0-10)	Reporting on Anti-corruption Programmes	Organizational Transparency	Country-by-country reporting
Spain	Banco Santander	Financial	5.4	46%	100%	21.30%
Spain	Telefónica	Telecom.	6.2	69%	100%	26.20%
Italy	ENEL	Utilities	6.2	85%	100%	0.80%
Italy	ENI	Oil & Gas	5.9	93%	83%	1.30%

Source: Transparency International

## ANNEX 2 - OVERSEAS TERRITORIES OF EU MEMBER STATES

France, Great Britain and the Netherlands maintain close relations with overseas territories either through single or affiliated governance structures. The European Union is directly or indirectly involved in these territories. Some of these overseas territories are active tax havens closely linked to their European counterparts.

This annex briefly outlines the governance structures linking Great Britain, France and the Netherlands to their overseas territories. This annex also provides an overview of the status of these territories with regard to the EU. Finally, it reviews the role of overseas territories as tax havens.

Article 52 of the Treaty on European Union sets out the territorial scope of the European treaties. This refers to article 355 of the Treaty on the Functioning of the European Union (TFEU). Article 355.1 of the TFEU distinguishes two categories of overseas territory<sup>263</sup>:

- The Outermost Regions where the treaties apply; and
- The Overseas Countries and Territories, in which they do not apply.

### The Outermost Regions

As of 01 January 2012, there were eight Outermost Regions. France accounts for five (Guadeloupe, Guyana, Martinique, Réunion and Saint Martin), Portugal two (the Azores and Madeira) and Spain one (Canary Islands).

Even though the European treaties apply in the Outermost Regions, the Council may adopt specific measures to take account of their "...structural social and economic situation, which is compounded by their remoteness, insularity, small size, difficult topography and climate, economic dependence vis-à-vis a few products, the permanence and combination of which severely restrain their development" (Article 349 TFEU).

EU legislation applies in the Outermost Regions, as they are part of the European Union territory. This also means they are eligible for European structural funds such, as the European Regional Development Fund (ERDF) and the European Social Fund (ESF).

---

<sup>263</sup> Source: Banque de France. (2012) French overseas territories and the euro. [WWW] Available at [http://www.banque-france.fr/fileadmin/user\\_upload/banque\\_de\\_france/publications/QSA-24\\_05.pdf](http://www.banque-france.fr/fileadmin/user_upload/banque_de_france/publications/QSA-24_05.pdf) Accessed 12 March 2013

## **The Overseas Countries and Territories**

As of 01 January 2012, there were 22 Overseas Countries and Territories. France accounts for seven, the Netherlands for two, Denmark one, and the United Kingdom 13. These are listed below.

### France:

- French Polynesia
- French Southern and Antarctic Lands (TAAF)
- Mayotte
- New Caledonia
- Saint Barthélemy
- Saint Pierre and Miquelon
- Wallis and Futuna

### The Netherland

- Aruba
- Netherlands Antilles (including Bonaire, Curacao, Saba, Sint Eustatius and Sint Maarten)

### Denmark

- Greenland

### United Kingdom

- Anguilla
- Bermuda
- British Antarctic Territory
- British Indian Ocean Territory
- British Virgin Islands
- Cayman Islands
- Falkland Islands
- Gibraltar
- Montserrat
- Pitcairn, Henderson, Ducie and Oeno Islands
- St Helena and St Helena Dependencies (Ascension and Tristan da Cunha)
- South Georgia and South Sandwich Islands
- Sovereign Base Areas of Akrotiri and Dhekelia
- The Turks & Caicos Islands

(British crown dependencies – Isle of Man and the Channel Islands (the Bailiwick of Jersey and the Bailiwick of Guernsey, including Guernsey and its dependencies) - are neither Outermost Regions nor Overseas Countries and Territories. British overseas territories and crown dependencies are described below).

The Overseas Countries and Territories are subject only to Part IV of the TFEU, which simply provides for “...the association with the Community of the non-European countries and territories which have special relations with Denmark, France, the Netherlands and the United Kingdom” (Article 198 TFEU).

Given that the Overseas Countries and Territories are not part of the territory of the European Union, European law does not apply and they are not eligible for European Structural Funds. They may, however, benefit from the European Development Fund (EDF) and the investment facility managed by the European Investment Bank (EIB) as set up by the decision on the association of the Overseas Countries and Territories. This funding is financed by EU Member States' resources and fosters investment in particular in the private sector, infrastructure and the financial sector. It operates as a so-called revolving fund (loan repayments are reinvested in new operations), but also consists of grants and technical assistance services.

Citizens of the Overseas Countries and Territories are nationals of an EU Member State. Therefore they enjoy European citizenship and may participate in elections of their country's representatives at the European Parliament and travel/reside freely throughout the EU territory.

## **United Kingdom**

The United Kingdom has jurisdiction over fourteen territories, although they do not form part of the United Kingdom itself.

There are two types of territory associated with the United Kingdom:

- British overseas territories (former British colonies that have not become independent from the UK for various reasons);
- British crown dependencies.

### British Overseas Territories

A British Government telegram dated 05 January 2009 and published by The Telegraph on 04 February 2011 states that *"Since 2002, BOT [British Overseas Territories] citizens have been British citizens, with limited exceptions. However BOTs are not constitutionally part of the UK. Each has a distinct constitution and a unique legal relationship to the UK. HMG [British Government] guarantees the defense of all BOTs and handles their foreign relations."*<sup>264</sup>

*"Each BOT is constitutionally unique. The degree of self-government depends on the BOT's constitutional relationship with the UK. Larger, more developed BOTs are largely autonomous in regard to their internal affairs, as is the case with Bermuda, Gibraltar, the Falklands, and others. The common thread among them is recognition of UK sovereignty, acknowledgment of the Queen as the Head of State, and British citizenship."*

*"HMG can and will intervene directly and significantly in a BOT's internal government under extraordinary circumstances, as is presently the case in the Turks and Caicos Islands..."*

---

<sup>264</sup> The Telegraph, 2011, *A Guide to the British Overseas Territories* (British government telegram passed to The Telegraph by WikiLeaks) [online], <http://www.telegraph.co.uk/news/wikileaks-files/london-wikileaks/8305236/A-GUIDE-TO-THE-BRITISH-OVERSEAS-TERRITORIES.html> (Accessed 06 February 2013)

The telegram notes that “Tourism and financial services account for most of the revenue generated in the BOTs” and it points out that their economies are therefore fragile.

*“The BOTs are supported in HMG by the United Kingdom Overseas Territories Association (UKOTA). UKOTA acts like a lobbying group in London; it exists to promote and defend the common interests of the BOTs, as well as promote cooperation and common positions among BOT governments. UKOTA’s members are the BOT governments themselves, represented by a delegate named by each government.”*

The British government website refers to its responsibility to ensure the security and good governance of British Overseas Territories. It lists several significant challenges, including building more diverse and resilient economies, and regulating finance business effectively.<sup>265</sup>

### British Crown Dependencies

These comprise the Isle of Man and the Channel Islands (the Bailiwick of Jersey and the Bailiwick of Guernsey, including Guernsey and its dependencies)

The following extracts, taken from a 2010 Ministry of Justice response<sup>266</sup> to a report of the Justice Select Committee,<sup>267</sup> explain the relationship between British Crown Dependencies and the UK.

*“The Crown Dependencies have their own democratically elected governments responsible for setting policy, passing laws and determining each Island’s future. They have an important relationship with the United Kingdom because of their status as dependencies of the British Crown but they are not part of the United Kingdom nor, except to a limited extent, the European Union. They are not represented in the UK parliament and UK laws do not ordinarily extend to them without their consent.”*

*“The United Kingdom Government has a responsibility to ensure that the Crown Dependencies have the advice and assistance necessary to function as socially and economically sound democracies. In turn the Government expects each Crown Dependency to accept the responsibility of being a ‘good neighbour’ to the UK and to ensure its own policies do not have a significant adverse impact on the UK’s interests.”*

*“The UK government is responsible for the Crown Dependencies’ international relations and ultimate good governance and has the commensurate power to ensure these obligations are met.”*

*“As they are not sovereign States, the Crown Dependencies cannot bind themselves internationally. It should be recognised that the Crown Dependencies do have an international identity which is different from that of the United Kingdom. UK Government Departments should consult the Crown Dependencies in respect of any international instruments that may extend to*

---

<sup>265</sup> British Government, 2012, *Supporting the Overseas Territories* [online], <https://www.gov.uk/government/policies/protecting-and-developing-the-overseas-territories> (Accessed 06 February 2013)

<sup>266</sup> Ministry of Justice, 2010, *Government Response to the Justice Select Committee’s report: Crown Dependencies* [online], <http://www.justice.gov.uk/downloads/publications/moj/2010/gov-response-justice-select-committee-crowndependencies.pdf> (Accessed 06 February 2013)

<sup>267</sup> House of Commons Justice Committee, 2010, *Crown Dependencies* [online], <http://www.publications.parliament.uk/pa/cm200910/cmselect/cmjust/56/56i.pdf> (Accessed 06 February 2013)

*them, and where practicable consult them when developing a UK position on international matters."*

### Status of the territories

The following table shows which British territories were considered by the IMF in 2000 to be financial offshore centres, whether they are subject to EU law, and if they are part of the EU VAT area and included in the EU single market.

**Table 24: British Overseas Territories and Crown Dependencies**

(Green – yes; yellow – partially or with exemptions; red - no or minimal)

		Considered as offshore financial centre by the IMF?	Application of the EU law	EU VAT area	EU single market
United Kingdom		No	●	●	●
British Crown Dependencies	Jersey	Yes	●	●	●
	Guernsey	Yes	●	●	●
	Isle of Man	Yes	●	●	●
BOT- British Overseas Territories	Anguilla	Yes	●	●	●
	Bermuda	Yes	●	●	●
	British Antarctic Territory	No	●	●	●
	British Indian Ocean Territory	No	●	●	●
	British Virgin Islands	Yes	●	●	●
	Cayman Islands	Yes	●	●	●
	Falkland Islands	No	●	●	●
	Gibraltar	Yes	●	●	●
	Montserrat	Yes	●	●	●
	Pitcairn Islands	No	●	●	●
	Saint Helena, Ascension and Tristan da Cunha	Yes	●	●	●
	South Georgia and the South Sandwich Islands	No	●	●	●
	Turks and Caicos Islands	Yes	●	●	●

Source: IMF<sup>268</sup> and DG TAXUD<sup>269</sup>

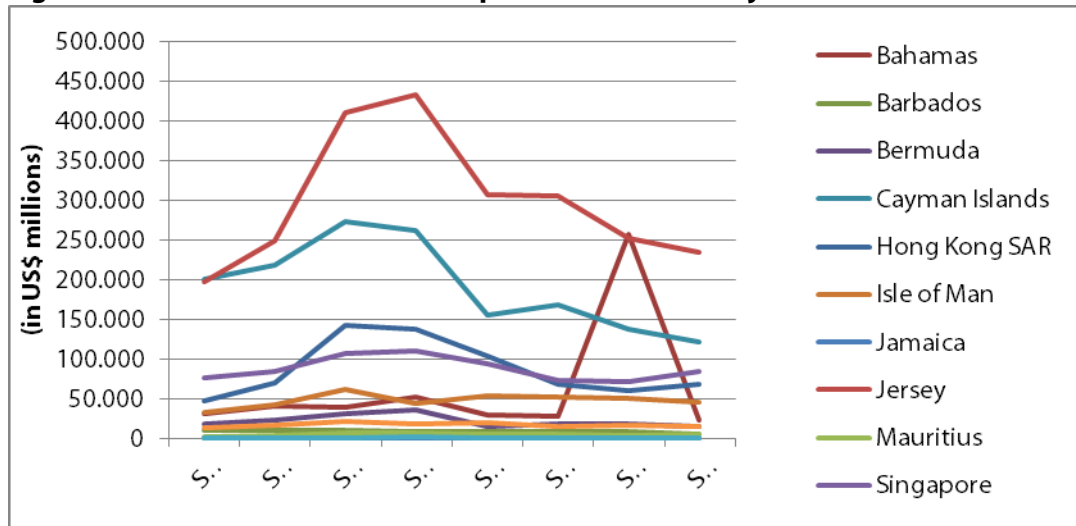
The British economy focuses strongly on financial service delivery. With more than 500 banks, the City of London is the world's largest foreign exchange market. The City of London is criticised for its lack

<sup>268</sup> IMF, 2000, *Offshore Financial Centres: IMF Background Paper* [online], <http://www.imf.org/external/np/mae/oshore/2000/eng/back.htm> (Accessed 12 March 2013)

<sup>269</sup> [http://ec.europa.eu/taxation\\_customs/index\\_en.htm](http://ec.europa.eu/taxation_customs/index_en.htm)

of transparency and accountability.<sup>270</sup> British overseas territories and crown dependencies are among the favourite destinations for British capital when offshoring. The following figures show financial flows between the United Kingdom and countries or territories considered financial offshore centres.

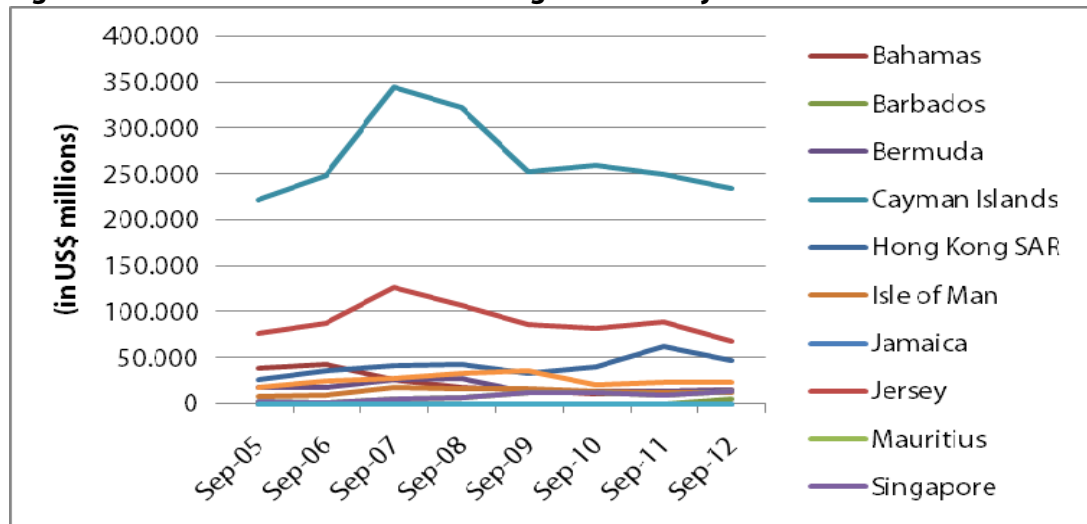
**Figure 4: UK financial institutions deposits from offshore jurisdictions**



**Source:** Bank of England interactive data base, dataset VPQB254 (countrycode); as of February 2013.

**Note:** This data does not include a number of other financial instruments, e.g. derivatives contracts. West Indies UK includes Anguilla, Antigua and Barbuda, British Virgin Islands, Montserrat and St Christopher/St Kitts-Nevis.

**Figure 5: UK financial institutions lending to offshore jurisdictions**



**Source:** Bank of England interactive database, dataset VPQB255 (country code); as of February 2013.

**Note:** This data does not include a number of other financial instruments, e.g. derivatives contracts. West Indies UK includes Anguilla, Antigua and Barbuda, British Virgin Islands, Montserrat and St Christopher/St Kitts-Nevis.

<sup>270</sup> Trustlaw, 2013, *Transparency International UK to take anti-graft battle to City of London* [online], <http://www.rai-see.org/news/world/3572-transparency-international-uk-to-take-anti-graft-battle-to-city-of-london.html> (Accessed 15 March 2013)

Quinn B., 2013, *Alliance of Labour, Ukip and Occupy members attempt to reform City of London* [online], <http://www.guardian.co.uk/uk/blog/2013/mar/11/alliance-of-labour-ukip-and-occupy-members-attempt-to-reform-city-of-london> (Accessed 15 March 2013)

## France

### French territories and their regulation

The French government introduced a Constitutional reform in 2003, affecting its overseas regions. The current status of these regions is as follows<sup>271</sup>:

- The French overseas departments and regions (DOM/ROM – *Département d'outre mer / Région d'outre mer*) are Guadeloupe, Martinique, Guyane, Réunion and Mayotte (since April 2011). They are part of the Republic of France, and legally have the same status as the regions of the metropolitan France.
- The French overseas communities (COM – *Collectivité d'outre mer*) are French Polynesia, Saint-Barthélemy, Saint-Martin, Saint-Pierre and Miquelon and Wallis and Futuna. These communities have a different status and system of internal organization, regulated by the Organic Law of 21 February 2007. New Caledonia has a specific status.
- The French Southern and Antarctic Lands, and Clipperton have no permanent population and no communes. They do not have a defined constitutional status but only a legal status.

The Ministry of the Overseas (Ministère des Outre-mer) is the ministry of the French government in charge of the exercise of authority in the overseas departments, communities and territories. Its role is similar to that of the Internal Affairs Ministry in the metropolitan departments of France.<sup>272</sup>

In the DOM/ROM directly applicable EU legislation is automatically applicable just as in metropolitan France. As regards European texts that are not directly applicable, no specific procedure is needed for these texts to be applied locally because the law applicable in the DOM/ROM is the same as in metropolitan France under the principle of legislative identity. The measures adopted to transpose these texts into French law apply as such in the DOM/ROM.

Consequently, financial institutions established in the DOM/ROM, like those established in metropolitan France, have access to *Eurosystem* monetary policy operations and payment systems and are subject to the same obligations (minimum reserves, statistical reporting, etc.). The only real specificity of the DOM/ROM in the monetary field therefore lies rather in the role of the Institut d'Émission des Départements d'Outre-Mer (IEDOM), the central bank for French overseas departments, which "acts in the name, on behalf and under the authority of the Banque de France" (Article L711-2 of the MFC).<sup>273</sup>

### Status of the territories

The following table provides an overview of the French overseas departments and regions. It indicates whether they were considered by the IMF in 2000 to be financial offshore centres, whether they are subject to EU law, and if they are part of the EU VAT area and included in the EU single market.

---

<sup>271</sup> INSEE (Institut National de la Statistique et des Études Économiques. Définitions.

<http://www.insee.fr/fr/methodes/default.asp?page=definitions/liste-definitions.htm>

<sup>272</sup> Ministère des Outre-mer. Available at: <http://www.outre-mer.gouv.fr>

<sup>273</sup> Banque de France. (2012) French overseas territories and the euro. [WWW] Available at [http://www.banque-france.fr/fileadmin/user\\_upload/banque\\_de\\_france/publications/QSA-24\\_05.pdf](http://www.banque-france.fr/fileadmin/user_upload/banque_de_france/publications/QSA-24_05.pdf) Accessed 12 March 2013

**Table 25: French overseas departments and regions and overseas communities**

(Green – yes; yellow – partially or with exemptions; red - no or minimal)

		Considered as offshore financial centre by the IMF?	Application of the EU law	EU VAT area	EU single market
France (Metropolitan)		No	●	●	●
DOM – <i>Département d'outre mer</i>	Guadeloupe	No	●	●	●
	Martinique	No	●	●	●
	Guyane	No	●	●	●
	Réunion	No	●	●	●
	Mayotte	No	●	●	●
COM- Collectivité d'outre mer	French Polynesia	No	●	●	●
	Saint-Barthélemy	No	●	●	●
	Saint-Martin	No	●	●	●
	Saint-Pierre and Miquelon	No	●	●	●
	Wallis and Futuna	No	●	●	●
TOM - <i>Territoire d'outre mer</i>	French Southern and Antarctic Lands	No	●	●	●
Specific status	New Caledonia	No	●	●	●

**Source:** IMF<sup>274</sup> and DG TAXUD<sup>275</sup>

It is also broadly thought, and can be also deduced from the table, that France does not have tax havens among its overseas territories.

Neighbouring jurisdictions, Andorra, Guernsey, Jersey, Luxembourg, Monaco and Switzerland, have attracted French private wealth. In recent years however, France has become increasingly proactive about tackling the issue of French citizens failing to declare assets abroad. The Amended Finance Bill of 2009 introduced a series of anti-evasion provisions. These apply to payments made to, or received from, and to income realized in jurisdictions which are considered “uncooperative countries”. A list is to be published annually by the French tax authorities and takes into account the effective application of administrative assistance agreements concluded with France.<sup>276</sup>

<sup>274</sup> IMF (2000), *Offshore Financial Centres: IMF Background Paper*, <http://www.imf.org/external/np/mae/oshore/2000/eng/back.htm>. Accessed on 12 March 2013

<sup>275</sup> [http://ec.europa.eu/taxation\\_customs/index\\_en.htm](http://ec.europa.eu/taxation_customs/index_en.htm)

<sup>276</sup> Ernst & Young (2010) *International tax alert: French parliament enacts Finance Bill for 2010 and Amended Finance Bill for 2009*. [WWW] Available at:

<http://tax.uey.com/NR/rdonlyres/eryogwlm3v7dsolm3pteogjins5hlo7gw6o5iyqr4jjh442ajcyorafwtjh3ks2xi6mwnbeqdrouvuyrkpqb/ITA003.pdf> (Accessed 12 March 2013)

## The Netherlands

### Netherlands territories and their regulation

The Kingdom of the Netherlands comprises four parts on a basis of equality: Aruba, Curaçao, Sint Maarten, and the Netherlands. The latter includes three territories in the Caribbean which are considered Dutch municipalities, namely Bonaire, Sint Eustatius and Saba. All four parts of the Kingdom enjoy independence on all matters related to their territories. While the constitutions of Aruba, Curaçao, Sint Maarten and the Netherlands regulate governance in each jurisdiction, they are all subordinate to the Charter for the Kingdom of the Netherlands. The Charter specifies that only the affairs of the Kingdom include the maintenance of the independence and defence of the kingdom, foreign relations, Netherlands nationality, extradition and regulations relating to sea navigation etc.

### Status of the territories

The following table shows which Netherlands territories were considered by the IMF in 2000 to be financial offshore centres, whether they are subject to EU law, and if they are part of the EU VAT area and included in the EU single market.

**Table 26: Netherlands territories**

(Green – yes; yellow – partially or with exemptions; red - no or minimal)

		Considered as offshore financial centre by the IMF?	Application of the EU law	EU VAT area	EU single market
The Netherlands	Netherlands	No	●	●	●
	Bonaire	No	●	●	●
	Sint Eustatius	No	●	●	●
	Saba	No	●	●	●
Dutch Caribbean	Aruba	Yes	●	●	●
	Curaçao	Yes	●	●	●
	Sint Maarten	Yes	●	●	●

Source: IMF<sup>277</sup> and DG TAXUD<sup>278</sup>

Table 26 above shows that Bonaire, Sint Eustatius and Saba are not considered tax havens. This is understandable as these are considered municipalities of the Netherlands and are not allowed to function as tax havens. However, some studies claim that the Netherlands itself could be considered a tax haven.<sup>279</sup> This is because the country offers companies the means to reduce their tax charges on interest, royalties, dividends and capital gains income from subsidiary companies. The attractiveness of the Netherlands results from several factors:

<sup>277</sup> IMF (2000), *Offshore Financial Centres: IMF Background Paper*, <http://www.imf.org/external/np/mae/oshore/2000/eng/back.htm>. Accessed 12 March 2013

<sup>278</sup> [http://ec.europa.eu/taxation\\_customs/index\\_en.htm](http://ec.europa.eu/taxation_customs/index_en.htm)

<sup>279</sup> (November 2006) Van Dijk, M; Weyzig, F; Murphy, R; The Netherlands: a tax haven?. SOMO. Available from: [http://somo.nl/publications-en/Publication\\_1397](http://somo.nl/publications-en/Publication_1397). Accessed 11 March 2013

- The so-called ‘participation exemption’ that exempts dividends and capital gains from subsidiary companies abroad from corporate income tax in the Netherlands.
- The unusually large Double Taxation Treaty network that substantially reduces withholding taxes on dividend, interest and royalty payments between treaty countries and the Netherlands.
- The advance tax ruling system that gives certainty to multinationals about how the income of their Dutch subsidiaries will be taxed.
- Other reasons include the special regime for group finance companies (CFM), that is currently being phased out, and general factors such as legal security and political and economic stability.

In the end, the country’s relationship to the Netherlands Antilles is probably the most important factor for its attractive tax environment (also reflected in the table). The territories benefit from the so-called *Belastingregeling voor het Koninkrijk* (Tax Arrangement for the Kingdom) with the Netherlands. This has a similar effect as a tax treaty resulting in companies established in the Antilles being able to obtain a beneficial reduction of Dutch withholding tax.

## **ANNEX 3 - STAKEHOLDERS**

OECD Global Forum on Transparency and Exchange of Information for Tax Purposes

OECD

EC DG Taxation and Customs Union

EC DG Development and Cooperation - EuropeAid

EC DG Trade

DG Budget (via survey)

European External Action Service

MS tax authorities, including FISCALIS contact points (limited survey responses)

The following were invited to participate in a survey but either did not respond or indicated that they could not provide the requested information:

European Anti-Fraud Office (OLAF) (no survey response)

EC DG Economic and Financial Affairs

EC DG Competition

UK tax authorities and crime prevention bodies





## DIRECTORATE-GENERAL FOR INTERNAL POLICIES

# POLICY DEPARTMENT BUDGETARY AFFAIRS **D**

## Role

Policy departments are research units that provide specialised advice to committees, inter-parliamentary delegations and other parliamentary bodies.

## Policy Areas

-  Budgets
-  Budgetary Control

## Documents

Visit the European Parliament website: <http://www.europarl.europa.eu/studies>

PHOTO CREDIT: iStock International Inc., Shutterstock



ISBN 978-92-823-4346-3  
doi: 10.2861/19589