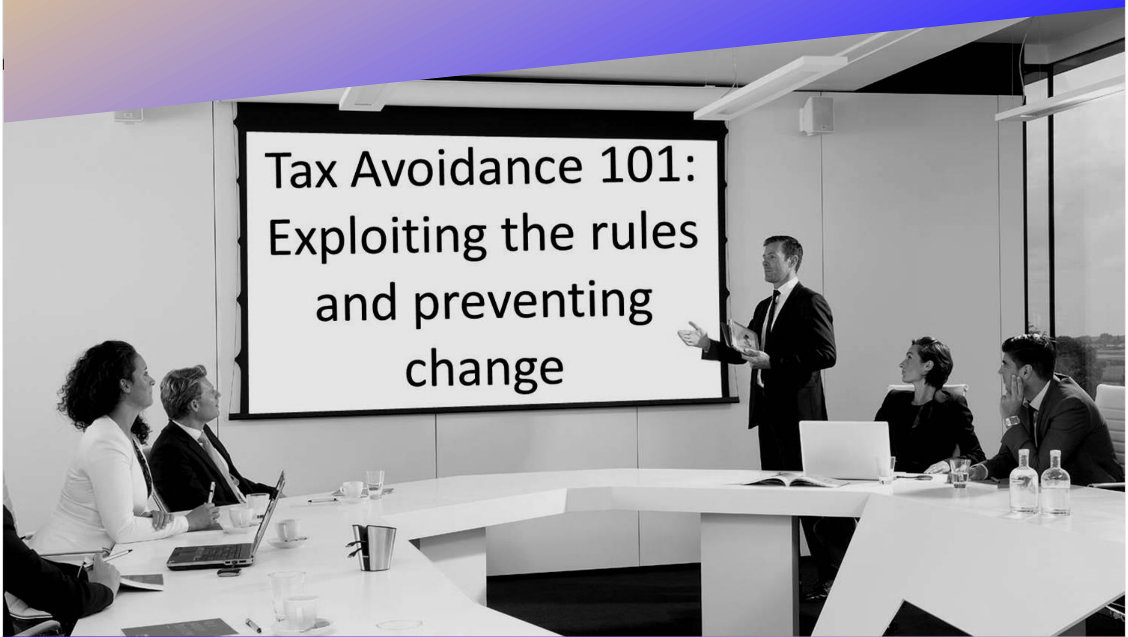
Global Tax Justice - Key Actors and Key Aims



Methodist Tax Justice Network

Case Study #3

International Tax Policy - Too Big An Issue?

One of the obstacles in the ongoing campaign for tax justice, especially at a grassroots level, can be a feeling of great complexity and even powerlessness. It's all very well targeting companies who have avoided tax, but it can be both frustrating and challenging when you start talking about *changing the rules that allow them to get away with it the first place*. It's tricky, trying to keep track of who's involved in making those rules, which rules are not working and what we want to replace them with. That is why MTJN have decided to publish this pamphlet, which we hope will summarise the roles of the major players in the international tax game, the flaws in the system as it stands, and most importantly, provide a simple list of the desired outcomes for tax justice campaigners. In this way, we hope to bring some clarity to this often confusing area, and make advocacy easier, so you can start campaigning with real confidence.

The EU

The European Union become increasingly engaged in developing policies to tackle international tax avoidance in recent years. Unfortunately, while there has been some progress on tax policy in the EU, its ability to make significant changes is limited by its inability to influence policy on the world stage, and the fact that all measures dealing with direct taxation require unanimous agreement, effectively giving states such as Luxembourg (and the UK) the power of veto.

Changes to banking regulations made in 2013 meant that **European banks are now effectively having to publish country-by-country financial information**, including the whereabouts of all subsidiaries, the number of employees and profit/loss figures in those subsidiaries, and subsidies received. However, an attempt in 2014 to extend these provisions beyond the banking sector was not successful.

More recently, the EU called on member states to adopt **national registers of beneficial ownership**, to reveal who really owns shell companies - however, only a handful of countries have agreed to make this information **publicly available**. In 2014, **full automatic information exchange** between tax authorities of information about interest on bank accounts and similar payments **was made a European standard** - however, **this applies only within the EU** and therefore does little to help developing countries. Current **investigations into tax legislation** in Luxembourg (as a result of the 'Lux Leaks' scandal), Ireland, and the Netherlands, all of which are accused of aiding and encouraging tax avoidance, are welcome, but **more needs to be done to prevent governments from creating unfair legislation** in the first place. Most recently, the European Commission has revived plans for a **European Common Consolidated Corporate Tax Base (CCCTB)**. Under this Europe-wide change in infrastructure, corporations with subsidiaries in EU member states would have their tax bill split across each country using a formula based on the proportion of capital, labour and sales in each country. Debt repayments would not be counted as tax-deductable, negating complex tax planning arrangements. However, nations are still permitted, and even encouraged, to set 'competitive' tax rates, i.e. a 'race to the bottom' .

<u>The OECD</u>

The OECD is an international body comprising 34 member-states, primarily wealthy Western nations, but also including Chile, Japan, South Korea and Mexico. Through its **Committee on Fiscal Affairs (CFA)**, the OECD has coordinated international tax policy since 1956. The **'Model Tax Treaty'** developed by the OECD is the basis for all legally binding bilateral tax treaties between nations. It also runs the **Global Forum on Transparency and Exchange of Information for Tax Purposes**, described by the G20 as “the premier international body for ensuring the implementation of the internationally agreed standards... in the tax area.”

In 2012, the finance ministers of the G20 called upon the OECD to develop a plan to tackle **'Base Erosion and Profit Shifting' (BEPS)** - a technical name for tax dodging by multinational corporations. The result was the 15-point **'BEPS Action Plan'** - a set of resolutions designed to repair the international tax system. This was released in 2013, with the aim of having all fifteen action points addressed by September 2015.

Flaws in the OECD and BEPS

THE BEPS ACTION PLAN

#1: Address the Tax Challenges of the **Digital Economy**
#2: Neutralise the Effects of **Hybrid Mismatch Arrangements**
#3: Strengthen **CFC Rules**
#4: Limit Base Erosion via **Interest Deductions**
#5: Counter **Harmful Tax Practices** , Taking Into Account Transparency and Substance
#6: Prevent **Treaty Abuse**
#7: Prevent the artificial avoidance of **Permanent Establishment Status**
#8: Transfer pricing: **Intangibles**
#9: Transfer pricing: **Risks and Capital**
#10: Transfer pricing: **Other High-Risk Transactions**
#11: Develop Methods to Collect and **Analyse Data on BEPS** and Actions to Address It
#12: Require Taxpayers to **Disclose Aggressive Tax Planning Arrangements**
#13: Re-examine **Transfer Pricing Documentation**
#14: Make **Dispute Resolution** mechanisms more effective
#15: Develop a **Multilateral Instrument**

While many saw the BEPS Action Plan as an honest attempt to make changes to international tax policy, there have been many flaws in its implementation. As it is essentially a rich countries' club, the ability of developing countries to influence OECD decision making is dwarfed by the influence of corporate lobbying groups, big businesses and professional services groups.

Since 2014, interested and affected parties have been given the chance to register their concerns through technical submissions. The concerns of civil society groups are coordinated through the **BEPS Monitoring Group**. However, a 2015 study carried out by the Copenhagen Business School on submissions made regarding BEPS 13, the action regarding Country-by-Country Reporting, showed that just 9% of submissions came from academics and civil society organisations combined, while 71% came from 'professional service firms', 'other business' and 'business associations and lobbies'. Furthermore, 52% of submissions were from Europe and 22% from North America, but Africa and South America contributed just 1% each, and Asia 4%.

Furthermore, it is widely acknowledged by tax justice campaigners that the BEPS process is simply patching up an archaic tax system that is no longer fit for purpose. The 'arms length principle', which governs the OECDs regulations on transfer pricing, allows companies to trade with each other as long as they can be proved to be sufficiently unrelated. Multinational corporations exploit the vagueness of this rule by artificially shifting profits from high tax jurisdictions (and often developing countries) to tax havens using their own subsidiaries. Allegations of this tax avoidance technique, known as 'transfer mispricing', are very difficult to prove due to the fact that the 'arms length principle' was not designed with multinational corporate structures in mind.

The IMF and World Bank

The idea that altering the current regulations on international taxation through the BEPS process will not be enough is supported by no less an authority than the **International Monetary Fund (IMF)**. Founded in 1944 and comprised of 188 member states, the IMF ensures the stability of the international economic system and, as of 2012, investigates all macroeconomic and financial sector issues that affect global stability. Its 2014 paper on **spillover analysis** (how a nation's tax policies adversely affect tax revenues elsewhere) made it clear that "current initiatives, which operate within the present international tax architecture, will not eliminate spillovers" (p35). Another IMF study released in May 2015 showed that not only has the average global corporate tax rate nearly halved since 1980, but that developing countries lose $200bn annually to tax avoidance.

The **World Bank Group** has also attempted to enforce greater corporate transparency in recent years . The World Bank Group is a family of five organizations affiliated with the UN which makes loans to developing countries. In 2011, they introduced a new policy regulating their use of offshore financial centres through the **IFC** (**International Finance Corporation**). However, this new policy was heavily based on the flawed OECD model. They have stepped up their efforts by announcing plans to have corporations applying for World Bank-funded contracts reveal their true identities, to prevent the use of shell companies.

<u>Who should be making these decisions?</u>

Many feel that the inherent inequality of the OECD's membership and structure makes it unsuitable to be the primary decision making body on international tax regulation. Campaigners have therefore backed an international tax legislation body under the purview of the **UN**, allowing equal representation for all nations. Such a body technically already exists - the **UN Committee of Experts on International Cooperation in Tax Matters** (often simply known as the **UN Tax Committee**). However, the power and membership of this committee is limited, especially as the OECD not only ensures it is under-resourced and under-supported, but also intervenes in their decision-making processes to make sure that their rules remain the 'international consensus'. A new UN tax commission would have to have governments, and not individuals, appointed to it, to allow countries some flexibility in who they send depending on the expertise needed on a particular issue. It will also need to be open to observers for transparency and accountability, adequately resourced by the UN core budget (and not a trust fund, as with the current committee) with a focus on developing country participation, and have as close as possible to universal membership. At the Third International Conference for Finance for Development in Addis Ababa, July 2015, this issue was debated, but after heavy lobbying from rich nations, including the UK, the proposal to create a new UN tax body was rejected.

In response to the shortage of alternatives to the OECD model, a coalition of civil society organisations, academics, experts and leaders from around the world have formed the **Independent Commission for the Reform of International Corporate Taxation (ICRICT).** This group hopes to expand the debate around international tax legislation and make it more inclusive.

Campaigning - What Do We Want?

Civil society organisations across the world, including the Global Alliance for Tax Justice (a five-continent tax justice action network), Oxfam, Christian Aid Action Aid and Churches, should campaign for effective change in international tax legislation, focusing on the following-

- Greater financial transparency, including making registers of beneficial ownership publicly available and making automatic information exchange compulsory worldwide;
- New international tax laws, rather than patching up the current OECD model; this would include compulsory and public country-by-country reporting across all business sectors, and prevention of exploitative taxation treaties, ensuring taxes are paid where true economic activity takes place;
- A new international body, under UN control, to give developing countries an equal say in decision-making on tax, and reduce the power of wealthy nations and businesses;
- National governments closing tax loopholes and eliminating corporate tax breaks which are of no benefit to the public, or which actively harm other nations' economic development;
- All taxes being used for sustainable development and public services, through a transparent and accountable system.

Please write to your MP and MEP, outlining the urgent need for the UK to be at the forefront of making the necessary changes within Europe and internationally. Ask your MP to put these requests forward to the Chancellor of the Exchequer for his response, and send copies of your correspondence to your MEP for their information.

The Methodist Tax Justice Network

The Methodist Tax Justice Network aims to engage all appropriate parts of the Methodist Church - and where possible other Churches – in research, education, campaigning and action for Tax Justice, and to work alongside Christian and secular bodies also seeking Tax Justice as an essential means of progress towards a more just world. Publications thus far include two case studies on Cadbury's and Zambia, and two booklets *The Bible and Tax* and *Investigating our Investments*: an insight into tax avoidance in Methodist investments; we also distribute Tax us if you can by the Tax Justice Network and Secret structures, hidden crimes by Eurodad, who co-ordinate Tax Justice Europe.

Patrons:
Dr Pauline Webb, Revd Dr Colin Morris, Revd Alison Tomlin, Baroness Kathleen Richardson, Revd Dr Inderjit Bhogal (all former Presidents or Vice-Presidents of Conference), Bishop Ivan Abrahams (World Methodist Council).

Committee:
Chair - Rachel Stephens **Treasurer -** Philip Wetherall
Convenor - Revd David Haslam **Co-ordinator -** Matthew Jones

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Find us on Facebook: www.facebook.com/MethodistTaxJusticeNetwork
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Further useful websites:
Christian Aid - http://www.christianaid.org.uk/ActNow/trace-the-tax/
Tax Justice Network - http://www.taxjustice.net/
ActionAid - http://www.actionaid.org.uk/take-action-for-tax-justice
Oxfam - https://www.oxfam.org/en/campaigns/even-it-up
Global Alliance for Tax Justice - http://www.globaltaxjustice.org/