

EU tax haven blacklist review

Oxfam analysis and background

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Why should the EU tackle corporate tax havens?

Tax havens are used by corporations and the super-rich to avoid paying their fair share of taxes. This deprives countries, and developing countries in particular, of important resources to fund essential public services like education and health, which benefit the poorest and women first. [The UN estimate](#) that developing countries are losing around USD 100 billion each year due to tax avoidance by multinational corporations. [Data from the International Monetary Fund](#) shows that 40% of global Foreign Direct Investments are phantom investments that pass through empty corporate shells in tax havens, with no real economic activity taking place. Moreover, [researchers estimate](#) that close to 40% of multinational foreign profits, i.e. more than USD 650 billion in 2016, are shifted to tax havens each year.

What is the EU list of non-cooperative jurisdictions?

In 2017, the EU published the first EU blacklist and 'grey list' of tax havens. These lists, officially known as EU list of non-cooperative jurisdictions for tax purposes, are compiled by member state governments in the Code of Conduct group for Business taxation, a secretive group of government experts. Governments screen third countries according to three criteria: transparency, fair taxation and commitment to the OECD anti-BEPS package.¹ Countries that fail any of these criteria feature on the blacklist (officially Annex I), unless they commit to reforms, in which case they are added temporarily to the 'grey list' or watch list (officially called Annex II).

When launched in December 2017, the blacklist included 17 countries and the 'grey list' 47. In its first review in March 2019, 15 countries were blacklisted and 34 were listed in the 'grey list'. Since its last review in November 2019, eight countries feature on the blacklist², and further 32 on the 'grey list'.

To compile the lists, EU governments assessed more than 200 potentially harmful tax practices in more than 75 countries until December 2019. [24 new potentially harmful regimes have been identified](#) only from July to December 2019.

EU governments have now screened again the 92 countries analysed last year, plus three additional countries (Argentina, Mexico and Russia). However, the number of blacklisted countries is likely to remain limited, and many actual tax havens identified by Oxfam are let off the hook.

	December 2017	March 2019	November 2019 (last update)
Blacklisted countries	17	15	8
'Grey-listed' countries	47	34	32

¹ BEPS stands for Base Erosion and Profit Shifting. Anti-BEPS measures refer in this case to the G20/OECD action plan initiated in 2013 and presenting different measures for countries to tackle corporate tax-avoidance practices and aggressive tax-planning schemes.

² American Samoa, Fiji, Guam, Oman, Samoa, Trinidad and Tobago, the US Virgin Islands and Vanuatu



What are the problems with the current EU blacklist?

The EU blacklisting process remains weak. The March 2019 Oxfam report '[Off the Hook](#)' has shown why the EU blacklisting process is not fit for purpose. While the EU implemented some minor improvements to the criteria and listing process in 2019, the main shortcomings are still unsolved.

Notorious tax havens are left off the hook

Five of the world's worst tax havens [identified by Oxfam](#) – Switzerland, Singapore, Hong Kong, Jersey and Mauritius – are currently neither on the blacklist nor on the 'grey list', due to weaknesses in the EU criteria for tax havens and the methodology applied. Also, none of the ten most corrosive corporate tax havens exposed in the '[Corporate tax haven index](#)' of the Tax Justice Network, are on the EU's tax haven blacklist, and only four feature on the EU's 'grey list'.

Two concrete examples clearly demonstrate how the EU blacklist is failing to be an effective tool against tax avoidance. Switzerland and Mauritius were completely removed from the EU list in October 2019 after implementing reforms which are weak by any standard.

Switzerland, for instance, has abolished its preferential tax regimes – that allowed foreign companies to pay less tax than Swiss companies – but the country still offers large tax incentives such as a patent box, and it has even lowered its rates for companies.

Mauritius' role as a tax haven has been exposed in recently in the '[Mauritius Leaks](#)' investigation by the International Consortium of Investigative Journalists (ICIJ). In Mauritius, interest payments are taxed at the very low rate of 3%, and unfair tax agreements signed between Mauritius and countries in Africa and Europe allow some companies to cut their tax bills even further.

[Oxfam has estimated](#) that company loans from Mauritius and nine other tax havens to other African countries total over USD 80 billion. This means that for every USD 6 of foreign direct investment in Africa, USD 1 was a company loan from a tax haven, distorting the working of the global economy and causing significant losses to developing countries.

Many tax havens that facilitate tax avoidance through zero-tax rates, such as Bahamas, Bermuda, British Virgin Islands, Jersey, Guernsey and Isle of Man, are at the moment also missing on the blacklist. The reason is that the EU does not consider zero-tax rates, or minimal tax rates, a criterion to identify tax havens; such rates are merely a 'risk indicator', for the EU blacklist assessment.

Oxfam's research has also found that the closing of old loopholes has sometimes caused the opening of new ones. For instance, [US multinational corporations have reacted to the EU blacklist by starting to change their tax structures](#) and moving their intangible assets (like patents) from traditional tax havens in the Caribbean, like Bermuda and the Cayman Islands, to less known tax havens such as Ireland and Singapore.

In a nutshell: while the structure of the EU's criteria displayed a good understanding of corporate tax havens, its weak indicators and the lack of economic impact elements are undermining the process and its outcome. There is an urgent need to critically review the EU criteria for identifying tax havens.

EU tax havens are not screened

In 2015, [30% of corporate profits shifted to tax havens were moved to tax havens within the EU](#). Moreover, [about 80% of the profits shifted from EU member states are channelled to or through a few other EU countries](#). The same research shows that the revenue losses caused by aggressive corporate



tax planning in the EU in 2015 ranged from EUR 50 to 70 billion to EUR 160 to 190 billion. Also, tax avoidance via six EU member states (Ireland, Luxembourg, Netherlands, Belgium, Malta, Cyprus) [results in a loss of EUR 42.8 billion in tax revenue](#) in the other 22 EU countries.

Nevertheless, the blacklisting process does not apply to EU member states. New Oxfam research confirms that five EU countries – Cyprus, Ireland, Luxembourg, Malta and the Netherlands – fail the EU's own criteria on fair taxation and would appear on the blacklist if they were not given an automatic exemption.

Oxfam's analysis, detailed in the annex, is based on quantitative economic data of Foreign Direct Investments, royalties, intra-group interest and intra-group dividend payments. When these indicators are disproportionately high compared to GDP, it means that profits are out of balance with real economic activity in the country.

Many EU governments and companies are also abusing tax practices like patent boxes, research and development super deduction and tax credits. [Evidence shows](#) that these practices, introduced to support innovation, instead have led to a new, harmful race to the bottom in corporate taxation. [According to EU figures](#), 15 out of 28 EU member states had a patent box in 2018.

US 'too big to be listed'

The United States have never been listed, despite failing the EU's transparency criteria. The country has not signed up to the OECD Common Reporting Standard (CRS), a clear requirement for the EU. It has introduced a similar system, the Foreign Account Tax Compliance Act (FATCA), but tax authorities of EU member states do not receive as much information from the US under their bilateral FATCA agreements as they do from countries participating in the multilateral CRS. In October 2019, EU governments screened to US, but found the country to be compliant. This exemption is likely to be confirmed.

Lack of transparency

Other concerns are related to the transparency of the blacklisting process. The Code of Conduct Group (CoCG), the body within the Council in charge of screening tax havens, works behind closed doors, publishing only few documents, and late in time. In particular, the agenda, the minutes and documents of the meetings are not available for public scrutiny.

Developing countries unfairly treated

A number of developing countries have been listed by the EU for failing to comply with international standards which these countries have not had a chance to agree on, and which some of them do not have the capacity to implement. Currently countries like Botswana, Eswatini, Namibia, Jordan and Vietnam are on the 'grey list' and risk to be blacklisted because they have not yet signed the OECD Multilateral Convention on Mutual Administrative Assistance.³

Were there any improvements in the last year?

During 2019, the EU started to introduce some minor improvements to the criteria and listing process, but the main shortcomings remain currently unsolved.

³ The Convention on Mutual Administrative Assistance on Tax Matters was developed jointly by the OECD and the Council of Europe in 1988 and it provides forms of administrative co-operation between states in the assessment and collection of taxes. The signing and ratification of the convention is one of the indicators under the EU's transparency criterion.



In December 2019, member states started to discuss the strengthening of the blacklist criteria, but a possible review will only be starting in March.

Some flexibility has been introduced to take the situation of developing countries into account. All developing countries without financial centres will be automatically excluded from the screening of one of the transparency indicators (automatic exchange of information). The EU is considering replacing this exception with another transparency criterion (mutual administrative assistance).

As for EU tax havens, the EU has publicly recognised that harmful tax practices exist within its own borders. In 2019, [the European Commission called on Ireland, Malta, Cyprus, Luxembourg and the Netherlands](#) to “address features of the tax system that may facilitate aggressive tax planning”. [The European Parliament went even further](#) and called on the Commission to label Cyprus, Ireland, Luxembourg, Malta and Netherland as EU tax havens. Nevertheless, EU tax havens continue to exist and undermine the credibility of the EU blacklisting process.

What should the EU do to improve the blacklist?

On the EU blacklist and ‘grey list’

- The Commission and the Council should **strengthen the listing criteria** by:
 - including economic indicators that can help to better identify countries that facilitate tax dodging and that have been proven to disproportionately attract profits from other countries
 - expanding its narrow definition of harmful tax practices so that it includes all harmful tax rules used in both developed and developing countries to attract profit-shifting by multinationals
 - adding zero-tax and low-tax regimes as a criterion to identify tax havens and blacklist them, because they will always attract tax dodging companies
- The EU should increase the **transparency** of the Code of Conduct Group and inform the Parliament in detail ahead of any proposed changes to the list.
- The Council should continue to take into consideration the particular situations of **developing countries** when screening them, allowing countries to make a voluntary decision based on their national priorities and capacities as to whether they want to join the OECD BEPS Inclusive Framework and/or adopt the OECD BEPS minimum standards. The EU should also provide more and better support to developing countries for Domestic Revenue Mobilisation (DRM) and apply countermeasures that are proportionate to the harm of tax practices.

On EU tax havens:

- The EU should put its house in order before screening other countries.
 - EU governments should ban the use of patent boxes and similar measures that entice companies to shift their profits from one country to another to avoid paying tax.
 - While the decision-making power on tax competition and harmful tax practices lies mostly with the member states, the Commission and the Parliament can play an important role as facilitators of further tax reforms. For instance, to monitor and call out harmful tax practices in Europe, the European Commission should expand its assessment on aggressive tax planning in its European Semester country reports and ensure strong follow-up and countermeasures.



Other measures against tax havens

Minimum effective corporate taxation

The EU should support a minimum effective tax rate at a fair level. Introducing such a minimum rate would reduce the incentive for companies to shift profits to low- or zero- tax countries, by putting a floor in the damaging tax competition between countries. Currently [a proposal on a minimum effective tax rate is being discussed at OECD level](#) under the BEPS (Base Erosion and Profit Shifting) 2.0 process. The initiative, referred to as GLOBE, focuses on the remaining BEPS issues to end profit shifting and tax competition that lead to low levels of effective corporate taxation.

Within the OECD lead process, EU member states should push for a consensus-based agreement towards an ambitious minimum effective tax rate set globally, applied on a country-by-country basis without carve-outs, and set at a high enough rate to effectively curb profit shifting.

If a solution is not found at global level by end 2020, the EU should then pursue a minimum effective tax rate at EU level.

Transparency and public country by country reporting

Profit shifting to tax havens is facilitated by a lack of transparency when it comes to a company's taxes, particularly on the amount of taxes a company pays in each country. Public country-by-country reporting – that is, the disclosure by companies on how much money they make and how much they pay in taxes for each country they operate in – would discourage the use of tax havens by corporations.

EU member states should promptly reach an agreement on the proposal for public country-by-country reporting and allow the trilogue negotiations among the Council, the Parliament and the Commission to start.

ANNEX

Oxfam has conducted a quantitative analysis of economic data from EU member states, based on the most recent data available (Eurostat data 2018 – [GDP](#), [other indicators](#)) to see if countries show profits that are significantly out of balance with real economic activity. This allows to identify tax havens within the EU that artificially attract company profits that remain untaxed in other countries.

The [methodology](#) used is the same as in last year's 'Off the Hook' report. Levels of FDI stock, which were assessed in the 2019 analysis, are not assessed this year because new data is not available.

1. Weight of intellectual property (IP) income and royalties

Level of royalties paid and received above 2.5% of GDP (conduit jurisdiction assessment)

Using this data, Oxfam identified:

Paid		
	2017	2018
Ireland	22.4%	22.3%
Luxembourg	7.6%	7.1%
Malta	5.9%	5.8%
Netherlands	5.0%	4.6%

Received		
	2017	2018
Ireland	3.1%	3.6%
Luxembourg	4.3%	3.4%
Malta	4.3%	4.2%
Netherlands	3.9%	3.8%

(Data from 2017 (received) slightly differ from data displayed in [Off the hook methodology](#) because Eurostat data have been updated.)

2. Weight of interest income

Estimated net intra-group interest income at more than 1% of GDP

If profit is shifted to a tax haven in the form of interest, this shows up as a high balance of interest received minus interest paid as a share of GDP.

Using this data, Oxfam identified:

	2017	2018
Netherlands	2.1%	1.8%



Level of intra-group interest paid and received superior to 2.5% of GDP

Using this data, Oxfam identified (conduit jurisdiction assessment):

Paid		
	2017	2018
Cyprus	17.1%	16.4%
Luxembourg	46.3%	45.0%
Netherlands	3.6%	3.7%

Received		
	2017	2018
Cyprus	5.49%	5.34%
Luxembourg	56.14%	42.47%
Netherlands	5.68%	5.48%

(Data from 2017 (received) slightly differ from data displayed in [Off the hook methodology](#) because Eurostat data have been updated.)

3. Weight of dividends

Net intra-group dividend payments more than 5% of GDP

Using this data, Oxfam identified:

	2017	2018
Luxembourg	34.7%	22.7%
Netherlands	8.7%	6.7%

(Data from 2017 (received) slightly differ from data displayed in [Off the hook methodology](#) because Eurostat data have been updated. Data for Cyprus is not available for 2018.)

Level of intra-group dividends paid and received in excess of 5% of GDP (conduit jurisdiction assessment)

Using this data, Oxfam identified:

Paid		
	2017	2018
Luxembourg	78.9%	67.1%
Malta	76.5%	69.0%
Netherlands	15.0%	14.8%

Received		
	2017	2018
Cyprus	93.6%	76.5%
Luxembourg	113.6%	89.8%
Netherlands	23.8%	21.6%