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Tax Havens against World democracy

Jacques Fontanel

**Seminar, UNECON (State University of Economy of Saint-Petersbourg),
Russia, April 2016.**

**Seminar, Institut Libre d'Etudes de Recherche Internationale (ILERI),
Paris
November 2016**

CESICE, Grenoble, 2016

Summary: Globalization has enabled some unscrupulous countries to market their sovereignty. These states pursue a policy of the “beggar-thy-neighbour” type, which allows them to receive a number of multinational firms registered offices after particularly attractive financial tax negotiations with governments in place. What are their methods, the guilty States, the multinational firms concerned, the cost for public service, the violence of inequality, the new insecurity for international health and protection of citizen? Tax havens threat democracy.

Résumé : La mondialisation a permis à certains pays peu scrupuleux de commercialiser leur souveraineté. Ces États mènent une politique du type "beggar-thy-neighbour", qui leur permet d'accueillir un certain nombre de sièges sociaux de multinationales après des négociations fiscales particulièrement intéressantes avec les gouvernements en place. Quelles sont leurs méthodes, les États coupables, les multinationales concernées, le coût pour le service public, la violence des inégalités, la nouvelle insécurité pour la santé internationale et la protection des citoyens ? Les paradis fiscaux menacent la démocratie.

Mots clefs : Globalization, Tax Havens, Democracy, inequalities, States

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**Seminar, Institut Libre d'Etudes de Recherche Internationale (ILERI),
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February 2016

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Russia, April 2016.**

CESICE, Grenoble, 2016

The states of tax havens commercialise their national sovereignty to offer the largest international firms the opportunity to conduct a policy of tax avoidance and optimisation. The "Panama Papers" affair¹, unveiled by the Washington-based International Consortium of Investigative Journalists, reminds us of the financial importance of this "secret" world, linking the interests of multinational firms, private assets or politicians, a world that has no respect for the laws and tax rules that apply in countries where their fortunes prosper. It highlights the importance of hidden fortunes and tax avoidance procedures and the financing of public goods by the largest multinational corporations and the wealthiest individuals. The information provided highlights legal and illegal systems of corruption in the relationship between political elites and global wealth². The government of Panama is now investigating the offences committed in order to identify possible financial damage and to cooperate with the judiciary if legal proceedings are initiated, but it is also seeking to discover the perpetrator of the leaks, who is believed to be in Switzerland. The disclosure of this information created a shock wave, in Iceland with the resignation of the Prime Minister, in the United Kingdom with the involvement of Cameron and the king of Morocco. Through the system of Foundations, to their great surprise, the names of the Red Cross or WWF have been directly used by companies to carry out, without great risk, a tax evasion, because in Panama it is not necessary to know the supposed donor, but only the institution that is supposed to receive donations. Similarly,

¹ 107 newspaper editors in nearly 76 countries have uncovered a scandal of tax evasion on a global scale, based on 11.5 million pieces of data provided by a whistle-blower on the Mossack Fonseca company's archive files. These are exchanges of emails and administrative documents from a Panamanian company specialising in the domiciliation of offshore companies. The investigation reveals that in 4 decades, the company has created more than 214,000 "offshore" entities in nearly 21 different tax havens. Not all these companies are necessarily illegal, but the links between economic and financial activity are hardly established, with the creation of shell companies to hide assets..

² Kaufmann, D., Gillies, A. (2016), From Panama to London: Legal and illegal corruption require action at the UK anti-corruption summit, Brookings – Blog – May 9. <http://www.brookings.edu/blogs/future-development/posts/2016/05/09-corruption-panama-papers-kaufmann-gillies>

many treasures or works of art are hidden legally or illegally through the channels of "rogue" countries³. Switzerland, which has always stated that it has changed its behaviour, is also a major contributor to these financial transfers, which says a lot about the willingness of "rogue" countries to quickly and genuinely change their behaviour. The law firm Mossack-Fonseca has created more than 200,000 offshore companies for a wealthy clientele around the world wishing to avoid taxes. How many identical law firms have also been able to create these fictitious companies whose sole purpose is to swindle middle-class taxpayers while taking advantage of public goods and the laws on which their wealth is based? The Unaoil affair, of an oil company in Monaco, highlights the importance of such influence peddling, illegal trade secrets and bribes, which generally escape justice thanks to high-level political protection⁴.

Panama's Paper has been criticized for targeting only well-identified political targets, and very few Americans (but close allies) use the state of Delaware instead, whose practices of creating trusts in the greatest anonymity are well known. There should be an equivalent for Delaware's papers. The term tax haven is not appropriate. One should rather choose territory of convenience, because it goes far beyond simple tax avoidance and optimization. It also allows for discreet relations between states (secret negotiations and political support), but also between heads of state and heads of multinational companies, especially for flags of convenience. Finally, Panama is a "rogue" country, but it is not ranked among the very first beneficiaries of this type of practice. It is only a "knot" in the system of corruption and tax evasion that has been set up in the little frequented circles of multinational companies, public officials and wealthy individuals. It is also about laundering "dirty" or "stolen" money by oligarchs, kleptomaniacal political leaders or companies specialising in the go-between of setting up corruption cases. Setting up a company in Delaware requires little information, compared to the usual requirements. The United Kingdom uses its "offshore" jurisdictions and "protectorates" to act as a relay for all these covert transactions that pervert the business world. It has become child's play to make

³ Herzberg, N. (2016), Panama's papers : les documents révèlent le véritable propriétaire d'un Modigliani disparu. Le Monde, 8 Avril.

⁴ Baumann, N., Blumenthal, P., Grim, R (2016), Scandal. Here's Why everyone Should Care, The Huffington Post, http://www.huffingtonpost.com/entry/unaoil-bribery-scandal-corruption_us_56fa2b06e4b014d3fe2408b9. April 11. Unaoil presents itself as a solution provider to the energy sector in the Middle East, Central Asia and Africa. The Ahsani clan is always present to defend charities, NGOs and the arts. In fact, it has emerged as a systematic corrupter of the global energy sector by bribing large international companies or their executives. Large companies such as Rolls-Royce, Samsung, Eni, Siemens, Leighton Holdings, Hyundai, Halliborton, heads of state such as Gaddafi, Bashar-al-Assad or Iraqi ministers are involved. Oil-producing countries suffer from highly corrupt governance. Unaoil, although certified by the anti-corruption agency Trace International, uses the fear of big companies that they will not get the successful contracts without outside help. British and American banks agree to wash away this dirty money. Thus, the purchase of Iraqi oil to help the Iraqi people has been the object of many corrupt manoeuvres. The company has intervened in Iran, Libya, Syria, Yemen, Kuwait, and the United Arab Emirates.

transactions opaque for uses that do not comply with business law. In some States, the political leaders who have been revealed in these occult operations have been ordered to resign. In other states, the rulers have cried conspiracy and Chinese rulers; Putin's relatives and the Aliyev family have not had to justify themselves before the justice system and the citizens of their countries. The "privatization" of public resources and laws allows elite to receive rents often obtained legally. Many African political elites benefit from this, particularly in the oil sector. This flight of capital for tax purposes has a negative influence on the collection of resources by states, which, in competition with each other, are increasingly willing to reduce the percentage of corporate taxes. Political power is increasingly in the hands of large companies, which are taking advantage of this to reduce their costs, arguing that the competition is one that governments must control.

The importance of these sums "hidden" from the tax authorities or protected in places that provide a form of financial security in the event that economic developments turn out to be contrary is considerable. It is undoubtedly possible to measure "active" deposits intended to finance investments abroad at a later date, but it is almost impossible to know, unless specific research is carried out in the countries concerned, not only the long-term hoarding, but also the material "values" (gold, precious metals, masterpieces, deeds of ownership) which are locked up in safes and which will only come out of them in the event of an emergency or expatriation. For more than 15 years, heads of state, from Bush to Sarkozy, have proclaimed the end of "tax havens" and financial opacity. The extent of the concealment of assets by the economic and financial elites is considerable. States have been very agitated to consider that they are taking the problem head-on, but it must be acknowledged that the studies and reports have had little concrete effect. According to most analysts, tax havens do not add any value to the world's wealth, they have no public utility, and they only allow a few already wealthy individuals or multinationals to become even richer, in the greatest secrecy. Before globalization, companies did not evade taxes much. Bad payers were accused of being bad citizens with no morals. Today, the job of councillors is to make the most money for shareholders. Tax optimization is a way to increase profits. Tax lawyers abound and are very well paid. From this perspective, the search for relocation of profits, which is completely artificial, becomes a "win-win" game for tax lawyers looking for low corporate taxes or deductible interest payments.

This version is not accurate, because the rogue countries steal, they reduce the capacity of public goods to flourish, and they divert collective funds for private purposes, funds that could normally have been used for social spending, for defining a common citizen's future. They then threaten the rule of law, they knowingly protect illegal activities, and they create major structural distortions in the normal functioning of the economy. As liberals, they defend Adam

Smith's selfish interests as a means of achieving the collective optimum, via the famous invisible hand, forgetting that, according to the Scottish economist, the rich must contribute to public spending, not just according to their income, in a higher proportion. It should be noted that Donald Trump himself, in opposition to the tradition of the American Republicans, considers it necessary to raise taxes for the richest. In democratic countries, inequality even creeps into economic and commercial affairs. In the United States, it has been calculated that the complexity of the tax code costs 6.1 billion hours and more than \$100 billion to understand and apply. In fact, citizens are not equal before the law because small businesses do not have expert panels to optimize their corporate tax expenditures. Complexity creates inequalities in taxation⁵.

Where some progress has been made, decisions have always been made with a date of application of the rules that allowed offenders to find a remedy. They thus allow offenders to benefit either from a tax amnesty or from procedures that reduce the penalties incurred provided that they voluntarily declare tax evasion. Thus, in France, requests for regularisation have risen from around 100 million euros in 2014 to more than 2 billion euros in 2015. Automatic transmission of information on financial assets will become the rule from 2018. It will be difficult not to identify breaches of this rule early enough, not least because there are notable exceptions for securities held through trusts and foundations⁶. Furthermore, the absence of penalties for recalcitrant countries, which are considered to be willing to develop the transparency of financial transactions, is worrying in view of the system of impunity and opacity that has hitherto driven tax havens, to their great advantage. States have never undertaken the necessary structural, fiscal or regulatory reforms because, firstly, they covet the support and investments of the economic and financial elite and, secondly, because those in power belong or have the ambition to belong to this golden class.

Nevertheless, other flows, often subject to implicit or "ad hoc" agreements, also reveal a large part of the activities of tax havens, playing on the different tax regulations of developed countries. Tax competition leads to an exacerbated neglect of public goods and to a policy of "beggar-thy-neighbour" (voluntary impoverishment of one country due to the unfriendly policy of another), between governments that officially express either the objective of building Europe or of facilitating international trade. The United Kingdom has announced that the corporate tax will be set at 17% as of 2021 (12% for Ireland), a rate comparable to that of Russia and many developing countries, and that it will maintain the predatory practices of their dependencies, the famous islands that protect fortunes. In this context, inequalities will only increase, along with economic recession and unemployment. In fact, these sums are generally not

⁵ Senate Committee on Finance (2016), Navigating Business Tax Reform, Hearing, April.

<http://www.finance.senate.gov/hearings/navigating-business-tax-reform>

⁶ Piketty, T. (2016), L'hypocrisie européenne, Le Monde, p.25.

reinvested in full; they serve in part as a "financial mattress" in the event that economic developments become contrary to the interests of those who own them. The United States maintains its taxes at 35%, even though the zero tax rate in the state of Delaware makes the latter the biggest "beneficiary" in terms of added value of its state of "tax haven". Nonetheless, American multinationals are very fond of tax havens, with 1600 subsidiaries "officially" having 1400 billion dollars in assets. This is undoubtedly a very low estimate of the reality of these investments, since the declaration only concerns subsidiaries or investments that represent more than 10% of the consolidated assets of a group or those whose income is greater than 10% of these assets⁷. In France, MEPs want to strengthen the obligations of large companies to combat tax fraud. The aim is to make public the declarations of their activities on a country-by-country basis. This proposal is in line with the Constitution, according to the Constitutional Council, but the information cannot be made public. On the other hand, if a European directive admits the publication of these declarations, its transposition into French law will be applicable.

Trade within multinational companies is at the heart of globalisation. It accounts for two thirds of the trade carried out by the subsidiaries of international industrial groups located in France. The exchange prices between the different subsidiaries of an international group can be manipulated in order to reduce the tax legally due to the country of production of the real added value. Economic globalisation has favoured the rise of tax havens and offshore centres. Firstly, international financial transactions, encouraged by deregulation, disintermediation and the decompartmentalisation of national markets⁸, have developed considerably and have been attracted by the advantages conferred territorially by States with the most flexible regulations and wishing to conduct a policy of legal and fiscal dumping. Secondly, tax optimisation policies have become more widespread. In a production process involving two or more production or service units located in several countries, companies have used the channel of their subsidiaries to undervalue the added value of the countries of production in order to increase it fictitiously in the country of the tax "lowest bidder", while keeping the selling price of the products concerned high in the countries of consumption. Finally, social inequalities have exploded over the last two decades. There is a control of the purchasing power of the poor in favour of the rich, who wish to avoid taxes in their country of origin and take advantage of financial liberalisation to optimise their income. Developed countries normally have high taxes and low interest rates. Developing countries, on the other hand, have high interest rates and low taxes. In this context, the "haves" benefit from high interest rates for their investments, low interest rates

⁷ Lauer, S. (2016), Les multinationales américaines font un usage immodéré des paradis fiscaux, Le Monde, 16 Avril. P. 12.

⁸ Fontanel, J. ((2005), La globalisation en analyse. Géoeconomie et stratégie des acteurs. Coll. La Librairie des Humanités, l'Harmattan, Paris. Septembre.

for their loans and low or no taxes, without a spirit of citizenship and solidarity for the development or maintenance of public investments.

The definition of a tax haven requires a geopolitical analysis. That is to say that the concept is a moving concept, with regard to the collective interests that all States should defend, and the freedom of action of States more or less extended with regard to international agreements. The budgetary field is generally the one that is best protected by national leaders, it is the one that offers them a more or less extended potential for action according to the means made available to them by their citizens or residents. However, the economic opening of borders leads to tax competition policies that transform the rules of competition and offers many possibilities of choice to individuals or legal entities with significant financial means. Tax havens" are often characterised by very accommodating (sometimes even non-existent) taxation for foreign operators, flexible and attractive financial legislation, great opacity of their operations thanks to banking and judicial secrecy, weak judicial cooperation with third countries and political stability often reinforced by security agreements with major economic and military powers. These states have thus strengthened the interests of the owners or large firms to the detriment of those of states and national and international public authorities. It is in this sense that it is rather relevant to speak of "rogue" states, of people who shamelessly steal from their Allies, who often protect them on the other hand. They thus benefit from the mismatch in economic and financial actions between collective interests and the interests of those who have the power to be interested only in their own individual interests. The result is income "leakage" for many countries, which is one of the determining factors in the economic stagnation that has gradually taken hold in the globalized world. The "rogue" countries then develop to the detriment of other countries, from which they often pump out the surplus, that is to say, investments that are useful for all the national economies concerned by this institutionalized "theft".

Governments and tax havens

At the initiative of the French Presidency, the first international action to combat money laundering was decided in 1989, at the same time as the creation of the Financial Action Task Force (FATF), which in April 1990 presented forty recommendations. In 1990, France set up Tracfin to combat clandestine financial circuits. The European Union also took an interest in the issue in 1998, when it proposed, without success, harmonizing the taxation of savings (15% withholding tax on interest payments). However, Luxembourg and the United Kingdom then exercised their veto rights in a legal context requiring unanimity for all matters relating to the taxation of member countries.

Following the attack on the Twins Towers on 11 September 2001, President Bush declared that he wanted to freeze the financial assets of terrorist

organisations (and in particular those of Osama Bin Laden) by requiring foreign banks to provide information hitherto considered secret, on pain of heavy penalties for them if they refused to cooperate with the US Administration's intelligence services. This new American security policy primarily concerned tax, banking and jurisdictional havens, places where all or part of the financial assets of foreign (or offshore) owners are managed. The war against terrorism implied the abandonment of banking secrecy, necessary exchanges of information with the American justice system and targeted control of client activities. The U.S. Treasury was then given the power by the U.S. government to legally freeze the assets and transactions of banks in the U.S. that were unwilling to disclose the required information. On this occasion, a withholding tax (of the order of 30%) on foreign payments of US-source dividends and interest was introduced, except under specific tax treaties establishing both a certain transparency and the cooperation of foreign financial institutions⁹.

This policy seemed likely to favour banks in New York, London, Berlin, Zurich or Paris. On the other hand, international banks with exotic subsidiaries, with little regard for the origin of the funds, were rightly concerned about the resulting loss of profits, but also about the information made available on their past behaviour. With the emergence of the new rich born out of the economic upheavals of the 1990s, a particularly profitable niche of wealth management was about to experience new difficulties in expressing itself, with the questioning, at least partially, of banking secrecy, which improved financial returns and favoured tax optimisation. With this policy initiated by the US government, investments in exotic countries or small states with controls deemed insufficient by the OECD were to undergo a severe reduction in intensity in favour of less exposed and more internationally recognised countries.

This perception begged the question whether all the "offshore" places were not primarily justified by the importance of illicit investments. The money laundering circuits were so opaque that very few banks knew whether or not they had dirty money on their books¹⁰. In 2003, a European Union directive (2003/48/EC) allowed Luxembourg and Austria to maintain banking secrecy, with, in return, a withholding tax refunded to the countries of origin of the clandestine funds. This measure was extended to Switzerland, Monaco, Sint Maarten, Liechtenstein and Andorra, the Channel and Caribbean territories of the United Kingdom and the Netherlands. This decision had very little effect, as

⁹ The financial institutions that adhere to the QI (Qualified Intermediary) are then concerned. They must transmit to the IRS the identity of their American clients who hold assets abroad. The Internal Revenue Service (IRS) is the government agency in the United States that collects income tax and various taxes (employment tax, corporate tax, inheritance tax, etc.) and is responsible for enforcing tax laws.

¹⁰ The Bin Laden family group was mainly based in the City and its offshore dependencies. These territories constitute a tax, banking, financial and judicial haven according to a French parliamentary report. National Assembly (2000), *La lutte contre le blanchiment des capitaux en France : un combat à poursuivre*, President V. Peillon, Rapporteur, A. Montebourg. Joint fact-finding mission on obstacles to the control and suppression of financial crime and money laundering in Europe, 30 March 2000.

the banks had anticipated these measures and were able to circumvent them easily.

More rigorous studies initiated by the fear of terrorist financing have provided surprising information for the uninitiated. Contrary to popular belief, tax havens were not only located in small, exotic islands. The European Union was not exemplary; it was even an institution that turned a blind eye to the "lowest common denominator" tax policies of its component parts. It thus favoured "beggar-thy-neighbour" policies with impunity for countries that did not hesitate to enrich themselves on the production of their neighbours and partners. Ireland, for example, negotiated its corporate taxes directly with the most demanding multinational firms (up to 2% tax on declared profits), while at the same time receiving a great deal of aid from the European Union; Luxembourg got rich without embarrassment by encouraging tax evasion by taxpayers from neighbouring countries; the Dutch government set up conventions designed to encourage tax avoidance to the detriment of other countries, but to its own benefit, while actively participating in the reduction of compulsory levies in order to improve its economic and financial "attractiveness". .

While it was known that Switzerland or Monaco, Panama or the Cayman Islands managed many fortunes secretly, many people were unaware that for more than a thousand years, companies and individuals based in the City, in the heart of the United Kingdom, had not paid tax. Yet London is a dominant financial centre, which has often encouraged all kinds of trafficking. Considerable transfers were deposited in protected territories, using opaque financial channels. These transactions have had significant direct and indirect impacts on global economic development, while at the same time profoundly altering the growth of income and wealth inequalities. The London financial centre has specialised its activities in two areas, the management of wealth "onshore" in London and tax avoidance for non-residents. Despite the 1997 reforms, a French parliamentary report had accused the British government of "serious complacency" with regard to the "customs and habits" of the City of London, which was presented as a preferred investment location for terrorist organisations, and the British Normandy Islands, which were accused of being a major centre for laundering criminal money¹¹. In response, London had assured that the City had a very strict legislative arsenal to combat that scourge¹². However, the warning led the banks to tighten particularly flexible financial regulations, but some States then took advantage of this "windfall effect" to take over the torch of optimised management of large fortunes (Singapore or Mauritius or even Luxembourg and Austria, members of the European Union).

¹¹ Assemblée Nationale (2000), La lutte contre le blanchiment des capitaux en France : un combat à poursuivre, Rapport d'information, Rapport Arnaud Montebourg, n°2311. 11 avril.

¹² Assemblée Nationale (2012), Délinquance financière et blanchiment des capitaux, <http://www.assemblee-nationale.fr/11/dossiers/blanchiment.asp> , 11 Avril.

In addition, Gibraltar, Jersey, the Isle of Man or Guernsey continued to offer their financial strength to enrich the City. In 2008, only two states were on the FATF list, Myanmar and Nigeria. The OECD list of tax havens included only Monaco, Andorra and Liechtenstein, even as the financial crisis was about to erupt. Today, it condemns Iran and North Korea and warns of the possible failures of Vietnam, Tanzania or Myanmar, countries in which transfers of financial flows appear to be relatively insignificant compared to many other countries and territories in the western world.

Tax evasion is currently estimated at between \$5 trillion and \$10 trillion a year. The quality of this estimate is obviously very difficult to evaluate, given the very heterogeneous fiscal principles of countries around the world. Thus, the tax advantages offered by the State of Delaware are rather difficult to measure globally, as they may also resemble a policy of support for US exports of its own products. The estimated sums represent 6 to 12% of a world GDP estimated at 80,000 billion dollars¹³.

In this context, the war against "tax havens" has opened Pandora's box, and the financial powers benefiting at different levels of the system have quickly closed the lid, without, however, eliminating all questions about their operations. However, European countries have still been reluctant to review their financial legislation, particularly that concerning banking secrecy. Many countries have shown great reluctance to cooperate not only on information concerning financial matters, but also on all crimes and offences

After the severe crisis of 2007-2008, it became clear that these offshore centres were one of the main problems of the international financial system. As early as 2008, a GAO report¹⁴ showed that US banks had a parallel or shadow banking system in prudential havens. Assets kept secret, especially in the Cayman Islands, were proving to be toxic, especially those located in the Cayman Islands. Several banks were then declared bankrupt because of excess short-term funding placed in "exotic" subsidiaries. In April 2009, the London G20 then became involved in the fight against tax havens, considering that the era of banking secrecy was over. Sanctions were introduced against recalcitrant countries and territories in order to protect the public finances of major countries and to strengthen the normal functioning of the international financial system. However, there was still certain hypocrisy in those analyses and pertinent remarks. While the decaying effects of the famous trusts were highlighted, there was still a great silence surrounding comparable behaviour in various forms in Delaware, Wyoming and Nevada, three American federal states.

The recognition of the responsibilities of tax, regulatory, banking and legal havens has not, however, substantially modified the regulations in force. The crisis has been partly fought by the public sector, with taxpayers' money, in

¹³ Violet, V. (2015), *Paradis fiscaux, enjeux géopolitiques*, Technip, Paris, Septembre.

¹⁴ The Government Accountability Office (GAO) is the audit, evaluation and investigative agency of the United States Congress responsible for auditing the public accounts of the United States federal budget.

favour of the agents guilty of tax optimization and tax evasion, the banks. The financial actions of small exotic islands are generally directed, in forms as diverse as they are difficult to spot, by players based in the most developed countries. Tax havens have become pillars, albeit very fragile, of today's economic and financial system. They also give a distorted picture of economic reality, which is dominated by opaque financial movements with confusing final content¹⁵. 55% of international trade or 35% of financial flows are channelled through tax havens, which deal with tax avoidance and the laundering of criminal or corrupt operations as well as traditional economic activities¹⁶. "Globally, 50% of global transactions would transit through tax havens, which would include 4,000 banks and 2 million shell companies. This represents one third of the world's financial resources, and a sum that could generate between 148 and 218 billion euros in tax revenue for states. By comparison, official development assistance is about 100 billion euros per year"¹⁷. Many financial institutions have "offshore" banks in "rogue" countries. French banks are developing numerous subsidiaries in Luxembourg, Belgium, the Netherlands and Ireland (at least 330 in total in these countries). In Europe, private fortunes are set up in three privileged destinations, Switzerland, the United Kingdom and Luxembourg (two-thirds of the whole of Europe). Tax evasion causes the French Treasury to lose 60 billion euros, a sum roughly equivalent to that of Germany. Thus, today, "tax havens" have become a key issue in global economic development.

Because of the very diversity of statuses, legislations and specialties, it is interesting to define tax havens, and possibly to extract a typology, before measuring their importance on the global economy¹⁸ as a whole and highlighting the actions likely to be taken to reduce their importance.

Nature, content and qualification of tax havens

For a long time, tax havens have been analysed as wealth protection areas for high-income people wishing to avoid taxes or to build up "precautionary savings", in case they need them later on in view of the conflicts in world history. It was known that "dirty" money was placed there, the object of all drug trafficking, prostitution or shady deals not legally identified. Over the past 20 years, these tax havens have seen their activities increase, companies have called on their services, and banks have favoured both money laundering and tax

¹⁵ How can we analyse the fact that the Cayman Islands have become the fourth International Financial Centre? How to understand that the British Virgin Islands invest more in China than the USA?

* Attali, J. (2011), *Demain qui gouvernera le monde ?* Fayard, Paris.

¹⁷ Assemblée Nationale (2012) ; *Lutte contre les paradis fiscaux : si l'on passait des paroles aux actes*, Rapport présenté par Alain Bocquet et Nicolas Dupont-Aignan, 14 Novembre

¹⁸ By definition, there are no official statistics on tax havens, beyond the question of their definition. As with everything that is secret, we can only rely on evaluations. The amount for the world as a whole is most commonly estimated at between \$5 trillion and \$10 trillion. Some estimates go as high as \$20,000 or \$30,000 billion that would be hidden in tax havens.

avoidance. Some States, previously virtuous, have also tried their hand at this adventure, with great profit. Having the right to sovereignty, recognised by all the international bodies in which they are supposed to participate, they have a regal right whose use can only be reduced by belonging to a group of countries (and not its basic legitimacy). A state dictates its own laws, and when it temporarily abandons them in the context of economic integration, it can always regain exclusivity by abandoning the convention with its partners.

Main characteristics

There is no consensual definition of tax, legal, financial and judicial havens. Strictly speaking, the concept of tax havens differs from both offshore areas and banking or judicial havens. However, the term tax haven is often used to define all "uncooperative territories" with resources of opaque origin. For the OECD, a tax haven includes several significant characteristics, which can be found, in different types of combinations, in some countries¹⁹. Tax havens have particularly interesting tax laws.

- First of all, banking secrecy is very strict and can be invoked against all foreign judges. Important legal and even constitutional provisions reinforce the confidentiality of financial transactions and professional secrecy.
- Taxes are generally very low, especially for non-residents. Tax havens are designated as tax havens because the direct personal or corporate taxes they levy are zero or low for those who are not tax residents or for firms that do not operate there.
- There is a very high degree of freedom of capital movements for residents and non-residents. The conditions for setting up companies and opening accounts are not very restrictive. Company registration procedures are easy and quick, and the information required is minimal compared to other financial centres. Formalities for setting up companies are few and the law on foreign trusts is at least not very restrictive and very liberal. The difficulty for the tax and criminal administrations of the countries of origin is to identify the real beneficiaries.
- International judicial cooperation is limited. It is, however, organised on the basis of an extensive network of bilateral agreements, in order to avoid double taxation of company subsidiaries.
- In order to reassure investors, the political and economic stability of the country is also claimed, which is a necessary condition for the good development of business, whatever the constitutional system put in place. For their needs and those of their clients, banks, but also international rating agencies, regularly draw up lists of countries, classifying them according to the risks they represent. The "reputation" of a tax haven is strongly linked to its economic and legal stability, even if bank fees and commissions are objectively higher than in most other tax havens. If North Korea, a rogue state, does not

¹⁹ <http://www.lafinancepourtous.com/Outils/Mediatheque/Videotheque/Les-interviews-de-l-IEFP/Les-paradis-fiscaux>. La Finance pour tous (2012), Paradis fiscaux,

charge taxes, it has no legitimacy to become a tax haven. The country must have a good brand image, like Switzerland, Singapore, the City of London or Luxembourg (the world's third largest fund manager based on total financial assets under management, after the United Kingdom and the United States, and the second largest mutual fund market).

In "rogue" countries, the financial sector is bloated in relation to the size of the country and the size of its economy. They are often small states or territories without international legal personality but with a specific tax regime. They can considerably reduce taxes, since financial, legal, banking and accounting activity forms the basis of their national or territorial product. In the case of small countries, they often benefit from the support of a large financial centre and the judicial support of a large country²⁰, they are usually at the heart of a large network of bilateral agreements that effectively promote tax evasion and they have a high level information technology infrastructure to that effect. They are part of the application of the "Arsène Lupin" syndrome, the very sympathetic "gentleman" burglar. Tax havens are crooks, which defraud partner countries that are rather benevolent towards them.

Forms of paradise

On this basis, it is interesting to distinguish between tax havens, regulatory havens and legal havens. Offshore Financial Centres (OFCs) are also tax havens, but the reverse is not always true.

- **Tax havens** offer both a low or non-existent tax regime and the anonymity of monetary and financial transactions, which allows non-residents (companies or individuals) to escape taxation. Wealthy individuals and companies take advantage of the situation to optimise (minimise) their debts to all public authorities by using the tax distortions of the countries, thus benefiting from globalisation and European integration. For the victim country, the result is a triple downward pressure, firstly on the size of the sums collected through taxation on high incomes and capital (to the detriment of the middle classes, through income and consumption taxes), secondly on the profits of small and medium-sized enterprises with little involvement in international trade, and thirdly on wage income (with a loss of international competitiveness of employees with regard to the comparison of acquired social benefits). The Member States of the European Union seek to attract the wealthiest companies and households to their territory by modulating their taxes. In this way, they seek to improve their "attractiveness effect" for non-resident investments. Sometimes, there is even real competition between "rogue" states. In this context, the perverse effects accumulate for public authorities whose interests, even for their partners, become contradictory.

²⁰ Sometimes the territory belongs legally or de facto to a great power.

- **Regulatory havens** do not subject the financial sector to the prudential rules that exist in other countries (in particular transparency of accounts or capital ratios with regard to credit or speculative activities). Risk analysis is then treated much less rigorously, which favours the establishment of companies, trusts or corporations protected by anonymity regarding the identity of the real originators and beneficiaries of the assets. Individuals and companies can then discreetly set up multiple shell companies to conceal certain income both from the tax authorities and from all the economic players concerned. The aim is to create a voluntary system of opacity, through offshore subsidiaries and advantageous transfer pricing choices, which allows companies to sell their products at cost price to their offshore subsidiaries, which then resell them with large profits abroad. In the United States, exporting companies (FSCs or Foreign Sales Corporations) can be legally domiciled in their subsidiaries located in offshore centres, which are often controlled by US capital (e.g. Panama, Virgin Islands, Bermuda, Barbados), allowing them to avoid the tax on international contracts. Although the profit is not subject to the tax normally payable in the United States, the US government thus seeks to favour its domestic companies in obtaining major contracts, particularly in commercial aviation or major public works. This is, in fact, a disguised subsidy, normally prohibited by WTO rules²¹. The US government, whose budget is heavily indebted, has launched an action concerning the considerable stock of "offshore" profits of multinational companies. It proposed two solutions, one involving a transitional tax on such profits, the other the tax-free return of capital from US companies; they have the same intention of bringing financial flows back into the country, but in fact have opposite effects. The transition tax seeks first to increase government revenues in order to increase public investment. In the second solution ("repatriation tax holiday"), the State does not receive any income, since in this procedure the repatriated income does not pay any tax²².

- **Banking havens** reinforce the professional secrecy in favour of the foreign client with regard to the respect of the civil, financial and social regulations in force in his country of origin. Normally, bankers cannot disclose financial information of natural and legal persons, but banking secrecy can be lifted in very specific cases provided for by law²³. In addition to banking secrecy, there is also business secrecy, if claimed and respected by large companies, financial institutions and trusts. The opacity of finances transiting through offshore

²¹ On this basis, the US government, following a complaint by the European Commission, was condemned by the WTO for unfair competition.

²² Chye-Ching Huang and Brandon Debot (2015), Transition Tax on Overseas Profits Versus Repatriation Tax Holiday: Understanding the Differences, Center on Budget and Policy Priorities – Paper - April 10, 2015. <http://www.cbpp.org/sites/default/files/atoms/files/4-10-15tax.pdf>

²³ The criminal court and the customs authorities are concerned, but there are also cases of garnishment or notification to third party holders, over-indebtedness, tax requisition or suspicion of money laundering.

centres is made even more difficult to shed light on in view of the complexity of the financial arrangements put in place with the help of the banks. The aim in most cases is to reduce the readability of accounts. In Switzerland, tax evasion committed abroad is not punishable; banking secrecy is a legal obligation, which gives the judicial authorities the right to refuse any cooperation with other countries on this subject, even if the scope of such cooperation is nowadays reduced by agreements. However, tax fraud can be a punishable offence if it is accompanied by forged documents. Thus, in the case of tax fraud and a bipartite agreement, cooperation can be initiated²⁴. However, until very recently, the application of tax treaties on exchange of information on request was not very well respected.

- **Judicial havens** are territories that escape the laws, including criminal laws, applied in other States. They apply less strictly (when they do apply them) the customary rules usually retained by the international community. The judiciary in these countries takes a less rigorous interest in the origin of funds, often refuses to provide information necessary for the prosecution of dubious commercial and financial cases, and is reluctant to cooperate with States that request it. Judicial and tax cooperation with other States is weak or non-existent. Moreover, the trust system constitutes a considerable factor of opacity. The settlor of a trust may divest himself of movable property (shares, bonds, partnership shares, paintings, racehorse-type animals, etc.) or real estate and entrust them to a third party, the trustee, who will administer them on his behalf according to the guidelines given in a letter of intent. The income and proceeds of the trust go to the beneficiaries of the trust, designated in advance, or be left to the discretion of the trustee (the trust is then discretionary). Provision is also made for the devolution of assets upon termination of the trust. This situation makes it possible to hide the reality of the property; it ensures anonymity to the natural person who is the actual beneficiary of the assets and corresponding income. In this case, the tax authorities are disarmed and the beneficiary then has no corporate or profit tax, VAT, inheritance tax, no obligation to render the accounting books or to publish his private accounts. Moreover, fraud and crime are adapting to the speed of the computer "click". They are winning the speed race with the judicial and tax system. A legal dumping very favourable to the powers of money is then engaged, without any arbitration by international bodies.

- **Offshore Financial Centers (OFCs)** allow non-residents to borrow from other non-residents in a third national currency (such as the dollar or the euro) in order to benefit from favourable tax conditions. Table 1 provides information on 82% of OFCs worldwide.

²⁴In Andorra, banking secrecy is absolute, even if it is an offence under ordinary law.

Table nº1: Financial transactions, GDP, OFC intensity ratio (2011)²⁵

Country	Country Foreign financial assets ²⁶ in situ in billions of dollars	GDP	OFC intensity ratio
Caïman Islands (UK)	3524	2,25	1566
Marshall Islands (US)	40	0,17	228
British Virgin Islands (UK)	173	1,10	158
Guernsey (UK)	358	2,74	131
Jersey (UK)	547	5,10	107
Bermuda (UK)	534	5,77	93
St Kitts and Nevis	61	0,72	85
Anguilla (UK)	14	0,18	78
Bahamas	563	7,78	72
Antigua & Barbuda	81	1,12	72
Luxembourg	3340	59,20	56
Ilse de Man	111	4,08	27
Curaçao (NL)	112	5,08	22
Libéria	31	1,55	20
Samoa	9	0,64	14
Gibraltar (UK)	15	1,11	13
Mauritius	144	11,26	13
Ireland	2355	217,28	11
Barbados	40	3,69	11
Belize	12	1,45	8
Seychelles	8	1,06	7
Hong-Kong (China)	1267	248,61	6
Liechtenstein	28	4,83	6
Malta	50	8,89	6
Panama	134	27	5
Cyprus	100	24,69	4
St Vincent and the Grenadines	3	0,69	4
The Netherlands	2933	836,07	4
Bahrain	73	22,95	3
Turks et Caicos	2	0,55	3
DELAWARE	5000	65,67	76

²⁵ Fichtner, Jan <http://www.jfichtner.net/offshore-intensity-ratio/>

²⁶ The results were obtained by a rough analysis of the size of financial assets available in a jurisdiction, based on information provided by the IMF (Coordinated Portfolio Investment Survey) and the Bank for International Settlements (Locational Banking Statistics).

In the ranking of the most clearly defined OFCs, after the Cayman Islands (the sixth largest international financial centre, under British sovereignty, with an incredible ratio of 1560), follow the Marshall Islands, the British Virgin Islands, Guernsey, Jersey, Bermuda, Saint Kitts & Nevis, Anguilla, the Bahamas, Antigua and Barbuda (all these countries with ratios of the order of 230 to 60) and Luxembourg.

It is difficult to say at what level of intensity the qualification to be OFC. On this basis, the statistical information presented in Table 1 is sometimes extravagant and shows the intensity of tax avoidance and evasion, especially since many transactions are unknown to statisticians, given the OTC agreements between financial actors. However, small islands are too small in terms of GDP to have a significant influence on the development of financial transactions. In this case, Ireland, the United Kingdom, Belgium, the Netherlands, Cyprus, Malta or Switzerland are OFCs.

It is easy to see the extent to which London dominates these markets, regardless of the singular role played by the City. Moreover, if Delaware were an independent country, it would belong to the OFC category. It is difficult to say at what level of intensity the qualification to be OFC. The authors propose a ratio of 3. On this basis, the statistical information presented in Table 1 is sometimes extravagant and testifies to the intensity of tax avoidance and evasion, especially since many transactions are unknown to statisticians, given the over-the-counter agreements between financial players. However, small islands are too small in terms of GDP to have a significant influence on the development of financial transactions. In this case, Ireland, the United Kingdom, Belgium, the Netherlands, Cyprus, Malta or Switzerland are OFCs. It is easy to see the extent to which London dominates these markets, regardless of the singular role played by the City. Note also that if Delaware were an independent country, it could also be characterized as an OFC.

Tax avoidance does not seem to be amoral, when it is not illegal. It does not give rise to any feelings of guilt. The sovereignty of each State does not allow the scourges of tax evasion, corruption, dirty money or secret agreements, often organised or suggested by the public authorities of the countries concerned, to be combated. International judicial cooperation is deliberately avoided or limited. Most often, the circles overlap, they have the four qualifiers of the above-mentioned havens. This is the case for most exotic destinations. On the other hand, if Monaco is rather a tax haven for foreign (non-French) assets, London has long been considered as a judicial haven by its refusal to respond to financial investigations initiated by public or private services of foreign countries. In fact, one should rather speak of "rogue" states, which seek to attract fortunes and funding by illegitimate means made legal in their own jurisdiction.

Which countries are concerned?

The label "tax haven" is not generalized and conceptualized in the same way by analysts. Thus, in a very strict sense, only small countries are listed. In a much broader conception, the federal states of the United States that favour significant tax reductions are included, as they allow companies, under certain conditions, to avoid all or part of their corporate taxes. In various ways, there are just under a hundred tax, banking and judicial havens. However, for reasons that sometimes have more to do with politics than with the reality of financial transactions, governments are not always indignant at partner states that take advantage of the opaque international system to attract capital without really questioning its nature and source. While the reports of the French National Assembly are particularly harsh on London and the British Isles, its government has been much more discreet about the practices of this eminent member of the European Union. As part of its policy of cracking down on international tax evasion, France updated the list of non-cooperative States and Territories (NCTs) in April 2012. The list includes Botswana, Brunei, Guatemala, Marshall Islands, British Virgin Islands, Montserrat, Nauru and Niue²⁷. Basically, the most "rogue" countries in terms of statistics are not listed, which does not fail to worry about the political will of States to eradicate this scourge. The OECD has classified the countries into three categories on the basis of their co-operation (Table 2).

This typology refers first of all to the degree of cooperation between States. This is a limited commitment, as there is nothing automatic about such cooperation. Firstly, the black list concerns states that are not fiscally cooperative. There are no longer any countries officially on this list, which is no doubt surprising. Secondly, the grey list shows those states that have promised to comply with the new rules, while already substantially complying with them. The looted tax system must ask for specific information, and the administration thus solicited will itself determine the relevance of a response. However, some tax havens do not always know the owners or beneficiaries of the companies, trusts or foundations on their territories. With this system, many states have bought their way out at little cost (such as Luxembourg, Switzerland, Liechtenstein, Singapore or the Cayman Islands) by dealing first with the countries least concerned by their secret affairs. Finally, the OECD deals only with tax issues, with little or no intervention on other opaque forms of protection for their "clients", such as legal aid and support from regulatory authorities. Efforts for international reform regarding the compliance of jurisdictions with regard to tax evasion have been underway for several years, but so far they are not yet very convincing.

²⁷ On the other hand, Anguilla, Belize, Costa Rica, Cook Islands, Dominica, Grenadines, Liberia, Oman, Panama, Saint Vincent and the Turks and Caicos Islands have been removed from the list of tax havens, although financial transactions often remain suspicious. The list instead highlights Luxury Yacht registrations, as other territories are not always suitable for commercial activity.

Table n°2: Countries that have met the compliance standards of their jurisdictions with regard to tax evasion²⁸

CONFORMING	Australia, Belgium, Canada, China, Denmark, Finland, France, Isle of Man, Iceland, India, Ireland, Japan, Korea, Mexico, New Zealand, Norway, Slovenia, South Africa, Spain, Sweden.
ESSENTIAL CONFORMATIONS	Argentina, Bahamas, Bahrain, Belize, Bermuda, Bermuda, Brazil, Cayman Islands, Chile, Estonia, Germany, Ghana, Gibraltar, Greece, Grenada, Guernsey, Former Yugoslav Republic of Macedonia (FYROM), Hong Kong (China), Italy, United States, Jamaica, Jersey, Macao (China), Malaysia, Malta, Mauritius, Monaco, Montserrat, Netherlands, Philippines, Qatar, Russia, San Marino, Singapore, Slovak Republic, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Turks and Caicos Islands, United Kingdom.
PARTIALLY CONFORMING	Andorra, Anguilla, Antigua and Barbuda, Austria, Barbados, Indonesia, Israel, Saint Lucia, Turkey.
NON-CONFORMING JURISDICTIONS	Brunei Darussalam, Dominica, Marshall Islands, Federated States of Micronesia, Guatemala, Lebanon, Liberia, Panama, Nauru, Switzerland, Trinidad and Tobago, Vanuatu.

Tax havens opportunities and obstacles

The authorities in Brussels are beginning to seriously address the issue of tax avoidance. All its members are being forced into fiscal austerity, even though these practices are causing huge losses in public revenue. Today, multinational firms pay barely 2% tax on their profits, while the average European citizen pays 20-30% of his or her income. In the United States, the "GAFA" companies (Google, Apple, Facebook, Amazon) have come under similar criticism from senators of the Senate's Standing Subcommittee on Investigation. Until 2015, using the labyrinth of tax laws, a subsidiary of the Amazon company employed 15,000 employees in the United Kingdom for zero profit, and 500 employees in Luxembourg, with a considerable profit²⁹. The GAFA companies are trying to

²⁸ OCDE (2014), Forum mondial sur la transparence et l'échange de renseignements à des fins fiscales, Transparence fiscale, <http://www.oecd.org/fr/sites/forummondialsurlatransparenceetlechangederenseignementsadesfinsfiscales/rapport-annuel-FM-2014.pdf>

²⁹ Assemblée Nationale (2013), Lutte contre les paradis fiscaux : si l'on passait aux actes, Rapport n° 1423, présenté par Alain Bocquet et Nicolas Dupont-Aignan, <http://www.assemblee-nationale.fr/14/rap-info/i1423.asp>

demonstrate that they are living within the law, but their tax optimisation techniques seem particularly amoral in a crisis situation³⁰. In some cases, the arrangements allow these companies to pay no tax to any government on most of their profits³¹. Table 3 highlights the scheme presented by Apple to evade corporate tax.

Table 3 - An example of action on tax evasion: APPLE³²

The APPLE case	Action and limitation
<p>The world's largest financial capitalization in 2015, Apple receives most of its profits from intellectual property produced in Cupertino, California. For tax reasons, these profits are housed in its subsidiary Apple Ireland, where no such research work exists. It benefits from an IRS provision called the "cost sharing agreement", created in 1980. When an MNF (multinational firm) undertakes a new research project, it can share the costs with its foreign subsidiaries. If Apple Ireland incurs 80% of the costs of this research, it receives 80% of the profits. The so-called "check the box" rule has allowed Apple Ireland to collect all the profits from the foreign subsidiaries, as they lose their specific character as entities. Prior to 1997, this was impossible, as the tax would have been due in the United States to prevent tax optimisation. Today, all profits are artificially produced in Ireland.</p>	<p>However, the legal interpretation of the cost sharing agreement provision by Apple does not philosophically correspond to the original tax agreement³³.</p> <ul style="list-style-type: none"> - Moreover, Obama proposed to abolish this rule, but the MNF lobbying has made it possible to safeguard it for the next 5 years. - The Senate has shown that Apple does not even pay the 12.5% corporate tax in Ireland. Apple Ireland is an Irish company that does not pay tax in the US. For the Irish tax authorities, it is considered American because it is managed and controlled in California. Apple is therefore not resident anywhere. An agreement with Ireland allows it to pay only 2% tax. Most Multinational Corporations (MNCs) can produce this scheme.

According to U.S. PIRG and Citizen for Tax Justice, if these U.S. firms repatriated their profits, they would owe about \$600 billion to the U.S. tax authorities³⁴. Apple, with more than \$180 billion, is the company that is the most

³⁰ On the French market, Google collects more than 2 billion euros in advertising revenues, free of VAT, thanks to its Irish structures.

³¹ McIntyre, R.S., Phillips, R., Baxandall, P. (2015), Offshore Shell games 2015. The Use of Offshore Tax Havens by Fortune 500 Companies, U.S. PIRG.

http://ctj.org/ctjreports/2015/10/offshore_shell_games_2015.php#.VuvSdWThBVw

³² Avis-Yonah, R. (2016), International Tax Evasion: What can be done? The American Prospect, May. <http://prospect.org/article/international-tax-evasion-what-can-be-done>

³³ If the project fails, the taxpayer cannot deduct the costs of the offshore subsidiaries. The more the cost is borne by the subsidiaries, the more the deductions are made impossible. That is why the law was passed.

³⁴ This figure is probably underestimated. The amount of profits accumulated by American companies in tax havens is estimated at \$2 trillion, which, at its 30% rate, represents an exemption of \$700 billion in tax debts, on added value produced mainly in the United States.

involved in offshore financial centres, saving nearly \$60 billion. General Electric (\$119 billion), Microsoft (\$108 billion), Pfizer (\$74 billion) or American Express, Nike, PepsiCo, Morgan Stanley, Citygroup, Walmart, Bank of America, Google and 358 of the 500 largest firms in the United States have used tax havens, through more than 7,400 subsidiaries mainly in Bermuda and the Cayman Islands. American multinationals (Amazon, Pepsi, FedEx, Apple, Heinz, etc.) are widely established in Luxembourg, Ireland and the Netherlands. They take advantage of the flexibility of US tax legislation to conceal part of their profits made outside the United States.

The payment of taxes at the place where the economic activity has been undertaken should be the fundamental principle of all taxation, but this principle is far from being respected (Table 4).

Tableau 4 - The Caterpillar case³⁵

Caterpillar case	Actions
<p>Caterpillar gets more profit from its parts than from its large base equipment. These parts are sold by its Swiss subsidiary to pay my taxes. They are produced in the United States but 85% of the profits are reported in Switzerland. This situation needs to be reconsidered from a tax point of view. PwC, the Caterpillar board) thinks that this solution can be maintained, the buyers pay the Swiss subsidiary, but all the spare parts go from Illinois to foreign consumers. These parts are considered to belong to the subsidiary, with a "virtual" inventory that does not need to be segregated in the Illinois warehouses.</p>	<p>IRS is challenging this arrangement, which allows Caterpillar to declare \$2.4 billion to Switzerland. It accuses the company of tax evasion. This case was discovered thanks to a whistle-blower. It's been referred to the US courts.</p>

How is it that such behaviour has been accepted in Europe? The large states, on the other hand, cannot a priori afford such a strategy. However, we should also note the importance of the United Kingdom in this game. From a legal point of view, the absence of banking secrecy in this country is not a disadvantage compared to Luxembourg or Switzerland, because capital that is placed in London can very well be placed there, through shell structures such as trusts or offshore companies in a dependent territory (such as the Channel Islands or Gibraltar) in which the company does not carry out any activity.

Companies have excellent tax advisers who are able both to ask members of parliament for tax "niches" or special derogations or exemptions in the States where they reside, and to propose complex financial constructions aimed at optimising their taxes. This involves, for example, setting up a holding company to house their shares, which receives dividends. In France, for example, only the money coming out of the holding company is taxed on income tax. The state is rather complacent. It has admitted a few exemptions that allow the richest

³⁵ On the basis of the of the proposition of : Avis-Yonah, R. (2016), International Tax Evasion : What can be done ? The American Prospect, May. <http://prospect.org/article/international-tax-evasion-what-can-be-done>

people not to pay tax legally. The "Canard enchaîné" showed how the richest families in France were able to benefit in 2015 from a massive reduction in their wealth tax, with the principle of the confiscatory tax, even more interesting than that of the tax shield.

The tax arrangements with the State of Luxembourg, which is complicit in tax optimisation, are secret and complex. This has manifested itself in a significant wave of relocations of the head offices of many American companies. Indeed, the United States does not apply the principle of territoriality in force in France (taxes on profits are paid where they are obtained), but the principle of "nationality" (taxes on profits concern all profits made in the world). In this context, American multinationals have concentrated profits made outside the United States in fiscally attractive and secretive countries, out of reach of the American tax authorities. Numerous over-the-counter tax agreements have validated tax-exempt financial transactions. They can no longer be asked to open an account. Firms have restructured their groups by creating new companies in states or "city states", between which share transfers and money loans circulate. Ultimately, the aim is to create a tax-exempt "cork" company that concentrates the worldwide profits of all the global subsidiaries of the parent company. Verizon in the Netherlands and Luxembourg has put other arrangements in place. Finally, Apple uses the "Irish double" tax system, which relocates profits to an offshore centre. In addition, its European iTunes headquarters are located in Luxembourg, completely tax-free. They refuse arrangements that could force them to pay part of these taxes, arguing that they would lose their international competitiveness. Under these conditions, they threaten to relocate their activities to more comprehensive destinations.

A recent survey shows that French banks are not unscathed by similar operations in terms of their objectives. In the CCFD-Terre Solidaire, Oxfam France and Secours Catholique-Caritas France study, "Internationally, while French banks make a third of their profits in tax havens, these account for only a quarter of their declared international activities, a fifth of their taxes, and only a sixth of their employees", according to CCFD-Terre Solidaire, Oxfam France and Secours Catholique-Caritas France³⁶. In 2014, the five largest French banking institutions generated nearly 5 billion euros of profits in countries with "advantageous taxation", based on the list of tax havens presented by Tax Justice Network (which however has the disadvantage of not including the Delaware of the United States or the City of London)³⁷. Speculative activities

³⁶ Aubry, M., Watrinet, L. (2016), En quête de transparence, sur la piste des Banques françaises dans les paradis fiscaux, CCFD-Terre Solidaire, Oxfam France et Secours Catholique-Caritas France 16, Mars https://www.oxfamfrance.org/sites/default/files/file_attachments/rapport_sur_la_piste_des_banques_francaises.pdf?utm_source=oxf.am&utm_medium=Zhra&utm_content=redirect

³⁷ The NGOs analysed detailed 2014 data on bank activities country by country (turnover, number of employees and number of subsidiaries). This information is being made public, pursuant to the French Banking Act of July 2013. Previously, only the counting of their subsidiaries was possible. La Tribune (2016), Les paradis fiscaux toujours attirent les banques françaises, La Tribune, 16 March. <http://www.latribune.fr/entreprises-finance/banques-finance/banque/les-paradis-fiscaux-attirent-toujours-les-banques-francaises-557313.html>

are privileged there. Luxembourg (1.7 billion euros), Belgium (1.66 billion euros), Hong Kong (436 million), Singapore (346 million) and Ireland (272 million) are the main destinations. BNP Paribas and Société Générale are the main beneficiaries in absolute terms, but Crédit Mutuel-CIC has the largest "relative share of international profits declared in tax havens (44%)", the disconnection between profits declared in tax havens and the actual activity of banks". BNP Paribas (€2.4 billion) and Société Générale (€1.3 billion) record the largest profits in tax havens. Employees of offshore banks are supposed to be 2.6 times more productive than in other places, sometimes there are not even any employees available in 34 offshore subsidiaries, especially in the Cayman Islands. Overall, banks pay half as much tax in offshore places (in 19 places they pay no tax at all). This results in a transfer of profits for tax reduction, but also to facilitate tax evasion by individuals and companies or to engage in speculative activities deemed over-regulated in other places. Tax evasion is a lucrative game, but it is detrimental to the citizens of the countries of origin.

Today, these companies are in the sights of the American and European authorities, and they will no doubt be obliged to compromise, just like the "rogue" countries, which will also have to reduce the advantages granted to the detriment of their partners³⁸. There are at least 3,000 tax treaties in the world to avoid double taxation. However, this information is particularly well managed by multinational firms, without always being available to legally despoiled countries. The erosion of tax bases and the low taxation of profits has been facilitated by the concern to avoid double taxation, and well-informed companies have taken advantage of this to be doubly exonerated. This decision resulted in the virtual non-taxation of companies specializing in tax avoidance. In the context of the consolidation of public finances, this legal method of tax evasion is proving to be less and less tolerated.

Since 2013, mandated by the G20, the OECD has set up the "BEPS project" (Base Erosion and Profit Shifting). However, today's responses are not commensurate with the dramatic importance of what is at stake. The OECD wants to require multinational firms to provide the tax authorities of the countries concerned with detailed information, country by country, on their income, profits, assets, workforce and taxes paid. The objective of this initiative was to establish a standard tax treaty that would promote the exchange of information on request and the adoption of the peer review principle in tax co-operation. It is based on three principles: firstly, the exchange on request of

³⁸ According to the U.S. Congressional Commission of Inquiry, chaired by Carl Levin, the subsidiary Apple Operations International, which from 2009 to 2012 recorded a net profit of \$30 billion, but did not declare any tax domicile or file any income tax returns or pay any income tax during those four years. Similarly, Apple Inc. has used loopholes in US tax regulations, including the "check the box" rule that avoids taxation of profits not repatriated to the United States from foreign subsidiaries, to prevent \$44 billion in taxable profits from being translated into \$10 billion in annual taxes. The website of the French telecoms federation states that Google, Apple, Facebook, Amazon and Microsoft pay only 5% of the taxes they should pay in respect of their activities in France (37.5 million euros compared to 828.7 million euros).

information deemed relevant to the administration or enforcement of the co-signatory's domestic legislation is followed up; secondly, access to reliable information is provided in accordance with the rights of taxpayers; and thirdly, the confidentiality of the information exchanged remains clearly established.

Transparency is indeed at the heart of the problem, but the world of business still claims a "business secret" that can no longer be really understood in a truly democratic world. The culture of secrecy encourages speculation and predation. Apple in Ireland, Amazon in Luxembourg and Google nowhere have thus escaped taxation until 2015. Today, the cards are being reshuffled, but there is no doubt that other financial "packages" will be put in place that will maintain at least some of the benefits of systematic tax optimization. It is a race between gendarmes and thieves, with fences, protective territories for fortunes, secrets, indicators, corruption and violent legal or illegal conflicts. The carousel on carbon credits highlights the introduction of a positive law on global warming that has been the subject of frauds and scams organised by the Milieu, allowing money laundering and the significant loss between expected VAT revenues and the revenues actually collected.

High net worth individuals also seek to protect themselves from taxes, using the secrecy of the financial arrangements of rogue countries to continue to enrich themselves at the expense of democratically owed public resources (Table 5). Tax Justice Network, which brings together several NGOs, aims to inform the public by publishing the annual Financial Secrecy Index. Transparency International complements the information, which can then be crosschecked. The Tax Justice Network publishes an annual Financial Secrecy Index, highlighting an opacity index that underlines the degree of confidentiality of countries. Table 6 is calculated on the basis of several criteria, according to specific calculation methods. It also takes into account the importance of the financial centre to highlight the global influence of each tax haven in the international financial flows listed. It is easy to see the importance of the United Kingdom in the control of tax havens³⁹. Switzerland, Luxembourg, Hong Kong, the Cayman Islands and Singapore, often countries that are given as examples for their development, are also those that take advantage of their regulations to impoverish neighbouring countries. In fact, they are ranked among the countries with the highest GDP per capita in the world. They often live as "parasites" on the backs of insufficiently protected economies.

³⁹ The secrecy rate is calculated on the basis of 15 indicators. The importance of secrecy in relation to the importance of the country's financial transactions represents the country's share in financial exports. The Financial Secrecy Index is calculated by multiplying the cube of the secrecy score with the cubic root of the global weight scale.

Table 5 - An example of an action concerning the tax evasion of a wealthy Texas businessman⁴⁰.

Tax evasion	Reactions	Limitations
<p>Sam Wyly, has an estimated fortune of \$6 billion. Part of this fortune was hidden in the Isle of Man, through a transfer of stock options from his many companies into two charitable trusts and foundations of which his six children were beneficiaries and heirs. In addition, following legal advice he was to receive deferred income in 10 years, which would defer the payment of taxes over time. However, he had full control over the assets of his trusts and could secretly use them to do business in the United States.</p>	<p>The case was cleared up by the Senate Permanent Subcommittee on investigation (PSI). A review was initiated and the jury found him liable. To avoid paying the \$300 million demanded by the IRS, he was put into bankruptcy. He is now being asked for more than \$2 billion. Today, the issue is better settled by the implementation of the Foreign Account Tax Compliance (FATCA) which requires the provision of information on the accounts of American citizens by all banks operating in the United States, on pain of being threatened with a 30% tax on all their income. In addition, The Offshore Voluntary Disclosure Program has made it possible to put in place intergovernmental agreements concerning the provision by banks to their governments of all financial information concerning US citizens, which will then forward it to the IRS (Internal Revenue Service).</p>	<ul style="list-style-type: none"> - FATCA is a system that only works if the banks involved are operating in the United States and it only applies to large sums of money. It is then possible to create several accounts for smaller amounts to escape disclosure. - The question of reciprocity poses considerable legal problems. If Washington can impose it on foreign banks on US soil, the question is whether the US government can provide the same information on foreign residents in the US to their respective governments. The US courts will have to decide, which is not yet the case. - The Multilateral Agreement on Administrative Assistance on Tax Matters (MAATM) envisages the automatic exchange of tax information between the signatories, but Washington has not yet ratified it. The majority of Republicans in the Senate are opposed to it. - Tax havens use inertia to maintain their advantages.

⁴⁰ Table proposed by Avis-Yonah. Avi-Yonah, R. (2016), International Tax Evasion: What can be done ? The American Prospect, May. <http://prospect.org/article/international-tax-evasion-what-can-be-done>

Table n°6 - Financial secrecy index of some significant countries in 2013 ⁴¹

Country	Financial Secrecy Index value ⁴²	Secrecy rate ⁴³	Financial Weight scale ⁴⁴
1) Territories under jurisdiction United Kingdom	3170,0	80	24,160
1) United Kingdom and overseas dependencies	2162,0	70	24,100
1) Switzerland	1765,2	78	4,916
2) Luxemburg	1454,4	67	12,049
3) Hong-Kong	1283,4	72	4,206
4) Cayman Islands (UK)	1253,5	70	4,694
5) Singapore	1216,8	70	4,280
6) USA	1212,9	58	22,586
7) Lebanon	747,8	79	0,354
8) Germany	738,3	59	4,326
9) Jersey (UK)	591,7	75	0,263
10) Japan	513,1	61	1,185
11) Panama (USA)	489,6	73	0,190
12) Malaysia	471,6	80	0,082
13) Bahrain	461,1	72	0,182
14) Bermuda (USA)	432,3	80	0,061
15) Guernsey (UK)	419,3	67	0,257
16) United Arabic States	419,0	79	0,061
17) Canada	418,5	54	2,008
18) Austria	400,8	64	0,371
19) Mauritius	397,8	80	0,047
20) Virgin Islands (UK)	385,4	66	0,241
21) United Kingdom	361,3	40	18,530
25) Russia	325,2	60	0,318
32) India	254,5	46	1,800
43) France	190,9	41	2,141
54) Italy	118,9	39	0,748

⁴¹ We rearrange it. Tax Justice Network (2014), Financial Secrecy 2013 Index <http://www.financialsecrecyindex.com/introduction/fsi-2013-results>

⁴² FSI = Indice de secret au cube multiplié par la racine cubique du poids financier

⁴³ The secrecy rate is calculated from 15 published indicators..

⁴⁴ It represents the share of a country's financial services exports in the world.

In small islands, the Association Tax Justice Network stresses the specific role of these small states in the development of tax havens: Andorra, Anguilla, Antigua & Barbuda, Aruba, Bahamas, Barbados, Belize, Bermuda, Hong Kong, Macau, Cyprus, Gibraltar, Guernsey, Cayman Islands, Marshall Islands, British Virgin Islands, Jersey, Liechtenstein, Luxembourg, Malta, Mauritius, Panama, Seychelles, St Kitts & Nevis, St Lucia, St Vincent & the Grenadines, Switzerland and Turks & Caicos. This enumeration highlights, above all, the fact that not all tax havens are therefore located on small islands. The association "Tax Justice Network" reveals that for a "tax reticent", a single jurisdiction is not optimal for dedicated investment types and that it is often interesting to combine operations in several "offshore" places. Moreover, the advantages are different depending on the nationality of the tax optimizer. Until 2010, the United Kingdom (as a commercial agent), Switzerland (for holding companies), Seychelles, Hong Kong, Singapore, Panama, Costa Rica and Saint Kitts & Nevis were highly recommended by banks, but today investments in Europe are increasingly risky for Europeans themselves. Finally, one must also consider that the tax laws of Delaware, but also Wyoming and Nevada are legitimate, but certainly not moral in the eyes of American taxpayers.

It is interesting to note, since the revelations demonstrating the systematic nature of financial flows linked to tax evasion, the reactions of the countries concerned. In two years, several countries have increased their banking secrecy, notably the United States, the United Kingdom (but not its dependencies) and France (Table 7). Overall, however, banking secrecy seems to be less important than it was two years ago.

For Statista⁴⁵, the ranking shows only small countries, respectively the British Virgin Islands, Gibraltar, the Cayman Islands, Hamilton, Jersey, the Isle of Man, Guernsey, Mauritius, the Bahamas, Malta and Cyprus, two-thirds of which have a close relationship with the United Kingdom. In 2009⁴⁶, Forbes magazine ranked Delaware as the best tax havens suitable for business activities, followed by Luxembourg, Switzerland, the Cayman Islands, the City of London, Ireland, Bermuda, Singapore, Belgium and Hong Kong. As can be seen, opacity also exists in the criteria and in the choice of "rogue" countries or territories (Table 8). This observation is particularly surprising for the uninitiated.

⁴⁵ Statista (2015), Leading offshore financial centers worldwide as of June 2014, <http://www.statista.com/statistics/370375/leading-offshore-financial-centers-worldwide/>

⁴⁶ Tax Justice Network (2011), Plateforme Paradis Fiscaux et Judiciaires, 30 Avril 2011. <http://www.stopparadisfiscaux.fr/qui-sommes-nous/article/le-tax-justice-network>

Table 7 - Financial Secrecy Index for some significant countries in 2015 ⁴⁷

Country	Financial Secrecy Index Value	Secrecy rate	Financial Weight Scale
Switzerland	1466,1	73	5625
Hong-Kong	1259,4	72	3842
USA	1254,7	60	19603
Singapour	1147,1	69	4,280
Caïmans Islands	1013,1	65	4,857
Luxemburg	816,9	55	11,630
Lebanon	760,2	79	0,377
Germany	701,8	56	6,026
Bahrain	471,3	77	0,085
Macao	420,1	70	0,186
Japan	418,3	58	1,062
United Kingdom	380,2	41	17,394
Jersey	354,0	65	0,216
Guernsey	339,3	64	0,231
Malaysia	338,7	75	0,050
Turkey	320,9	64	0,182
China	312,1	54	0,743
Virgin Islands	307,6	79	0,281
Barbados	298,3	78	0,024
Mauritius	297,0	72	0,049
Austria	295,3	54	0,692
Bahamas	273,0	79	0,017
Brazil	263,6	52	0,678
30) Russia	243,2	54	0,397
31) France	241,9	43	3,104
45) India	148,0	39	1,487
58) Italy	98,6	35	1,218

⁴⁷ Tax Justice Network (2014), Financial Secrecy 2015 <http://www.financialsecrecyindex.com/introduction/fsi-2015-results>

Table 8: Obligations of Certain "Rogue" Tax Havens⁴⁸

Countries	Minimum paid-up capital	Accounting requirements	Taxation	Basis of entitlement Laws	Bearer shares
Seychelles	0	no	no	Common law	yes
Belize	0	no	no	Common	yes
Anguilla	0	no	no	Common	yes
Panama	0	no	no	civil	yes
British Virgin Islands	0	no	no	Common	No
Delaware	0	no	no	Common	No
Bahamas	0	no	no	Common	No
Hong-Kong	1 £	no	no	Common	No
Gibraltar	0	yes	10 %	Common	No
UK	1 £	yes	21 %	Common	No
Cyprus	1000 £	no	10 %	Common	No
Switzerland ⁴⁹	20000 – 100.000	yes	25 %	civil	It depends

Thanks to its special status, neutrality and the advantages it offers to foreign companies, Switzerland is the world's leading trader in raw materials, especially Russian oil. 35% of oil trading, 60% of metals and 35% of grain are concentrated here. It is therefore easy to see that the Swiss laws, which are so favourable to foreign companies, form the basis for the country's economic development. But what is valid for one country cannot be generalized. In this context, Switzerland is taking advantage of its situation resulting from the last world wars to enrich itself in a system of predation that was once the basis of all armed conflicts. Today it competes with Singapore and Dubai (without corporate taxes), but the free port of Geneva does not levy any transaction tax, with no control over payments and their origin. The "rogue" countries still have a future.

⁴⁸ In these countries, anonymity is the rule, there is the requirement of only one person to set up a company (2 if it is a public limited company in Switzerland), the cost of setting up a company with a director is less than 6700 pounds (in Gibraltar and Hong Kong), e, the cost of maintaining this administered activity does not exceed 3700 pounds (in the United Kingdom) and the provision of a partner shareholder is always less than 500 1000 pounds (Gibraltar), often more like 500 dollars..

⁴⁹ The financial sector accounts for 10% of Switzerland's GDP. According to the Swiss Federal Office's Mutual Legal Assistance Unit, Switzerland's assets under management amounted to 5,500 billion Swiss francs in 2011, i.e. more than 4,000 billion euros. Swiss financial institutions manages one third of the world's offshore assets, i.e. USD 800 billion. In 2009, Hevea carried out a study according to which almost 80% of foreign assets in Switzerland would not be declared. Since certain actions against Switzerland, a total of around CHF 60 billion has been withdrawn from the banks in Western Europe. This development is attributed to the feeling among holders of undeclared funds that Switzerland is no longer as safe as it once was..

Similarly, the City of London is probably indirectly at least the largest tax haven in the world (half of international equity trading, international public issues and over-the-counter derivatives trading, a third of foreign exchange trading), as it is not subject to the regulatory and supervisory authorities of the United Kingdom. It benefits from capital from the Caribbean islands, former colonies, the Channel Islands and even Cyprus. Most of the hedge funds are based in the Cayman Islands. The City is the place for transactions by Russian oligarchs and the financial operations of Indian or Chinese entrepreneurs. In 2014, the European Commission has listed 30 tax havens on questionable grounds. No European Union country is mentioned, not even Switzerland. No sanctions have been decreed against them.

The international importance of tax Havens

It is of course very difficult to know exactly how much money is hidden under real or false names, but it is also very difficult to know what definition is used to measure the extent of tax evasion. The information is secret, the investments have existed in these territories for at least two generations, and it is difficult to know how these values were, or were not, reinvested in other productive investments, real estate or precious metals. When countries grant tax amnesties, there is a lack of accurate information, including tax secrecy, on the amounts legally reinvested in national economies. Thanks to the expertise of the Dutch company, Promogroup, the Rolling Stones, using the tax laws of the Netherlands Antilles, had a tax rate over the last twenty years of... 1.6% of their income⁵⁰. According to the CCFD-Terre solidaire report⁵¹, the British Virgin Islands invest four times more than Japan in China. Each inhabitant theoretically invests nearly \$700,000 a year in the ten most powerful economies in the world. The Virgin Islands, the Cayman Islands, Luxembourg, Mauritius and the Netherlands have combined direct investment abroad 70% more than the United States and three times more than Japan, Germany and France combined. Luxembourg is the second largest investment fund after the United States and the leading international asset management centre in the euro area, thanks to the advantages granted to holding companies (more than 15,000 holding companies holding nearly EUR 2,300 billion). OffshoreLeaks' files revealed the existence of 120,000 trusts and nominee companies in the Cayman Islands and the Virgin Islands. The activity of tax havens is considerable, accounting for 20% of the world's private wealth, with illicit activities estimated at a quarter of these

⁵⁰ Chavagneux, C. (2006), Les paradis fiscaux, piliers du capitalisme, Alternatives Economiques, n° 252, novembre.

⁵¹ http://www.leparisien.fr/event/pdf/RAPPORT_CCFD_101206_BD.pdf. CCFD-Terre solidaire, L'économie déboussolée, 2011.

amounts⁵². More than 4,000 banks and nearly 3 million shell companies are involved.

Average tax rates for multinational companies have only decreased from 33% in 1999 to 22% in 2014. In 2009, between the nominal rate and the effective rate, multinational firms obtained great advantages, which weakened the purchasing power of consumers and the middle classes, especially employees. We can then see the differences in tax treatment between multinational companies that are able to use every argument to set up a profitable business in a given territory, with the support of the State, with regard to the obligations that small and medium-sized enterprises have to fulfil. Multinational enterprises are able to reduce their effective tax rate by transferring part of their profits to subsidiaries located in "rogue" or less fiscally demanding countries. Large companies pay proportionally less tax than SMEs, which also gives them a clear competitive advantage⁵³ (Table 9).

Table n°9: Nominal and real tax rates of multinational firms in 2011

Countries	Nominal rate (%)	Real rate (%)
Belgium	39	10
Germany	37	4
Denmark	34	11
Spain	35	4
France	33	7
Italy	36	8

Scandals have not failed to erode the civic capacity of major brands. Between 2009 and 2013, McDonald's declared 3.7 billion euros in turnover in a subsidiary employing 13 people in Luxembourg, for a payment of 16 million euros⁵⁴. This company benefited from a special treatment that is difficult to justify, thanks to complex financial arrangements that highlight the inconsistencies of international legislation, particularly European legislation⁵⁵. Similarly, Wal-Mart has subsidiaries in Ireland, the Netherlands, Luxembourg, Spain, Cyprus and Switzerland, even though there were no Wal-Mart stores in

⁵² Assemblée Nationale (2013), Lutte contre les paradis fiscaux : si l'on passait aux actes, Rapport n° 1423, présenté par Alain Bocquet et Nicolas Dupont-Aignan, <http://www.assemblee-nationale.fr/14/rap-info/i1423.asp>

⁵³ Sénat (2015), Commission d'enquête sur l'évasion des capitaux et des actifs hors de France et ses incidences fiscales, Travaux parlementaires, Rapport n° 673, de M. Éric BOCQUET, fait au nom de la Commission d'enquête Evasion des capitaux, déposé le 17 juillet 2012, http://www.senat.fr/rap/r11-673-1/r11-673-1_mono.html

⁵⁴ EPSU et al. (2015). *Unhappy meal: €1 billion in tax avoidance on the menu at McDonald's*, p.11. Publié le 24 Février 2015: http://www.notaxfraud.eu/sites/default/files/reports/enUNHAPPYMEAL_final.pdf

⁵⁵ In 2009, McDonald's Europe Franchising obtained a guarantee from Luxembourg that it would not be liable for corporate tax. This agreement presupposed that the company justified the payment of this tax in the United States, which was not the case. The principle of the refusal of "double taxation" implies a verification of the host country, but it seems that the agreement was made knowingly by Luxembourg. In addition, the company is also said to have transferred more than 2 billion euros from France to Switzerland and Luxembourg, without paying the tax due to the French tax authorities.

those countries, which enables it to reduce its taxes considerably. A recent study⁵⁶ carried out on 20 European Union member countries shows that, on average, multinationals have an effective tax rate 3.5 points lower than national companies, especially SMEs, without using territorial tax planning techniques. Combating tax evasion would significantly improve the competitiveness of small and medium-sized enterprises.

Financial assets alone (excluding non-financial assets such as real estate or gold) held by private individuals in tax havens were estimated in 2010 at between \$21,000 and \$32,000 by the Tax Justice Network, based on figures published by the World Bank, the IMF, the UN and central banks⁵⁷. According to these data, 91,000 people, and the other half by 8.4 million individuals, or respectively 0.001% and 0.14% of the world's population would hold half of this offshore wealth. There are then very important "black holes", the disposal of considerable sums that no longer benefit the world economy, in the form of inactive savings.

Table n°10 shows the percentages of national investments in favour of tax havens (in the narrowest sense, with only 29 countries concerned in this assessment⁵⁸) and the assets invested from a tax haven in the same country. However, the figures are not always available, which highlights the opacity of the operations. However, we can see, on the one hand, the importance of these investments in tax havens and, on the other hand, the lack of investment in certain countries due to the refusal of nationals or multinational firms to go down this route.

It is easy to see the size of the sums that escape national investment to the benefit of tax havens to the detriment of Madagascar, Mozambique, China (even if large sums are returned to be invested, with a deduction of around 28% for the year in question), Ukraine (deduction of 36%), Ireland (deduction of 7%), Greece (deduction of 6%), Canada (deduction of 13%), the United States (deduction of 9%) or the United Kingdom (deduction of 9%). On the contrary, Germany (+9%), Switzerland (+9%) or France (+11%) receives more investment from "rogue" countries than they officially invest.

⁵⁶ VVA & ZEW. (2015). SME taxation in Europe – An empirical study of applied corporate income taxation for SMEs compared to large enterprises. European Commission CIP Programme 186/PP/CIP/12/F/S01C24, p.111: <http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetailDoc&id=11838&no=3>

⁵⁷ Henry, J.S. The price of offshore revisited. New estimates for missing global private wealth, income, inequality, and lost taxes. Tax justice offshore, July 2012.

http://www.taxjustice.net/cms/upload/pdf/Price_of_Offshore_Revisited_120722.pdf

⁵⁸ They do not concern, Luxemburg, Cyprus, Malta, Gibraltar, Guernsey, Jersey, Liechtenstein, Andorra, British Virgin Islands, Cayman Islands, Hong-Kong, Macao, Bahamas, Panama, Mauritius, Anguilla, Antigua and Barbuda, Aruba, Barbados, Belize, Bermuda, Marshall Islands, Seychelles, Sint Marteen, St Kitt and Nevis, St Lucia, St Vincent and the Grenadines, Turks and Caicos,

Tableau n°10: Percentages of national investments in tax havens and of assets invested in a country from a tax haven in 2011, based on figures provided by the IMF⁵⁹

Country	Country % of a country's assets invested in a tax haven as a proportion of total assets invested from abroad	% of assets invested in a country from a tax haven as a proportion of total assets invested in that country from abroad
Madagascar	96	na
Cook Islands	95	na
Mozambique	94	25
Montserrat	93	na
China	83	65
Jamaica	75	na
Ukraine	64	28
Hungary	61	32
Russia	60	61
Macao	54	38
Martinique	49	na
Greece	35	29
Ireland	34	27
Liberia	32	71
Canada	29	16
USA	26	17
UK	25	16
Belgium	24	26
Netherlands	23	27
Brazil	22	15
India	20	57
Singapore	18	28
Iceland	17	76
Germany	14	23
Switzerland	13	21
France	10	21
Japan	10	13

According to UNCTAD, developing countries lose about \$100 billion in revenue through tax avoidance and at least \$300 billion in lost development

⁵⁹ Transparency International France (2014), Mesure de l'importance des paradis fiscaux dans l'économie mondiale, 15 mai, http://www.transparency-france.org/e_upload/pdf/resultats_finaux.pdf

finance⁶⁰. While not all investment to and from tax havens is linked to corruption or other criminal activities, they account for more than 20 per cent of the world's total cross-border investment, which is out of all proportion to the weight of these tax havens in the real economy⁶¹. Such figures should encourage governments to study the size, origin and destination of these flows.

Some modus operandi of tax havens

The explanations put forward by the establishments in tax havens are often caricatured. It is a question of highlighting their legal and fiscal neutrality, their respect for the famous "business secret", their professional capacity to settle insurance problems (Bermuda), to develop trusts (Jersey⁶²) and to manage hedge funds (Cayman Islands⁶³). These considerations are justified, except for the "in situ" skills of the operators, because the reality of the acts is carried out in the major financial centres (London, New York or Paris). The users of tax havens (in the broadest sense) are companies and banks that set up subsidiaries, hedge funds, investment companies, but also wealthy individuals and criminal networks. The aim is to avoid paying taxes or laundering money. A distinction must be made between tax optimisation (which is not illegal) and tax evasion. Any individual can legally hold an account abroad, but he or she must declare it to the tax authorities in his or her own country.

- Today, because of these gaps in the tax jurisdictions of states, more than half of international trade and a third of financial flows transit through tax havens. It is then a question of hiding their added value from banking secrecy. Companies in the "new economy" and large multinational corporations generally use all the financial meanders to escape taxation. They thus avoid participating in the financing of public services of which they are also major users. They then act as "stowaways" who benefit from a public service without paying for it. With the help of banks or consultancy firms, they organise complex financial arrangements or operations on the value chain that encourage a drastic reduction in their tax burden.

- Today, tax evasion threatens the stability of States, but also of groups of States. By way of example, several procedures can be highlighted. A company A sells products for 10,000 euros to a subsidiary company B, without profit. The latter resells them for 20,000 euros to another company of the group, named C, located in a tax haven. C sells them again for 12,000 euros to another subsidiary company, making a loss of 8,000 euros. Assuming that its actual costs are 8,000

⁶⁰ UNCTAD (2015), FDI, Tax and development, The fiscal role of multinational enterprises: towards guidelines for Coherent International Tax and Investment Policies, <http://investmentpolicyhub.unctad.org/Blog/Index/42>

⁶¹ http://www.transparency-france.org/ewb_pages/div/Projet_de_mesure_des_investissements.php

⁶² There are nearly 200 trust managers and trustees in Jersey, a management fee charged by the hour and probably in the order of £400 billion of assets under management. 800 English companies are domiciled in one restaurant in Jersey.

⁶³ There are 18,000 hedge funds in the islands.

euros, it pockets a profit of 4,000 euros without tax. Under these conditions, the company is in a position to claim aid from the State or regional or local authorities. The procedure of "business restructuring" consists of charging all costs in the country of origin and making profits in low-tax countries. In this case, the prices have no link with the economic reality. Even French companies in which the State is partly a shareholder use these procedures, without any reaction from the executive. For example, EADS, a Franco-German company, is a public limited company under Dutch law, which it justifies in competition with Boeing, which also enjoys the support of the American state.

- As regards financial insurance products, if the premiums and related risks are located in one country and the compensation received in a tax haven, the losses are then borne by the country of origin, to the benefit of the offshore territory.

- Similarly, the undercapitalization of subsidiaries is interesting when the interest is deductible from the taxable income in the State where the subsidiary is located. It is a question of not making a capital contribution to the subsidiary. This does not involve making a capital contribution in a normally taxed country, but an 8% loan of one million euros from the company located abroad. The interest (80,000 euros) is then deducted from the taxable income, which allows a reduction in the tax paid of around 28,000 euros, with the addition of a non-taxable profit of the amount of the total interest (80,000 euros). This procedure is mainly used by the digital economy, which locates its industrial property rights (licence box) and services in tax havens. In the European context, multinational companies use treaty shopping to obtain the best solution for their net tax results. It is interesting to note the importance of procedures and regulations that protect intellectual and industrial property⁶⁴, and the absence of international rules concerning their location in the world.

Two Member States of the European Union (Ireland and the Netherlands) give rise to a financial transaction commonly known as a "sandwich" in the tax sense of the term. This involves admitting the existence of legal companies whose sums of money transiting through them do not give rise to any taxation. The "Irish sandwich" consists in creating a company under Irish law that is not tax resident, and therefore not controlled. It allows a simple passage to Bermuda or the Cayman Islands. The Netherlands offers a network of important bilateral tax treaties to reduce withholding tax on dividend payments as well as taxes on royalties and interest paid or received. Under the agreements with the Netherlands Antilles, amounts relating to interest payments, royalties or services are exempt from withholding tax. A Dutch shell company has the right to shelter property rights, thus enabling a company established in another Member State to

⁶⁴ Congressional Research Service (2016), Intellectual Property Rights Violations: Federal Civil Remedies and Criminal Penalties Related to Copyrights, Trademarks, Patents, and Trade Secrets, Hearing - May 27, 2016 – 23 pages, <http://www.fas.org/sgp/crs/misc/RL34109.pdf>

avoid withholding tax in its State of tax residence (BRK Convention, Belastingregeling voor het Koninkrijk").

Table No. 11: Advertising for the use of company services for setting up a business in Switzerland⁶⁵

Activities	Content
Setting up your company in Switzerland	Possibility to domicile your company in our premises Provision of a director for your company Legal advice Drawing up your business plan (business plan)
Creation of your inshore or offshore company	Creation of an offshore company adapted to your needs Provision of a manager for your company Legal advice and Business plan
Management and administration of your company	Keeping or assisting with your accounting Preparation of the audit report for your company Complete management of your company's employees (payroll expenses, pay slips, etc.).
Transfer of company	- Evaluation of your company - Drawing up a valuation report in the event of the entry or exit of a partner or shareholder
Taxation and tax optimisation	Tax returns for companies and individuals in French-speaking Switzerland - Tax advice with tax expertise to companies and individuals; in particular for the application for an auxiliary and holding status, but also for the implementation of a tax-optimised structure adapted to your needs/ - Defending your interests with the tax authorities.
Other services	- Insurance advice - Consumer loan - Management of your file (secretariat, invoicing, real estate service). - Some bank employees hold accounts in the name of their clients, each playing the role of nominee or "drawer".

In this case, the combination of two companies incorporated under Irish law and a Dutch "shell" company allows optimum tax avoidance through a cascade concession of intellectual property rights. The Irish company¹ collects the payments from customers in all EU countries, which then remits this sum to its parent company PB, a royalty exempt from withholding tax in Ireland. In

⁶⁵AZFH (2015), AZ Fidu Holding SA, <http://www.azfh.ch/>

accordance with the BRK Convention, the PB company pays all the tax-exempt amounts collected to the Irish company², which is a non-resident tax resident and is managed in a tax haven.

Table n°11 highlights the services offered by a Swiss company to non-resident companies. It is easy to see to what extent the banks have no ethics with regard to governments, which they nevertheless call upon when their activities suffer from a crisis that they themselves have helped to provoke. When secrecy is instituted as a fundamental protection for banks in a country, then all procedures are permitted and even encouraged, regardless of the consequences for neighbouring countries or the ethics of the operations themselves. The result is a predominance of subsidiaries of large European and US banks in smaller territories. Three professions dominate the economic activity of tax havens: bankers, lawyers and accountants, often from other countries.

International transfers are not always governed by the simple system of product exchange. Companies ask themselves about their tax liability and are therefore committed to optimising their tax burden from the moment they engage in international activities. It is then a question of setting up a system whereby most of the added value created is declared in the country with the lowest taxes. This policy significantly changes the rules of global and European competition. According to the accounts of multinational firms, applying transfer-pricing optimisation, their employees in tax havens are exceptionally productive and profitable compared with their other subsidiaries. These results are obviously fictitious. The declared establishment of fair and normal competition between all members of international organisations designed to regulate free trade (WTO); the financial system (IMF) or support for specific operations in developing countries (World Bank) is deliberately misused⁶⁶. A country's fiscal attractiveness is a drain on public resources⁶⁷. By depriving States of valuable tax revenues, the public sector's capacity for intervention is called into question and private interests then prevail in all countries of the world, particularly those of the South, which are subject to increased economic and political dependence on financial flows of foreign origin (aid, investment, debt).

Statistical analyses of financial and commercial transactions do not fail to challenge specialists. Russia seems to favour agreements and economic exchanges with Cyprus, a state belonging to the European Union. Mauritius is the leading investor in India. Multinational companies set up subsidiaries in these tax havens, which invest all over the world and often develop their own subsidiaries. The complexity of the financial networks makes all financial operations even more opaque. In this context, the recording of profits in internal

⁶⁶ Fontanel, J. (1995), *Organisations économiques internationales*, Masson, Paris. Fontanel, J., Touatam Antipas. (2002), *La myopie du FMI*, *Géoeconomie africaine*, Septembre. Fontanel, J., Biays, J-P. (2007), *FMI et Afrique*, *Géopolitique Africaine*, 2007

⁶⁷ What interest can a country's government have in reducing its corporate tax rates from 50% to 30% if neighbouring countries accept tax levels below 10%?

trade is carried out in the territory that offers the lowest tax rate, both for the activities of the parent company and for its own subsidiaries. With the tax advantages offered by Delaware, a federal state contiguous to New Jersey, the loss of revenue for the United States government is estimated at more than \$300 billion per year. In other words, the US Federal State accepts this situation in order to favour American exports and imports, with a "special" aid not raised by the WTO of 300 billion dollars for the competitiveness of American companies and subsidiaries. 60% of US imports concern intra-company trade, without knowing the importance of the financial networks belonging to American economic actors in the complex arrangements of trusts and holding companies. The transfer prices of enterprises within a group are supposed to be subject to well-defined regulations, established by each country or at the multilateral level. The general principle implies that the prices of trade between two enterprises in the same group should not be different from those defined by two independent enterprises. Transfer pricing strategies are central to the tax optimisation of financial groups and multinationals. More than two thirds of multinational enterprises use transfer-pricing manipulation to reduce their final costs and thus increase their overall profit. Tax optimisation legal services have become recognised profit centres for creating net corporate value. Finally, large audit firms receive remuneration based mainly on the results thus obtained in terms of tax avoidance. Multinational companies are taking advantage of this situation, without the Western states, which are members of the FATF, reacting to this state of affairs in a concerted manner. Governments show little courage to combat such evasion of potential revenues normally dedicated to the public sector. Connivance is not always sufficiently emphasised to explain this form of collective resignation.

US law encourages complex arrangements designed to increase the commercial competitiveness of multinational companies established on its territory. It accepts forms of tax exemption such as the domiciliation of profits from international contracts in subsidiaries established in offshore locations. Thus, thanks to these "arrangements", most American companies facing competition on international markets no longer pay corporate tax, to the detriment of middle-class taxpayers whose purchasing power has not been increased in the United States for 35 years. In this context, it is difficult to know the value added of each country, and therefore of its real GDP. The share of immaterial production, and in particular the valuation of data, makes it very difficult to locate the value added of companies with numerous subsidiaries abroad. Given the presence of many countries practising tax competition, it is likely that the real value of France's GDP is actually higher than its official figure. If we refer to the standards obtained for the United States, this difference could be in the order of 10 to 15% of GDP calculated by INSEE. Indeed, it is in the interest of a company established in France to underestimate the added value of its products exported to its subsidiaries abroad in order to pay as little tax as

possible. It is then a matter of passing part of the production chain to the country with the lowest tax bill in order to make the highest value added official and public. This behaviour highlights the major problem of legibility of statistics and their interpretation. If the value added declared at customs clearance in France is low, it means that this country does not have sufficient productivity in relation to excessively high wages, which would then have to be reduced to improve the competitiveness of companies established on the national territory. In this context, the firm wins on both counts, on the one hand it limits its taxes, and on the other hand it feels justified in demanding a reduction in wages or social benefits. In reality, this is nothing more than an accounting manipulation, the social consequences of which on wages and employment are considerable.

Article 238 A of the French General Tax Code establishes a presumption of "abnormality" of certain financial transfers or payments made to areas with reduced taxation. Article 209 B of the French General Tax Code provides for the possibility of claiming taxes from French parent companies on the basis of the profits earned in subsidiary companies located in countries with preferential tax treatment. However, this rule can fairly easily be circumvented. For example, a company can sell milk produced in France almost at a loss and export it to Germany for a simple operation, always with low added value. The finished product is then sold in Luxembourg, where, without any industrial operation being undertaken, the highest added value is declared with a very low tax rate. The product can then return to France to be sold there at a price that will have increased significantly in relation to its original cost. In this case, the tax authorities have to undertake investigations, which are all the more difficult as they are confronted with business secrecy and little assistance from the banks. It should be possible to follow the whole production from country to country to see the real evolution of the declared value added. Luxembourg uses its neighbours' policy of impoverishment without any restrictions, which may explain the high per capita income that its real activities in the value chain make it very difficult to justify. Jean-Claude Juncker, President of the European Commission and former Prime Minister of Luxembourg, has allowed his country to enter into a number of tax agreements with multinational companies, allowing them to evade taxes on an unprecedented scale to the detriment of its European partners, particularly France⁶⁸. The immorality of these procedures has still not been condemned, as it should have been, with this deliberate theft of public money from States that are themselves in worrying financial difficulties.

Criminal activities use tax havens. The secrecy of these transactions, which lead to money laundering, is particularly high, and international legislation is incapable of controlling them. The estimates put forward are random, often highlighting only the tip of the iceberg. While analysts are familiar with the organization of these criminal activities, the estimate of their

⁶⁸ International Consortium of Investigative Journalists. (2014). *Luxembourg Leaks: global companies' secrets exposed*: <http://www.icij.org/project/luxembourg-leaks>

importance remains questionable. It is indeed necessary to calculate the importance of drug trafficking (with the difficulty of establishing whether, at the international level, certain substances are well recognised as drugs, such as hashish or marijuana), the growing trafficking of human beings (transport of illegal immigrants, sex industry, forms of slavery), the destruction of the animal world, smuggling (concerning the price differences due to the heterogeneous taxes from country to country), counterfeiting, or the arms trade. We should also report on corruption, slush funds, false invoices, clandestine work, insurance fraud, computer manipulation (impossible to estimate), financial crime, VAT fraud through the so-called "VAT carousel" system), but also the rigging of balance sheets (Enron, Andersen, etc.) which benefit, at least in part, tax havens. Finally, many riches (gold, precious metals, works of art, but also bundles of cash) are hoarded in secret safes in "rogue" countries, without the importance of their value being appreciated.

Finally, the complicity of the political class and economic leaders in certain forms of corruption, particularly tax evasion, seems normal to many influential people. Rich taxpayers are more easily amnestied than others. Legal proceedings are often politically sensitive and technically complex to conduct internationally. The lack of harmonisation of national legal systems and the absence or inadequacy of communication between countries normally belonging to the same networks may explain this. The procedures are very lengthy and are constantly confined to technical or legislative details that, in the end, encourage money laundering. For example, the report of the National Assembly of France highlighted the poor treatment of international letters "rogatoire" by the Liechtenstein authorities. Requests for information from magistrates are completely ignored by their counterparts, which is both never punished and is not the subject of any information on the country's procedures for protecting fraudsters.

The importance of fraud concerning the activities of rogue countries is considerable. According to the figures, Ireland or Switzerland has an average ratio of value added per employee 5 times higher than other European countries, Bermuda more than 50 times higher, which would suggest that these employees are considerably more productive than in any other country in the world. Moreover, the ratio of after-tax profit to payroll is also out of the norm in tax havens, in the order of 7 times as high in Ireland and 35 times as high in Bermuda. This, of course, is unlikely, since this result depends primarily on the manipulation of figures and transfers to tax havens.

The negative effects of tax havens

Tax havens have important consequences for the functioning of market economies:

- Firstly, they damage public finances, with a considerable and growing loss of revenue for governments. The very global estimates of these tax revenue losses put them at more than 300 billion dollars per year. The figure is not satisfactory, as countries are led to limit tax rates of their own accord in order to remain in the race to attract investment to their territories. Governments are under pressure because of the threat of tax relocation. A race to lower corporate taxes has even begun. Ireland's corporate tax rate is 12.5% and many Eastern European countries are also moving in this direction, to the detriment of other European Union member states. "The implicit tax rate would be on average 27.5%, 39.5% for SMEs and 18.6% for large companies. The largest companies, those with a turnover of more than €2.5 billion, pay between 15 and 20% of corporation tax, whereas they generate between 50 and 70% of total turnover"⁶⁹. According to Christian Chavagneux⁷⁰, the leading foreign investor in France is France. Non-resident subsidiaries of French groups are the main international investors in France, as is also the case in the United States. This situation highlights the importance of optimal tax reduction strategies. The State of Delaware, with its particularly attractive tax system, allows companies to save several tens of thousands of billions of dollars per year. Without the existence of tax havens, no doubt its tax requirements would increase, especially in view of the public debt and the collective services to be developed.

- Secondly, the lack of coherence between partner states on public budget issues enables them to avoid taxes in whole or in part. This is a form of wealth plundering, which enables company managers and shareholders to increase their personal income. The banks have supported their wealthy clients in this process, even though they were bailed out by public money. Governments are now heavily indebted, and banks are organizing a strong pressure to be reimbursed "rubies on nails".

- The equality of natural or legal persons with regard to taxation is clearly flouted. In the United Kingdom, the Royal Bank of Scotland has received £45 billion in public aid. We also learned from Panama's Paper that the same bank has helped wealthy clients avoid their tax obligations⁷¹. Law firms defend private institutions and individuals with substantial wealth and income. The tax evasion is then negotiated with the state, which in most cases recovers the amount that should have been paid. In France, the "Commission aux Infractions Fiscales (CIF)" selects the cases that will ultimately be handed over to the judicial authorities. Of the 50,000 in-depth checks, 16,000 result in financial penalties for intentional fraud. A total of 1,000 of these will be presented to the CIF, which will investigate only nine out of ten, without having to justify its

⁶⁹ Assemblée Nationale (2011), L'application des mesures fiscales contenues dans les lois de finance, Rapport présenté par Gilles Carrez, n° 3631, Paris.

⁷⁰ Chavagneux, C. (2011), A quoi servent les paradis fiscaux ?, Les Amis de l'Ecole de Paris, séance 1 juillet 2011,

⁷¹ Joly, E. (2016), Pour en finir avec l'impunité fiscale, Le Monde Diplomatique, Juin.

decisions⁷². In addition, the Minister of Finance has a kind of "right of pardon" which was applied in the cases of Bernard Tapie and Karl Lagerfeld. The sanctions before the judges remain weak, as if the theft of the State was less guilty than that affecting the private sector. Banks play a very ambiguous role in this context; they do not always respect the rules concerning the reporting of money movements that could be the result of money laundering or crime. In France, Bercy's monopoly on tax evasion or fraud should be broken and "whistle-blowers" should be encouraged. There is great reluctance on the part of the public authorities to go down this road. This gives the feeling of a two-tier justice, that of ordinary citizens and that of men or societies of power who always suggest that their social usefulness is not always sufficiently rewarded. Faced with taxes, they legitimise their fraud by the size of the tax burden, a burden that very few French people really know about, given that only 48% of households pay income tax.

- Because of the opacity of financial operations in these territories, the dominant financial players are likely to take significant risks, thus escaping the control of regulators, shareholders or rating agencies. The result is financial instability, producing particularly high systemic risk, with potentially dangerous consequences for growth and employment.

- Statistics on the added value of countries are underestimated in countries that are victims of tax havens, which does not improve their attractiveness and weighs on the salaries of those who are directly or indirectly victims. Thus, multinationals can demonstrate that workers in tax havens are different producers of wealth than those who bring in the products that are the subject of price transfers.

- Natural or legal persons engaged in illegal activities may escape the control of national jurisdictions, as tax havens allow them to hide the origin of funds. The ratification of the UN Convention on the Suppression of the Financing of Terrorism of December 1999 includes the immediate freezing of all terrorist funds and assets in accordance with UN Resolution 1373, the reporting of suspicions by financial institutions, the monitoring of alternative remittance systems or the transparency of non-financial entities such as charities. The fight against terrorism has been one of the factors in the strengthening of anti-money laundering rules. Terrorist groups know how to use the financial techniques proposed by "rogue" states. Piracy cases sometimes benefit certain tax havens such as London, Dubai or Kenya. The self-assessment exercise carried out by FATF's members shows that only France and the Netherlands fully meet the standards defined by the organisation in the fight against terrorist financing.

⁷² Ibidem, p.21. The number of investigating judges has increased from 27 in 2001 to 8 in 2012. Most European countries have reduced the number of inspector posts. Concerning the list of fraudsters submitted by Hervé Falciani (nearly 3000 cases), (3) only 4 % were prosecuted before a judge, despite the overwhelming evidence. France's 150,000 largest taxpayers come under a separate department (Direction nationale de vérification des situations fiscales), which in 2010 ordered 900 adjustments and only 17 complaints.

- UNCTAD⁷³ has highlighted the effects of tax avoidance in developing countries. The contribution of multinational firms to state budgets in these countries in 2014 was in the order of \$730 billion, i.e. 23% of corporate payments and 10% of overall government revenues (14% in Africa). 30% of foreign direct investment goes through tax havens. The report estimates that this results in a loss of around \$100 billion in tax revenues that go to "offshore hubs" due to the "artificial" absence of profits from these investments. The estimated loss in terms of tax revenue represents one third of the potential total. Applying a profit reinvestment rate of around 50 per cent, \$165-225 billion could be available each year to finance the national economies of developing countries. Adding together tax losses and profits that are not reinvested locally, the loss in financing growth in developing countries is estimated at \$250-300 billion per year⁷⁴. In sub-Saharan Africa, illicit or uncontrollable capital flight severely limits the budget allocated to agriculture, while 30 per cent of the population suffers from undernourishment. According to the FAO, the public finance deficit of the States of the South caused by tax evasion alone is five times the amount needed to eradicate hunger in the world⁷⁵. If the investments made by multinationals in Africa are channelled through tax havens, the same applies to the assets of the heads of state of the least democratic countries, who favour investments in Switzerland. Despite the international will to limit these harmful effects on the reputation of "rogue" countries, the use of the screen structures constituted by trusts and non-resident companies favours the maintenance of a certain opacity.

- Lack of financial resources is a leitmotif in the political discourse of all governments. In this context, public education and research, the health and protection system for the weakest, satisfactory remuneration for civil servants, aid to farmers and financial support for young businesses - all these activities that are essential for a country are undergoing credit cuts that prevent them from achieving their republican objectives. The state is being robbed of a share of its income and the prevailing idea remains that taxes are already too high. They are too high for the whole population, except for the managers of large companies whose tax rates are much lower than those of the middle classes. Direct taxes reduce personal income, indirect taxes increase the price of goods, and payroll taxes increase the cost of labour⁷⁶. At the end of May 2013, the European

⁷³UNCTAD, Investment and Enterprise Division (2015) FDI, Tax and Development. The fiscal rôle of multinational enterprises: towards guidelines for coherent international tax and investment policies, <http://investmentpolicyhub.unctad.org/Upload/Documents/FDI,%20Tax%20and%20Development.pdf>

International Centre for Tax and Development (2015), New UNCTAD Paper on Corporate Tax in Developing Countries, April, A working paper for review and feedback 3/26/2015. <http://www.home.walsingham.com/en/new-unctad-paper-corporate-tax-developing-countries-0>

⁷⁴ Cobham, A. (2015), UNCTAD Study on corporate tax in developing countries », 26/03/15, <http://uncounted.org/2015/03/26/unctad-study-on-corporate-tax-in-developing-countries/>

⁷⁵ CCFD-Terre solidaire (2011) L 'économie déboussolée, http://ccfd-terresolidaire.org/ewb_pages/i/info_2378.php

⁷⁶ However, if the Government of France could make all the tax revenues voted in Parliament pay for itself, it could reduce the tax burden borne by all taxpayers by more than 60 billion per year. There are 36 million tax

Parliament estimated that EUR 1000 billion of public money is lost in Europe⁷⁷ every year through tax evasion. This corresponds to an annual loss of 2,000 euros per European citizen. The study points out that the underground economy is estimated to account for 20% of the European Union's GDP. These figures are worrying when compared to the €150 billion of the European budget or the €500 billion deficit of the Union in 2012.

- In order to avoid too great a reduction in their purchasing power, the States then end up going into debt. Globally, public debt has increased considerably, in particular due to tax avoidance. It is inconceivable to continue to increase the tax burden in a country, which largely benefits States that do not respect their partners (Table n°12).

- This system increases injustice, to the benefit of the richest and most mobile taxpayers. SMEs are at a distinct disadvantage, as are employees who cannot evade all or part of their taxes. The least mobile economic actors and the middle classes bear the lion's share of the tax and thus of the financing of public services, often provided almost free of charge to large multinational companies. The first victims of capital flight are the middle and poor classes. The flight of savings to tax havens also leads to higher interest rates for national and local banks, which then lack liquidity.

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- Finally, national GDP statistics, an otherwise debatable concept, influence the more or less optimistic economic behaviour of citizens and companies. With the transfer pricing system, many GDPs are undervalued in relation to the value added actually produced.

households, but only 19 million pay income tax. On average, tax evasion steals EUR 3 000 a year from taxpayers and probably more than EUR 6 000 from households in the 30% tax bracket.

⁷⁷ Parlement européen (2013), Sur la lutte contre la fraude fiscale, l'évasion fiscale et les paradis fiscaux, Commission des affaires économiques et monétaires, 3 Mai, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A7-2013-0162+0+DOC+XML+V0//FR>

Table n°12 - Public debt in the world, GDP per capita, number of months of monthly income owed by each citizen. Some significant cases⁷⁸

Country	Public debt in 2014, in billions of dollars ⁷⁹	% Debt/GDP ⁸⁰	GDP per capita (current dollars) ⁸¹	Number of months of monthly income due per citizen
Germany	2793	80	43884	10
Brazil	1649	59	15037	7
China	1313	22	11906	2
Spain	1084	94	33094	10
France	2451	93	37532	12
Greece	297	175	25667	18
India	1352	52	5418	6
Ireland	255	124	45684	16
Italy	2381	133	35281	15
Japan	12247	226	36223	30
Luxemburg	10970	23	91047	2
Portugal	282	128	27804	18
UK	2623	91	38259	12
Russia	224	8	25248	1
USA	14327	72	53042	11

What action should be taken?

Three types of fraud must be distinguished: that of companies that intend to optimise their tax situation, that of individuals who do not want to respect the democratic rules of the state budget and that of organised crime. Large companies, under the pretext of fierce competition, do not seek to comply with their tax obligations; they prevent States from effectively combating inequalities, particularly in developing countries. Their relations with state officials give them considerable weight in political choices. Tax rules are increasingly dependent on the desiderata of multinationals, which exercise all

⁷⁸ The figures provided are relatively random according to IMF, European Union or World Bank sources. In addition, account must also be taken of the related interest rates (higher in Greece than in the United States, for example), the repayments to be made each year, the length of the contracts and the size of the national economy in relation to the wealth produced globally. In short, this table only provides an interesting indication, which would of course have to be refined for a more rigorous analysis.

⁷⁹ Dupray, La dette publique s'envole, <http://www.centralcharts.com/fr/forums/133-analyse-economique-fondamentale/139-la-dette-publique-mondiale-s-envole>

⁸⁰ Economics help (2014) List of National Debt by countries, <http://www.economicshelp.org/blog/774/economics/list-of-national-debt-by-country/>

⁸¹ World Bank for 2013, <http://data.worldbank.org/indicator/NY.GDP.MKTP.CD>

their powers over the nation of territorial attractiveness. The G20's new approach to tax reform is likely to come under pressure from many private sector lobbyists. Governments have to comply with certain obligations demanded by these firms, which can set up their subsidiaries at the "lowest bidder" fiscally. In this context, the new international system is likely to fail to benefit the population⁸². Without concerted action by the partner states to settle this issue, it is clear that the public sector will experience in the years to come a significant gap between the requirements of voters and the resources of the public sector.

The abolition of tax havens has often been mentioned. A priori, the progressive blocking of the financial exchanges concerned could be designed and applied. However, freezing or immediate control seems difficult in view of the importance of the transactions and the strategies put in place by multinational firms reluctant to abolish an operation from which they benefit. Strict regulations concerning an international agreement on taxation have often been disregarded by states, which establish special relations with large firms that provide jobs, they improve their trade balance in the very short term and they exercise significant political weight in the country.

In 1989, on the initiative of the G7, the FATF (Financial Action Task Force) was created to combat money laundering and terrorist financing. It is a multidisciplinary intergovernmental body that aims to develop and promote national and international policies to combat money laundering. Its purpose is to create non-mandatory standards, which are guidelines that governments should follow in order to avoid the opacity of certain financial transactions. It brings together economic, legal or financial experts, delegated by its members, to guide the action of public authorities. It sets standards for combating money laundering, monitors the progress of its members in implementing the recommended measures and conducts specific studies to better understand the workings of the system. Since its creation, the FATF has focused its efforts on the adoption and implementation of its 40 Recommendations and on their application worldwide⁸³. All FATF members must include these measures in their legislation to counter the use of the financial system by criminals. The FATF currently comprises only 34 countries and territories (including Luxembourg, the United Kingdom, Switzerland, Singapore, Ireland and the United States) and 2 regional organisations.

The FATF classifies countries according to the degree of opacity perceived by foreign administrations. International Conventions allow, in

⁸² Oxfam (2014), *Petits arrangements entre amis. Pourquoi la réforme fiscale internationale n'inquiète pas les entreprises championnes de l'évasion fiscale*, Documents d'information, Mai, <https://www.oxfam.org/fr/rapports/petits-arrangements-entre-amis>

⁸³ Several countries are reluctant to cooperate, including Egypt, Indonesia, Ukraine, Guatemala, Nigeria, Hungary, Bahamas, Cayman Islands, Cook Islands, Santo Domingo, Israel, Lebanon, Liechtenstein, Marshall Islands, Niue, Panama, Philippines, Russia, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Anguilla, Barbados, Bahrain, Belize, Samoa, Montserrat, Seychelles, Marshall Islands, Vanuatu.

particular, reducing the formalism and the time taken to respond to communications between jurisdictions. These good intentions have not always been translated into practice, either in terms of form or in terms of tax proceedings⁸⁴. The Financial Stability Forum (FSF), and then the Financial Stability Board that succeeded it in 2009, propose international cooperation in the area of supervision and oversight of financial institutions. It manages foreign exchange reserves on behalf of developing countries. They concern Ireland, Luxembourg, Switzerland, Andorra, San Marino, Barbados, Bermuda, Gibraltar, Aruba, Hong Kong, Isle of Man, Bahamas, Anguilla, Nauru, Netherlands Antilles, and Turks and Caicos Islands. However, while the situation is slowly improving with the creation of specialized judicial posts, States reluctant to provide transparency of information are not subject to any international retaliation. More than ten years after this first text, the automatic exchange of information is therefore not carried out between European countries. In all, the Council has more than 900 conventions to its credit. However, we must not overlook a kind of hypocrisy in the approach, which consists of signing conventions between tax havens in order to get off the lists and reach the minimum number set. The banks established in tax havens devote considerable resources to their units responsible for drawing up tax optimisation schemes. In the automatic passage of information, the process is complicated. France has received only modest payments information from the Cayman Islands (2005 agreement), as the proper names of the real operators remain unknown, so the automatic exchange of information does not present any difficulties. However, many analysts still consider that this procedure reduces the potential for the spirit of cooperation. The banks are heavily lobbied in all international organizations.

The role of the FATF, in the absence of an executive branch, remains limited, as the extent of the phenomenon is still poorly controlled. However, the effectiveness of proceedings against national regulations could be significantly improved, but it remains difficult to oppose Delaware and the City of London, behind which all the other tax havens are hiding. However, the United States has obtained the lifting of Swiss banking secrecy in connection with certain operations deemed important by its government, without itself abandoning the operations in Delaware.

There is no real will to fight against the financial ins and outs of criminal abuses. The idea that these "offshore" centers are necessary for the functioning of capitalism and the market economy is anchored in the collective information. Financial crime has no visible or comprehensible effect on citizens. Corruption is secretive, "dubious" funds escape the vigilance of national courts. Multinational firms can use transfers from country to country to maximise their

⁸⁴ Luxembourg and England often show an excessive concern for forms which often amounts to a refusal. Switzerland does not provide information on tax matters as long as there is no evidence of criminal activity itself.

profits. This white-collar crime is located in the rich strata of society, surrounded by legal and economic advisers responsible for finding every legal loophole to enhance their assets, to the detriment of the already unjust rules of income distribution produced by the market economy.

The BEPS (Base erosion and profit shifting) system allows multinational companies to avoid their fiscal responsibilities. In 2013, the OECD is proposing recommendations and solutions to this issue, without calling into question a tax system that grants more rights to tax in the countries in which multinational companies are based to the detriment of the countries in which the company operates. Large firms use the roads, education system, markets, related legal protections and security by behaving as "stowaways. However, tax optimisation will always be present as long as states do not change the rules of the game and the related international laws. After two years of diplomatic negotiations, a political agreement was signed by 62 countries (including the United States, Russia, France, Germany, but also the United States, the United Kingdom, Ireland and Luxembourg, countries often accused of complicity) to combat tax evasion, which would cost up to 240 billion dollars a year⁸⁵. The OECD has reached a consensus regarding the fight against aggressive tax optimisation, which consists of relocating profits to countries with a low level of participation in the public budget that receive them without any real activity being carried out there. Until now, the rules applied did not allow for any adjustment. The BEPS (Base erosion and profit shifting) project is presented as a toolbox to combat abuses.

However, the heterogeneity of state tax rules is too great a temptation for companies. The "rogue" countries benefit from a profitable activity that leads them to be reluctant to accept the advantages they have acquired and to find other means to continue their predation work, to the benefit of large multinational companies, wealthy individuals and their own income and employment levels. It also comes up against the complicit exercise of the major economic powers that often harbour flags of financial convenience such as the United States (which thus protects its industries under pressure from congressional lobbies) and the United Kingdom (Virgin Islands, Cayman Islands, Jersey, etc.). In some cases, the plan does not eliminate the problem of tax evasion. It will often involve making legal activities that could amount to avoiding the payment of taxes. Since 2016, the fifteen rules proposed by the OECD, new global standards are normally applicable, unless there is an indication of optionality. The measures mainly concern "transfer pricing control, which consists of exporting profits made in producing countries to countries with very low taxes. Multinational enterprises will be required to report information about their global business activities and transfer pricing policies in

⁸⁵ Best, I. (2015), L'OCDE lance le combat contre l'évasion fiscale internationale, La Tribune, 5 Octobre, <http://www.latribune.fr/economie/international/l-ocde-lance-le-combat-contre-l-evasion-fiscale-internationale-510755.html>

a file. They must report the location of profits, turnover, employees and assets, as well as the countries in which their taxes are calculated and paid. The tax authorities may, if necessary, re-qualify the Multinationals' contracts for tax purposes if they do not meet these requirements.

The aim is to ensure that the economic information declared is consistent with the actual production of value added in each territory. It is interesting to note that today the countries that have the greatest resources in terms of patents, industrial or intellectual property are not those that actually fund research and development. The question of tax havens can obviously be raised to explain this anomaly⁸⁶. It is supposed to be more difficult today to relocate the profits of a company established in country A by domiciling its intangible assets (patents, trademarks, etc.) in country B. The profits will have to be taxed in the countries where the value added was produced. France, the United Kingdom or Spain are about to ask companies to provide their tax authorities with information on the geographical distribution of their profits, as recommended in the BEPS plan. The OECD insists on consistency between economic activities, the location of risks, the number of people employed, and profits. This is a fundamental change. On this point, new instructions are still needed, with the final version expected in 2017.

Other rules have also been established. These are as follows:

- The obligation for companies to declare their activities in each country.
- In many countries, there are tax incentives for innovation, in the form of a "patent box" or "innovation box". They take the form of a tax box or tax line that offers them very low tax rates in order to promote their development. In this context, the United States government has been asked to commit itself to this approach in order to maintain its competitiveness in the most innovative industries⁸⁷. Today, a rule is being put in place concerning the location of patents (Patent Box) or innovations; this must be located in the countries where the researchers are located. The OECD has identified 16 industrial property regimes that are not compatible with the new rules, notably in the United Kingdom, Luxembourg and the Netherlands.
- Agreements between national tax administrations and multinational firms must be automatically exchanged between states.
- A framework for tax shopping has been introduced in order to control investors wishing to set up in a country through front companies or fictitious companies (or even mailboxes) in order to take advantage of advantageous tax treaties. A multilateral convention is proposed to replace bilateral agreements.
- CFC (Controlled foreign companies) rules allow states to tax profits transferred by their companies to tax havens; they also require companies to

⁸⁶ Fontanel, J. (2016), *L'économie politique et la science économique en débats et en défaut face à la crise*, EDDEN, Université Grenoble-Alpes, Document de travail, à paraître, Grenoble.

⁸⁷ Atkinson, R.D. (2015), *An Easy Check off for Global Competitiveness: The Case for a U.S. Innovation Box*, ITIF, November, <http://www2.itif.org/2015-innovation-boxes.pdf>

declare their tax arrangements. It is also a question of combating hybrid arrangements⁸⁸.

- Finally, the digitisation of the economy implies a reflection on VAT rules and the identification of taxable income. This issue concerning the value of data is not really settled, in particular the sharing of the right to tax between countries. This asymmetry increases the profits of financial operators and these multiple deductions are costly to the community. The aim is to prevent deductions offered in one country from being tax-free in another country, but this provision is not binding.

- Multinationals take advantage of intra-group financing mechanisms to increase the level of indebtedness of their subsidiaries, enabling them to obtain interest deductions that are higher than their actual interest charges. The OECD wishes to avoid subsidiaries located in high-tax countries taking on large debts in order to reduce taxable profits, to the benefit of other subsidiaries taking on very little debt because they benefit from very low or no tax. The OECD plans to introduce a "tunnel" for interest charges, which should be between 10% and 30% of EBITDA (operating profit). The OECD proposes to set a range of 10 to 30%⁸⁹.

This first "step forward" is not, however, sufficient to considerably reduce this situation of predation of public goods in favour of specific private goods. Preferential regimes offered by states always make it possible to avoid certain types of taxation. The maintenance of the "patent boxes" (preferential tax regimes for income from intellectual property), the abolition of which was mentioned for a while, remains, without doubt, a door to tax evasion that is still wide open. The MacDonald Company has been able to avoid paying more than a billion euros in five years to several European states, and the legal techniques applied in this respect are still only controlled at the margin. Moreover, the single multilateral tax treaty proposed by the OECD presupposes a "soft" consensus, given the interests of countries with such heterogeneous tax systems. Finally, the creativity of financial experts and tax experts from companies and banks is particularly well developed. Their income and the importance of their functions are at stake. The BEPS reform will not prevent multinational companies from playing around with tax rules to evade taxation. Lessons have not been learnt from the latest tax evasion scandals such as Luxleaks, which may continue to recur. The methods for distributing the profits of multinationals among the various production players have not been defined, which makes it difficult to implement rules adapted to the fight against tax evasion and fraud.

The agreement provides for reporting measures by country for multinational companies, but this information will remain confidential and

⁸⁸ The bond convertible into shares (which is a debt security for one country and an equity security in the business of the company in another) is directly concerned. Until now, it has been possible to deduct interest in the first country at the time of payment, and then to benefit in the second country from tax-exempt dividends.

⁸⁹ 50 % for Japan, 30 % for Germany, 10 % for USA and 0% for France.

available only in a limited number of countries⁹⁰. Above all, the OECD maintains the highly controversial "preferential tax regimes for intellectual property" (or patent boxes) as they stand until 2021, which still offer considerable advantages to multinational companies. They encourage legal, but immoral, transfers of companies to developed countries, especially "rogue" companies. Today, there are no plans to change the harmful effects on public finances. In 2000, France reduced its effective tax rate from 33% to 15% and Ireland planned to set it at 6.25%.

In addition, developing countries are at a considerable disadvantage. There is therefore no real desire to get to the very roots of this de facto tax evasion, to the benefit of other countries. The OECD remains fundamentally a club of rich countries, with often neo-colonialist attitudes, despite its declarations concerning equal treatment of all countries. In these negotiations, the absence of developing countries is damaging, not least because they feel multinational firms are plundering them. The state is then no longer in a position to provide the necessary public goods to its population. The developing and emerging countries of the G24 have reacted strongly, considering that they are the first victims of the erosion of their tax base and the transfer of profits. They demand to benefit also from the automatic exchange of intelligence. In addition, NGOs are demanding greater transparency from multinational companies. The exchange of information between tax administrations on the location of profits in each jurisdiction remains confidential, which is a step backwards compared to European legislation. Moreover, while European countries such as Switzerland, Austria and Luxembourg have committed themselves to transmitting them, this is not the case (or not yet the case) for Monaco, Liechtenstein or the Channel Islands⁹¹. The small "rogue" territories live off these financial expedients. They will seek to maintain their "competitiveness" in this field, keeping information secret as much as possible. Automatic exchanges of information are not the only key to solving the problem.

The European Parliament⁹² has studied the question of preferential tax regimes for income generated by intellectual property ("patent boxes") with a view to reacting to the harmful consequences of tax advantages granted to income from intellectual property, without so far initiating binding procedures. The complexity of the BEPS system's consideration of taxation is likely to lead to numerous disputes, including numerous appeals of confidential tax returns⁹³. The European Commission is currently considering only the European Union's

⁹⁰ OCDE. (2015). Countering harmful tax practices more effectively, taking into account transparency and substance, Action 5 – 2015 Final Report: <http://www.OCDE.org/tax/countering-harmful-tax-practices-more-effectively-taking-into-account-transparency-and-substance-action-5-2015-final-report-9789264241190-en.htm>

⁹¹ France could also put pressure on Monaco and Andorra from which large-scale opaque operations have been carried out by Russian and Chinese groups.

⁹² European Parliament. (2015). European Parliament resolution of 25 Mars on the Annual Tax Report, ECON, Procedure 2014/2144(INI),

⁹³ The fiscal « rescript » is an answer from the administration to your questions on the interpretation of a tax text, or on the interpretation of your de facto situation with regard to tax law.

rescripts. According to the OECD, the "tax inspectors without borders" initiative could be deployed in developing countries to train them in auditing multinationals⁹⁴.

The G20 countries and the OECD are planning to set up a system of automatic exchange of information concerning these "rescripts" taxes, on condition that the countries respect confidentiality, which distances many developing countries from this procedure. In 2013, France was the first European country to introduce country-by-country public reporting for its banking institutions, but it is now failing to extend this to other sectors of activity. It will be impossible to verify these procedures and to know the amount of taxes paid by multinational firms and banks. Several problems can legitimately be raised about the scope of this decision. The size of the companies concerned (750 million euros) subject to the reporting obligation excludes 90% of multinationals, particularly in relation to developing countries.

On 6 October 2015, the EU Finance Ministers unanimously adopted a provision on the transparency of these rescripts, following a proposal for a directive by the European Commission. Member States will automatically have to exchange this information in order to create a deterrent effect on states and multinationals, which will then find it more difficult to engage in unfair tax competition. However, the information will not be made public, but made available to authorised tax administrations. At the European level, this is a step backwards, since, since 2013, more than 3,000 European banks have been encouraged to make their "reporting" public, country-by-country, compared to only 1,000 under the OECD proposal. It is now a matter not only of starting negotiations between the Commission (which is rather reticent), the Council and the Parliament in order to reach an agreement, but also of exchanging information not only within Europe but also with third countries. The European Commission is committed to improving the uneven situation of taxation and its economic effects. In particular, it has proposed to investigate whether certain tax agreements between Member States and multinational companies constitute illegal state aid (as in the case of Delaware) The European Commission is studying the impact of public reporting on a country-by-country basis. The results will be published in early 2016. For the European Commission, MNCs should pay their taxes in the EU country where the added value was created. However, with subsidiaries, they can always cheat to optimise their tax situation. This solution can only work if it is accompanied by the acceptance of a single tax that would benefit the countries in which the wealth is created and where the personnel are located. However, there is very strong opposition to the idea of a single tax, particularly from the G20 and the OECD.

Despite its commitment to the free movement of capital within the EU, the Commission has included an "anti-abuse" provision in the Parent-Subsidiary

⁹⁴ OCDE (2015) OECD Secretary-General Report for G20 Finance Minister, Istanbul, Turkey, February. <http://www.oecd.org/ctp/oecd-secretary-general-tax-report-g20-finance-ministers-february-2015.pdf>

Directive. In June 2015, the Commission presented an action plan to reform company taxation in the EU, with a view to coordinating national policies in this area. However, it is the Council that will take the final decision today, but nothing seems to change in practice. Finally, there is still no international body responsible for intergovernmental tax cooperation issues under the aegis of the United Nations⁹⁵, as requested by Ban Ki Moon, the UN Secretary General and the G77 at the conference on financing for development in Addis Ababa. France and the United Kingdom are still blocking this proposal and the European Commission has still not taken a public stance on this issue. Decision-making therefore remains in the hands of the OECD, to the detriment of the South.

Tax administrations can grant companies Advance Pricing Agreements (APAs) to make the system more efficient and transparent. These agreements are negotiated directly between the company and the tax administration and remain confidential. In this context, these practices can also lead to improved conditions for tax evasion, including discreet bribery procedures. The question is then to know what information and controls are available to the State during the entire negotiation process. Even today, tax scrutiny seems to facilitate tax evasion by companies⁹⁶. The anti-corruption summit in London, organised by the OECD on 12 May 2016 and bringing together some 40 countries, seems to be leading to concrete negotiations, which have been helped by the Panama Papers scandal. It is to be hoped that these initial proposals for reform will become laws, rules, which will be able to reduce tax evasion.

A project for an international anti-corruption investigation centre has been mentioned by the United States, the United Kingdom and Australia, but in view of the policies revealed by the whistle-blowers it is likely that these actions will be more oriented towards third country contracts. A claim by the Tax Justice Network seems to be worthy of consideration. It concerns the creation of public registers indicating, behind the creation of shell companies, the real owners of trusts. It should be noted that in June 2013, the proposal for the automatic exchange of data had already been mentioned, without any concrete results for three years. France has had a public register in place since 30 June 2016 and the United Kingdom has also undertaken to do the same. Some 40 countries, including some "tax havens" controlled by the British authorities (Gibraltar, Montserrat, Jersey, Cayman Islands, Bermuda, Isle of Man, Anguilla) have expressed their willingness to set up a register, but it would be restricted to tax authorities only. It is clear, however, that many rogue countries will drag their feet on such a procedure until new procedures or loopholes in the law allow them to avoid giving up this vein of wealth. In London, "foreign shell companies" own 36,000 properties. The register would make it possible to

⁹⁵ ONU. (2014). The road to dignity by 2030: ending poverty, transforming all lives and protecting the planet. Synthèse du Secrétaire-Général sur l'agenda en matière de développement durable post-2015, p. 25. Consulté le 31 Août 2015: http://www.un.org/ga/search/view_doc.asp?symbol=A/69/700&Lang=E

⁹⁶ Eurodad (European Network on Debt and Development), Cinquante nuances d'évasion fiscale au sein de l'Union européenne, Rapport global 2015, Novembre.

indicate who the real owners of these properties are, in fine. These draft decisions are a step in the right direction, but they have not yet been implemented. The City is concerned about the popular reactions that could concern many companies listed on the stock exchange and customary to these practices in order to keep their fortunes secret.

However, if other states do not wish to cooperate, or do so only minimally, the issue of tax evasion will still not be resolved. However, the Government of the Virgin Islands did not wish to participate in this meeting, as did the United States, and it does not wish to show solidarity with such a measure. It considers that the OECD is attacking smaller jurisdictions, but that it accepts that larger countries do not comply with international standards. The United Kingdom cannot impose its decisions on these independent territories, even though the Queen of England is their head of state and the constitutional rules are registered with the British Parliament. For the United States, federal law does not always allow certain abuses to be controlled. In some states, controls on the creation of companies are almost non-existent.

One of the key challenges in the fight against tax evasion is that it is relatively easy to conceal money, especially cash. Increasingly sophisticated procedures, such as shell companies, trusts, holding companies and foundations, are used to be the nominal owners of the assets of anonymous persons. According to Gabriel Zucman⁹⁷, more than 60% of all deposits held by foreigners in Swiss banks belong to entities located in Jersey, the British Virgin Islands and Panama, places that are well known for the quality of protection provided by shell companies. Banks, such as HSBC, have advised their clients on how to set up this process, as has PriceWaterHouseCooper, which has been accused of aiding tax evasion by the United Kingdom. The European Parliament has called on Member States to ensure that a special-purpose entity carries out a minimum of real economic activity in the country where it is based. In addition, it considers it necessary to make public information on the real owners of companies and trusts⁹⁸.

Harmonisation of tax regimes at the international level would be the most radical way to remove the comparative advantages of "rogue" states. At this stage of development, it seems very difficult to put in place and it would not, however, eliminate banking and judicial havens. The European Commission is working on the harmonisation of the tax bases for the calculation of corporate tax within the 28 member countries of the European Union, to remedy the great disparities that lead multinational companies to favour the "best bidder" system. International rules on the taxation of multinational companies remain unclear and complex. However, the European Commission has recently obtained the

⁹⁷ Zucman, G. (2014). Taxing Across Borders: Tracking Personal Wealth and Corporate Profits, *Journal of Economic Perspectives*, Vol. 28, No. 4, p.141: <http://gabriel-zucman.eu/files/Zucman2014JEP.pdf>

⁹⁸ Parlement Européen. (2015). European Parliament resolution of 25 Mars on the Annual Tax Report, ECON, Procedure 2014/2144(INI),: <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P8-TA-2015-0089>

support of the 28 EU member countries for large companies to publish their profits and taxes on a country-by-country basis. At present, there is a serious lack of statistical data on this subject and the monitoring of their effectiveness remains questionable. At the Commission's flagship initiative, the establishment of a system for the automatic exchange of banking data between tax authorities has been proposed, which improves transparency regarding the location of profits, particularly in countries with lenient tax systems. This provision is not extended to developing countries. The fight against tax fraud suffers from the withholding of information between states, even those belonging to an already well-organised regional grouping such as the European Union. However, with a system of automatic exchange of tax information, for any opening of an account by a non-resident in a given territory, the tax administration of his country of origin must be automatically informed.

The establishment of a list of tax havens can have a deterrent effect, the so-called "name and shame" effect in Anglo-Saxon countries. It proposes to include states on lists that are made public, which gives a negative image of the country. The KYC (Know Your Customer) rule is sometimes imposed, as the management of private fortunes is overexposed to the risk of money laundering. In this respect, banks sometimes prefer to get rid of dubious customers rather than feel accused of suspicion of fraud, and comply with compliance rules in order to convey a satisfactory image of ethics and transparency. This behaviour often leads them to restructure their client base to refocus on the private management of only very large fortunes. The system is often advantageous for tax havens because the more restrictive the international measures are, the higher the fees for additional services.

The G20 of 2013, in Saint Petersburg, wished to set up a global exchange of information with an automatic standardised fiscal interest between States, whereas today this exchange is done on demand, which allows tax havens to avoid having to respond. Since 2014, the United States has enacted a FATCA (Foreign Account Tax Compliance Act), which obliges financial institutions worldwide to communicate the transactions of American nationals, even if the text is not sufficiently binding. Income tax is based on a residence criterion, but also on a nationality criterion. Every US citizen declares and pays tax in the United States, unless adjustments are provided for in tax treaties with countries of residence. It provides for retaliatory measures against banks that refuse to cooperate (including high taxation of transactions in the US), but smaller institutions or jurisdictions may wish to give up working in the US to continue to manage the profits from tax evasion⁹⁹.

FATCA requires financial institutions worldwide to automatically exchange information with the US tax authorities, under threat of strong sanctions (a 30% tax on dividends and interest payments from the United

⁹⁹ While France must provide all information on US financial assets, the US tax authorities are not (yet?) in a position to offer reciprocity, due to a lack of appropriate legislation.

States). This system is a step forward, but it is not infallible. Financial opacity lends itself to it. It is still relatively easy for offshore establishments to claim that they only manage accounts belonging to shell companies, without identifying the real owners, and therefore not send any information to the relevant authorities. It should be noted that the FATCA provision is not binding in the United States, as it would be unconstitutional.

The framework is applied at the global level by all countries and territories concerned. There are two types of enforcement. With Switzerland, the banks are obliged to inform the US tax authorities about the assets available in accounts in the Swiss Confederation. With France, Italy, the United Kingdom or Germany, the two tax authorities automatically provide the necessary information themselves. This procedure is based on reciprocity, with a better guarantee of protection for the data transmitted. At a later stage, questions relating to real estate, salaries or income from other professional activities may be dealt with under this procedure. However, there is still an asymmetry, because although the information given by the European countries concerned will be automatic, this is not yet the case for the United States under its laws. It is the US government that is demanding a change in legislation from all other countries, without itself being in a position to comply with this rule. Switzerland is itself forced to accept this rule, which means that the Rubik system¹⁰⁰ will be called into question. France and Germany are united in questioning the complex procedures developed to avoid taxation, particularly with regard to trusts.

Today, the prospect of a European FATCA exists, between the United Kingdom and its dependencies, as well as with Germany, France, Italy and Spain. A multilateral convention is under discussion concerning the exchange of tax information. Almost half of the tax havens are located in Europe, which is not the least of the paradoxes. The European Commission could declare non-compliance with competition rules, given the heterogeneous tax commitments of the countries of the Union. A minimum tax level should be set, without however calling into question the financing of kingly services. Other measures have been mentioned, such as the payment of whistle-blowers, the refusal of a tax amnesty replaced by a compulsory loan for specific public services or the ability of the judiciary to prosecute itself for tax evasion (often reserved for tax services only). Moreover, the ambiguous decisions of the European Union are sometimes surprising. 85 billion from the European Union in the midst of the financial crisis, even though it is known to form a "tunnel" for tax evasion to Bermuda. Some States mentioned the establishment of a permanent international tax cooperation body to promote the exchange of information on potential tax evasion. In a report on tax fraud and tax havens, a committee of the National Assembly in France listed 45 proposals with a heterogeneous but often complementary influence (Table 13).

¹⁰⁰ Under this system, the taxpayers' states collected the equivalent of taxes and benefited from a backlog of past clearance. Anonymity and banking secrecy remained guaranteed. Swiss banks thus retained their customers.

Table No. 13 - Propositions of the French National Assembly Committee

- 1) Worldwide rollout of FATCA-type information devices
- 2) Establish a single list of tax havens (instead of the current three, FATF, OECD, FSB)
- 3) Include the transparency of screen structures in the centralized registers of all countries.
- 4) Obliging professionals to know the natural persons benefiting from the operation
- 5) Insert a centralised file of FICOBA-type bank accounts that is binding on all States and territories that are legally and fiscally autonomous, with transparency standards.
- 6 and 7) Establish the concept of permanent establishment adapted to the digital age, based on the origin of value creation and the role of the client. Eliminate hybrid arrangements
- 8) Organizing State control over the International Bureau of Accounting Standards
- 9) Ensuring the automatic exchange of tax information between EU Member States
- 10 and 11) Use EU trade negotiations to improve transparency and tax cooperation with partners. Establish a EU list of tax havens
- 12) Impose a minimum corporate tax at the European level.
- 13) Require large companies to be more transparent about their profits on a country-by-country basis.
- 14) Improving the European criminal arsenal against money laundering (4th Directive).
- 15) Creation of an inter-ministerial committee against fraud (Prime Minister's office).
- 16) Improve public statistics transmitted to the Parliament on tax auditing
- 17) Establishment of a Parliamentary Observatory against tax fraud and tax optimisation
- 18) Putting the sums repatriated from tax havens into a compulsory loan to finance the energy transition and the equipment of the territory.
- 19) Extending the statute of limitations for assets held illegally abroad to 20 years.
- 20) Revise the list of tax havens in line with the effective implementation of the conventions.
- 21) Develop concrete initiatives involving tax havens.
- 22) Conduct a fraud risk analysis for all laws and regulations.
- 23) Better inform the tax authorities about tax schemes; taxpayer & board, responsible.
- 24) Give more means to the tax authorities of control and financial justice
- 25) Extending the faculties of use of administrative files to the tax and customs services.
- (26) Abolish the Minister's monopoly on criminal prosecution for tax evasion
- 27) Initiate a procedure for interregional mobility of magistrates
- 28) Admit the use of all illicit proofs of origin by the tax authorities and the judiciary
- 29, 30) Pay fraud informants and have whistle-blower status.
- 31) Apply the new European rules on self-liquidation for structurally risky sectors and sectors at imminent risk of fraud
- 32 to 37) They concern statistical verification analyses making it compulsory to file CVs of company directors, activating commercial court registries, imposing monthly VAT declarations for new companies in sensitive sectors, developing real-time communication, etc.
- 38 to 41) It is a question of better applying tax treaties, establishing a right of communication with paying institutions, making it compulsory to declare the professional accounts to which tax residents have access, establishing a right of resale for any transfer abroad of the tax domicile.
- 42 to 45) Inform the tax authorities from the outset of transfer pricing when public contract holders use suppliers abroad, establish a system of automatic taxation of business relocations, strengthen transfer pricing controls and make the offence of money laundering more autonomous from the predicate offence.

National administrations do not have the legislative and human resources to combat these types of behaviour, which harm the collective interests of nations. There is a disproportionate amount of means put in place to control these flows compared to the size of the armies of tax specialists and accountants working on "tax optimisation". Whistle-blowers should be protected¹⁰¹.

According to Daniel Lebègue¹⁰², two-thirds of hedge funds, whose assets and risks are unknown, are domiciled in offshore centres, as are 4,000 banks and hundreds of thousands of financial companies. This clandestine finance is dangerous for the stability of the international financial system. Although the conditions for weakening tax competition are not yet in place, it is already necessary to combat those areas that refuse to apply banking customs and practices, as well as any cooperation or information to victim states. Several measures could be taken, such as refusing access to rescue and guarantee plans for banks domiciled, in whole or in part, in tax havens, banning opaque hedge funds, creating an international register of offshore companies, requiring listed banks and multinational firms to provide information on their subsidiaries based in tax havens in order to put an end to shell companies, and extending the European directive on non-resident savings to legal persons.

Most large companies are looking to lower their taxes through this channel. Out of the 50 groups analysed¹⁰³, only 5 of them pay this 35% in corporate tax in the United States. For Oxfam¹⁰⁴, this operation costs more than 110 billion dollars to the American budget, by using the transfer of intellectual property rights (for innovations developed on the American territory) or lobbying which allows them to pay 1000 billion dollars in taxes while receiving subsidised loans or 11000 billion dollars in subsidies from public authorities. "For every dollar spent, these 50 groups received \$130 in tax relief and \$4,000

¹⁰¹ Whistle blowers are often prosecuted, as was the case in other cases with Snowden or Assange on confidential espionage matters, but also in financial matters, as is the case with Antoine Deltour and Édouard Perrin who revealed the "LuxLeaks" affair and the journalist from "Cash investigation" who had been the first to reveal documents from the KPMG consultancy firm, revealing the arrangements between the Luxembourg tax authorities and large companies. Similarly, Stéphanie Gibaud, former marketing manager of UBS France, allowed the French State to uncover 12 billion euros hidden from the French tax authorities due to illegal practices by her employer. See Vasseur, Q. (2016), Edward Snowden, Stéphanie Gibaud, Hervé Falciani... What happens to whistleblowers? Le Monde, April 12.

¹⁰² Transparency International (2008), Peut-on faire disparaître les paradis fiscaux ? http://www.transparency-france.org/ewb_pages/div/Interview_Daniel_Lebègue_Paradis_fiscaux_La_Tribune.ph

¹⁰³ These are the 50 largest U.S. companies according to Forbes 2000, à savoir Alphabet (Google), American Express, American International Group (AIG), Amgen, Apple, AT&T, Bank of America, Berkshire Hathaway, Boeing, Capital One Financial, Caterpillar, Chevron, Cisco Systems, Citigroup, Coca-Cola, Comcast, ConocoPhillips, CVS Health, Dow Chemical, Exxon Mobil, Ford Motor, General Electric, General Motors, Goldman Sachs, Hewlett-Packard, Home Depot, Honeywell International, IBM, Intel, Johnson & Johnson, JPMorgan Chase, Merck, MetLife, Microsoft, Morgan Stanley, Oracle, PepsiCo, Pfizer, Phillips 66, Procter & Gamble, Prudential Financial, Qualcomm, Twenty-First Century Fox, Inc., United Technologies, UnitedHealth Group, US Bancorp, Verizon Communications, Wal-Mart Stores, Walt Disney, and Wells Fargo.

¹⁰⁴ Oxfam America (2016), Top 50 US Companies stash a trillion Dollars Offshore While Benefitting from Trillions in Government Support, April 14, <http://www.oxfamamerica.org/press/top-50-us-companies-stash-a-trillion-dollars-offshore-while-benefitting-from-trillions-in-government-support/>

in federal loans or bailouts (using taxpayers' money)¹⁰⁵. Bermuda, for example, provides them with 43 per cent of their total profits for 4 per cent of their payroll and 7 per cent of their investments. The system of "tax inversion", which allowed the firm's headquarters to be located in "rogue" countries, is beginning to be challenged.

Today, the inversion process is limited since the promulgation of the American Jobs Creation Act, which prohibits it if the shareholders of American origin own at least 80% of the firm¹⁰⁶. A control is carried out to verify if there is any real commercial activity of the company in tax havens. The U.S. government was thus able to challenge the merger between Pfizer and Allergan, whose tax optimization objectives were all too obvious. However, the process is not yet impervious to tax evasion operations. It is possible when the partner in the country of the head office carried out the substantial ((first 10%, then 25%) economic operations. In addition, following a merger, if the US shareholders do not reach 80% of the shares of the company. Many countries such as Ireland, Switzerland or the United Kingdom are targets for this "reversal", with a significant reduction in their corporate taxes.

It is worth recalling the extent of the threat that financial crime poses to states. The amount of illegal flows is estimated at 5% of world GDP for the various forms of organised crime, including the Chinese mafia, prostitution, and drug trafficking and gambling. Numerous attempts at infiltration have been highlighted, suggesting large areas of passage from the illegal economy to the global financial markets. In France, the abuse of detachment and false detachment, modern forms of slavery, constitute a gulf for social security, while at the same time constituting a serious breach of labour law and human dignity.

Tax havens attract one third of the foreign direct investment of multinationals, but their usefulness has never been demonstrated. In fact, they mainly promote corruption and tax avoidance, even if they have not necessarily been the source of hedge funds. With the LTCM affair¹⁰⁷, new financial transactions sometimes present a systemic risk that endangers the solvency and liquidity of the entire international financial system. Financial innovation controlled by simple mathematical algorithms, controlled only by insiders, poses a considerable problem to the whole functioning of the current system of the market economy, which is too liberalised and monopolised by the powers of money. At a time when the European Union is only just beginning to become alarmed at widespread tax evasion, it is still asking citizens to make major sacrifices to repay debts that are partly due to the tax optimisation of the richest or the least honest in terms of their collective responsibilities. It should have the

¹⁰⁵ Lauer, S. (2016), Les multinationales américaines font un usage immodéré des paradis fiscaux, Le Monde, 16 Avril. P. 12.

¹⁰⁶ Marples, D.J., Gravelle, J.G. (2016), Corporate Expatriation, Inversions, and Mergers: Tax Issues, Congressional Research Service – Report - April 27, <http://www.fas.org/sgp/crs/misc/R43568.pdf>

¹⁰⁷ LTCM (Long Term Capital Management) was a hedge fund that emerged in 1994, whose bankruptcy in 1998 endangered the international banking system, causing major disruptions in the financial markets.

courage to condemn tax havens in Europe. It has to be said that, when it comes to the issue of tax evasion, states are generally very willing to be magnanimous and do not apply the criminal rules strictly. In a transitional period, the taxation of "rogue" countries for their undue profits could be imagined¹⁰⁸.

However, the UBS affair highlighted an initial revolt by the states, mainly because the US government was heavily involved in a proven situation of organised tax evasion. It confirmed that an entire system of tax evasion had been set up by Swiss bankers, in application of illegal practices of the "Qualified Intermediary" (QI) programme in the United States¹⁰⁹. UBS was canvassing clients and providing them with the means to evade the QI programme, mainly through the use of screen structures, assistance in the use of undeclared assets and even training to avoid customs controls, among other things. The Bank was fined \$780 million in the United States. UBS reached a financial agreement with Germany, in the order of 300 million euros, thus avoiding a conviction. France was also a victim of this system, but the procedures were inexplicably very long to set up. The "Autorité de contrôle prudentiel" (ACP) imposed a fine of 10 million euros for "laxity" in the control of commercial practices that could be the subject of tax fraud laundering. Today, UBS's tax fraud laundering is estimated by France to amount to nearly EUR 5 billion.

The HSBC affair has also highlighted the importance of the fraud allowed by bankers¹¹⁰. France's guilty procrastination, due officially both to legal disputes between France and Switzerland and to a relocation of the competent jurisdiction, has meant that a fraud situation revealed in 2008 has not yet been tried by the competent judicial authorities. However, the interest of the information is considerable, with the identification of client account numbers, asset managers and the contact details of the players. It was thus noted that on the uninhabited Bouvet Island in Geneva there were more than 121,000 accounts. However, the concealed assets represented approximately 5 billion dollars. Because of the conditions for obtaining information, the State was unable to directly oppose the information it had at its disposal to the taxpayers, who sometimes denied possession of these undeclared assets. From a tax point of view, the offenders' contributions were only made in respect of the wealth tax, because it was impossible to identify the source of the flows. The accounts of legal entities, given the limitation periods, have not been adjusted in any way. From a judicial point of view, there have only been 50 judicial investigations for 3,000 cases. The same bank has been prosecuted by the United States for laundering drug money, terrorist organisations and trade with Iran (a rogue state). It paid a fine of nearly \$2 billion to end the prosecution. Other lawsuits,

¹⁰⁸ Zucman, G. (2013), *La richesse cachée des Nations. Enquête sur les paradis fiscaux*, Le Seuil, Paris.

¹⁰⁹ A former UBS employee, an asset manager, has agreed to testify and to cooperate with the American justice system. He was criminally convicted, but also received a \$104 million bonus as a whistleblower.

¹¹⁰ It was opened by information provided by a computer scientist, Hervé Falciani, who was prosecuted by the Swiss courts.

in particular concerning the LGT¹¹¹ and Wildenstein "cases"¹¹², have also been brought, with results that are still very disappointing.

On the other hand, the whistle-blowers who have exposed aggressive tax practices have often been in serious legal trouble, both in the countries that practice these operations and sometimes even in the countries that have been harmed¹¹³. Antoine Deltour, the founder of Luxleaks, risks a heavy prison sentence. The practice of judicial deterrence is particularly well used by Banks and public institutions that are accomplices. While France relied on whistle-blowers to denounce abuses, it has hardly encouraged their action by offering them neither protection nor incentives. It was also characterized by a limited number of prosecutions for corruption and weak sanctions. In France, on 7 June 2016, the MPs gave a protective framework to the whistle-blower, defined as a person who testifies in the general interest to a crime or misdemeanour, to serious breaches of the law or regulations, to the detriment of respect for the environment, health and public safety, with no hope of self-interest (contrary to the American model) and no desire to harm others. The law provides for the creation of an Agency for the Prevention and Assistance in Detecting Corruption called the French Anti-Corruption Agency, composed of administrative, judicial and financial magistrates. Reprisals against a whistle-blower will be punishable by criminal sanctions, and the whistle-blower's employment may be maintained within the company. A judicial agreement in the public interest may replace criminal sanctions with the payment of a fine in order to avoid a trial. This "two-speed" justice system should improve the effectiveness of the fight against transnational corruption.

Despite the will expressed by Barrack Obama, the US business community is clearly opposed to any idea of controlling tax havens, that offer low-cost, responsive services, freedom, flexibility, innovation and competitiveness to international trade. The problem is that hundreds of billions of dollars of risky investments, hidden in tax havens, are likely to create a second financial earthquake. However, it should be remembered that it would be a revolution, when more than 55 per cent of international trade and 35 per cent of global financial flows pass through sovereign tax havens, considered in this context as an essential cog in the wheel of the market economy. The European Union allocates 50% of its investments from abroad to the United States (which

¹¹¹ The LGT affair, known as Liechtenstein II, revealed a circuit of tax evasion of the largest fortunes in Germany, France and the United States, using foundations taxed on a fixed basis 635 euros per year and which can be dissolved at any time. In France, the reassessments concerned 31 million euros of assets and led to the recovery of 4.3 million euros, plus 1 million euros in penalties. 1 million in penalties. However, no complaints of tax fraud were recorded

¹¹² This is a case where the fraud being prosecuted relates to inheritance tax, and thus concerns income tax, through offshore trusts and very complex procedures. The members of the Wildenstein family have thus been able to benefit from one of the largest fortunes in France and even worldwide without paying tax. A €600 million tax adjustment was claimed from the heirs.

¹¹³ Consortium of Investigative Journalists. (2014). Swiss Leaks: Murky cash sheltered by bank secrecy: <http://www.icij.org/project/swiss-leaks>

is normal), ahead of Switzerland (15%). Luxembourg, with more than 110 billion euros per year, is the main investor outside the European Union (5 times more than France, 3 times more than Germany). Cyprus and Luxembourg are also the two hubs for money laundering, which offer the corruption the opportunity to escape punishment.

Officially, France would like to see tax harmonization within the European Union, but tax sovereignty remains a freedom that no country wishes to give up. The British have entered into discussions with the Crown Dependencies that enjoy sovereignty in tax matters, and have recently signed agreements with many of these territories as part of an overall strategy designed to limit their effects considerably. The United States is determined to take action on bank accounts, as the aim is to thwart Swiss and European competition. However, on the issue of trusts, which conceal considerable sums in complex banking procedures in order to maintain the anonymity of the beneficial owners of the capital, the US government is less enthusiastic about monitoring them.

Globalisation has been accompanied by a considerable increase in inequality, with a transfer from the poor in rich countries to the rich in poor countries. Tax evasion and money laundering are now undermining sustainable competition. The public treasury is being cheated and the winners are those who set aside their scruples to organise their wealth to the detriment of individuals, citizens or competing companies. Admittedly, since 2009, the signing of agreements for the exchange of tax information at the request of the administration has increased the risk of secretly holding accounts and assets abroad, particularly in Switzerland. However, other steps are already being taken to develop new solutions to protect the fortunes of wealthy individuals and improve the profits of multinational companies. It must also be said that the resources made available for tax auditing are relatively small in view of the army of advisors who act on behalf of companies or individuals who wish to evade taxes, at least partially. The European Commission estimates the loss of VAT revenue in France at 32 billion euros per year (compared to 10 billion for the Ministry of Finance). The transparency and accountability of European companies must become satisfactory from the taxman's point of view. It is necessary to ask financial institutions and large groups, but also legal entities and trusts, to publicise their places of business in order to understand the advantages of locating in a particular place. Finally, a new and more demanding list of NCJs (non-compliant jurisdictions) appears necessary.

European citizens, despite proactive steps, have not taken the measure of the problem, as the latest scandals involving McDonald's, Fiat or Starbucks shows¹¹⁴. At the end of the day, it is Europe that, by refusing to determine a tax system that is comparable in all countries and which values only market values

¹¹⁴ Eurodad (European Network on Debt and Development), *Cinquante nuances d'évasion fiscale au sein de l'Union européenne*, Rapport global 2015, Novembre.

that enable large firms to enrich their shareholders. The institution is being held hostage by multinational firms which, with a few legal rules that they have inspired, can justify their actions by the constraints of a competition that is ultimately not so constraining for those who take economic decisions and use chameleon techniques in the context of mergers or various shareholdings in order to get rich. Mechanisms facilitating tax evasion within the European Union broaden the choices of multinational companies wishing to evade taxes.

Following the example of the new Irish patent box, a dozen or so patent boxes (preferential tax regime for income from patent applications) are now available or about to be available. In fact, as an avatar of competition, all European countries are condemned by multinational firms and banks to tax competition, which allows them to dictate their conditions, even through democratic procedures, but to their sole benefit and to the detriment of the citizens of the European Union and developing countries. France follows the pale recommendations of the OECD, an organisation that always puts itself at the service of the richest countries. It has developed a set of tax incentives, from the CICE (Competitiveness and Employment Tax Credit) to the CIR (Research Tax Credit), at an estimated cost of more than 84 billion euros per year, equivalent to the national education budget, without any analysis to measure their positive impact. It is now necessary to provide information on the countries in which companies carry out their activities and where they pay their taxes, which would improve transparency on the real economic activity of companies and highlight the illegitimate interplay of tax competition. Lastly, France has signed many tax treaties with developing countries, requesting substantial reductions for its companies, of the order of 3%. The dividend withholding tax rate with China has been reduced from 10% to 5%. This is a policy of lower tax rates that is unfavourable to the countries that need these sources of public funding the most. France is an excellent jurisdiction to invest in China and Europe. Avoiding taxes is a factor of impoverishment for all citizens who do not practice it. When properly used, public funds make it possible to finance education, the national health system, respect for justice and democratic rules. If nothing is done about "tax havens", the very rich class will continue to avoid progressive income tax. Progressively, the middle classes are themselves reluctant to pay taxes, whose system is based on voluntary cooperation. If all Americans refuse to cooperate, it will be difficult for the tax system to do its job. Thus, the culture of non-payment of taxes will take hold among the population, making it very difficult to collect taxes, with each taxpayer becoming a de facto potential "tax cheat"¹¹⁵.

The "rogue" countries often engage in procedures comparable to those of a state in a war situation. They cultivate secrecy, they protect all their operations, they have multiple alert systems and they decentralise most of their

¹¹⁵ Zucman, G. (2015), *The hidden Wealth of Nations ; The scourge of Tax Havens*, University of Chicago Press, Chicago, 200 pages.

activities to make them more difficult to read from the outside. They thus engage in deterrent procedures, with informers, spies and lawyers seeking to identify the gaps in the law with a view to generating new activities or profits. Even within the countries thus "attacked", they have agents who participate in legislative and fiscal activities. Under these conditions, they are constantly anticipating. Not only do they detect flaws in the systems put in place against fraud or abuse of dominant offers, but they also protect themselves by making it more difficult for operators to return to the market when they are attracted by the services offered. The rogue countries steal without remorse the public funds of their partners, the money remaining the unique value of their action.

The lowest tax bill remains an essential piece of information that is still the subject of many publications. States themselves accept this competition among themselves, offering considerable advantages to those with available capital. Newspapers today make it possible to find out which countries are the most attractive countries for personal income tax purposes. Bradley Hackford¹¹⁶ also introduces the quality of life, legal and physical security, the quality of the economic investment programme developed by the local government to encourage investment by new residents and the quality of the country's geographical location, infrastructure and accessibility. Thus, Malta, Antigua and Barbuda, the United Kingdom¹¹⁷, Andorra (10% personal income tax), Portugal¹¹⁸, Mauritius, the Bahamas (for those who have a local real estate property of more than 500,000 dollars), Monaco (a principality in which, except for the French, it is necessary to demonstrate "sufficient wealth"), Bulgaria (10% personal income tax rate) and the United Arab Emirates and Dubai¹¹⁹.

A question has not really been asked yet about the real willingness of the leaders of states, caught up in the pincer of the immediate results to be achieved for their re-election and the need to take decisions in a context where other allied states are seeking to change the conditions of competition to their advantage. However, the states are above all challenging "tax havens" which are not in their spheres of influence. The United States blames the Cayman Islands by turning a blind eye to the many Wall Street companies registered in Delaware, a federal state under its jurisdiction, where trusts can remain anonymous and carry out many large, hidden financial transactions. The same applies to the United Kingdom, which offers many opportunities for secrecy to companies based in the Channel Islands. Each economic power has decisive power over certain "tax havens", the Channel Islands or the Caymans for the United Kingdom, Andorra and Monaco for France, the Bahamas or Marshall Island for the United States, the "free zones" of the Emirates and Kingdoms of the Persian Gulf, Hong Kong,

¹¹⁶ Bradley Hackford (2016) : Expatriation : Top 10 des pays les plus attractifs fiscalement en 2016. 27 Avril. <http://www.bradleyhackford.com/expatriation-top-10-pays-plus-attractifs-fiscalement-2016/>

¹¹⁷ It offers non-UK citizens the opportunity to settle without being taxed on their non-local income or assets outside the UK for the first seven years of residence. A minimum tax lump sum must then be paid each year.

¹¹⁸ The status of "non-usual resident" is very attractive for pensioners and shareholders.

¹¹⁹ Companies can be 100% foreign-owned, with corporate and personal income tax rates of 0%.

Singapore and Macao for China, Singapore for Asia, Mauritius for India and even Cyprus and the City for Russia. It is then a matter of attracting capital from large companies and hedge funds. Some states are nevertheless better equipped in these "grey areas", with privileged rights for the major capital providers, and a violent struggle that allows the United States to appropriate new rights over Switzerland's banking secrecy policy, without proposing such an opening to other countries concerning Delaware or the Bahamas. The balance sheets of the central banks are relatively small (25% of GDP), but private and public players hold colossal sums of money over each other, a veritable house of cards, representing 10 to 15 times gross world production. The result is a very great fragility that financial opacity hardly makes it possible to limit. Action must be taken before a new crisis occurs, with social effects strong enough to lead to revolutionary situations or civil war.

The idea that these opaque transactions are necessary for the functioning of the global system can only be conveyed by its beneficiaries, such as support for political opponents who do not respect human rights, arms transfers, drug trafficking, organised crime or tax offences. It is no doubt conceivable that some people might want to cover their backsides in a country in difficulty, but then why not start proceedings in accordance with the laws of the country of origin. The manoeuvres of "rogue" countries lead to economic distortions that are not well known, but which are undoubtedly at the root of certain financial crises.

Under the FATCA tax regulations, foreign banks established in the United States must disclose all the accounts of American citizens placed abroad. However, while this measure appears to be a policy of refusing tax havens, it does not concern trusts that continue to hide their assets. The coalition between the private sector and an arranging public sector in the United States and, to a lesser extent no doubt, the one that also exists in the United Kingdom is taking control of all offshore finance. However, even if one is in a position of strength in a market, it is not certain that the actions taken really benefit those who organise it, at least in the long term. In other words, the Anglo-Saxon area dominates the markets of tax havens, it lays down its rules which constrain the players involved, it modifies the conditions of competition, but it is not certain that these actions ultimately benefit its national economies. The interests of "General Motors are not necessarily those of the United States", it was said during the "Glorious Thirty". We must always remember this old maxim, which should be applied today to the famous "GAFA" (Google, Apple, Facebook, Amazon), which are major consumers of investments in "rogue" countries. The billions of dollars that escape taxation reduce the capacity for social investment. Oxfam¹²⁰ estimates that only 100 million dollars are needed to provide hygiene and drinking water to more than 2 billion people who do not have access to it.

¹²⁰ Oxfam America (2016), Top 50 US Companies stash a trillion Dollars Offshore While Benefitting from Trillions in Government Support, April 14, <http://www.oxfamamerica.org/press/top-50-us-companies-stash-a-trillion-dollars-offshore-while-benefitting-from-trillions-in-government-support/>

Despite all the apparent efforts, the system of "tax havens" still seems to have a bright future.

In the past, governments have often threatened "tax havens" with sanctions, but they are all guilty because they are somehow trying to be more attractive than other countries. The automatic exchange of relevant financial information is an interesting gamble, but its success is unlikely in the current state of affairs. However, some steps could be taken. The available funds invested in most tax havens cannot be invested in small islands. Under these conditions, a tax could be imposed on the entry of these funds into OECD countries, of the order of 30% as proposed by the FATCA provision. The problem with this solution is that Europeans help tax evasion by American companies and individuals and vice versa, which highlights the influence of big business on both sides of the Atlantic. Europe wants to introduce a tax on the anonymous deposits of foreigners, but Washington is not yet ready for it. Finally, Washington would have to do away with the "check in the box" that allows all tax optimisation situations.

The rules laid down by the major international organisations calling for state co-operation to combat this societal gangrene have changed the situation. While in 2015, multinational companies had officially invested \$221 billion in low-tax countries, notably Luxembourg and the Netherlands, a large part of this money was withdrawn at the end of the year, when the two European countries were required to implement new rules designed to combat abusive tax evasion practices. On the other hand, large funds from emerging countries (China, Brazil, Russia, in particular) became very important, heading for the Cayman Islands or the Virgin Islands.

Under all conditions, capitalism advocates the self-interest of legal and natural persons. Under these conditions, all operations that do not raise formal opposition from the law are practiced. For banks and large multinational companies, it is a question of formally respecting the law, without respecting the spirit of the law. The clients of the "rogue" countries come from the major economic powers, including emerging countries. The tax issue is fundamentally political. Whether kings, a British Prime Minister, or the Finance Ministers of France or Spain carry out these types of operations, especially when they are tax amnestied, cannot fail to question public opinion and, if necessary, the electorate. Perhaps the main problem is that many economic and political leaders have got their hands on the "jam jar". It will undoubtedly be necessary to establish the period when the frauds will be amnestied, then made secret, so that they finally decide to enforce national laws in the context of a process of anarchic globalisation. However, citizens are better informed today with whistleblowers. Income tax itself is contested with its exemptions and tax niches that only really benefit those who are rich enough to have the services of tax advisers. Tax evasion looks even more promising as a means of recovering public money owed. We can now imagine a citizen awareness that proposes

retaliatory measures against companies or banks that do not respect the collective interest, such as a boycott of the products of the offending companies or media pressure to punish the guilty parties.

If action is not taken to prevent tax evasion, the middle classes will be reluctant to pay their taxes, which is never satisfactory for a government seeking re-election. Tax evasion is theft, so a culture of avoidance of personalized and democratic financing of public goods and social actions must be addressed. Greece has paid dearly for this knowledge. Developing countries are often impoverished by tax and capital evasion, without the intervention of international bodies¹²¹. Many countries whose banking system prospers through tax evasion and fraud are becoming paragons of virtue for state budgets¹²². States condemn corruption, but it is also a factor of profit for certain national economies. Morality is never respected when thieves sometimes become judges according to unsuitable or partisan rules and laws¹²³..

Table n°14 - Barrack Obama's proposals

<p>The 9 proposals concern:</p> <ul style="list-style-type: none">- The strengthening of administrative measures to combat money laundering, terrorist financing and tax evasion;- The introduction of legislative proposals to strengthen the tools needed to fight corruption;- The adoption of new legislative tools to suppress tax evasion and illicit financial activities;- Improving financial transparency through the application of 'Customer Due Diligence' rules (pre-transaction verifications);- The elimination of the procedure that allows foreign firms and individuals to hide behind anonymous entities incorporated in the United States;- Passing new laws on mandatory reporting of beneficial ownership of companies, requiring citizens to assist the police in preventing and investigating financial crimes;- The development of US capacity to fight transnational corruption;- Encouraging Senate action to develop tax treaties with many countries,- The expansion of a reciprocal FATCA to strengthen the capacity of the US administration to work with other countries to combat tax evasion.
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¹²¹ Fontanel, J., Biays, J-P. (2007), FMI et Afrique, Géopolitique Africaine, 2007

¹²² Coulomb, F., Fontanel, J. (2006), Spéculation et instabilité financière internationale, in « Des flux et des territoires. Vers un monde sans Etats ? ». Sous la direction de Bernard Jouve et Yann Roche, Presses de l'Université du Québec, Montréal, 2006. Fontanel, J. (2006), Spéculation internationale et géopolitique, Annuaire Français des Relations Internationales, Vol. VI. 2006. Coulomb, F., Bensahel, L., Fontanel, J. (2007), The concepts of economic war and economic conflicts in a global market economy, in « Arms, War, and Terrorism in the global economy today, Ed. Wolfram Elsner, Ed. LIT Verlag, Bremen Schriften zur Konverzion, Band 13, Hamburg. Fontanel, J. (2016), La science économique en débats et en défaut face à la crise, Document de Travail, Université Grenoble-Alpes, EDDEN, Grenoble, à paraître. Fontanel, J. (2016), La Finance, prédatrice des richesses, Document de Travail, Université Grenoble-Alpes, EDDEN, Grenoble, à paraître.

¹²³ Fontanel, J. (2007), Ethique, démocratie et économie mondialisée. Quelle éthique ? in « Questions d'éthique », Coll. « Les idées et les théories à l'épreuve des faits, J. Fontanel, (Ed). L'Harmattan, Paris. Fontanel, J. (2007), Questions d'éthique, Coll. « Les idées et les théories à l'épreuve des faits, L'Harmattan, Paris.

Barrack Obama¹²⁴ has embarked on this path (Table 14). This proposal is a little late in coming, since Barrack Obama will leave the presidency of the United States without having initiated the process that will become necessary as the "whistle-blowers" are protected. To this programme should be added the urgency of the fight against this corruption and the capture of state resources by a few politicians. It may be necessary to go further, as these proposals are too general to be applicable or meaningful. Other proposals should complement this framework. These include

(1) Encouraging transparency in financial and commercial transactions, controlling private spending to finance election candidates, combating conflicts of interest, verifying the size of politicians' incomes, and taking strong measures to discourage abuses. International law should establish rules of control applicable to all countries, particularly on income whose sources are not clearly available and justified. International organisations should intervene to publicise the reality of the situation, inform citizens and encourage states to take the necessary measures.

2) To create, like the International Criminal Court, an International Commercial and Financial Court that could condemn the predation operations (often criminal in their effects) of certain governments on the resources of their countries;

3) To get rid of the "grey areas", by gradually dismantling the secrets (in particular on the owners of holding companies, anonymous safes or the source of deposits) and the actions of "rogue" countries. In this context, the influence of non-governmental organizations is often decisive in raising awareness of this type of parasitic economy for the vast majority of the world's population¹²⁵ ..

Transparency of operations must be encouraged. The banks that still lend themselves to these "complex arrangements" designed to make operations opaque would themselves be liable in the courts of the countries thus swindled. A public register of these operations could be generalised to all countries, following the example of the Extractive Industries Transparency Initiative. Governments could require disclosure of financial and commercial transactions at least for state-owned enterprises. The many secret transactions involving licences, transport rights or import-export should be made transparent, with significant penalties for corruption.

Panama's Papers have clearly highlighted the most damaging and difficult type of corruption to contain: legal corruption and the ability of the privileged to indirectly "capture", for their own benefit, the economic management of states. There is an elitist class that concentrates political and economic power to establish laws and rules that satisfy their own interests. It is a secret privatization

¹²⁴ The White House (2016), Steps to Strengthen Financial Transparency, and Combat Money Laundering, Corruption, and Tax Evasion, The White House - Office of the Press Secretary - May 5. <https://www.whitehouse.gov/the-press-office/2016/05/05/fact-sheet-obama-administration-announces-steps-strengthen-financial>

¹²⁵ Bensahel, L., Fontanel, J., Corvaisier-Drouart, B. (2009), Les organisations non gouvernementales ou l'homme au cœur d'une mondialisation solidaire, L'Harmattan, Paris.

(privatization of public policy and law-making¹²⁶) of public policies and laws, under the banner of a misguided, deceptive democracy. Inequalities continue to grow, especially as rents grow and provide high incomes to their beneficiaries, without it being possible to stop this development, without possibly resorting to inflationary procedures that would, moreover, produce further inequalities and injustices. Under the pretext of the rise of greed, civil or international wars often come to the international negotiating table, especially when poverty is no longer on the decline and the phenomenon of social capillarity becomes a requirement for all citizens¹²⁷.

An anti-optimisation authority would therefore have to be set up to regulate providers of tax evasion. It would make illegal any transaction (e.g. trusts) whose sole purpose is tax avoidance. The governments could then take retaliatory action against firms engaged in tax laundering. International tax management of multinational firms is required, strict control of the methods of tax havens and the search for transparency.

The states of tax havens commercialise their national sovereignty to offer the largest international firms the opportunity to conduct a policy of tax avoidance and optimisation. The result is a reduction in the means of public services, indebtedness of the victim states, a system of unfair international competition, the rise of inequalities to unequal levels, the violence of injustice, but also a great difficulty in changing the path of economic growth which boldly devastates nature, destroys natural wealth for good and, with climate change, makes life for mankind on Earth increasingly uncertain. Capitalism has become difficult to control, politicians are no longer in control of the economic situation, worst is possible, because greed, like human stupidity, has no limits. We need more economic democracy.

¹²⁶ Kaufmann, D., Gillies, A. (2016), From Panama to London: Legal and illegal corruption require action at the UK anti-corruption summit, Brookings – Blog – May 9. <http://www.brookings.edu/blogs/future-development/posts/2016/05/09-corruption-panama-papers-kaufmann-gillies>

¹²⁷ Smith, R., Fontanel, J. (2010). International security. Politics, Policy, Prospects. Prospects. Smith, R., Fontanel, J. (2008), International security, defence economics and the powers of nations, in « War, Peace and Security », Contributions to Conflict Management, Peace Economics, and Development, Volume 6, edited by Jacques Fontanel and Manas Chatterji, London, Emerald, London, 2008. Smith, R. (2010). Sécurité internationale et crise économique internationale. In J. Fontanel (Ed.), Economie politique de la sécurité internationale. Paris: Collection Librairie des Humanités, L'Harmattan. Fontanel, J., Geslin, A. (2008), Political Economy of the Humanitarian Actions, War, Peace and Security, Contributions to Conflict Management, Peace Economics, and Development, Volume 6, edited by Jacques Fontanel and Manas Chatterji, Emerald, London, 2008. Fontanel, J., Arrow K., Klein, L., Sen, A. (2003), Civilisations, globalisation et guerre, PUG, Débats, Grenoble. Fontanel, J. (1995), Les dépenses militaires et le désarmement, PubliSud, Paris. - Fontanel, J., Corvaisier-Drouart, B. (2014), For a General Concept of Economic and Human Security, in R. Bellais (Ed.), The Evolving Boundaries of Defence : An Assessment of Recent Shifts in Defence Activities, Emerald, Bingley. Fontanel, J. (2016) La sécurité économique et sociétale : pour une conceptualisation humaniste multidimensionnelle, PSEI, Politique de Sécurité Européenne et Internationale, n° 3. 2016-<http://revel.unice.fr/psei/index.html?id=822>

The social state must be financed and a new fight for the climate and ecology must be launched. The state has a special role to play in education, health and support. Tax evasion is theft, against democracy. The laws must apply to everyone. We must make the rich pay to help the poor. Economic inequality is only acceptable if it improves the living conditions of the most vulnerable. There is a link between personal wealth and the willingness to create new business. One could imagine that, in another system, pride would instead be put into contributing to the common good. Many associations, NGOs, often lead the way, with personal satisfactions at least equivalent to those of great fortunes. Tax justice is a democratic and humanist necessity.

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