# EU tax haven blacklist review

**Oxfam analysis and background**

15 February 2021

Tomorrow, Tuesday 16 February, European Union finance ministers will review the EU tax havens list, officially known as the EU list of non-cooperative jurisdictions for tax purposes. This is an assessment of non-EU countries according to the current blacklist criteria. This process started in 2017 and takes place twice a year. Currently 12 countries are blacklisted and 10 are 'grey-listed'.

This year, Oxfam's analysis finds that the EU tax havens list continues to fail in effectively identifying the countries which use harmful tax practices and help the richest dodge their tax bills. The list still gives a pass to all EU countries by not evaluating their tax practices. It also does not capture some of the world's worst tax havens as it does not automatically blacklist zero or low tax rate jurisdictions.

As a result, Oxfam's 2021 analysis finds that:

- Only two out of 13 countries with a zero percent corporate tax rate are blacklisted.
- Only one out of 18 countries with low corporate tax rates (<12.5%) are blacklisted.
- In 2019, five EU member states - Cyprus, Ireland, Luxembourg, Malta and the Netherlands – continued to have economic indicators typical of tax havens (e.g. high levels of Foreign Direct Investment, intellectual property payments, interests, dividends).
- In 2019, Luxembourg had levels of Foreign Direct Investments coming in and out of the country 67 to 100 times bigger than its economic weight (GDP). Due to its dodgy tax practices, the country found itself at the centre of the recent #OpenLux investigation.

The EU has started this year to reform the overall blacklisting process, including the definition of harmful tax practices and the lists' criteria. Based on the above findings, Oxfam makes the following recommendations to the Code of Conduct Group, in charge of the reform:

- **Blacklist zero and low corporate tax jurisdictions:** make zero and low corporate tax rates a standalone criterion of the EU tax haven list.
- **Include economic analysis to identify harmful tax regimes**. Use levels of foreign direct investment and passive income as red flags for the identification of tax havens.
- **Properly screen EU countries:** EU countries must be held to the same, if not higher, standards than non-EU countries.

Based on our previous report and analysis, Oxfam also calls for the EU to increase the transparency of the screening process and to take into account the special circumstances of developing countries.

**Chiara Putaturo, Oxfam's EU Policy Advisor on Tax and Inequalities, said:**

"This year, European governments have the opportunity to reform the EU blacklisting process. The current list captures hardly any real tax havens. There are 31 countries around the world with zero or low corporate tax rates, but only three of them are blacklisted.

"The EU must look at what is happening in its own backyard – European countries are acting as tax havens. It is time the EU cleans up its act and end this looting of public resources. Letting big corporations pay little to no tax at the expense of ordinary people, especially during these hard times, is scandalous. The EU needs to broaden the definition of harmful tax practices, create a strong set of indicators and properly screen EU countries."

## Background

Since the creation of the list in 2017, Oxfam has shown that the EU blacklisting process is not fit for purpose. Oxfam's 2019 report "*Off the hook*" and the updated 2020 analysis highlight the shortcomings of the blacklist: weak criteria, lack of transparency of the process and incoherence between the assessment of EU and non-EU countries. Real tax havens continue to escape the list and some EU countries keep operating as tax havens given their exemption from the blacklisting process. A recent study from Tax Justice Network revealed that EU blacklisted countries are responsible for less than 2 percent of global tax losses. In comparison, EU member states are responsible for 36 percent of global tax losses – resulting in over $154 billion of lost tax revenue annually. The EU list does not include a single one of the world's 20 worst corporate tax havens as identified by Tax Justice Network and only includes 1 of the world's 15 worst corporate tax havens as identified by Oxfam in 2016. Most recently, the #OpenLux case shows how the small EU member state Luxembourg continues to facilitate corporate tax avoidance without any repercussions.

During the last year, EU institutions recognised the need to reform the EU blacklisting process. In July 2020, the European Commission committed to reform the criteria for identifying tax havens, the definition of harmful tax practices (Code of Conduct for Business Taxation), and the body responsible for the listing process (Code of Conduct Group - CoCG). As the reforms are currently being discussed by the CoCG – they will not feature on tomorrow's review of the list. In January 2021, the European Parliament called for a better EU tax haven list. Their call centred on three asks: a reform of the group governing the blacklist (CoCG), stronger criteria for the blacklist and sanctions for non-compliance.

## Why should the EU tackle tax havens?

Corporations and the super-rich use tax havens to avoid paying their fair share of taxes. This has a direct impact on public services like education and health as vital tax revenues are shifted from countries across the globe to tax havens. Tax havens are responsible for tax losses in other countries of over $427bn annually. Today those resources are even more essential to recover from the COVID-19 crisis and build stronger health and social protection services. For lower income countries, tax losses are equivalent to nearly 52 percent of their combined public health budgets, whereas it is 8 percent for higher income countries.

## What does Oxfam's new analysis show as weaknesses in the EU blacklisting process?

### Zero and low tax jurisdictions are not blacklisted

Zero and low tax rate jurisdictions cause aggressive tax competition. They attract corporations by offering no taxation or very low tax rates. This practice has caused a worldwide race to the bottom in corporate taxation. It has been estimated that, between 1985 and 2019, the global average statutory corporate tax rate fell from 49% to 23%.

Currently, 13 countries in the world have zero percent corporate tax rates, but only 2 are blacklisted and the remainder escape the grey-list. Only 1 out of 18 countries with low tax rates (under 12.5% corporate tax rate - see Annex) are blacklisted.

The EU does not automatically blacklist countries with zero percent or very low corporate tax rates as these rates are not considered a standalone criterion to identify tax havens. They are instead only considered 'risk indicators'. This is despite the practice resulting in aggressive tax competition and a global push to set up a minimum affective tax rate by 139 countries at the OECD and G20 level - a decision which would ban zero and low corporate tax rates.

### Member States continue to operate as tax havens

The blacklisting process does not apply to EU member states, only to non-EU countries. The CoCG reviews potential harmful tax practices in Europe but without imposing sanctions and with almost no visibility.

The European Parliament called on the Commission to regard at least five Member States - Cyprus, Ireland, Luxembourg, Malta and the Netherlands - as EU tax havens. In 2020, the European Commission identified six member states - Cyprus, Hungary, Ireland, Luxembourg, Malta and the Netherlands - for having tax rules or systems that facilitate aggressive tax planning. **Luxembourg's tax system has been considered at risk of aggressive tax planning since 2016, but the #OpenLux case demonstrates how corporations can still use it for tax avoidance purposes.**

Previous Oxfam analysis identified five EU countries - Cyprus, Ireland, Luxembourg, Malta and the Netherlands - as failing the EU's own criteria on fair taxation. If not for the automatic EU exemption, these countries would appear on the blacklist. This year's analysis shows there has been little movement on the ground to change this. **For the third consecutive year Oxfam research found that Cyprus, Ireland, Luxembourg, Malta and the Netherlands score high on economic indicators typical of tax havens.**

Between 2017 and 2019, these countries had amounts of Foreign Direct Investments and passive income (royalties, intra-group interest and intra-group dividend payments) significantly exceeding their economic weight. These are strong indicators that these jurisdictions make use of aggressive tax practices to attract FDI, royalties, interest or dividends (acting as offshore centres) or to act as a conduit towards other offshore centres, usually zero or low tax jurisdictions. This causes losses in tax revenue to countries where real profits are made.

Luxembourg is a prime example. Levels of Foreign Direct Investments (FDI) coming in and out of the country is between 67 to 100 times its GDP. In comparison, for the 22 member states who have balanced economic indicators, levels of FDI remains below 2.5 times. In 2019, interest paid and received on intra-group company debt is over 65 percent of GDP and dividend paid and received is over 150 percent of GDP. In comparison, it remains below 2.5% and 5% respectively for 24 member states. Thanks to a lax tax system, Luxembourg is used as conduit jurisdiction to shift profits from where the actual economic activity takes place – mainly in other EU member states – to tax havens. This has allowed 140,000 companies to flood the Luxembourgish market: 90% of which are foreign and 40% merely hold assets and do not create economic activity. Multinational companies artificially shift an estimated $66bn in profits through Luxembourg – with countries like France losing around $4.1bn in corporate tax revenue.

### What should the EU do?

This year the EU is reforming the blacklisting process. Based on the above analysis, Oxfam recommends to:

- **Make zero and low levels of taxation a standalone criterion**, rather than an indicator. If a Minimum Effective Tax Rate (METR) is agreed at the OECD level, the EU should take it as a reference for the new criteria. Failing this, the EU must establish its own effective tax rate. This tax rate must be high enough to discourage profit shifting.
- **Include economic analysis to identify harmful tax regimes**. Levels of foreign direct investment and passive income should be used as red flags to identify tax havens.
- **Better screening of EU countries.** European countries should be assessed according to at least the same – if not higher - standards than non-EU countries.

Based on our previous report and analysis, Oxfam also calls on the EU to increase the **transparency** of the process and to take into account the **special circumstances of developing countries** – the EU lists some developing countries for not living up to international standards despite them not being at the negotiating table and not having the capacity to implement these standards.

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# ANNEX

## ZERO AND LOW TAX JURISDICTIONS

Oxfam selected jurisdictions with zero or low corporate tax rates based on the information available in the OECD, KPMG, E&Y and PWC databases. While all databases provide information on the Statutory Corporate Tax Rate (STR), only the OECD database provides information on the Effective Average Tax Rate (EATR) and only for a limited number of countries. Therefore, the STR is mainly used in this analysis. The list is not exhaustive as the databases do not cover all world jurisdictions.

For this analysis, the tax rate of 12.5% is used. It reflects the minimum effective tax rate proposed in the last OECD-BEPS2 Pillar 2 Blueprint. Oxfam considers this rate too low to capture all tax dodging.

| **0 tax rate jurisdictions (STR or EATR = 0%)** | | **Low tax rate jurisdictions (STR or EATR <12.5%)** | |
|---|---|---|---|
| **Blacklisted (B) or grey listed (G)** | **Not listed** | **Blacklisted (B) or grey listed (G)** | **Not listed** |
| Anguilla (B, STR 0%) | Bahamas (STR 0%) | Barbados (B, STR 5.5%) | Andorra (STR 10%, EATR 8.9%) |
| Vanuatu (B, STR 0%) | Bahrain (STR 0%) | | Bosnia and Herzegovina (STR 10%) |
| | Bermuda (STR 0%) | | Bulgaria (STR 10%, EATR 9.2%) |
| | British Virgin Islands (STR & EATR 0%) | | Cyprus (STR 12.5 %, EATR 10.4%) |
| | Cayman Islands (STR & EATR 0%) | | Gibraltar (STR 10%) |
| | Guernsey (STR & EATR 0%) | | Hungary (STR 9%, EATR 10%) |
| | Isle of Man (STR & EATR 0%) | | Ireland (STR 12.5%, EATR 12%) |
| | Jersey (STR & EATR 0%) | | Kosovo (STR 10%) |
| | Marshall Islands | | Kyrgyzstan (STR 10%) |
| | Turks and Caicos Islands (STR & EATR 0%) | | Liechtenstein (STR 12.5%, EATR 10.1%) |
| | United Arab Emirates (STR 0%) | | Macau (STR 12 %, 11.5% EATR) |
| | | | Montenegro (STR 9%) |
| | | | Moldova (STR 12%) |
| | | | North Macedonia (STR 10%) |
| | | | Paraguay (STR 10%) |
| | | | Quatar (STR 10%) |
| | | | Timor-Leste (STR 10%) |

## ECONOMIC ANALYSIS OF EU MEMBER STATES

Oxfam has conducted a quantitative analysis of economic data from EU member states, based on the most recent data available (Eurostat data 2019, GDP, other indicators ) to see if countries attract levels of FDI, interests, royalties, dividends that are significantly out of balance with real economic activity. This allows the identification of tax havens in the EU that artificially attract company profits which remain untaxed in other countries.

The methodology used is the same as in 2019 'Off the Hook' report and 2020 update analysis. Data from 2017 and 2018 slightly differ from data displayed in previous years because of updates in the Eurostat database.

### 1. FDI stock levels

*FDI inward stock minus FDI outward stock in excess of 250% of GDP.*

Very high inward FDI relative to a country's economy is usually related to offshore structures. Oxfam analysed the balance of inward FDI stock minus outward FDI stock.

Using this data, Oxfam identified:

| | **2017** | **2018** | **2019** |
|---|---|---|---|
| **Malta** | 913.1% | 930.5% | 937.0% |

*Level of FDI inward stock and outward stock in excess of 250% of GDP (conduit jurisdiction assessment)*

Using this data, Oxfam identified:

| Inward | | | |
|---|---|---|---|
| | **2017** | **2018** | **2019** |
| **Cyprus** | 1982.8% | 1793.6% | 1827.5% |
| **Ireland** | 473.6% | 473.9% | 436.7% |
| **Luxembourg** | 8618.0% | 7462.7% | 6742.5% |
| **Malta** | 1566.1% | 1531.6% | 1489.1% |
| **Netherlands** | 642.9% | 602.6% | 581.2% |

| Outward | | | |
|---|---|---|---|
| | **2017** | **2018** | **2019** |
| **Cyprus** | 2119% | 1910.9% | 1886.6% |
| **Ireland** | 510.1% | 455.1% | 431.3% |
| **Luxembourg** | 10205.1% | 9229.6% | 8381.2% |
| **Malta** | 653.0% | 601.1% | 552.1% |
| **Netherlands** | 788.7% | 758.0% | 723.5% |

**2. 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** | **2019** |
| **Ireland** | 22.2% | 22.2% | 23.7% |
| **Luxembourg** | 6.8% | 6.3% | 7.7% |
| **Malta** | 7.4% | 7.0% | 7.5% |
| **Netherlands** | 5.0% | 4.9% | 4.8% |

| Received | | | |
|---|---|---|---|
| | **2017** | **2018** | **2019** |
| **Ireland** | 3.0% | 3.7% | 3.0% |
| **Luxembourg** | 2.9% | 2.7% | 2.9% |
| **Malta** | 4.9% | 4.6% | 4.9% |
| **Netherlands** | 3.9% | 4.2% | 4.6% |

**3. 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** | **2019** |
|---|---|---|---|
| **Luxembourg** | 25.0% | **<1%** | 10.0% |
| **Netherlands** | 2.1% | 1.7% | 1.7% |

- *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** | **2019** |
| **Cyprus** | 16.8% | 12.9% | 12.2% |
| **Luxembourg** | 74.4% | 74.7% | 65.9% |
| **Netherlands** | 3.6% | 3.8% | 3.7% |

| Received | | | |
|---|---|---|---|
| | **2017** | **2018** | **2019** |
| **Cyprus** | 5.4% | 5.3% | 6.1% |
| **Luxembourg** | 99.4% | 42.5% | 75.9% |
| **Netherlands** | 5.7% | 5.5% | 5.4% |

**4. Weight of dividends**

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

Using this data, Oxfam identified:

| | **2017** | **2018** | **2019** |
|---|---|---|---|
| **Cyprus** | 30.7% | 51.7% | 36.8% |
| **Luxembourg** | 20.5% | 10.8% | 31.9% |
| **Netherlands** | 8.7% | 6.8% | 8.5% |

- *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** | **2019** |
| **Cyprus** | 62.0% | 66.7% | 30.0% |
| **Luxembourg** | 191.8% | 187.0% | 152.1% |
| **Netherlands** | 15.0% | 18.0% | 13.9% |

| Received | | | |
|---|---|---|---|
| | **2017** | **2018** | **2019** |
| **Cyprus** | 92.7% | 118.3% | 66.8% |
| **Luxembourg** | 212.3% | 197.8% | 184.0% |
| **Netherlands** | 23.8% | 24.7% | 22.4% |