

## **Towards more action on fighting tax dodging: the EIB must lead by example and revise its Non Cooperative Jurisdictions policy**

As the EU house bank, the European Investment Bank (EIB) is a key pillar in implementing the Europe 2020 objectives, including its aim of an inclusive growth. However, for growth to be inclusive, states have a crucial role to play. For this they need resources, and taxation is one of the main means for states to raise revenue. However, both within the EU and in developing countries tax evasion is a plague hindering effective domestic resource mobilisation and this is greatly facilitated by the levels of secrecy especially dominant in Offshore Centres (OFC).

On December 15<sup>th</sup> 2010 the EIB made public the new version of its policy on Non-Cooperative Jurisdictions (NCJ), namely tax havens or Offshore Centres. The 2010 policy replaces the 2009 interim policy, which had been a response to widespread civil society critique of the weak due diligence process in the EIB on corporate taxation issues, in particular when lending outside of the EU. Nevertheless, the policy is still inadequate. The 2010 policy does little to prevent European public money reaching tax havens or to safeguard European corporations that benefit from EIB support from being associated with illicit financial flows. Indeed, several loopholes remain and its policy still favors corporate rights over public and taxpayer interest.

First, a key problem remains the definition of the tax havens. The EIB bases itself on the OECD black and grey lists which are currently almost empty.

Then, a crucial issue lies in the wide number of exemptions granted to European business operating via tax havens. In particular the bank argues that it still accepts to operate via tax havens because of the inadequate legal framework and investment climate in many developing countries where projects are implemented, and consequently about the need to avoid burdensome double taxation. However the EIB policy goes beyond these arguments and permits corporations operating in a specific country to register in a different country which is a tax haven just because there might be "other tax burdens that make the structure uneconomical".

Finally, of even more concern is that the EIB policy does not exclude the possibility to support a financial intermediary incorporated in a tax haven if this bank or private financial institution operates in sectors related to the local economy of that country. The widespread use by the EIB of financial intermediaries poses a major threat to its accountability, particularly in its lending outside of the EU where such entities are the destination for almost 40% of its loans.

Since 2009 several important international developments have taken place on the matter of the fight against tax evasion and avoidance at OECD, G20 and UN level. As the G20 leaders stated in September 2013<sup>1</sup>, "*In a context of severe fiscal consolidation and social hardship, in many countries ensuring that all taxpayers pay their fair share of taxes is more than ever a priority. Tax avoidance, harmful practices and aggressive tax planning have to be tackled.*"

At the same time at EU level several directives related to tax matters are being reviewed, including the anti-money laundering legislation. In addition, the European Council already called in May 2013 for beneficial ownership identification to be introduced on the EU level.<sup>2</sup> Country-by-country reporting has also been introduced in the EU in 2013 for banks through the Capital Requirements Directive (IV).<sup>3</sup> They will be obliged to disclose profits made, taxes paid, subsidies received, turnover and number of employees on a country-by-country basis. The European Council in May 2013 also backed inclusion of this requirement for large companies in other sectors in the Directive on the disclosure of non-financial and diversity information.<sup>4</sup>

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<sup>1</sup> <http://en.g20russia.ru/news/20130906/782776427.html>

<sup>2</sup> <http://register.consilium.europa.eu/pdf/en/13/st00/st00075-re01.en13.pdf>

<sup>3</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32013L0036:EN:NOT>

<sup>4</sup> <http://register.consilium.europa.eu/pdf/en/13/st00/st00075-re01.en13.pdf>

Furthermore, several DFIs adopted more advanced policy against tax havens, namely BIO in Belgium, several Nordic agencies, and lately the EBRD improved its policy on the matter. Finally cases occurred in the last years - such as the Mopani case in Zambia - showing that the EIB has not been equipped yet in detecting tax evasion and avoidance risks via its ex-ante due diligence of projects and other operations, thus exposing the EIB to significant reputational risks and the risk of having an active part in tax dodging.

**It is time to ensure that European public money supports the fight against tax dodging rather than perpetuates the problem. It is time that the EIB adopts stronger policies in relation to transparency and tax havens.**

A real opportunity for meaningful change is present. A public bank - financed by European taxpayers' money - such as the EIB should be the first to seize this momentum to ask its clients – the beneficiaries of public money - for higher accountability standards and more transparent access to data about economic operations and taxes paid and contributions to societies in which they are registered and/or operate. A very strict exclusion is necessary to avoid the risk of tax avoidance through offshore centres. With this measure, the EIB may lose a small number of investment projects, but as the EU house bank with a political mandate, it is not in competition with private banks, so this should not be an obstacle to adopting a rigorous policy.

EU member states in their capacity of EIB shareholders can decide to stop these incoherencies. Recipient countries outside of the EU would benefit from such a decision as they will gain the ability to collect more taxes instead of seeing profits from operations conducted on their territories siphoned off to offshore centres. The EIB has an important opportunity to put into practice a number of proposals that have been discussed globally in recent years in order to help the bank achieve its mission, to avoid reputational risks and to ensure that its investments bring real tax benefits for the countries of operation. Below we present several recommendations to make the new policy functional and effective.

- The EIB needs to make an assessment of the impact – positive or negative – that its investments in offshore companies have so far had in its countries of operation, as requested by its External Lending Mandate reporting requirements.
- The EIB must ensure that all companies and financial institutions involved in its projects publicly disclose the beneficial ownership of any legal structure directly or indirectly related to the company, including trusts, foundations and bank accounts.
- In order to be eligible for EIB financing, all beneficiaries, whether corporations or financial intermediaries, that are incorporated in different jurisdictions must be obliged to disclose country level information about their sales, assets, employees, profits and tax payments in each country in which they operate in their audited annual reports. Beneficiaries must make contracts with host governments public and in particular disclose the fiscal regime in each country in which they operate.
- The EIB needs to include projects' tax implications in its REM indicators, with projects generating relatively more tax for country being rated higher than those with lower tax contributions. The bank also needs to indicate the expected and actual tax revenues for the countries of operation in its project summary documents, and make sure the countries receive a fair share of taxes.
- The EIB must not finance a client, which is located in an offshore financial centre if the project is not to be implemented in the OFC and the client does not have substantial operations in the OFC.
- The EIB should only cooperate with financial intermediaries not operating in offshore financial centres, which have substantial local ownership and are equipped to implement a pro-development approach supporting the specificity of SMEs in the countries of operation.

Given the rapid developments at the EU and international level on tax avoidance and evasion, **the EIB should launch a revision of its NCJ Policy in 2014 at the latest through an inclusive public consultation process.**

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