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# European Union and Tax Havens

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Due to economic globalization, tax havens allow owners to place their capital, even virtually, in financial centers that are particularly undemanding in terms of taxation and control over the origin of the funds thus placed. A distinction must be made between tax havens "stricto sensu", regulatory havens, judicial havens and offshore financial centers (OFC). The United Kingdom has the greatest weight in the world, ahead of Switzerland, Luxembourg, Hong Kong, the Cayman Islands, Singapore and the United States. There is even a certain specialization of "tax havens". Until 2010, the United Kingdom or Switzerland were highly recommended by banks, but today investments in Europe are increasingly risky for Europeans themselves. At the initiative of France, a tax of 3% of the turnover (and not the profits) generated by the exploitation of digital activities has been proposed on these companies. However, tax havens" are still very present in the world of financial markets. Most multinational companies use tax havens to optimize their profits. Democracy is clearly in danger.

Tax havens, European Union, economic democracy, GAFAM

With the market globalization of the economy, the State has lost some of its prerogatives and is itself competing with other States and multinational firms in the expression of its strategic, political and economic choices. In fact, large companies have become increasingly powerful, both by increasing the size and diversity of their production, but also by actively participating in international and national public bodies in order to promote their economic and societal interests. The direct economic interventionism of the States is no longer in the odor of sanctity, except to define economic and social rules intended to improve the competitiveness of companies. If citizens legitimately maintain their pressure on public authorities to reduce precariousness or to improve their income, governments are often forced to grant significant tax advantages to the headquarters of multinational companies and to respect, by treaty, the conditions for the functioning of the market economy, with some exceptions. States are asked to intervene to develop infrastructures and national solidarity (such as schools, universities, health, pensions, etc.), while companies seek to reduce their contribution to public resources, by cheerfully practicing, often legally, tax avoidance and optimization, and sometimes, illegally, tax evasion or opportunity tax arrangements.

Due to economic globalization, tax havens allow owners to place their capital, even virtually, in financial centers that are particularly undemanding in terms of taxation and control over the origin of the funds thus placed. They are often referred to as "tax havens" and are associated with small countries, whereas a more detailed analysis shows the intervention of the great powers in these "fictitious" constructions that partially escape the usual economic and financial statistics. There is no consensual definition of the concept of tax haven, notably because this notion covers heterogeneous operations that overlap in these territories or states. Since the so-called "Panama's and Paradise's papers" affairs, the issue has finally been publicly debated thanks to the intervention of a group of media. The companies and personalities involved demonstrate the extent of the phenomenon. Bernard Arnaud uses six tax havens to optimize his own wealth. According to some estimates, multinationals move at least 40% of their profits to tax havens. The UBS bank, the largest private bank in the Swiss Confederation, is accused of illegal canvassing of clients and aggravated tax fraud by France, which is demanding a fine of 3.7 billion euros.

Faced with the importance of these revelations, it is possible to understand that too many companies and personalities are involved in these scandals for the revelations not to be made in dribs and drabs and for the operations to remedy them to be delayed in order to find the means of a general amnesty in the future, so as not to despair the people and the citizens. In a world of heterogeneous national interests, it is difficult to face optimization and tax avoidance without solidarity between the States. Within the United States itself, Delaware has such low taxes on corporate profits that it attracts corporate investment. Within the European Union, several partner states, arguing their sovereignty in matters of public finance, take advantage of this state of affairs to attract capital. In Europe, Switzerland, the City of London, Eire, the Netherlands or Luxembourg have a financial sector that is as hypertrophied as it is opaque. In 2019, Luxembourg was the world's third largest manager of financial assets under management, after the United Kingdom and the United States, and second largest market for mutual funds. The European Union is therefore not exemplary.

### **What is a tax haven?**

The term "tax haven" is often used to define the set of "non-cooperative territories" with resources of opaque origin, not linked to concrete "physical" or "material" operations. For the OECD, a tax haven includes several significant characteristics, notably the implementation of strict banking secrecy, low taxes levied, great freedom of capital movements for residents and non-residents, low formalism concerning the establishment of a foreign company, limited international judicial cooperation and a proven economic and political stability known to limit risks. The United Kingdom, for example, has small, sometimes unincorporated, territories whose fundamental basis of national or territorial product depends primarily on their highly competitive financial, legal, banking and accounting activities. Their main activity consists in promoting tax evasion or optimization, thanks to high-tech digital infrastructures.

A distinction must be made between tax havens "stricto sensu", regulatory havens, judicial havens and offshore financial centers (OFC).

- Tax havens stricto sensu have a simple tax system, at very low cost, often characterized by the anonymity of monetary and financial operations, allowing "insiders" to optimize their taxation. The member states of the European Union are trying to improve their "attractiveness" for the investments of non-residents, without any common consultation, which allows some countries to get rich at the expense of their partners.

- Regulatory havens do not respect the prudential rules of the financial system of other countries, particularly as regards the transparency of accounts or compliance with specialized international ratios. In this context, the setting up of trusts or shell companies protected by the anonymity of the real principals and the beneficiaries of the assets is supported. A voluntary system of opacity, through offshore subsidiaries, is thus put in place to modify the reality of added value transfers. For example, American exporting companies (FSC or Foreign Sales Corporations) are domiciled in their subsidiaries located in offshore centers controlled, in fact, by American capital. In 2017, in order to reduce its debt and bring financial flows back to the United States, Washington proposed the tax-free return of American companies' capital placed abroad and a light transition tax on the profits of firms "relocated" to the United States. This new pressure on public resources is characterized in the United States by the proposed reduction of the corporate income tax from 30% to 15%.

- Banking havens provide both a greater degree of secrecy for commercial and financial operations for their foreign clients and business secrecy for multinational companies, financial institutions and trusts. Banks in "offshore" centers offer very complex financial arrangements to reduce the legibility and availability of accounts. In Switzerland, tax evasion committed by foreigners to the detriment of their country of origin is not opposable to Swiss jurisdictions. Washington has put all its financial power to obtain the communication of information on the deposits and other banking operations of American nationals. In addition, the OECD calls for the development of bipartite agreements between states concerning the provision of precise economic information between countries. However, the reflexes and habits of the banks' relations with their clients often take precedence over the pressure exerted by international organizations.

- Judicial havens do not always apply the laws or rules, especially criminal ones, claimed or applied at the international level. They do not really care about the origin of their depositors' funds, they refuse or are reluctant to communicate the information necessary for another country's legal proceedings, and they are unwilling to cooperate with their foreign counterparts. London has long been considered a judicial haven because of its refusal to respond to financial investigations by public or private agencies in foreign countries. With the click of a computer mouse, criminal activities can easily be concealed from the tax and legal authorities.

## **Tax optimization and fraud in Europe**

In 2009, Forbes magazine ranked Delaware, Luxembourg, Switzerland, the Cayman Islands, the City of London, Ireland, Bermuda, Singapore, Belgium and Hong Kong as the best tax havens for business activities. The policy of "beggar thy neighbor" policy of taking measures for one's own development at the expense of neighboring countries, has often been applied unscrupulously by member states, especially towards partner countries. However, in 2014, the European Commission listed 30 tax havens, but none of them were members of the European Union or even the European continent, Switzerland included. Therefore, no action or sanctions were taken.

In 2014, a study by the Tax Justice Network, a non-governmental organization that brings together several NGOs around the world, calculated a Financial Secrecy Index (FSI) that measures the rate of opacity of countries' financial operations (with maximum opacity at 100 and maximum transparency at 0). It is a tool to compare the degree of secrecy of international financial transactions country by country. The maximum opacity of a small country may be less important than the lesser opacity of a large country that is heavily involved in international financial markets. Even if the secrecy of financial transactions is more strongly protected in Andorra than in the United States, the weight of its overall influence on global flows will be much less important than that of American financial institutions.

In this context, given its influence over many territories under its direct or indirect control, the United Kingdom has the greatest weight in the world, ahead of Switzerland, Luxembourg, Hong Kong, the Cayman Islands, Singapore and the United States. Luxembourg and Singapore have experienced considerable economic development, partly due to their financial regulations, which have often allowed them to benefit from significant economic advantages obtained at the expense of their neighboring countries, through a secret system of predation, which is similar to "parasiting". These two countries are actually ranked among the countries with one of the highest GDP per capita in the world, thanks in part to this financial strategy.

In December 2017, the list of tax havens proposed by the finance ministers of the 28 states 17 countries that do not meet international standards, namely Bahrain, Barbados, South Korea, United Arab Emirates, Macau, Marshall Islands, Mongolia, Namibia, Palau, Panama,

St. Lucia, Samoa Islands, American Samoa, Trinidad and Tobago, Tunisia. It has been widely criticized for its bias. For Oxfam, at least 35 countries should be included, including Switzerland, Ireland, Luxembourg or the Netherlands.

Since 2014, following the Panama's Papers (2015) and the Paradise's Papers (2017) highlighting the importance of investments in countries with a well-supported business secrecy, many speeches and a few decision proposals have been held, but the effects of inertia seem to outweigh the effects of opportunity regarding the reduction of the public debt of States. An international reform concerning the compliance of jurisdictions with regard to tax evasion has been underway for several years, but it comes up against the relative inaction of the "victims" and the firmness of the "beneficiary" national banking systems. There are still privileged relationships between large multinational firms and the authorities of their home and host countries, as in the case of Apple and Ireland, which allow the firm to obtain tax advantages that are often undue.

The OECD proposes that a state that feels it is a victim of tax evasion can request information from the tax authorities of another country, which will then judge the relevance and appropriateness of a response. As the OECD proposes to move forward gradually in this area, the States most attached to banking secrecy are conducting bilateral cooperation with countries with which they have little financial exchange, which however obviously takes them a long time. For example, the agreement between France and Switzerland was still not effective at the end of 2018. Berne probably needs some time to groom the stables of tax and financial fraud of French nationals.

Paradoxically in view of the declarations of the leaders of these countries, the United Kingdom (with all its dependent territories) and the United States have increased their financial secrecy index, which was already very high. Washington obliges the financial institutions of all the countries in the world to provide it with banking and financial information concerning its nationals under penalty of heavy fines to continue their activities in the USA. On the other hand, this obligation does not arise for Washington for reasons related to the respect of the American Constitution. Washington fights firmly against tax havens abroad, but not at home.

The unanimity rule that exists in the European Union is an obvious brake, particularly because of the countries that benefit from this system

and apply both their lobbying and their vetoes. In the Netherlands, Shell was virtually exempt from taxes on the 13 billion in profits it made in 2017 (just like Ikea or Starbucks). The company has set up a tax entity that allows it to accumulate the profits and losses of its subsidiaries. It has a specific status, made secret by the public authorities. This "tax ruling" agreement was decided at the time of the establishment of the company's headquarters in The Hague. The European Competition Services have only recently, in 2018, questioned this indirect aid from the Dutch state to a large company, thus distorting the rules of competition within the European Union.

The criteria and characteristics of the "rogue" countries or territories are opaque. Switzerland is the world's leading commodities trader, with 35% of oil trading, 60% of metals and 35% of cereals concentrated there. It benefits from its neutrality status, maintained during all the wars on European territory, which limits the risks of investments or placements in Geneva banks in the event of conflict. It is therefore easy to see that the Swiss laws, which are so favorable to foreign companies, are the basis for the economic development of this country. It is now competing with Singapore and Dubai (without corporate taxes). For Moodys, "in fine", the twelve "most lucrative tax havens" in 2017 were Bermuda, the Netherlands, Luxembourg, the Cayman Islands, Singapore, Jersey, Guernsey, the Isle of Man, Ireland, Mauritius, Switzerland and the Bahamas. Europe can no longer consider that "tax havens" are located far from its borders (de Pietro).

The City of London is an important tax haven because it is not obliged to respect the rules defined by the British regulatory authorities. However, it accounts for one third of foreign exchange trading, half of international equity trading, international public offerings and over-the-counter derivatives trading. It manages the "offshore" capital of a British empire partially reconstituted for the occasion. Most of the hedge funds are based in the Cayman Islands, which are under British control. The City is the place where Russian oligarchs do business and where Indian and Chinese entrepreneurs carry out financial operations.

There is even a certain specialization of "tax havens". Until 2010, the United Kingdom or Switzerland were highly recommended by banks, but today investments in Europe are increasingly risky for Europeans themselves.

### **What operations to undertake?**

The GAFAMs (Google, Apple, Facebook, Amazon and Microsoft) have taken advantage of the public's lack of understanding of the digital economy to artificially locate their activities in countries with accommodating tax regimes in order to pay on average less than 5 to 10% corporate tax in Europe (compared to 23% corporate tax on average in the EU). Because of their financial strength, these firms have a monopoly or very limited oligopoly position in their segments and can prevent other innovations or competitors from joining their ranks. These firms hire tax experts to repatriate profits to tax-friendly countries. Several conflicts have marred GAFAM's relations with the European Union.

At the initiative of France, a tax of 3% of the turnover (and not the profits) generated by the exploitation of digital activities has been proposed on these companies. This tax would only apply to companies with annual revenues of more than 750 million euros and profits in Europe of more than 50 million euros. However, this indirect tax is still prohibited by the budgetary rules of the European Union. The calculation of the tax base and the techniques for taxing the profits of multinational companies must be changed. The tax proposed by France should eventually disappear and be absorbed by a corporate tax defined by the European Union. This would involve defining a consolidated corporate tax base (CCB), with a view to standardizing the calculation of the standardized corporate tax at the European level. In this context, multinational companies would be able to file a single consolidated tax return for all operations carried out on EU territory; they would no longer benefit from the disparities in the treatment of member countries' tax systems. However, to undertake such a reform, a political unanimity of the members of the European Union is required, which is not yet the case. However, each European state is worried about Washington's reactions in the event of a specific decision to tax GAFAM.

In France, it would be necessary to modify the rules and criteria applicable to corporate income tax, notably concerning the concept of permanent physical establishment, and to add the significant adjective of "virtual" when platforms sell services from servers located outside the political territory. Some states are opposed to this solution. The BEPS (Base Erosion and Profit Shifting) proposed by the OECD, requires the transmission of the necessary financial information to multinational firms in the countries concerned by detailed data, country by country, concerning in particular their assets, their workforce, their profits and the taxes paid. The aim is to put in place a standardized tax convention concerning the exchange of information relevant to tax administrations, access to certain information in the context of taxpayer compliance and

the confidentiality of the information thus exchanged, particularly with regard to the media. For example, Ireland is to end the "Irish sandwich" in 2020. This is a tax arrangement for the creation of a company with a hybrid status that allows it to carry out its economic activities under Irish commercial law, while locating its tax residence in a tax haven, thus avoiding any tax. This operation is taken over by Apple in Jersey, under specific terms and conditions.

- Finally, tax treaties could change the distribution of profits. However, there is still no international agreement, as each country has different interests to defend against the very active lobbying of GAFAM. On the European side, the will is now to tax the added value coming from the data collected and used for advertising purposes.

On the other hand, Washington considers that GAFAM's profits should be taxed in the United States. If it seems legitimate that GAFAM pay taxes where these companies create value, it is nevertheless necessary to convince all countries to respect the European agreements. However, Ireland, the Netherlands and Luxembourg are pleading for an agreement coordinated by the OECD, notably because this tax risks reducing the competitiveness of the European Union. Germany is now in favour of a worldwide minimum tax on the profits of multinationals. However, Berlin would like to commit itself in two stages, first seeking an international agreement with the OECD and, if negotiations fail, introducing a European tax from 2021. Washington is opposed to this tax, and could initiate coercive measures in the event of its application.

On June 7, 2017, 17 countries met at the OECD headquarters, without the presence of the United States, to fight against tax evasion by multinationals. Four key measures were agreed upon:

- The refusal of tax shopping by large groups, when they set up in a country only to benefit from tax advantages,
- A pragmatic definition of the notion of "permanent establishment" which allows to identify the taxable income in a given country,
- Protection against hybrid arrangements, financial products constructed in such a way that they cannot be taxed anywhere,
- The inclusion in new tax treaties of procedures for the amicable settlement of tax disputes relating to double taxation. An arbitration commission could be set up if the amicable procedure is not settled after two years.

Tax havens" are still very present in the world of financial markets. Most multinational companies use tax havens to optimize their profits.

When analyzing the background of the problem, we can see that the United States or the United Kingdom have often supported these practices. Since September 2015, several countries have cut corporate taxes (China, Australia, UK, Italy, Japan, Israel, Norway, Namibia, etc.) and the US and France are proposing to follow suit. There is no limit to the creativity of tax experts, with tax incentives for investment and R&D, support for SMEs, the creation of special economic zones or well-defined tax havens. Differences in labor costs are no longer enough to attract multinationals. Democracy is clearly in danger

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