

Opening Statement for the TAX3 committee public hearing on the fight against harmful tax practices within the European Union and abroad

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Intro

1. Many thanks for inviting me to speak today. As an organisation operating in more than 90 countries to fight against poverty and promote equality, Oxfam has been working on the issue of tax justice for years.
2. Every year Oxfam publishes a report during the Davos meetings showing how the extreme inequality crisis threatens to undermine the progress made in tackling poverty during the last quarter of a century.
3. Tax as part of our social contracts, has a key role to play. It redistributes wealth and balance income inequality. Second it allows us to finance public services.
4. If tax contributions of large corporations are reduced by governments, two options are then put forward: to cut back on the essential spending needed to reduce inequality and poverty; or to shift tax contributions on poor and non-mobile people.
5. Although international progress has been made to curb tax evasion and avoidance. Countries consistently chose to lower their statutory corporate tax rates¹ or create tax incentives falling out of scope of the EU Code of Conduct group rules or the OECD Forum on Harmful Tax Practices in a desperate attempt to attract investors. At the same time the effective corporate tax rates of multinationals are lowering. The system is broken, and tax havens, the ultimate expression of the global corporate tax race to the bottom remain untouched.
6. Tax havens cause harm to the poorest people in the world. In general, while tax avoidance practices by multinational corporations are a global problem that is relevant to all countries in developing and developed countries alike, they remain of greater concern to the Global South.² Losses from corporate tax revenues are estimated to cost developing countries \$100bn a year.³ Corporate tax continues to be more important for developing countries' budgets, accounting for 16% of tax receipts compared with a little more than 8% of tax receipts for high-income countries.⁴
7. The topic of this hearing "the fight against harmful tax practices within the European Union and abroad" is in this context of extreme importance. Today I would like to briefly present our Oxfam views on the EU list of non-cooperative jurisdictions, an important tool to counter these harmful tax practices abroad.

¹ On average, statutory corporate income tax rates in OECD countries decreased almost a third since 2000, falling from 30.4% to just 22.3% in 2017. When it comes to effective tax rates, the latest studies show that the actual corporate income tax rate of the EU's digital sector, for example, is less than 10%.

² The case of Total in the British Virgin Islands: <https://www.news24.com/Africa/News/french-giant-total-helped-congo-brazzaville-skirt-imf-rules-report-20180411> The recent Paradise Papers have also shown how West African development was undermined by the tax practices of multinationals such as Glencore, a Swiss commodity giant. Until 2017, Glencore owned the Nantou mine in Burkina Faso through Merope Holdings Ltd, a Glencore subsidiary in Bermuda. The International Consortium of Investigative Journalists revealed that Glencore would have used tax tricks to reduce its tax bill in Burkina Faso, notably through artificial interest payments to two offshore companies in Bermuda.

³ UNCTAD (2015) World Investment Report 2015, http://unctad.org/en/PublicationsLibrary/wir2015_en.pdf

⁴ IMF (2015) IMF Working Paper, Base Erosion, Profit Shifting and Developing Countries <https://www.imf.org/external/pubs/ft/wp/2015/wp15118.pdf>

Tax Havens

8. The Paradise Papers revelations, one of the reasons why this committee was started, have once again put tax havens in the spotlight. The Paradise Papers were different from previous leaks as they clearly showcase how multinationals abuse legal loopholes and harmful tax practices to avoid tax. It is less about transparency and more about fair taxation.
9. Oxfam has been intensively working and building expertise on the topic of tax havens. Last November Oxfam released the 'Blacklist or Whitewash' report scrutinizing the EU criteria and council process while investigating what a fair EU blacklist should look like.
10. Oxfam has formerly welcomed and supported the EU's move to establish a joint-EU blacklist. The EU blacklist was revolutionary in the sense that finally harmful tax practices and zero tax regimes were taken into account as important features for tax havens. But to work, a blacklist must be based on (1) transparent and (2) objective criteria and (3) be free from any vested interests or political interference.
11. If not, a blacklist can rapidly lose credibility. As powerful tax havens ensure that they are not on the list, it rapidly becomes a whitewash instead. This has been the case with the OECD list created for the G20, which ended up with just one country on it, Trinidad and Tobago.
12. Unfortunately, Oxfam observes that none of these "three basic requirements" have been respected in this process. It is disturbing to see that mostly small countries ended up on the EU blacklist, while the most notorious tax havens got away on the 'grey list'. Oxfam was also shocked to find low and middle-income countries listed, especially when they simply were not compliant with tax standards agreed at OECD level and to which they were not allowed to contribute. Other countries could strangely even escape both the blacklist and grey list.⁵ Finally, the process leading up to the list and the aftermath have been extremely opaque.
13. In addition, the EU list aimed to look only at countries outside the EU. This step strongly harms the credibility of the process, as EU member states such as Ireland, Luxembourg, Malta and the Netherlands are - following our assessment - failing the fair taxation criteria. These countries have also been targeted by EU state aid cases, the Paradise Papers, and the two reports by DG TAXUD on aggressive tax planning.⁶ Oxfam believes that the EU should put its own house in order when it comes to fighting tax evasion and tax avoidance and that EU countries should not be left off the list. Moreover, some harmful regimes targeted in third countries do exist within the EU borders.⁷ This type of hypocrisy does not help to legitimate the EU being the tax police of the world.
14. Nevertheless, even if disappointed with the outcome, the EU listing process remains an interesting exercise as it opens the crucial debate on zero tax regimes which were not addressed before. Also, the 'grey list' re-opens the debate on how to address harmful tax practices and offers an opportunity for countries on the 'grey list' to change their laws.
15. Here again scepticism as the EU Code of Conduct group has been screening EU countries on harmful tax practices for 20 years already. It is true that some regimes were rolled back successfully, but others were legitimated and remained harmful explaining why countries like Belgium could use a very harmful notional interest deduction scheme for years.
16. Seeing this history, the strategy that is now being applied "have the EU Code of Conduct group's doctrine being implemented to others in order to create a level playing field" won't mean the end of tax havens, even worse it might just whitewash harmful practices. In that sense, the EU listing process could end up being a distraction for urgently needed reforms.
17. So, coming to the question "How the EU list of tax havens could be improved in order to tackle harmful tax practices better?"

⁵ For example, Brazil.

⁶ https://ec.europa.eu/taxation_customs/sites/taxation/files/taxation_papers_71_atp_.pdf and https://ec.europa.eu/taxation_customs/sites/taxation/files/taxation_papers_71_atp_.pdf

⁷ For example, Free Trade Zones in Poland or Madeira.

Recommendations

18. Revise the EU Code of Conduct group criteria as enshrined in the 1997 report in order to (1) broaden the scope of what constitutes a harmful tax practice like notional interest deductions, excess profit ruling practices and patent boxes (2) strengthen the role of economic indicators when assessing the existence of economic activities (also called substance). The EU Code of Conduct group was recently characterized by the press as the “most secretive expert group of the EU”. The current listing process appears to us as a great opportunity for the mandate of the Group to be reformed and we believe this should also come with more transparency on the work conducted, both to ensure a more democratic discussion but also that decisions and recommendations are better implemented in EU member states.
19. Adopt a clear and ambitious blacklist of tax havens, based on objective criteria and free from political interference. The EU should work towards a gradual improvement of its own criteria to cover all harmful tax practices. At the same time, the EU should promote a listing initiative at the global level. Such an initiative could be one measure in the needed new set of global reforms on tax, via a UN convention or a UN tax body, aimed at tackling the issue of tax competition.
20. Powerful tax havens did escape the blacklist, instead ended up on the grey list. It is positive that these jurisdictions are now committing to change however the EU has to make sure governments on the grey list follow up on their commitments, or else they must be blacklisted.
21. Introduce transparency regarding the listing process by disclosing the exact methodology used for analyzing countries, as well as a summary of third country interactions with the Code of Conduct Group during the listing process. Greater transparency will ensure that EU member states’ decisions are not influenced by diplomatic or economic pressure. We do welcome the progress made by the Council to disclose the letters sent to jurisdictions detailing the reasons why each country was black or grey listed and some of the commitment letters.⁸ However, some commitment letters are still missing like Bermuda and these could be of significant importance for civil society.
22. Take appropriate measures against EU tax havens. Sanctions need to be regarded with caution to ensure local population will not be harmed and pay the price of governmental choices or for multinational groups exploiting tax planning strategies, the following should be kept in mind: (1) access to EU funds should be restricted for companies or entities located in listed jurisdictions unless the project is located in such jurisdiction (physical implementation clause) and (2) different type of sanctions should apply depending on the criteria not respected by the jurisdictions. A country willingly engaging into a tax race to the bottom by proposing harmful tax practices (Fair taxation criterion) is representing a way higher threat to the tax revenues of EU countries and developing countries than a low or middle-income country which is not part of the BEPS Inclusive Framework. We, in fact, believe that the EU should not use its listing process to pressure and force developing countries to adopt norms that were decided while they were not at the negotiations table, like it was the case for the BEPS process.
23. Provide support and direction to jurisdictions which are heavily dependent on their tax haven status. Such support should aim to build a fairer, more sustainable and diversified economy
24. Fundamental solutions like an EU-wide harmonized strong CFC rule, leading to a minimum effective tax rate of profits, public country-by-country reporting and CCCTB could go a long

⁸ <http://data.consilium.europa.eu/doc/document/ST-6671-2018-INIT/en/pdf> and 38 commitment letters of the 62 grey listed jurisdictions have been published here: http://www.consilium.europa.eu/register/en/content/out?typ=SET&i=ADV&RESULTSET=1&DOC_TITLE=&CONTENTS=&DOC_ID=6972%2F18&DOS_INTERINST=&DOC_SUBJECT=&DOC_SUBTYPE=&DOC_DATE=&document_date_from_date=&document_date_to_date_submit=&document_date_to_date_submit=&MEET_DATE=&meeting_date_from_date=&meeting_date_to_date_submit=&meeting_date_to_date_submit=&DOC_LANCD=EN&ROWSPP=25&NRROWS=500&ORDE_RBY=DOC_DATE+DESC

way in tackling tax avoidance. Instead of investing a lot of resources in setting up a blacklist, tax avoidance could be easily curbed with these measures.

Conclusion

25. Political leaders are faced with a choice between ending the harmful impact of tax havens on both the EU and developing countries – or whitewashing tax havens and perpetuating the corporate tax race-to-the-bottom. 86% of European are in favour of “tougher rules on tax avoidance and tax havens”.

Thank you.