CCFD-Terre Solidaire report published on the 13th of October 2011 "Tax Havens: the Last-chance G20 Summit. A 12-point assessment after three years of negotiations"

A full translation of the report will be available soon online (www.ccfd-terresolidaire.org)

In April 2009, the G20 countries made the fight against tax havens their main answer to address the financial crisis. Two and a half years later, we cannot help but note that the G20 seems stalled on this issue.
This document provides a 12-point assessment of the situation.

Question 1 : Have tax havens disappeared?

There are now only five jurisdictions left on the OECD's list of uncooperative jurisdictions. But this doesn't mean that there are no more tax havens – quite the contrary. According to Tax Justice Network's 2011 Financial Secrecy Index (FSI), there are 54 jurisdictions that cultivate a strong degree of secrecy.
Up until then, the lists were made to enable blacklisted countries to be removed from them quickly. This time it's essential that the OECD does not consider the problem resolved because there's nothing on the lists anymore, and that it publishes new ranking, especially based on the conclusions of the Global Forum. (see question 4)

Question 2 : Can the G20 publish an exhaustive list of tax havens?

It's unrealistic to ask the G20 states to publish an exhaustive list for the simple reason that they alone represent 39% of international secrecy.
In April 2009 already, the jurisdictions politically tied to the G20 countries (Jersey, State of Delaware, City of London, Macao) were spared.
The issue should be approached first by **overcoming the compartmentalisation that has prevailed within international institutions for more than 10 years** – among tax havens (OECD), judicial havens (FATF) and unregulated jurisdictions (FSB). The **Tax Justice Network** does so by measuring the degree of secrecy of jurisdictions in its index. Among the top "secrecy jurisdictions", we can find Switzerland, the Cayman Islands, Luxembourg, Hong Kong, and the United States.

Question 3 : What use have the OECD black and grey lists been?

In April 2009, 42 jurisdictions were on these lists. Thirty-seven were removed after having accepted to sign at least 12 tax information exchange agreements. Many of these jurisdictions had up to then excluded the very idea of providing information about the subject, proving that pointing the finger of shame at jurisdictions is an effective strategy for obliging them to take action.

However, the criterion of 12 agreements for inclusion on the white list is much too soft, all the more so because it was enough for many tax havens to sign the agreements among themselves to be removed from the list, and – once removed – they are no longer really subject to international pressure.
The OECD acknowledges that this is of course the initial part of its action: it's counting on the evaluations by the Global Forum to measure the effectiveness of the signed agreements.
Beyond bilateral exchange of information, **more promising options need to be followed up, such as targeting multinationals companies and their financial intermediaries.**

Question 4 : Does the bilateral exchange of tax information enable tax authorities to track down evaders better?

Much was expected from the **OECD peer-review mechanism**, which was supposed to go further than the lists by measuring how the exchange of information effectively occurred after the agreements were signed. On October 13th 2011, 59 reports had been published by the Global Forum, which is in charge of the evaluation. The OECD claims to have reached very convincing tax transparency results. However, it seems essential not to claim victory too early, as many jurisdictions have not gone along properly. Austria, for example, has now signed 90 agreements, but only 14 have been judged to be in compliance with international standards.
And, above all, the Forum refuses to give any figures on the number of times these agreements have effectively been used to exchange information (number of requests received by a country, number of times it has responded and given information or not etc.).
Finally, the evaluation process will finish only in 2014, and we don't know what will happen afterwards. In 2009, the G20 mentioned possible collective sanctions that could be applied to the jurisdictions that did proceed properly with tax cooperation.
We're just asking to see.

Furthermore, it's important not to count entirely on bilateral exchange of information:
A multilateral approach would make it easier to include Southern countries, for which information-exchange agreements take a long time and are difficult to negotiate.
This is the principle of the **Multilateral Convention on Mutual Administrative Assistance in Tax Matters**, which was opened up to developing countries in 2010. It's an initiative that's interesting but that has no meaning if the tax havens are not obliged to adhere to it.
Automatic exchange of information is also an interesting option being explored by the European Union as part of its Savings Directive (whose death warrant has nonetheless been signed by the Rubik agreements), as well as by the United States, which with the FATCA law is preparing to establish the principle of information exchange directly with foreign financial actors.

Question 5: What have the greatest victories of the tax authorities been?

In terms of number of evaders identified over the last two years, the pragmatic methods of tax authorities have greatly prevailed over the approach put forward by the OECD.
The names of more than 30,000 taxpayers have been obtained thanks to stolen files purchased by the German, British and American tax authorities. Thanks to the HSBC list, France has similarly recovered €1.3 billion in back taxes.
The United States has moreover understood the advantage of demanding greater transparency directly from financial intermediaries: along with the **FATCA law**, they now plan to ask foreign banks to communicate automatically information about their American

clients; if they do not, those banks will no longer have access to the US market. This is an initiative that would be good to reproduce at the European Union level.
On the other hand some countries seem discouraged by the poor results in the fiscal cooperation. Germany and Great Britain have thus chosen to sign bilateral agreements with Switzerland **(the Rubik Agreements**), which would enable the latter to withhold taxes for them on the money hold by Germans and British in Switzerland in exchange for maintaining its bank secrecy. These two big European countries were attracted by what are probably very greatly overestimated tax revenue, but they are above all calling into question the very idea of fiscal transparency and destroying the painstaking efforts being made by the Global Forum and the European Union on the topic.

Question 6: Are tax havens becoming afraid?

Along with the financial crisis**, tax havens found themselves vulnerable again**. Faced with the risk of damage to their image from having the international community point the finger at them, their reactions have been many and varied. Some territories have chosen to keep a low profile and to comply to some OECD requirements. Others have chosen to play the communication card like Monaco, which treated itself to a €4.5-million publicity campaign to polish up its image. But it's Switzerland that counter-attacked the most violently, with the Rubik Agreements signed with Germany and Great Britain, thereby avoiding exchange of information and harming what progress the Global Forum and the OECD had made to promote tax transparency.
Multinational companies, which are the foremost clients of tax havens, are also increasingly exposed to this risk to their reputation. Public opinion is in fact less and less tolerant of companies avoiding taxes with impunity in a period of budgetary restraint. This can be seen by the increase in the Uncuts movement or by the wave of indignation that followed last June's Carrez report, which mentioned the indecent difference in tax burden in France between large corporations and small and medium enterprises (up to 21 points).

Question 7: What has changed for banks?

The main initiatives to enforce bank regulation have come chiefly from governments and not the G20 countries.
It must be acknowledged that, compared to the laxity before the crisis, the bank environment has changed considerably over the last two years. But **much remains to be done, especially in the field of financial regulation**. The FSB's (Financial Stability Board's) list of offshore financial centres presenting a risk for international financial stability, for which we've been waiting for more than a year, should be published before the Cannes Summit.
The most significant revelations have probably been in transparency:
For example, we can mention the American **FATCA** (Foreign account tax compliance act) law, which from January 2013 will oblige foreign financial firms wishing to invest in the US market to communicate automatically to US tax authorities information concerning their American clients.
But it is **the French administrative regions that have gone furthest in requiring transparency**: 17 out of the 22 regions have made public commitments against tax havens, with 9 requiring country-by-country financial transparency from their financial partners.
Finally, what has above all changed for banks is their image in public opinion: they are being increasingly blacklisted for the role they play in the crisis, or even brought to court. They know that they can no longer allow themselves to be taken as defenders of secrecy. It would be a pity not to take advantage of this situation.

Question 8: What has changed for the multinationals?

Up to now, the G20 has not studied the question of multinationals, which are nonetheless the foremost clients of tax havens. Indeed, **more than 20% of the subsidiaries of the 50 largest European companies are located in tax havens.**
Once again, the most significant progress has come from states. France, for example, has taken a few steps towards transparency by more strictly taxing corporate transactions with tax havens. The problem is that it does so based on its own list of just 18 inconsequential jurisdictions that make up only 0.2% of global finance.
The United States went furthest by adopting the Dodd-Frank act, an extremely interesting first step towards **country-by-country reporting**. The extractive companies listed in New York will now be obliged to inform the US tax authorities annually regarding payments to each government of the country where their extractive activities are located. This is a true anti-corruption measure that will enable citizens from developing countries to ask their governments to give accounts on the use of oil, gas and mining revenues.
The European Commission is about to adopt a similar law that has been extended to forestry companies and non-listed companies. To make this reporting a real instrument to fight tax avoidance, it's nonetheless important that companies also publish their turnover, profit and number of employees, etc., on a country-by-country basis. This is the flagship proposition put forward by civil society in the last several years, and this information would make it possible to verify whether the taxes paid do effectively correspond to the reality of the company's economic activity.

Question 9: What has changed for organised crime and corruption?

Not much :
A list of jurisdictions conducive to money-laundering was published by FATF (Financial Action Task Force) in February 2010 and updated in June 2011 based on whether or not countries were complying with 49 recommendations, **but it is incomprehensible**. It singles out only developing countries and spares countries such as Luxembourg, whose rate of complying with FATF's recommendations is nonetheless much lower than that of countries on the blacklist (20%, compared to 30% for Turkey for example).
In terms of preventing corruption, the most interesting initiative is again that of the United States, with its Dodd-Frank act (see Question 8).
The issue of restitution of the stolen assets of dictators is also making progress, but more thanks to civil society. For example, after having been refused many times by the public prosecutor, the lawsuit concerning ill-gotten gains brought against the Obiang, Sassou N'guesso and Bongo families by Transparency International France was received as admissible by the French Court of Appeals in November 2010. This historic decision could (finally) make it possible to shed light on the conditions of acquisition of wealth under investigation, but above all on the role of intermediaries such as banks or certain companies, the ramifications of which often involve acknowledged tax havens.

Question 10: What has changed for the developing countries?

The developing countries have not really benefited from the feeble progress made in transparency at the international level since 2009. Illicit flows leaving Southern countries are now reaching €950 billion. Further, **the solutions being implemented are not up to par with what's at stake**: Out of 420 tax information exchange agreements signed since April 2009 (TIEA), only 4% concern emerging countries, and only one poor country (Ghana) has benefited from them.
We can nonetheless be glad of the fact that c**ountry-by-country reporting is increasingly establishing itself as a credible option**. And it is especially being discussed in the G20 Development Working Group, within the informal OECD TaskForce on tax and development (in which four Southern countries have taken a stand in favour of mandatory country-by-country reporting), and even at the IMF!

Furthermore, **a growing number of voices of political authorities from Southern countries are being heard on these issues** and could eventually turn things around. The Argentine Minister of Foreign Affairs, for example, declared in July 2011 that he expected the next G20 summit to take concrete positions to fight tax havens and financial speculation.

Question 11: What use has mobilisation by civil society been?

Despite the complexity of the topic, the citizen mobilisation against tax havens is improving.
It's becoming increasingly structured: at the international level with the Tax Justice Network, of course; and in France with the Tax and Judicial Havens Platform, which now includes around 15 NGOs and trade unions. A network for tax justice was created in Africa in 2007 and then in Latin America in 2009 (Latindadd), and it's now spreading in Asia.
This year of French presidency of the G20 represents an unprecedented period of mobilisation, especially at the international level, along with the global "End Tax Haven Secrecy" campaign, which brings together more than 50 organisations in nearly 30 countries.
In addition to the collective mobilisations in which CCFD-Terre Solidaire is a very active stakeholder, we launched our own campaign "Help Money Leave Tax Havens" in October 2010, in order to raise the awareness of the general public on the subject.
Furthermore, the expertise of civil society is increasingly acknowledged, and its influence is growing more and more. For instance, it's the French campaign "Stop Tax Havens" launched in June 2009 by French NGOs and trade unions that led to 17 French regions committing themselves against tax havens.
But civil society won't stop there. Tax havens will be a crucial issue for the French presidential and legislative elections.

Question 12: Is the G20 capable of going further?

There are reasons to think not: Despite the announcements by Nicolas Sarkozy, France has not kept the issue one of its priorities; the most acknowledged progress has been the fruit of unilateral efforts; and the agreements signed by the United Kingdom and Germany with Switzerland have given a fatal blow to international and European efforts to cooperate in the fight against tax havens.
But there are also reasons to think the G20 will not leave it at that: Public opinion is increasingly exasperated by the consequences of the financial crisis and cannot tolerate that some avoid taxes with impunity. Furthermore, in this very tricky budgetary period, the rich countries need to replenish their state coffers more than ever. Let us recall that tax evasion deprives the United States of $100 billion and Europe of $250 billion per year.
Certain ideas are gaining ground, such as our flagship proposition for country-by-country reporting to fight against tax avoidance. The European Union is making progress on these subjects, and some emerging countries are seizing hold of this fact and have expressed their will to fight strongly against tax havens.

→ By recognising, in their final declaration, the major issue that consists in respect of tax regulations by multinational companies and the importance of demanding greater transparency from them, the G20 states could give international organisations the task of initiating a more ambitious work programme, especially on the problem of tax avoidance by companies (at least in the Southern countries). This would represent a great victory!!!

OUR RECOMMENDATIONS
for the G20 countries

Three sets of priority measures are considered as necessary for ending the current disconnect between the geography of real economic activity and accounting geography, and thereby helping global economic barometers to make sense again.

1. REQUIRING MULTINATIONALS TO PUBLISH THEIR ACCOUNTS ON A COUNTRY-BY-COUNTRY BASIS, OR EVEN ON A SUBSIDIAR Y-BY-SUBSIDIARY BASIS

We are recommending that every company with international business activities be required to publish the following details for every country where they operate:

- the name of all its subsidiaries in the country in question;
- details of their financial performance, including
    - sales, both to third parties and to other group subsidiaries,
    - purchases, both third parties and with intra-group transactions,
    - labour costs and employee number,
    - financing costs, split between third parties and those paid to other group members,
    - and pre-tax profits;
- details of the tax payments included in its financial statements for the country in question;
- details of the cost and net book value of its tangible fixed assets;
- details of its gross and net assets.

There are several ways of introducing this obligation to report on a country-by-country basis:

- Stock market regulation in each financial centre, for listed companies ;
- International accounting standards, which apply to the vast majority of companies.

2. PUTTING AN END TO SHELL COMPANIES

Each government or territory must undertake to:

- keep a register of the trusts and/or other secretive legal entities existing under its national laws. That register should specify the name of the real beneficiaries, the operators and the order givers;
- make the information available to the tax, customs and legal authorities in other countries on an ongoing basis.

Moreover, a register of bank accounts accessible to those same authorities should be drawn up in each country. Several European countries, including Spain and Germany, have such an instrument, for which the French tool (FICOBA, or the National Register for Bank and Related Accounts) serves as a benchmark.

For the time being, we expect the G20 and EU countries to:

- ask the Financial Action Task Force (FATF) to amend articles 33, 34 and VIII in its 40+9 Recommendations, in order to demand national registers and to make their creation one of the 16 key criteria for compliance with anti-money laundering standards;
- make the availability and accessibility of information regarding the effective ownership of financial assets a determining assessment factor in the Global Tax Forum Peer Review Group valuation reports ;
- envisage heavy and coordinated sanctions against countries that do not comply with these specific recommendations within a given timeframe.

3. REINFORCING SANCTIONS AGAINST ECONOMIC AND FINANCIAL CRIME

Economic and financial crime, especially in tax matters, would be much less attractiveness if it was no longer so easy to get away with. This is why countries must boost the level and the implementation of sanctions against tax evaders, and those who commit financial misdemeanours or crimes.
We are asking G20 and EU countries to:

- commit to entering into a multilateral agreement that would allow an effective exchange of tax information, and to ensuring that territories under their influence and financial black holes enter into the same agreement;
- extend the European Savings Directive, which is based on the automatic exchange of information, to a few developing countries, initially on an experimental basis;
- standardise the legal definition of tax evasion and to demand that the FATF make it an ancillary money laundering offence;
- seize and return the stolen assets from countries where they originate. This is a principle enshrined in the *United Nations Convention against Corruption* (known as the *Merida Convention*), and to adapt the internal legislation in each country in order to make it easier for the relevant non-governmental actors to prosecute those responsible with the purpose of restitution in case.

These propositions have been developed with the Tax Haven and Judicial Platform. They are supported by more than 50 organizations members of the "End Tax Haven Secrecy" global campaign.