

Written evidence from Oxfam GB (OTS0072)

Oxfam GB is a member of Oxfam International, a confederation of 20 organisations working worldwide to address poverty and suffering.

1. Introduction and summary

- 1.1. The governance of the Overseas Territories (OTs) will be improved if those OTs that are seen as tax havens make significant changes to their tax policies and practices. The UK government has an important role to play in supporting the OTs' transition to diversify their economies to no longer be reliant upon selling financial secrecy. Where the UK government and OTs disagree on issues of financial governance, the UK government should ensure that international standards and commitments the UK government has made are matched in the OTs. Whilst the UK government retains ultimate control over the OTs it should ensure that the OTs have equivalent standards on tax transparency and tax policies, as in other aspects of governance.
- 1.2. Oxfam recommends that:
 - 1.2.1. the UK government signals its clear intent to enforce the recent amendment to the Sanctions and Anti Money Laundering Act to require implementation of public registers of beneficial ownership in the OTs in the absence of voluntary action.
 - 1.2.2. the UK government does not oppose the use of beneficial ownership as part of the criteria to assess the EU list of 'non-cooperative jurisdictions' for tax purposes.
 - 1.2.3. the UK government support the OTs to implement commitments already made under the EU 'backlisting' process.
 - 1.2.4. the UK government supports the use of 'counter measures' against jurisdictions blacklisted by the EU and applies relevant sanctions.
 - 1.2.5. the UK government should work with the OTs to implement public Country by Country Reporting (pCBCR) once the UK government implements it.
 - 1.2.6. the UK government should work with the OTs and allies to help end the global race to the bottom on corporate tax rates and policies, by implementing a global minimum effective tax rate, and pressing for a new round of substantive international tax reforms.
 - 1.2.7. the UK government should provide support to the OTs to diversify their economies to no longer be reliant upon selling financial secrecy.
 - 1.2.8. the UK government should commission an independent spillover analysis of its tax policy, taking into account the overlap of influence the UK holds in relation to the OTs.

2. Governance and the OTs

- 2.1 Each OT is a separate constitutional unit with its own constitution, but all have a constitutional relationship with the UK, the sovereign power. The most fundamental principle of the relationship between the OTs and the UK is the supremacy of Parliament. Parliament has unlimited power to legislate for the OTs. In practice, the UK Government does legislate directly for the OTs relatively frequently, most commonly to implement UN and EU financial sanctions, or to institute regulatory changes on e.g. criminal finance and money laundering, without opposition by the OTs. The power is usually conferred by enabling Statute – use of the prerogative power is rarer.
- 2.2 There are governance impacts that reach beyond the relationship between the OTs and the UK. A number of OTs are significant financial centres and some are seen as tax havens, with an outsize impact on the global economy. Oxfam's analysis shows that some OTs are amongst the most significant tax havens. Our report, *Tax Battles* identified the world's top 15 corporate tax havens.¹ Top of the list is Bermuda, with the Cayman Islands at number 2 and the BVI at 15.
- 2.3 The role of the UK's OTs with large financial centres in facilitating tax avoidance and evasion is well documented. The OTs have generally implemented internationally agreed tax standards. However, these standards, including on tax transparency and substantive tax policy, still provide sufficient scope for the opacity and latitude on tax rates and policies that tax havens thrive on – hence some OTs remain tax havens, as do other jurisdictions which can demonstrate good compliance with the main international standards. Oxfam continues to call for greater tax transparency, and much more international cooperation to halt and reverse the race to the bottom on tax, which a number of OTs are at the forefront of.
- 2.4 The limited impact of international tax transparency standards can be seen by the information revealed in leaks such as *Panama Papers* and *Paradise Papers* which have provided important glimpses into the business model of some OTs. The British Virgin Islands (BVI) alone accounted for over half of the total number of companies registered with the support of Mossack Fonseca and exposed in the *Panama Papers*.² The ease of company formation processes, the absence of corporate and similar income tax, and the relative secrecy afforded to clients establishing companies in the BVI were all important factors.
- 2.5 Similarly, the revelations in the *Paradise Papers* highlighted the key role some OTs provided for Appleby and its clients. The Appleby office in Bermuda was an important hub for the company and many well-known multinationals registered subsidiaries in Bermuda and elsewhere with Appleby's support. In some cases highlighted by the ICIJ, allegations of tax evasion have been made where the secrecy provided by tax havens including Bermuda was seen as important for the clients. The leak also revealed that Apple instructed Appleby to identify a new location for an

¹ E. Berkhout et al (2016) *Tax Battles: The dangerous global race to the bottom on corporate tax* <https://policy-practice.oxfam.org.uk/publications/tax-battles-the-dangerous-global-race-to-the-bottom-on-corporate-tax-620159>

² <https://www.icij.org/investigations/panama-papers/explore-panama-papers-key-figures/>

important subsidiary to replace Ireland. Appleby recommended Jersey because of its zero corporate income tax rate on most profits amongst other factors.³

3. Tax transparency measures – beneficial ownership

- 3.1 Oxfam supports Clause 51 of the Sanctions and Anti Money Laundering Act 2018 which would mean that Orders in Council can be used to ensure OTs implement public registers of beneficial ownership in the absence of voluntary action. Public registers are an important tool against tax evasion, and can help limit the potential for some kinds of tax avoidance, including by wealthy individuals. Oxfam supports the extension of public registers of beneficial ownership of companies to the OTs and expects the government to use the formal powers described in the Sanctions and Anti Money Laundering Act 2018 if there is an absence of adequate action by the OTs themselves. We hope the government uses its influence to reach the same result in the Crown Dependencies (CDs).
- 3.2 We support efforts to share beneficial ownership information between tax authorities, including the UK-backed automatic exchange of information agreements. But very few developing countries are part of the scheme. In addition to supporting the extension of membership of this scheme, we think public registers will ensure more governments and other stakeholders can access and analyse relevant data.

4. Tax transparency and policies – EU ‘blacklisting’

- 4.1 In advance of the EU’s publication of its tax haven blacklist (list of non-cooperative jurisdictions in tax matters’) and ‘greylist’, Oxfam undertook a shadow analysis using the EU’s criteria as far as the limited information we had allowed and identified that Anguilla, Bermuda, BVI, Cayman Islands and Gibraltar should be on the EU blacklist.⁴ The EU placed Anguilla, Bermuda, BVI, Cayman Islands and Turks & Caicos on the ‘greylist’ having received commitments from each jurisdiction that they would implement new laws to require certain economic activity to take place in their borders to fulfil a ‘substance test’.
- 4.2 Oxfam welcomes the EU’s use of a ‘fair tax’ criterion in its assessment of tax havens. We would like the EU and other international organisations to go further. For example, whilst the presence of a zero corporate income tax (CIT) rate means a jurisdiction is screened by the EU, it does not mean it fails the fair tax criterion. We think zero or very low CIT rates encourage profit shifting and a wider race to the bottom. We would like other tax policies – around incentives and other measures to reduce effective tax rates – to be taken into account systematically when drawing up tax haven lists, and in considering counter measures.

³ <https://www.icij.org/investigations/paradise-papers/apples-secret-offshore-island-hop-revealed-by-paradise-papers-leak-icij/>

⁴ A. Chardonnet et al (2017) *Blacklist or whitewash? What a real EU blacklist of tax havens should look like* <https://www.oxfam.org/en/research/blacklist-or-whitewash-what-real-eu-blacklist-tax-havens-should-look>

- 4.3 Since the EU identified the unfair tax policies of these OTs, it is important that the UK ensures the requisite legal changes are made to prevent any of them appearing on the next iteration of the blacklist at the end of 2018.
- 4.4 The European Commission has proposed a range of countermeasures which member states can use defensively against blacklisted tax havens. The UK should work with the member states to agree which measures should be used in which circumstances and where necessary utilise relevant measures unilaterally. The political commitment to use such measures may be sufficient to induce positive steps by blacklisted jurisdictions. The UK should use the measures against OTs if they are blacklisted.
- 4.5 The EU may consider public registers of beneficial ownership as part of its criteria in later versions of the blacklist since all member states will be required to implement one as part of the latest (fifth) EU Anti Money Laundering Directive.⁵ Oxfam is concerned that the UK may be blocking such a move⁶ which runs counter to the example the UK has set with its own public register of beneficial ownership for companies and the new power to require the same measure in OTs.

5. Tax transparency – public country by country reporting

- 5.1. We recommend the UK takes bolder steps to make public country-by-country reporting (pCBCR) a reality. The EU negotiations on this are reasonably advanced, but the UK can do more to bring member states on board to support it, and to advocate for pCBCR in other international fora. In the absence of an EU agreement, we recommend the UK works with allies to agree pCBCR implementation, e.g., by following the model of the five European countries that started the automatic exchange of information on beneficial ownership and has since grown significantly in membership. The UK should also ensure its OTs are part of any implementation of pCBCR, not least because some OTs host financially significant subsidiaries of large multinational enterprises.

6. Ending the race to the bottom

- 6.1 Whilst the UK has been at the forefront of international efforts to improve tax transparency, the same cannot be said for tackling the race to the bottom on tax rates and related policies. This is even more the case for OTs. In a narrow sense, the opportunity for tax avoidance is reduced when statutory rates fall (or are zero), but the wider question of how to ensure fair and sufficient revenues from corporate taxation has not been properly addressed, including how the policy of the UK and its OTs impact on other countries, particularly developing countries.
- 6.2 At the most fundamental level, the example of zero CIT rates in some OTs contributes to a global race to the bottom where less tax is generated from

⁵ http://europa.eu/rapid/press-release_STATEMENT-18-3429_en.htm

⁶ <https://www.bna.com/eu-split-using-n73014481212/>

corporations. The national – and ultimately international tax base – is reduced. Shortfalls in government revenue then need to be made up from other – often less progressive – sources. The defence of low or no corporate income tax policies is problematic. OTs with such rates attract profits created elsewhere. Some OTs are considered corporate tax havens, helping to facilitate tax revenue loss in other countries, disproportionately in developing countries. The UK's defence of these policies helps to drive to the race to the bottom, where countries compete by lowering tax rates or offering more incentives. The incentives for profit shifting – and corresponding tax avoidance – at the international level are heightened. The UK should work with other countries and its OTs to agree a minimum *effective* tax rate as part of a package of international reforms to the global tax system which tackle and prevent the race to the bottom.

7. Diverse economies

- 7.1. No economies should be reliant on acting as tax havens. As well as being morally questionable, such a strategy is becoming increasingly risky, especially with regards to reputation, given international and national policy trends. The UK government should support those OTs identified as tax havens and/or disproportionately reliant on financial and related services to non-residents to diversify their economies, and allow more citizens to share in the territories' prosperity.
- 7.2. The UK government should understand the impact of its tax policies and those of the OTs on other countries, particularly developing countries. It should therefore commission an independent, holistic and thorough spillover analysis of the UK and OTs' combined tax policies. This would help identify how policy coherence could be strengthened with regards to the government's development priorities so that the commendable support the UK is providing to developing countries on tax, e.g. via the Addis Tax Initiative, and new focus on illicit financial flows is not undercut by its own policies. Such spillover analysis should incorporate the role of the OTs.

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