Research Report

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Forum: *General Assembly Second Committee*
Issue: *Aggressive International Tax Avoidance*

Position: *Deputy Chair*

Introduction

The United States Supreme Court has stated that "The legal right of a citizen to decrease what otherwise would be their taxes or to avoid them altogether, by means which the law permits, cannot be doubted." The act of avoiding to pay ones' taxes through means that are strictly speaking legal but against the intention of the law cannot be prosecuted, but can raise a question of morality. Should someone benefit from the loopholes of legislation to avoid their duty to the State? Few people enjoy paying taxes, but it does provide the State with enough resources to make life better for its residents. Taxes are used to pay for public education, healthcare, infrastructure and safety. These are all services that citizens cannot live without. Avoiding to contribute to these services, albeit through legal procedures, is something many citizens detest tax avoiders for, for it reduces the income of the State and therefore limits their possibilities. In a recent scandal, the Panama Papers, it has come to light that hundreds upon hundreds of corporations, politicians and high-profile individuals have been using schemes to avoid paying taxes, proving that this is a current issue that must be tackled.

Definition of Key Terms

Tax
A compulsory contribution to state revenue, levied by the government on workers' income and business profits, or added to the cost of some goods, services, and transactions.

Tax Avoidance
The use of laws and legal procedures in a region to reduce the amount of payable tax. Jurisdictions also include laws that allow for the reduction of taxes to benefit citizens. An example is the Dutch mortgage interest deduction, which makes it easier to buy a house. This is beneficial for homeowners and improves the economy. However, some individuals or corporations use intricate schemes to misuse these laws against the intended use of the laws. This type of tax avoidance is called Aggressive tax avoidance.

Tax Evasion
Reducing the amount of tax payable through illegal procedures.

Tax Havens
Jurisdictions which facilitate reduced taxes and are therefore favourable for corporations, individuals etc. These jurisdictions include nations such as but not limited to; The Principality of Monaco, The republic of Ireland, Switzerland, the Cayman Islands and the Isle of Man.

General Anti-Avoidance Rules (GAAR's)
Laws that prohibit aggressive avoidance of taxes. The GAAR's have been accepted in several countries including; Canada, New-Zealand, Australia, South Africa, Norway, United Kingdom and Hong Kong.

General Overview

As stated, tax avoidance is the use of legal procedures to avoid or decrease the amount of payable tax. This offers us the question of why this is an issue. While aggressive tax avoidance is technically legal, it does have a large impact on economies all around the globe. In a speech given by President of the EU Commission José Barros in April 2013, he stated that tax evasion, and tax avoidance, annually cost the European Union (EU) €1 Trillion. Money which he believes should be "spent on education, skills, healthcare, infrastructure and investment in MEDC's and LEDC's." In his speech Barros called for common action in the EU against tax havens and aggressive tax planning, by saying "Tax havens are *heavens* for avoiders and fraudsters, but are *hell* for law abiding citizens and tax-payers" This cannot just be found in the European Union but has also been stated in the 2014 United Nations Trade and Development Report. The report covers many aspects of economic and financial situation globally, but when reviewing tax avoidance concluded the following three things:

I) Tax avoidance/evasion schemes leads to huge losses in public revenue.
II) A large proportion of financial flows resulting from 'creative accounting' goes through offshore finance centres (OFC's) based in tax havens.
III) Many flaws remain in international taxation architecture which has failed to properly adapt to current reality.

These three points form the basis of the issue at hand. Not only does aggressive tax avoidance negatively influence tax payers due to large losses of income to the State, but the jurisdictions that facilitate this are not being taken on.
To fully understand the issue at hand and create a viable solution, it is useful to also understand how aggressive tax avoidance can take place. There are several ways to avoid paying (full) tax:

I) Establish a company or subsidiary in an offshore jurisdiction, such as a tax haven. Then the owner must move their Tax Residence to the tax haven. It is not possible to only move ones assets to a tax haven, but the owner must reside there also. This is because of bilateral taxation treaties that prevent double taxation over where income was earned and where the receiver resides, however there are few of such treaties with tax favourable jurisdictions. This method allows the receiver of income to have reduced, or low, tax over their income due to low, or non-existing income tax rates in tax havens.
II) Create a legal entity, such as a trust or company, to which ones belongings are donated. These entities are transferred offshore where they can earn income (with income tax). Later, these earnings are transferred to the owner, who must then pay capital gains tax. This may seem unprofitable, to tax income as income and as capital gains, however, the income tax in tax havens is at a low rate or non-existent. Also, there are several countries that do not have a capital gains tax. The problem with this method is that the settler, or creator, of the trust, may not be a trustee, or benefit from the trust in any way.
III) Invest in tax shelters. These investments can be stored without being taxed due to

their special nature. Tax shelters can include houses, foundations or the Individual Retirement Account (IRA). Some tax shelters are questionable or even outright illegal.

There are many more aggressive tax avoidance methods to be found, and the reason for their existence is simple. Due to legal vagueness, meaning vague definitions of legal terms, there are many loopholes to the intended meaning of the law that was written. Legislators try to close these loopholes by adding more and more legislation. This leads to a cycle of ever more complicated legislation and avoidance schemes, benefitting larger corporations with the resources to pay for 'creative accountants' who provide legal insight and tax planning schemes.

The consequences of such schemes can be extremely negative for states. In 2015, a tax avoidance scheme was brought to light when Anderson Group, a company that provides support to Recruitment Agencies, promoted a scheme that exploited the Employment Allowance in Great Britain. The scheme was that a recruitment agency would create several businesses, where each a few workers would be placed and then allow these 'companies' to claim their workers' £2000 National Insurance bill. This Bill was meant to encourage smaller businesses to hire more workers. This particular scheme was proposed by sales manager Ian Moran, however, the recruitment agency showed no interest in using the scheme. To encourage the agency, Mr. Moran suggested they use the gains of the scheme to "ride Bentleys or buy ski chalets". The estimated profit of the scheme stands at £300 000 annually. Through further suggestions of Moran, the HM Revenues and Customs (HMRC) would lose £20 Million in National Insurance contributions each year. While this may seem a small amount of loss for a government working with billions of pounds, this is the loss that would come from just one company. The impact on governmental income, if this scheme were used by many more, or all, of similar companies, would be catastrophic.

Major Parties Involved

Tax Haven jurisdictions

Tax Havens play a major role in this issue as they facilitate tax avoidance. The absence of double taxation laws and other regulations in these jurisdictions has a large impact global economies.

The Organisation for Economic Cooperation and Development

The OECD was one of the first organisations to attempt to tackle tax avoidance and other tax matters. Their lobbying laid the groundwork for treaties and already decreased the threat of tax havens by imposing standards on their legislation.

The Tax Justice Network

The TJN adopted the Financial Security Index with stricter regulations and standards than the list created by the OECD. Their Financial Security Index (FSI) has even further increased the cooperation with tax haven jurisdictions.

The European Union

The EU has several tax havens under its jurisdiction, such as Monaco, Ireland and Switzerland. The influence of their low tax rates has a large effect on the income of the

Union. The benefit from reducing tax haven power will improve living conditions in the Nations due to higher income that allows higher government spending on services.

Timeline of Events

1998	The Organisation for Economic Cooperation and Development (OECD) takes the lead in addressing the problem of tax havens at an international level by creating a list of all tax havens that fall under their qualifications thereto.
2000-2002	All but 7 nations on the OECD Tax Haven list comply to the OECD's standards and have been removed from the list. The remaining 7 have been named un-cooperative.
2003-2009	The final 7 nations have made commitments to the OECD standards and have also been removed from their list.
September 2009	The Global Forum, first established in 2000, is re-established in response to a call from the G20 to: strengthen exchange of information as so to protect the tax bases of governments from non-compliance.
2010	The United States of America adopts the Foreign Account for Tax Compliance Act (FATCA)which requires financial firms to report accounts held by US citizens to the Internal Revenue Service (IRS).
2013	Financial Security Index (FSI) is developed by the Tax justice Network (TJN), highlighting places that provide safe havens for tax avoiders and tax evaders
2014	47 countries agree to the Common Reporting Standard (CRS), as a standard of automatic exchange of information regarding residents' incomes and assets. The CRS is based on the FATCA implemented by the USA.
April 2016	After more than a year of research the Panama Papers come to light in the media as documents that highlight several financial illegal activities including tax avoidance and evasion.

Previous Attempts to solve the issue

In 1968 the Ad Hoc Group of Experts on Tax Treaties between Developed and Developing Countries was established as a subsidiary body of the Economic and Social Council (ECOSOC). In 2004 it was renamed the Committee of Experts on International Tax Matters. The Committee has the main task of updating and maintaining the Double Taxation Treaties, but also creating framework to enhance and promote international tax legislation.

In March 2002 Heads of State gathered in Monterrey, Mexico, to confront the challenges of financing for development. During the conference a consensus was reached, in which was called for the strengthening of international tax cooperation.

In 2010 a resolution passed in the ECOSOC which called for the presentation of a report on the strengthening of tax institutional arrangements to promote international cooperation in tax matters and also called for a discussion within the council on this issue.

In 2015 the Independent Commission for Reform of International Corporation Taxation (ICRICT) was initiated by a broad coalition including; ActionAid, the Global Alliance for Tax Justice, OxFam and the Tax Justice Network. The Commission has worked since 2014 to establish a non-partisan body to propose tax reform in public interest.

Possible Solutions

Reduce Legal Vagueness
By creating international definitions of legal terms that provide little to no potential of incorrect interpretation, States could prevent legislators from opening loopholes in tax law through which avoiders could reduce or avoid paying tax.

Creating a minimum contribution
More Economically Developed Countries (MEDC's) could establish a minimum income tax for corporations to contribute. This would provide the state with a minimum amount of income from the tax that exceeds the amount contributed when corporations take part in tax avoidance schemes.

Strengthen Enforcement
States should ensure that tax administrators have adequate resources, authority and legal protection to collect taxes owed Multinational Corporations (MNC's). This would motivate corporations to pay taxes with the possibility of legal action taken against them.

Increase Transparency
Require state-by-state reports on MNC's incomes and assets and make these available to tax administrators and the public. Due to the interest of investors and public

opinion, corporations would find that taking part in tax avoidance schemes publically would have negative impact on their businesses.

Build Inclusivity into International Tax Cooperation
Establish an Intergovernmental Commission in the UN and begin drafting conventions to combat abusive tax practices and eventually adopt consolidation and apportionment system for taxing global corporate profits. The Intergovernmental Commission would become an important body of the UN to prevent tax abuse, by discussing and solving the variety of issues that arise from it. As GA2 it is our task to solve this issue ourselves and not to send it to another Committee, however, the establishment of Commission could create a method of preventing such issues from arising in the future.

United Taxation legislation
Establish multilateral taxation conventions that apply to all States included in the convention. This means nations shall have similar or the same tax laws which allows nations to cooperate in applying legal measures against aggressive tax avoiders. This could also reduce the amount of tax havens, if they comply to the legislation proposed in the conventions. The convention would also pose a platform for multinational anti-tax avoidance programme, to reduce tax avoidance in the nations involved. This will benefit these nations due to the saving of their losses as a result of tax avoidance schemes.

Useful documents

www.un.org/en/ga/second/70/oct23icrict.pdf - link with information regarding ICRICT and their proposals.

www.unctad.org/en/PublicationsLibrary/tdr2014_en.pdf - Trade and Development Report 2014. Tax Avoidance from page 171 onwards.

www.un.org/en/development/desa/policy/cdp/cdp_background_papers/bp2014_24.pdf - Background information of tax avoidance presented by the Department for Economic and Social Affairs.

www.un.org/esa/ffd/tax/2013TMTTAN/A9_LD_Omoyle.pdf - Information on Tax Treaties, tax avoidance and tax evasion.

www.un.org/esa/ffd/monterrey/MonterreyConsensus.pdf - The Monterrey Consensus