Funding the Future

The USA will avoid being cast a a tax haven - but that ...

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I mentioned earlier today that there was a chance that if the OECD applied its new tax haven criteria correctly that the USA, Israel and Turkey might join the more usual suspects on a list of tax havens. Now the Tax Justice Network has published a press release summarising the ruses used to ensure that this is not the case, which effectively discredit the whole process. I share it in full, as follows:

Press Release: For immediate release, July 22, 2016

The G20 and OECD tax haven blacklist proposals risk becoming another whitewash

This weekend G20 ***Finance Ministers from the G20 countries will meet in China. One of the items on their agenda will be to agree the criteria for identifying non-cooperative jurisdictions with respect to tax transparency, which the OECD has been mandated to establish. The first details of the proposals have become public and our analysis gives rise to grave concerns that the criteria are, in the same way as past attempts at blacklists, weak and ineffective. The USA in particular is likely to escape blacklisting because of the peculiar nature of the criteria.***

The three criteria the OECD has come up with for assessing non-cooperative jurisdictions are summarised below. Each country has to meet ***two*** of the three in order to escape blacklisting:

* If the country gets a rating of "largely compliant" or better from the OECD's ***Global Forum, as regards the "exchange of information on request" standard of transparency.***

* ***The country commits to adopting automatic information exchange (the so-called Common Reporting Standard, CRS), and to begin exchanges by 2018 at the latest.***

* ***The country has signed the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (MCMAA), a multilateral framework***

for all kinds of information exchange, or if it has what the OECD considers a sufficiently broad exchange network providing for exchange of information on request and automatic exchange of information.

The first and most obvious escape route from the blacklist is that a country only needs to fulfil two out of these three criteria.***[1]*** ***A country can implement the 'on request' standard, plus the MCMAA, yet shun the OECD's much more comprehensive automatic information exchange project — and avoid being blacklisted.***

The second escape route concerns problems with ***criterion 1***:

* A jurisdiction only needs to be 'largely compliant'. Given that the standards are weak anyway it appears unjustified to be satisfied with 'largely compliant'. If there is a loophole (and thus not full compliance), everybody knows by now that determined evaders will be satisfied with continuing to exploit that single loophole.

* The ***peer reviews of the Global Forum*** ***which underlie the assessments are politically biased. For instance, there are US legal entities (single-member LLCs without US-sourced income) for which there is no ownership information whatsoever in the USA. Yet the Global Forum deems the US 'largely compliant'.***

* ***Similarly, Germany and Switzerland both allow bearer share companies — some of the most pernicious secrecy facilities ever — perfect for criminals. Yet Germany's company ownership is rated largely compliant — while Switzerland's bearer shares are rated as non-compliant.***

The third escape route concerns ***criterion 2***, the commitment to engage in automatic information exchange (under CRS). The USA should not be among the jurisdictions named as being committed to implementing the CRS because the USA refuses to implement the CRS. Yet the ***USA is named in a footnote*** ***in the relevant OECD document. This risks erroneously treating the USA in any eventual blacklist as being in compliance with criterion 2.***

Alternatively, a jurisdiction could 'commit' to participating in the CRS, and then delay or obfuscate, as the Bahamas and several other jurisdictions are doing.

The fourth escape relates to ***criterion 3***, relating to the signature of the MCMAA. Signature of an international legal convention alone does not result in effectiveness of that convention. It is only when ratification takes place (formal approval in parliament), that the convention comes into force. Many years can pass between signature and ratification. Germany, for example, ***signed it*** ***in 2008 but did not ratify it until last year. The United States is among those countries which have not yet ratified the amended Convention[2], meaning that the US will only provide data to***

OECD members.

If criterion three is not strengthened to require actual ratification of the amended Convention, the USA will no doubt be tempted to maintain its full tax haven secrecy status towards all non-OECD countries, while escaping blacklisting by the OECD and G20.

Moran Harari, a Tax Justice Network analyst, says:

“The litmus test of the value of the new OECD criteria will rest with the treatment of USA. That only two of the three criteria must be met is a worrysome feature, and combined with the requirement that signature of the multilateral tax convention is enough, appears to be tailored to let the US wriggle through. The G20 summit have to make clear that ratification of the amended Convention and three criteria have to be part of OECD’s listing approach.”

The Tax Justice Network’s Nicholas Shaxson, author of Treasure Islands, says:

“The OECD doesn’t seem to have learned its lesson from its last big war on tax havens, which began in 1998. It identified the small, weak players as the miscreants and whitewashed the big players. That campaign collapsed under the weight of its own contradictions. If the OECD doesn’t summon up some courage to do the right thing this time, it puts this whole promising edifice of global transparency at risk.”

Andres Knobel, a Tax Justice Network analyst, says:

“The OECD standards pretend to create objective measures, yet when analysed in detail they reveal double standards. How else would you explain that the peer review of the US acknowledges, among other, in the case of single-member LLCs with no income originating in the US there may be no ownership information whatsoever, yet the GF concludes that the US is largely compliant?”

Markus Meinzer, a director of the Tax Justice Network, says:

“It is an error for the OECD to set the initial bar so low that it suffices for any country to score ‘largely compliant’ on the exchange upon request standard. More than a decade after the endorsement of this standard, surely full compliance is a reasonable expectation?”

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About the Tax Justice Network

We are an independent international network focused on tax justice: the role of tax in society, and the role of tax havens in undermining democracy, boosting inequality and corrupting the global economy. We seek to create understanding and debate, and to promote reform, especially in poorer countries. We are not aligned to any political party.

[1] It is not necessarily enough to fufil two of three criteria. If a jurisdiction is determined by the Global Forum to be "non-compliant", or is blocked from moving past "Phase 1", or where it was previously blocked from moving past Phase 1 and has not yet received an overall rating under the Phase 2 process, it will be considered a non-cooperative jurisdiction, even if it has met the benchmarks of two of the three criteria. As of February, the blacklist comprised the financial giants of the Federated States of Micronesia, Guatemala, Kazakhstan, Lebanon, Liberia, Nauru, Trinidad and Tobago, and Vanuatu.

[2] The list of countries that have not yet ratified the amended Convention as of February 2016 are: "Andorra, Barbados, Brazil, Bulgaria, Chile, El Salvador, Gabon, Guatemala, Israel, Kenya, Liechtenstein, Monaco, Morocco, Niue, Philippines, Senegal, Switzerland, Turkey, Uganda, United States." (page 28, in: www.oecd.org/tax/transparency/about-the-global-forum/g20/global-forum-G20-report-shanghai-february-2016.pdf; 22.7.2016).