



TAX FAIRNESS IN THE BANKING SECTOR

On October 5 2015, 62 countries joined forces to launch a widespread program to combat corporate tax cheating, as part of the OECD and G20 initiatives on Base Erosion and Profit Shifting (BEPS). The banking sector was one of the first, for which tax transparency requirements under the form of country-by-country reporting were formulated with the 2013 European CDR IV Directive. Banks are the first users of tax havens or secrecy jurisdictions, which not only raise concerns in terms of tax avoidance and prevention of corruption but also constitutes a challenge in terms of regulation and financial stability. On a fiscal level, banks have a double responsibilities: as companies, they have to comply with the law and be transparent; as financial intermediaries, they have a role to play to request tax transparency from their clients, individual ones but also companies to which they provide accounts and financing services.

Vigeo Findings

Our latest review of the European Diversified Banks sector – covering 33 large institutions – showed improved reporting of banks on their tax responsibilities, compared to what we observed in 2013:

- **54.5% of the banks under review disclose commitments on the prevention of tax avoidance, against 42.8% in 2013.** Amongst the good practices, Société Générale has adopted a specific Tax Group Code of Conduct and committed not to provide assistance or encouragement to clients to breach tax laws and regulations, with internal rules to prevent the development of operations in countries qualified as uncooperative tax havens by the OECD.
- **In terms of implementation, 30.3% of the banks describe systems in place to prevent tax avoidance of their clients, while 33.3% mention to have prevention system to prevent their own corporate tax avoidance.** Among best practices noticed, BBVA and Rabobank signed cooperation agreements with the tax national authorities in countries like Spain, Great Britain, the Netherlands, Australia.



• However, the sector is exposed to many allegations concerning tax fairness. **55% of the companies in the panel were criticised for their tax avoidance strategies.** For instance, 39.4% of the banks were cited in the ‘*Luxleaks*’ scandal revealed in November 2014 by the International Consortium of Investigative Journalists relating to secret tax agreements approved by Luxembourg authorities, namely ABN AMRO, UBS, Deutsche Bank, Credit Agricole, Societe Generale, BNP Paribas, BFCM, HSBC, Skandinaviska Enskilda, Unicredit, DNB, Groupe BPCE and Natixis. Some banks were also subject to inquiries regarding tax fraudulent behaviours (i.e Barclays, Unicredit, KBC) or for their involvement in strategies to help clients’ tax evasion. In particular, in February 2014, Credit Suisse has been fined USD 2.6 billion for having helped U.S. clients evading taxes.

On background, Vigeo’s methodology takes into account the rising expectations of stakeholders and the evolving regulatory frameworks. Vigeo assesses as such the level of companies’ commitment in terms of responsible tax strategy, in terms of transparency on their tax payment and on information provided to justify their presence in offshore financial centers and non-compliant jurisdictions.

Forward

Tax fairness is one of the most important business responsibilities towards society, and in particular for banks as transnational companies, that have in addition received support from taxpayers since the financial crisis. A recent report from the European Parliament highlights that “*tax havens and secrecy jurisdictions that allow banking or financial information to be kept private, combined with ‘zero-tax’ regimes to attract capital and revenues that should have been taxed in other countries generate harmful tax competition, undermine the fairness of the tax system and distort trade and investment, particularly affecting developing countries, with a loss of an estimated USD 189 billion of tax revenue annually*”ⁱ. In addition, as showed by recent tax scandals, the lack of system to ensure tax fairness can be also a source of material risk for banks.

To tackle these negative impacts, the **EU Capital Requirements Directive** (CRD IV 2013/36/EU) requires banks and investment firms to publicly disclose – as of 1 January 2015 – information for



every country where they operate, namely their type of activities, turnover, full-time employees, profit/loss before tax, tax paid, public subsidies received.

The UE Commission is currently assessing whether a country-by-country reporting should be extended to all sectors of the economy. In March 2015, the Commission presented a package of tax transparency measures, and in June 2015, it adopted an **Action Plan for fair and efficient corporate taxation in the EU**ⁱⁱ. From its part, in July 2015, the European Parliament voted some measures to increase the transparency of the finances of multinational corporations, through as part of the Shareholders' Rights Directive (SRD).

The European regulation is in line with the **Action Plan on Base Erosion and Profit Shifting (BEPS)**, endorsed by G20 leaders and **led by the OECD since 2013**. In September 2014, the OECD progress report proposed reforms to reduce multinationals' tax avoidance and recommended that companies disclose country-by-country data to tax authorities. On October 5 2015, the OECD presented its BEPS final package of measuresⁱⁱⁱ to reform of the international tax, which include minimum standards on country-by-country reporting, treaty shopping, curbing harmful tax practices, and effective mutual agreement procedures.

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ⁱ "Report on tax avoidance and tax evasion as challenges for governance, social protection and development in developing countries (2015/2058 (INI))" – European Parliament – 09.06.2015

ⁱⁱ "Communication from the Commission to the European Parliament and the Council, a fair and efficient corporate tax system in the European Union: 5 key areas for action" – European Commission – 17.06.2015

ⁱⁱⁱ <http://www.oecd.org/ctp/oecd-presents-outputs-of-oecd-g20-beps-project-for-discussion-at-g20-finance-ministers-meeting.htm>