

Understanding the rationale for compiling 'tax haven' lists

SUMMARY

With taxation constantly in the headlines as one tax leak follows another, the question of which tax jurisdictions are regularly associated with the schemes revealed has gained in importance. Broadly speaking, tax havens provide taxpayers, both legal and natural persons, with opportunities for tax avoidance, while their secrecy and opacity also serves to hide the origin of the proceeds of illegal and criminal activities.

One may ask why establishing a list of tax havens is useful. Drawing up such a list started with the actions to stop harmful tax practices arising from the discrepancy between the global reach of financial flows and the geographically limited scope of jurisdictions, matching or inside national borders. This difference is central to the inter-connected issues of tax avoidance, tax evasion and fraud, and money laundering.

Whatever name is used (tax haven, offshore centre, non-cooperative jurisdiction) they all have in common that they make it possible to escape taxation: low or zero taxation, a fictitious residence (with no bearing on reality) and tax secrecy. The last two are key for hiding the ultimate beneficial owner, and consequently for money laundering. In short, the tax-haven issue reveals the discrepancy between real economic activity and the form and appearance given to it, through complex and global schemes.

In the EU, the process of adopting a common list of non-cooperative tax jurisdictions was initiated as part of efforts towards good governance in tax, and the external dimension thereof. On 5 December 2017, the Council adopted a first common list.



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Introduction

Tax havens have [long existed](#) and have been widely used since the 1930s. Yet they have become a prominent concern of tax and economic policies with the globalisation of the economy, in which taxpayers can try to structure their activities and choose the geographical location of their wealth, and plan the location of their tax bases accordingly. The digitalisation of the economy has made establishing the link between a jurisdiction and flow of money even more tenuous.

In this briefing the terms tax havens, secrecy jurisdictions and non-cooperative jurisdictions are interchangeable since they share commonalities.

Background: the global economy and tax havens

Tax jurisdictions¹ cover a defined territory, whereas some global taxpayers – multinational enterprises (MNE) and high net worth individuals ([HNWI](#))² – are able to move profits and their tax bases around the globe, from one tax jurisdiction to another.³

Tax avoidance, aggressive tax planning, and base erosion and profit-shifting

As recently highlighted, for example, by the [Panama papers](#) and [Paradise papers](#) leaks, those striving for discretion or anonymity will seek the assistance of facilitators such as advisors, law firms and banks, and use various types of instruments, such as shell, offshore and/or letterbox companies, as well as trusts, and route funds via a number of countries which have created tax regimes that are attractive for those offering or seeking such practices. The, legal and illegal, tax-planning schemes uncovered have once again highlighted the role played by tax havens in the routing and sheltering of funds.

Opaque transactions [hide](#) money laundering carried out in support of all kinds of illegal and criminal activities, including tax evasion and fraud. As regards tax challenges, even [tax avoidance](#) (which is *a priori* legal) can also rely on opacity, as [risk-taking](#) tax-strategies (minimising the tax liability) are less likely to be scrutinised in a shadowy environment. Opacity helps in keeping [aggressive tax-planning](#) schemes undetected, and therefore lowers the tax burden and the negative publicity ([reputation](#)) costs, not to mention that tax avoidance is legal as long as it is not deemed illegal by the tax authorities or, ultimately, by the courts.

Tax competition, by its very nature, is asymmetric. This means that some benefit from [tax competition](#) at the expense of others.⁴ Low-tax countries, in which tax havens are established, benefit from tax competition, whereas high-tax countries are more likely to [lose tax resources](#) as well as face reduced economic activity (and ultimately lower growth). By its nature, the issue of tax havens – in breach of tax good governance principles – has an external relations dimension, which extends to the development field. It is connected with [tax fairness](#) (not all taxpayers are able to use global aggressive tax-planning schemes) and the link between real economic activity, its true economic location and taxation (the nexus connecting the taxable event with the tax authorities).

Harmful tax competition and tax havens

Identifying and listing territories as tax havens was envisaged as part of the strategy to identify and address harmful tax competition used by companies and MNEs. Tax havens are also closely related with secrecy and anonymity, which are central elements in tax evasion and money-laundering. A report prepared by the Organisation for Economic Co-operation and Development (OECD) entitled '[Harmful tax competition: an emerging global issue](#)', published in 1998, responded to the request to counter this phenomenon. It was intended in particular 'to develop a better understanding of how **tax havens** and

harmful preferential tax regimes, collectively referred to as harmful tax practices, affect the location of financial and other service activities, erode the tax bases of other countries, distort trade and investment patterns and undermine the fairness, neutrality and broad social acceptance of tax systems generally'.

Subsequently, identifying 'tax havens' and seeking their commitment to the principles of transparency and effective exchange of information was one of the areas of work defined in the [project on harmful tax practices](#) in 1998.

Defining tax havens and identifying criteria

There is no single definition of a tax haven, although there are a number of commonalities in the various concepts used. Each such list describes the state of compliance or non-compliance with identified criteria, offering a snapshot of the global situation at a set date.

Secrecy and anonymity provided by tax havens

The secrecy tax havens provide to non-residents abets the shifting of income from its actual geographic source to low-tax jurisdictions, and consequently reduces the tax base in the country in which they are tax resident. This key feature also serves to provide opacity to illegal and criminal activities, not least tax fraud, money laundering and the range of criminal activities related to the latter. As a result, tax havens may be used not only for tax purposes (avoidance and evasion) and money laundering (bringing back into circulation money of illegal/criminal origin). Situations that are hidden or clouded by complex mechanisms linking several countries – in a chain of operations and a string of operators and intermediaries – touch tax havens using tools such as [letter box companies](#), [shell companies and offshore structures](#) or [trusts](#), and in particular networks of them.

Secrecy results from the lack of exchange of information as well as from the anonymity provided by mechanisms rendering the identity of the [ultimate beneficial owner](#) difficult to establish, due to partial or complete lack of traceability of transactions. As a result, information essential to authorities is obscured, thus creating a safe haven s out of the sight of authorities (tax and others, depending on the nature of the operations). As a consequence, tackling tax avoidance and fraud schemes requires removing the obstacles to identifying ultimate beneficial owners. Regulatory measures allowing traceability and the sharing of information (concerning the movement of financial transactions and other relevant information, within the framework of [anti-money-laundering](#) efforts, in particular through customer due diligence obligations) are tools appropriate to counteract these practices. This explains why lists drawn up within the anti-money-laundering framework are also of particular relevance for fighting tax avoidance and evasion.

Distinguishing between tax havens and non-tax havens

At first, the term 'tax haven' designated countries offering attractive low-tax regimes to attract financial services.⁵ Later, it was used to describe jurisdictions that do not respect the [tax good governance principles](#)⁶ vis-à-vis other jurisdictions, since their objective is to attract tax bases or investment.

Three elements, commonly used, contribute to the conclusion that a location is a tax haven:

- no or minimal taxation on income and assets of **non-residents**, tax advantages to non-resident individuals,
- **lack of effective exchange** of relevant information with other governments on their taxpayers, minimal or no disclosure on financial dealings and ownership of assets, and

- generally **not applying accepted minimum standards** of corporate governance and accountability.⁷

Overlapping terms: tax haven, non-cooperative jurisdiction, offshore centre, and secretive jurisdiction

The terms [tax haven, offshore financial centre, and secrecy jurisdiction](#) describe jurisdictions with the tax features listed above. Each of them puts the focus on a different feature: the foreign location for [offshore centres](#), and the anonymity or non-disclosure of financial dealings and ownership of assets, in the case of secrecy jurisdictions. Low-tax jurisdictions do underline the fact that there is no or minimal taxation on income and assets of non-residents. The map of jurisdictions labelled with one of those terms is not static. Since the purpose of drawing up such a list is to encourage jurisdictions that do not comply with the chosen criteria (rules, standards or principles) to commit to adopting or endorsing them, once they do so they may be de-listed. Yet there are places, and actors involved in schemes using tax havens, which keep appearing.

A look at tax compliance: behavioural economics and taxation

[Tax compliance](#) refers to willingness to comply with tax laws, declare the correct income, claim the correct deductions, relief and rebates, and pay all tax on time. At the taxpayer level, compliance is encouraged by the fight against tax evasion and fraud, without which non-abiding taxpayers would gain an economic advantage likely to deter compliance.

Classic economic models⁸ describe taxpayers as decision-makers seeking an economically optimal situation. [Behavioural economics in taxation](#) draws a more complex and nuanced portrait of taxpayers, where moral suasion in tax collection, culture, and the likelihood of being audited play an important role. However, studies mostly consider personal income tax and individuals. They underline several elements: the fact that tax compliance is affected by the quality of publicly provided goods and services, the fact that individuals cooperate in cases where they expect others to cooperate – compliance – and tend to limit cooperation when others do not, the influence of the cultural environment and social norms of behaviour, as well as the perceived probability of being audited.

Listing the lists

Currently there are lists which are established by international organisations, non-governmental organisations and countries. (The situation in the European Union and its Member States is covered in the section below.)

Common features of lists

Establishing lists generally follows a similar pattern, starting with the definition of criteria (such as practices not considered in line with fair tax competition and tax cooperation), followed by the establishment of the list itself. That is supplemented by incentives to those named on the list to remedy the shortcomings with a view to complying with conditions necessary to be de-listed. In short, setting and monitoring lists is a dynamic process.

(Black)listing is a way to bring about regulatory compliance. Standards and rules serving as criteria are applied by the members of the organisation which sets the list, in respect of others joining or gaining membership. The objective of the list is thus to 'pressure' tax havens to apply those rules and standards. This implies that members of the organisation themselves are out of the scope of the list, which does not automatically mean that they are immune to criticism. Blacklisting is however a tool rather than a [solution](#).

Some existing lists

International organisations

In the early [2000s](#), the OECD drew up a list of uncooperative tax havens, which was updated on the basis of commitments by countries placed on the list with regard to the specific criteria concerned. Following the intervention of the [G20 \(2010 Toronto\)](#), the 'black list' was complemented by a 'grey list' and a 'white list', according to the commitments made and their level of implementation [in the late 2000s](#). The IMF [offshore list](#) assessment in 2014 was established on the basis of predefined [standards](#) from several international bodies.

Among the organisations setting lists of countries which are relevant to tax matters, the [Global Forum on Transparency and exchange of information for tax purpose](#) (often referred as the [Global Forum](#)) has a particular role on tax transparency, as it is the multilateral framework gathering together OECD and non-OECD economies since 2000. Regarding the assessment of the implementation of the standard exchange of information on request (EOIR) the [Global Forum on Transparency](#) regularly reviews the commitments to join the multilateral [Convention on Mutual Administrative Assistance in Tax Matters](#).

The Financial Action Task Force (FATF) is of particular importance for combating tax evasion, corruption and other activities generating illicit flows of finance, as stated by the G20 in June 2015. For that reason the work of the Global Forum on Transparency builds on the work of the FATF concerning the [definition of beneficial ownership](#) in the terms of reference for the exchange of information on request (EOIR). The [FATF](#) identifies [high-risk and non-cooperative jurisdictions](#) (those with weak measures to combat money laundering and terrorist financing (AML/CFT)) in [lists](#) reviewed periodically. This work serves [as a basis](#) for a similar list [drawn](#) up by the European Commission.

NGOs

Secrecy jurisdictions are determined on the basis of an assessment made by the Tax Justice Network ([TJN](#)), which applies a secrecy score measuring banking secrecy, the capacity to create shell companies or offshore structures, and barriers to cooperation and information exchange. On this basis, every two years since 2009, TJN has published a list – the **Financial Secrecy Index** ([FSI](#)) – which ranks a [hundred jurisdictions](#) according to their secrecy and the scale of their offshore financial activities.

On 28 November 2017, [Oxfam](#) published a study containing a list of tax havens assessed with regard to the criteria of transparency, fair taxation and participation in international fora on tax, as defined for the establishment of an EU list by the Council.

Lists from the European Union

Lists in the EU

Based on the existence of national black/white listing processes inside the EU, the Commission published, on the basis of its action plan published on 17 June 2015, a list of cross-references of the national lists. It aimed at identifying the jurisdictions appearing on at least 10 national list. This was not a common list but a move towards more collective identification of problems than the [patchwork](#) of assessments available so far would allow.

Establishment of an EU list of third countries

The establishment of a list of non-cooperative tax jurisdictions (tax havens) is a tool for securing a level playing field, and was envisaged in the Commission's communication on

an [external strategy for effective taxation](#) presented in the 2016 anti-tax-avoidance package. A common EU system for assessing, screening and listing third-country tax jurisdictions allows the identification of those that play a particular role in tax avoidance and evasion, which can be used in base erosion and profit-shifting practices.

A [three-step process](#) was established for drawing up a common list of tax jurisdictions which are not meeting some of the criteria identified as essential for not being considered a tax haven. They consist of a neutral [scoreboard of indicators](#) (a tool for helping to determine the potential risk level of each third country when assessing tax governance); a screening of third countries identified on the basis of the scoreboard (based on a dialogue in which the third countries can decide to bring their rules into line with the criteria and make such a commitment – [213](#) countries were pre-assessed); and finally the adoption of an EU list of third-country non-cooperative tax jurisdictions.

The criteria set out in the external strategy relate to three main aspects for tax:

- Transparency: through compliance with the [international standards](#) on automatic exchange of information (AEOI) and exchange of information on request (EOIR), and checking if a jurisdiction has ratified the [multilateral convention](#);
- Fair Tax Competition: assessing the existence of [harmful tax regimes](#), contrary to the Code of Conduct principles or the OECD's Forum on Harmful Tax Practices;
- [BEPS](#) implementation: participation in the [Inclusive Framework](#).

The Commission communication also included the level of corporate taxation (low or close-to-zero-rate on corporate tax).

The Council adopted the first EU list of non-cooperative jurisdictions for tax purposes on 5 December 2017, in an annex to [Council conclusions](#). Six other documents accompany the list, and are aimed at future updates and follow-up measures:

- a 'State of play of the cooperation with the EU with respect to commitments taken to implement tax good governance principles';
- 'Defensive measures';
- 'Guidelines for further process concerning the EU list of non-cooperative jurisdictions for tax purposes';
- 'Criteria on tax transparency, fair taxation and implementation of anti-BEPS measures that the EU Member States undertake to promote'; and
- 'two documents specifying two of the criteria used (Criteria on the duration of the reasonable time frame, and Criteria on the absence of a corporate tax or a nominal corporate tax rate equal to zero or almost zero)'.

The list itself comprises 17 jurisdictions outside the EU that are non-cooperative in tax matters. Those jurisdictions have not made commitments on meeting the criteria sufficiently ahead of the adoption of the list, or made commitments that were found insufficient. Another 48 jurisdictions have been put on a watch list, meaning that their commitments are deemed sufficient, but their implementation will be closely monitored by the EU. It is worthwhile to note that the lists include jurisdictions which are EU overseas countries and territories ([OCTs](#)), and some are closely linked to a Member State as '[Crown dependencies](#)'. Finally, eight Caribbean region jurisdictions⁹ were given more time (until the end of 2018) before they are screened, because of the disruption caused by the September 2017 hurricane (see table in Annex). In total, [92 countries](#) were screened in the process of setting up the lists (20 were found to meet the criteria, while 72 were asked to address deficiencies).

The monitoring of compliance and review is envisaged. Accompanying [counter-measures](#) are tools to incentivise compliance. The list of counter-measures accompanying the Council conclusions is set out in the annexed paper on 'defensive measures'; this starts with placing the name of a jurisdiction on the non-cooperative list, along with a tougher stance concerning European financing conditions (particularly those in relation to EIB loans), complemented by at least one administrative measure (reinforced monitoring of certain transactions; increased audit risks for taxpayers benefiting from the regimes at stake, and increased audit risks for taxpayers using structures or arrangements involving these jurisdiction). Member States can apply additional measures such as the non-deductibility of certain costs, rules on controlled foreign companies or withholding tax.

Further reading

Chavagneux C, 'Combattre les paradis fiscaux', 2015

Chavagneux C, Palan R, Murphy R, 'Tax Havens - How Globalization Really Works'

Gravelle J, [Tax Havens: International Tax Avoidance and Evasion](#), January 2015, CRS

Gravelle J, [Reform of U.S. International Taxation: Alternatives](#), August 2017, CRS

Palan R, [History of tax havens](#), 2009

Schjelderup G, 'Secrecy jurisdictions', *International Tax and Public Finance*, 6 March 2015, Springer

Sharman JC, '[International Organisations, Blacklisting and Tax Haven Regulation](#)', 2004 (for historic part until 2004)

Endnotes

¹ 'Tax jurisdiction' defines which authority is competent to adopt tax rules within a territory, which may be smaller than a national state and cover an area which for other issues is covered by the law of the state in which it is situated.

² This relies on the globalisation of legal persons, which taxpayers (natural or legal persons) can make use of. The consequence is that income can be relocated, with the increase of fiscal engineering strategies, and that requires enormous resources for authorities to trace. See for instance G. Sanchez-Archindona Hidalgo, 'Reflections on multilateral tax solutions in post-BEPS context', *Intertax*, Volume 45, issue 11, p.714.

³ The interplay of a number of corporate taxpayers going global (MNEs with activities spanning the globe) and the development of 'tax schemes aimed at attracting financial and other geographically mobile activities can create harmful tax competition between States, carrying risks of distorting trade and investment and ... lead to the erosion of national tax bases', G7 countries [communiqué](#) issued by the heads of state at their 1996 Lyon Summit.

⁴ See article 'State-induced, strategic or toxic? An ethical analysis of tax avoidance practices', in particular the part on 'An ethical analysis of tax avoidance'.

⁵ [In a nutshell](#) a tax haven could be defined as a 'low-tax jurisdictions that provide investors opportunities for tax avoidance'.

⁶ See communication on an 'External strategy for effective taxation' of 28 January 2016, Annex I, Good governance standards in tax matters. It [clarifies and refines](#) the Commission [Recommendation](#) of 6 December 2012 on measures to encourage third countries to apply minimum standards of tax good governance. The [Platform for tax good governance](#) assists the Commission in developing initiatives to promote good governance in tax matters in third countries.

⁷ European Parliament Policy Department on Budgetary Affairs study, '[European initiatives on eliminating tax havens and offshore financial transactions and the impact of these constructions on the Union's own resources and budget](#)'.

⁸ See for instance K. Devos, Tax Compliance Theory and the Literature, in: *Factors Influencing Individual Taxpayer Compliance Behaviour*, Springer, Dordrecht, 2014.

⁹ The list is provided in point 12 of the conclusions.

ANNEX – EU tax havens lists

Based on the lists annexed to the [Council conclusions](#) of 5 December 2017: Non-cooperative list (17 jurisdictions) – Watch list (48) – Hurricane list (8)

[OCT = EU Overseas countries and territories](#); * jurisdiction also on the Oxfam list

Tax jurisdictions	EU list	Additional information
Albania*	Watch list	
American Samoa	Non-cooperative list	
Andorra	Watch list	
Anguilla*	Hurricane list	OCT
Antigua and Barbuda*	Hurricane list	
Armenia	Watch list	
Aruba*	Watch list	OCT
Bahamas*	Hurricane list	
Bahrain*	Non-cooperative list	
Barbados	Non-cooperative list	
Belize	Watch list	
Bermuda*	Watch list	OCT
Bosnia and Herzegovina*	Watch list	
Botswana	Watch list	
British Virgin Islands*	Hurricane list	OCT
Cabo Verde	Watch list	
Cayman Islands*	Watch list	OCT
Cook Islands*	Watch list	
Curaçao*	Watch list	OCT
Dominica	Hurricane list	
Faroe Islands*	Watch list	
Fiji	Watch list	
Former Yugoslav Republic of Macedonia*	Watch list	
Grenada	Non-cooperative list	
Greenland*	Watch list	OCT
Guam*	Non-cooperative list	
Guernsey	Watch list	Crown Dependency
Hong Kong SAR*	Watch list	
Isle of Man	Watch list Watch list	Crown Dependency
Jamaica	Watch list	

Jersey*	Watch list	Crown Dependency
Jordan	Watch list	
Korea (Republic of)	Non-cooperative list	
Labuan Island	Watch list	
Liechtenstein	Watch list	
Macaco SAR	Non-cooperative list	
Macedonia	Watch list	
Malaysia	Watch list	
Maldives	Watch list	
Marshall Islands*	Non-cooperative list	
Mauritius*	Watch list	
Mongolia	Non-cooperative list	
Montenegro*	Watch list	
Morocco	Watch list	
Namibia	Non-cooperative list	
Nauru*	Watch list	
New Caledonia*	Watch list	OCT
Niue*	Watch list	
Oman*	Watch list	
Palau*	Non-cooperative list	
Panama	Non-cooperative list	
Peru	Watch list	
Qatar	Watch list	
Saint Lucia	Non-cooperative list	
Saint Kitts and Nevis	Hurricane list	
Saint Vincent and the Grenadines	Watch list	
Samoa	Non-cooperative list	
San Marino	Watch list	
Serbia*	Watch list	
Seychelles	Watch list	
Swaziland	Watch list	
Switzerland*	Watch list	
Taiwan*	Watch list	
Thailand	Watch list	
Trinidad and Tobago*	Non-cooperative list	
Tunisia	Non-cooperative list	

Turkey	Watch list	
Turks and Caicos Islands	Hurricane list	OCT
United Arab Emirates*	Non-cooperative list	
Uruguay	Watch list	
US Virgin Islands*	Hurricane list	
Vanuatu*	Watch list	
Vietnam	Watch list	

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