STOP tax dodging

Hidden profits:

The EU's role in supporting an unjust global tax system 2014: Briefing

Summary of a report coordinated by Eurodad

Introduction

This report – the second in a series of three annual reports – brings together civil society organisations (CSOs) in 15 countries across the EU. Experts in each CSO have examined their national governments' commitments and actions towards combatting tax dodging and ensuring transparency. This year, for the first time, each country is also directly compared with its fellow EU member states on four critical issues: the fairness of their tax treaties with developing countries; their willingness to put an end to anonymous shell companies and trusts; their support for increasing the transparency of economic activities and tax payments of transnational companies; and their attitude towards letting the poorest countries get a seat at the table when global tax standards are negotiated. This report doesn't only cover national policies, but also governments' positions on existing and upcoming EU-level laws and global reform proposals.

Overall, this report finds that:

- **Practices which facilitate tax dodging by transnational corporations and individuals are widely used**, in some cases so governments can claim to be 'tax competitive'. This is creating a 'race to the bottom' – meaning that many countries are driving down standards to try to attract transnational corporations to their countries. Some of the countries that have been most successful in attracting companies – Ireland, Luxembourg and the Netherlands – are also currently under investigation by the European Commission for making competition-distorting arrangements with transnational companies behind closed doors. Several countries also allow 'letterbox' companies and other structures to be set up (so-called Special Purpose Entities – SPEs) which can, and often are, misused for tax dodging purposes.

- European countries have **a high number of tax treaties with developing countries**, with France and the UK leading the pack respectively with 72 and 66 of such treaties. These treaties often push down the taxation levels on financial transfers out of developing countries, and thus create routes through which transnational corporations can avoid taxation. Of the countries covered by this report, Spain, the UK and Sweden have negotiated the biggest reductions of developing country tax levels through their treaties. Despite several studies proving the negative effects these treaties can have on developing countries, only the Netherlands out of the 15 EU governments covered in this report has so far produced a 'spillover analysis' to estimate the impact of these treaties on the world's poor. Ireland is set to publish a similar study that will hopefully also focus on its tax treaties in the coming months.

- Most EU countries studied **have failed to expose the true – or beneficial – owners of companies**, trusts and similar legal structures operating within their countries. Some countries have done away with harmful structures that previously helped to hide identities, but are now in the process of creating new problematic structures. Both the Czech Republic and Luxembourg recently decided to abolish anonymous bearer shares – an instrument that has received much international criticism. At the same time, both countries are introducing 'trusts' into their national legislation, potentially providing new options for anonymous ownership that might replace the ones that are disappearing.

- Although EU governments have introduced **country by country reporting for banks** – meaning they will have to adhere to stronger transparency rules – many countries are still reluctant to do this for transnational companies in other sectors.

- **Although many are undecided, none of the EU governments studied actively support the establishment of an intergovernmental body on tax matters under the auspices of the United Nations**. Such a body would allow developing countries to have a say on global tax standards instead of the current situation, where the OECD is the dominant decision-making body, despite the fact that it only represents wealthy countries.

A direct comparison of the 15 EU countries finds that:

- France is currently the strongest country on issues of transparency and reporting rules for transnational corporations and has actively championed the issue. However, recent developments seem to indicate the government may be back-tracking. Its vast range of tax treaties have also caused substantial lowering of developing country tax rates. No analysis of these impacts is planned.

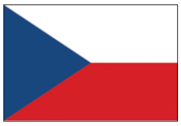
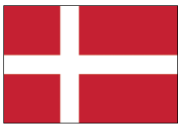
- Germany, Luxembourg, the Netherlands, Spain and Sweden received a red light on transparency, meaning that they have a lack of transparency of company ownership at the national level or are resisting EU-wide initiatives to promote transparency on company ownership.

- Spain has managed to negotiate the largest reductions in developing country tax rates – an average reduction of 5.3 percentage points - through its tax treaties with developing countries.

Campaign action during the European parliamentary elections urging companies to pay their taxes.

Country findings

See page 10 for a key to the following country rating system.

Country	Tax treaties	Ownership transparency	Reporting for transnational corporations	Global solutions
Belgium 	The Belgian tax treaty system has a number of features which are potentially harmful and can have direct negative impacts on the tax revenues of other countries, including developing countries. Although some anti-abuse provisions are in place, their effectiveness is uncertain. On average, Belgium has not been as aggressive as other countries covered in this report in terms of negotiating reductions in tax rates through its treaties with developing countries.	At the EU level, Belgium has not stated a clear position for or against the proposal to introduce publicly accessible registers of beneficial owners of companies, trusts and similar legal structures as part of a new EU Anti-Money Laundering Directive.	At the EU level, Belgium has not stated a clear position for or against the proposal to introduce public country by country reporting for all sectors. Belgium has also not introduced any domestic legislation that goes beyond the EU requirements	Belgium does not seem to have a clear position on whether an intergovernmental body on tax matters should be established under the auspices of the UN.
Czech Republic 	It is not clear whether the Czech government is open to using the UN model when negotiating tax treaties with developing countries. Average rate reductions in treaties with developing countries are significant but below the average for the 15 European countries covered in this report.	The Czech Republic is generally in favour of transparency but has not yet taken any proactive position as regards the proposal to introduce publicly accessible registers of beneficial owners of companies, trusts and similar legal structures as part of a new EU Anti-Money Laundering Directive.	In the case of country by country reporting, the Czech government is in principle undecided about extending this measure to all sectors, but it prefers a slower approach. The government has, however, not actively blocked progress on the issue.	The Czech government do not support the idea of negotiating global tax policies outside of the OECD, and is therefore supporting the exclusion of the world's poorest countries from the decision making processes on tax matters.
Denmark 	Denmark includes anti-avoidance clauses in tax treaties when the co-signing state requests it, but does not actively ensure that such provisions are included. Denmark also does not seem to have a clear position for or against negotiating treaties on the basis of the UN model. Of concern, Denmark's treaties with developing countries in general includes reductions in withholding tax rates that are well above the average for the European countries covered in this report.	Denmark has relatively open national registries of beneficial owners for listed companies accessible both via Central Securities Depository (CSD) and the transnational corporation itself, although verification of this information is not provided. On the issue of the EU Anti-Money Laundering Directive, Denmark supports public access to beneficial ownership information but has not actively championed the issue.	With regard to country by country reporting, the Danish government is supportive of further legislation as a means to combat tax dodging but has not actively championed the issue.	Denmark is clearly and openly opposed to the idea of negotiating global tax standards under the auspices of the UN, and supports the OECD as the leading forum when it comes to making decisions on global tax matters. Denmark is therefore supporting the exclusion of the world's poorest countries from the decision-making processes on tax matters.

Country	Tax treaties	Ownership transparency	Reporting for transnational corporations	Global solutions
France	France seems reluctant to include provisions which are important for developing countries and prefers the OECD model tax treaty rather than the UN model. Since France has an extremely large treaty network, including a high number of treaties with developing countries that include significant rate reductions, it is important that France actively works to prevent negative spillovers on developing countries.	France has introduced a public registry for the small number of French *fiducies*, and foreign trusts where French residents participate as trustees, settlors or beneficiaries. France has also been a champion of creating a public administrative registry of beneficial owners as part of the Anti-Money Laundering Directive on the EU level.	France has made significant efforts towards country by country reporting. Firstly, France has adopted specific measures at the French level in the banking sector, with first reports in 2014 and further expansion in 2015. Secondly, France has been proactively working for EU regulation which would subject all sectors to country by country reporting. Recent developments, however, indicate that the government could be back-tracking and there is a real danger that France's leadership on country by country reporting will evaporate.	France has repeatedly and actively opposed the upgrading of the UN Tax Committee to an intergovernmental body and insists that the intergovernmental negotiations about global tax policies be kept in the OECD. France is therefore supporting the exclusion of the world's poorest countries from the decision making processes on tax matters.
Germany	Germany has previously pushed for unjust elements, such as narrow definitions on *"permanent establishment"* and low levels of withholding taxes, when negotiating treaties with developing countries. However, the German government says it has changed its approach and will now use the UN model treaty in negotiations with developing countries.	Germany does not require reporting of beneficial ownership of Treuhand funds and bearer shares, and therefore support a high level of financial secrecy. The support of EU initiatives has also been weak. The former government blocked further progress in the Council on the establishment of public registries of beneficial owners.	The previous German government hindered negotiations for stricter reporting requirements for companies in the extractive industries on a country by country basis, and was against introducing country reporting information for all sectors.	The previous German government considered that international tax matters should remain at the EU and OECD levels and therefore opposed an upgrade of the Committee of Experts on International Cooperation in Tax Matters to an intergovernmental organ. The former government therefore supported the exclusion of the world's poorest countries from the decision making processes on tax matters. The new government has not yet indicated any change in this position.
Hungary	It is unclear whether Hungary's treaties in general follow the OECD or UN tax treaty model. Hungary's treaties with developing countries in general contain significant reductions in withholding tax rates, although the reductions fall below the average for the 15 European countries covered in this report.	Hungary started in 2013 to provide company ownership data, electronically verified, to the public. These are positive steps forward, but beneficial ownership information is still not systematically collected in Hungary according to the latest OECD review. At the EU level, Hungary has not taken a clear position for or against public registries of beneficial owners of companies and trusts.	At the EU level, Hungary has not stated a clear position for or against the proposal to introduce public country by country reporting for all sectors. Hungary has also not introduced any domestic legislation that goes beyond the EU requirements.	Hungary does not seem to have a position on whether an intergovernmental body on tax matters should be established under the auspices of the UN.

Country	Tax treaties	Ownership transparency	Reporting for transnational corporations	Global solutions
Ireland	The Irish government is open to measures which protect the interests of developing countries in tax treaties, but the current practice is that treaties are based predominately on the OECD model and include significant reductions in withholding tax rates above the average for the 15 European countries covered in this report. It is not clear whether Ireland would accept negotiating tax treaties with developing countries on the basis of the UN rather than the OECD Model, but Ireland currently favours the OECD model.	The Irish government's position has been to support the view that beneficial ownership of companies should be known, and indeed there are already provisions in place which allow for enforcement authorities and company shareholders to identify beneficial owners of companies when required. However, the government has not yet stated whether or not it supports a publicly available register in Ireland nor at the EU level.	To date, it seems that Ireland will move only when it must move collectively. The Irish government supports the OECD process on Base Erosion and Profit Shifting, which at the moment suggests that information from country by country reporting should not be public.	The Irish government supports the OECD as the lead organisation in international tax policy and has indicated that it supports the OECD in this role, rather than the UN.
Italy	It is not clear whether Italy would accept negotiating tax treaties with developing countries on the basis of the UN rather than the OECD model. Italy does include anti-abuse provisions in its tax treaties and has not carried out an impact assessment of its treaties on developing countries. The average reduction in withholding tax rates in treaties with developing countries is below the average for the 15 European countries covered in this report.	Italy has an advanced shareholder transparency system publicly accessible, but there is not adequate verification of this registry at the moment. At the EU level, Italy tolerates the fact that some EU countries would not make their registries of beneficial owners publicly accessible as part of the Anti-Money Laundering Directive.	At the EU level, Italy has not stated a clear position for or against the proposal to introduce public country by country reporting for all sectors. Italy has also not introduced any domestic legislation that goes beyond the EU requirements.	Italy has taken a position against having an intergovernmental process on tax matters under the UN and instead wants the OECD to continue being the lead organisation in the development of global tax policies. Italy is therefore supporting the exclusion of the world's poorest countries from the decision-making processes on tax matters.

Country	Tax treaties	Ownership transparency	Reporting for transnational corporations	Global solutions
Luxembourg	Luxembourg follows the OECD model for negotiation of tax treaties and does not systematically include anti-abuse provisions. Developing countries have previously raised concerns about their tax treaties with Luxembourg, yet despite this Luxembourg does not seem to have plans to do a spillover analysis of its tax treaty system and the potential negative impacts on developing countries. On the positive side, Luxembourg's treaties with developing countries in general only contain minor reductions in withholding tax rates compared to the other European countries covered in this report.	Luxembourg continues to attract international criticism for its failure to ensure the identification of beneficial owners. The government has not stated a clear position for or against the proposal to introduce publicly accessible registers of beneficial owners of companies, trusts and similar legal structures as part of a new EU Anti-Money Laundering Directive.	At the EU level, Luxembourg has not stated a clear position for or against the proposal to introduce public country by country reporting for all sectors. Luxembourg has also not introduced any domestic legislation that goes beyond the EU requirements.	Luxembourg does not seem to have a clear position on the issue of whether an intergovernmental body on tax matters should be established under the auspices of the UN.
Netherlands	The Netherlands has responded to some of the international criticism of its tax treaty system and has started incorporating anti-abuse clauses. Furthermore, the Netherlands seems open to applying the UN Model in future negotiations with developing countries.	The Netherlands hosts 12,000 special financial institutions that channel €4000 billion per year. The size of this sector of "mailbox" companies is accompanied by the risk of unknown beneficial owners. However, at the EU level, the Dutch government is not in favour of the establishment of a mandatory publicly accessible register of beneficial owners established as part of the Anti-Money Laundering Directive, but is of the opinion that member states should decide for themselves whether to make this information public or not.	The government is interested in initiatives that promote transparency through country by country reporting and has therefore advocated that the EU Commission investigates the impact of public CBCR for all sectors. However, the Netherlands has not yet worked actively to have country by country reporting introduced for all sectors at EU level. The Netherlands has also not introduced any domestic legislation that goes beyond the EU requirements.	The Netherlands expresses satisfaction with the way both the OECD and the UN currently function, which implies that it does not support intergovernmental negotiations on tax matters taking place under the UN. The Netherlands does, however, not seem to be actively working against this.

Country	Tax treaties	Ownership transparency	Reporting for transnational corporations	Global solutions
Poland	Poland makes use of provisions from the UN model treaty. Some of the tax treaties, but not all, have specific anti-abuse clauses. In general, Polish tax treaties with developing countries make less use of reduced tax rates than almost all other European countries covered in this report.	Poland has national registration requirements for keeping records of beneficial owners within the company's own records and notifying the National Court Register. This registration of beneficial ownership does not include the owners of bearer shares. Poland's position as regards the proposal to introduce publicly accessible registers of beneficial owners of companies, trusts and similar legal structures as part of a new EU Anti-Money Laundering Directive is unclear.	At the EU level, Poland has not stated a clear position for or against the proposal to introduce public country by country reporting for all sectors. Poland has also not introduced any domestic legislation that goes beyond the EU requirements.	Poland believes the need for establishing a new intergovernmental body under the auspices of the United Nations has to be analysed.
Slovenia	Slovenia follows the OECD model treaty when negotiating tax treaties. Slovenia includes anti-abuse provisions in its tax treaties, but in some cases also includes very low rates of withholding taxes. On average, however, Slovenia's reduction of withholding tax rates in its treaties with developing countries is comparable with the average for the 15 European countries in this report.	Slovenia collects data on beneficial ownership, although ownership information is in some cases lacking for foreign companies and foreign partnerships. The information is not publicly available. Indications are that Slovenia supports further EU regulation based on the strong domestic angle on ending tax dodging. Slovenia does not, however, seem to have been actively championing this issue at the EU level.	At the EU level, Slovenia has not stated a clear position for or against the proposal to introduce public country by country reporting for all sectors. Slovenia has also not introduced any domestic legislation that goes beyond the EU requirements.	It is unclear what the position of the Slovene government is on whether an intergovernmental body on tax matters should be established under the auspices of the UN.
Spain	Spain negotiates tax treaties following the OECD Model Convention. The Spanish treaties normally include anti-abuse clauses to avoid *"treaty shopping"* and *"rule-shopping"*, but it is unclear whether they protect against negative impacts of the Spanish tax policies. On average, Spain has reduced the withholding tax rate with 5.2 percentage points in treaties with developing countries, by far the largest reduction among the 15 European countries covered in this report.	Public information regarding company ownership is available, but only for shareholders above 5 per cent of the company. Spain has previously supported the establishment of a registry of beneficial owners as part of the Anti-Money Laundering Directive. However, Spain has argued against public access to the registry.	Spain has not implemented national measures towards country by county reporting, despite the fact that banks and IBEX35 companies operating in Spain have a high number of subsidiaries in tax havens. Spain supports OECD and EU- level initiatives, but wants the information to be confidential to the public. Spain has however not yet actively blocked progress on public country by country reporting at the EU level. If Spain decides to actively start working against public country by country reporting for all sectors at the EU level, the country would fall to the red light category.	Spain is against the creation of an intergovernmental body on tax matters under the UN and is therefore supporting the exclusion of the world's poorest countries from the decision making processes on tax matters.

Country	Tax treaties	Ownership transparency	Reporting for transnational corporations	Global solutions
Sweden	Swedish tax treaties differ a lot between each other. Some have anti-abuse clauses. It is not clear whether Sweden primarily follows the OECD model or the UN model when negotiating tax treaties with developing countries. Sweden's treaties with developing countries in general contain tax rate reductions that are well above the average for the 15 countries covered in this report. This is of concern.	Although the information is collected, Sweden does not have a public registry of beneficial owners of companies and trusts. The former Swedish government supported in general terms measures to increase transparency but believed it should be up to each member state to decide how they should be designed and whether they should be public.	The former Swedish government did not support EU regulation introducing an obligation for all transnational enterprises to carry out country by country reporting. Sweden has, however, not yet actively blocked progress on public country by country reporting at the EU level.	Sweden does not seem to have a clear position on whether an intergovernmental body on tax matters should be established under the auspices of the UN.
UK	While the UK does appear to have been receptive to some developing country demands in tax treaty negotiation processes, the default position is to follow the OECD Model and eliminate withholding taxes. Among the 15 European countries covered in this report the UK has negotiated the second highest average reduction in withholding tax rates in its treaties with developing countries - quite alarming given its wide network of treaties with these countries. This goes against the aims that the UK Government claims to have as regards assisting developing countries to increase and improve domestic revenue mobilisation.	Domestically, the UK has decided to introduce a public register for the beneficial owners of companies, which is a major positive sign and a first among the countries covered in this report. Furthermore, the UK has championed the idea of public registers of beneficial owners to be introduced EU-wide. However, when it comes to a public registry for owners of trusts, the UK is a strong opponent. This unwillingness of the UK to move significantly on trusts appears likely to hinder any agreement on public registries of companies at the EU level which would otherwise represent a major breakthrough in transparency across Europe.	When the EU in early 2014 considered introducing country by country reporting for all sectors, the UK was the strongest opponent and in the end managed to block the initiative.	While the UK on several occasions has referred to the need to find global solutions on tax reforms that also work for developing countries it is unclear what the government is willing do to achieve this. Specifically, it is unclear if the UK supports upgrading of the UN tax committee.

Methodology for the country rating system

Category 1: Tax Treaties

- **Green** light: The government applies the UN Model when negotiating tax treaties with developing countries in order to ensure a fair allocation of taxing rights between the two countries. The treaties include anti-abuse clauses. The average rate reduction on withholding taxes in treaties with developing countries are below 1 percentage point.

- **Yellow** light: The position of the government is unclear or the country does not systematically apply anti-abuse clauses or one specific model (UN or OECD). The average rate reduction on withholding taxes in treaties with developing countries is above 1 percentage point but below or equal to the average reduction for the 15 countries covered in the report (2.8 percentage points).

- **Red** light: The government applies the OECD Model when negotiating tax treaties with developing countries and does not ensure effective anti-abuse clauses. The average rate reduction on withholding taxes in treaties with developing countries is above the average for the 15 countries covered in this report.

Category 2: Ownership Transparency, and Category 3: Reporting for transnational corporations

- **Green** light: The government is a champion and has either actively promoted EU decisions on these issues, or has already gone – or plans to go – further in its national legislation.

- **Yellow** light: The government is neutral at the EU level and doesn't have domestic legislation that stands out. Yellow is also used to categorise countries where the government has a position which is both negative and positive when it comes to progress at the EU level, as well as countries where the position is unclear.

- **Red** light: The government has either actively blocked progress at the EU level or maintains national laws which are particularly harmful on these issues.

Category 4: Global Solutions

- **Green** light: The government supports the establishment of an intergovernmental body on tax matters under the auspices of the United Nations, with the aim to ensure that all countries are able to participate on an equal footing in the definition of global tax standards.

- **Yellow** light: The position of the government is unclear, or the government has taken a neutral position.

- **Red** light: The government is opposed to the establishment of an intergovernmental body on tax matters under the auspices of the UN, and thus is not willing to ensure that all countries are able to participate on an equal footing in the definition of global tax standards.

Symbols

- **Arrows**: Show that the country seems to be in the process of moving from one category to another. The colour of the arrow denotes the category being moved towards.

- **Blindfold**: Shows that the position of the government is not available to the public, and thus the country has been given a yellow light due to a lack of public information.

Recommendations to EU member states and institutions

There are several recommendations that EU member states and the EU institutions can – and must – take forward to help bring an end to the scandal of tax dodging. They are:

- Adopt EU-wide rules to establish **publicly accessible registries of the beneficial owners** of companies, trusts and similar legal structures. The EU negotiations over revisions to the Anti-Money Laundering Directive, which are now close to conclusion, provide an important window of opportunity to establish such registries.
- Adopt **full country by country reporting for all large companies and ensure that this information is publicly available**. This reporting should include:
  - A global overview of the corporation (or group): The name of each country where it operates and the names of all its subsidiary companies trading in each country of operation.
  - The financial performance of the group in every country where it operates, making the distinction between sales within the group and to other companies, including profits, sales, purchases and labour costs.
  - The assets i.e. all the property the company owns in that country, its value and cost to maintain.
  - The number of employees in each country where it operates.
  - Tax information i.e. full details of the amounts owed and actually paid for each specific tax.
- Carry out **spillover analyses** of national tax policies, in order to assess the impacts on developing countries and **remove policies and practices that have negative impacts** on developing countries in order to strengthen policy coherence for global development.
- Ensure that the new OECD-developed **"Global Standard on Automatic Information Exchange" includes a transition period for developing countries** that cannot currently meet reciprocal automatic information exchange requirements due to a lack of administrative capacity.
- Undertake a rigorous study jointly with developing countries, on the merits, risks and feasibility of more fundamental **alternatives to the current international tax system**, such as unitary taxation, with special attention to the likely impact of these alternatives on developing countries.
- Establish an intergovernmental **tax body under the auspices of the UN** with the aim of ensuring that developing countries can participate equally in the global reform of existing international tax rules. This forum should take over the role currently played by the OECD to become the main forum for international cooperation in tax matters and related transparency issues.
- All EU countries should publish an **impact assessment of their special purpose entities** and similar legal constructions, as well as **data showing the flow of investments** through such entities in their countries.
- Ensure that **special purpose entities** and similar legal constructions cannot be abused for tax purposes by introducing sufficiently strong substance requirements for all such entities. The General Anti-Abuse Rule as proposed by the European Commission in its Recommendation on Aggressive Tax Planning in December 2012 could serve as a guideline for defining the right level of substance requirements.
- When negotiating tax treaties with developing countries, EU countries should:
  - Adhere to the UN model rather than the OECD model in order to avoid a bias towards developed country interests.
  - Conduct a comprehensive impact assessment to analyse the financial impacts on the developing country and ensure that negative impacts are avoided.
  - Ensure a fair distribution of taxing rights between the signatories to the treaty.

To read the full report, please go to: www.eurodad.org/hiddenprofits

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