Tax Working Group
Te Awheawhe Tāke

Tax Working Group Public Submissions Information Release

Release Document

September 2018

taxworkinggroup.govt.nz/key-documents

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Submission to the Tax Working Group
30 April 2018

To the Tax Working Group:

This submission is made by Oxfam New Zealand. Oxfam New Zealand ("Oxfam") is a NZ registered Charitable Trust that is a legally autonomous member of the global Oxfam Confederation. Oxfam welcomes the opportunity to submit its views on the 'structure, fairness and balance of the tax system'.[1]

Limitations of the terms of reference

Oxfam believes the Tax Working Group's terms of reference, with a number of key issues explicitly ruled out of scope, is impossible to reconcile with the intention to consider the 'structure, fairness and balance of the tax system'. These exclusions include increases to income tax rates, the rate of GST, and certain forms of wealth tax, such as inheritance tax. With these key aspects apparently ruled out of scope from the start, it is hard to see how the Tax Working Group can plausibly make any recommendations towards a more balanced or fair tax system.

As an international development agency, however, Oxfam's view is that the apparent exclusion of 'international tax reform under the Base Erosion and Profit Shifting agenda' is of most concern. We challenge this exclusion from the terms of reference for the following reasons:

- It makes no sense to review tax systems in isolation while being part of a global economy. It rules out the consideration of NZ tax systems interdependence and interface with other national and global tax systems.
- If the objective of the New Zealand tax system is to 'promote long-term sustainability and productivity of the economy',[2] the loss of revenue due to tax avoidance by multinationals (MNCs) requires urgent attention.
- The Paradise and Panama Papers demonstrated a shocking epidemic in tax avoidance that is a global problem that needs a global solution.
- International tax reform cannot be dismissed as a 'technical matter'[3] but one of fairness, and one that can be addressed with sufficient political will. Countries must work collaboratively to remedy the system. New Zealand needs to be part of the global solution if it is serious about tackling inequality domestically and globally.

[1] Tax Working Group – Terms of reference page 1
[2] Ibid.
[3] Ibid, page 2

- As stated in the Tax Working Group documents, 'we are living in an era of rapid technological change, rising economic certainty and mounting environmental challenges. Our tax system must be robust to these challenges.'[4]

The Oxfam submission will therefore respond specifically to 'Chapter 6: Thinking outside the system'. As an international development agency, Oxfam restricts its comments to international tax reforms, focusing on tax avoidance (and not domestic tax reform).

Executive Summary

Oxfam believes that the Tax Working Group must extend its recommendations to Cabinet to examine New Zealand's role and responsibility to fix the global tax system. Developing countries are missing out on USD$150 billion each year due to multinational tax avoidance. Tax avoidance deprives governments around the world (including NZ) the money they need to tackle poverty and inequality. Governments must act together to force this system to end and countries must work collaboratively to remedy the system. New Zealand must stand in solidarity with developing countries and call for a new generation of global tax reforms.
Oxfam has two key proposals that the Tax Working Group must recommend to effectively tackle MNC tax avoidance:

- **Global tax reform:** New Zealand to actively support the creation of a new global tax body.

- **End tax secrecy:** New Zealand must commit to public country by country reporting.

Why Oxfam is concerned about tax avoidance

Oxfam is an international development agency that works in over 92 countries. Oxfam has witnessed first-hand the impact of lost tax revenue on developing countries. MNCs shifting their activities to low or zero tax jurisdictions is estimated to cost people in developing countries at least US$100 billion a year[5]. Even if this kind of tax avoidance is usually legal, it is morally dubious. Most individual taxpayers cannot reduce their tax liability. The effect can mean highly profitable MNCs pay a lower effective tax rate than many citizens.

Inequality and Poverty: Tax avoidance deprives governments around the world of the money they need to tackle poverty and inequality. When MNCs avoid paying their fair share of tax, people living in poverty can end up paying twice: having to pay more taxes to make up shortfalls in national tax revenues, and missing out on quality public services such as hospitals and schools that may otherwise be funded. MNC

[4] 'Future of Tax – Summary for Submitters' page 5
[5] United Nations Conference on Trade and Development (UNCTAD). (2015). *World Investment Report 2015*. Available at: http://unctad.org/en/PublicationsLibrary/wir2015_en.pdf

tax avoidance is entrenching poverty and weakening developing country economies. Poverty doesn't just coincide with tax avoidance; it's driven by it.

Sustainable Development Goals: There is a growing recognition that having effective and functional tax systems is a key building block for sustainable development.[6] Domestic revenue mobilization is therefore critical for developing countries to achieve the Sustainable Development Goals (SDGs) and in particular SDG 10: Reducing Inequalities.

New Zealand: The failure of international cooperation in tax matters is not only a problem for developing countries. It undermines the tax systems of all countries, and deprives governments of the vital resources needed to provide public services and uphold the human rights of their people. Tax avoidance by MNCs also impacts New Zealand. Oxfam's research last year uncovered that Reckitt Benckiser (RB) may have avoided paying as much as NZ$15.2 million in tax in New Zealand and NZ$395 million globally in the three years to 2016.[7] New Zealand is currently missing out on revenue between NZ$200-500 million a year (Tax Justice Network estimates this could be as high as NZ$700 million[8]). If the remit of this review is to consider the 'structure, fairness and balance' of the tax system, it must include recommendations to remedy the shocking 'unfairness' of New Zealand missing out on this revenue.

Oxfam position on Base Erosion and Profit Shifting (BEPS)

In New Zealand, Oxfam welcomed the recent introduction of the Taxation (Neutralising Base Erosion and Profit Shifting) Bill and supported the work in progress to reduce the tax losses that result from tax avoidance from MNCs. However Oxfam's primary concern is that the proposed legislation is not comprehensive and ambitious enough to effectively tackle the problem of MNC tax avoidance.

Oxfam's recommendations to the Tax Working Group

This Tax Working Group review offers New Zealand the opportunity to demonstrate leadership on the global stage and play a key part in the reform of the unjust global tax system, to lead by example for many developing countries in the pursuit of tax justice and to respond convincingly to public outrage about MNC tax avoidance.

Globally, Oxfam is calling for all governments to cooperate internationally to ensure that tax rules are fair, transparent and consistently applied. Oxfam's view is that it requires political will to adopt strong and effective legislation to stop MNCs avoiding paying their fair share of tax. Tax avoidance is not a victimless act: when governments do not have the money to pay for decent public services, it is the poorest people who lose out. Some progress has been made in curtailing the ability

[6] Please refer to the outcomes of the 'First Global Conference of the Platform for Collaboration on Tax – Taxation and the SDG's.
http://www.worldbank.org/en/events/2017/06/06/first-global-conference-of-the-platform-for-collaboration-on-tax
[7] https://www.oxfam.org.nz/reports/making-tax-vanish-how-practices-consumer-goods-mnc-rb-show-international-tax-system-broken
[8] https://www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=11824675

of MNCs to do this through BEPS, but too many loopholes remain. Concerted action is needed to restore trust in national and international tax systems.

Below are Oxfam's two key proposals that the Tax Working Group are strongly advised to recommend to Cabinet to effectively tackle MNC tax avoidance:

1. **Global tax reform: New Zealand to actively support the creation of a new global tax body**

Oxfam recommends the urgent need for a strong global response to the international problem of cross-boundary tax avoidance and in particular the importance of establishing an intergovernmental body on tax cooperation under the auspices of the United Nations (UN).

The idea of establishing an intergovernmental body on tax matters under the UN has been endorsed by the previous UN Secretary-General Ban Ki Moon[9], several independent experts on human rights and poverty issues[10], as well as by the Independent Commission for the Reform of International Corporate Taxation (ICRICT)[11].

There are ten reasons why an Intergovernmental UN Tax Body will work for the benefit all countries, both developing and developed[12]:

i) **A key step towards a coherent global system**. Currently, the international tax system consists of a complicated web of thousands of bilateral tax treaties and different parallel international systems to regulate, for example, information exchange and corporate reporting. Negotiation of a globally agreed system is the only way to remove the complexity, confusion, inconsistency and mismatches that exist today. A truly global tax body is a crucial first step towards this goal.

ii) **Stronger cooperation between tax administrations**. A coherent global system will make it easier for tax administrations to communicate and cooperate. This will further strengthen international coherence and improve working conditions for tax administrations.

iii) **Less unilateral action.** Blacklisting and special restrictions on transfer pricing, financial transfers, corporate reporting and documentation are only some of the measures individual governments are currently introducing to protect their tax base. If the crisis in the global tax system continues to be unresolved, we are likely to see many more of these kinds of self-protective measures. Only truly global cooperation can ensure that all governments have a real alternative to unilateral action.

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[9] UN Secretary-General Ban Ki Moon. (2014). *The road to dignity by 2030: ending poverty, transforming all lives and protecting the planet*. Synthesis report of the Secretary-General on the post-2015 sustainable development agenda. http://www.un.org/ga/search/view_doc.asp?symbol=A/69/700&Lang=E

[10] See Magdalena Sepúlveda Carmona. (2014). *Report of the Special Rapporteur on extreme poverty and human rights*. A/HRC/26/28. http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session26/Documents/A_HRC_26_28_ENG.doc ; Juan Pablo Bohoslavsky. (2015). *Final study on illicit financial flows, human rights and the 2030 Agenda for Sustainable Development of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights*. A/HRC/31/61. http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/31/61&Lang=E ; Alfred de Zayas. (2016). *Promotion of a democratic and equitable international order*. A/71/286. http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/71/286&Lang=E

[11] ICRICT. (2015). *Declaration of the Independent Commission for the Reform of International Corporate Taxation*. http://www.icrict.org/wp-content/uploads/2015/06/ICRICT_Com-Rec-Report_ENG_v1.4.pdf

[12] Tax Justice Network June (2015)

iv) **Ending the race to the bottom.** The fear of losing investments is currently driving governments to introduce tax incentives, loopholes and harmful tax practices in a tragic ‘race to the bottom’, which is costing countries billions of dollars in lost tax income. Through truly global cooperation, we can turn this deeply disturbing development around.

v) **Better business environment.** Clear, consistent, global and stable rules are good for business. Operating across diverse, inconsistent national tax systems creates heavy administrative burdens, legal uncertainty and high risks for international business.

vi) **A level playing field**. Today, governments who commit to increasing transparency and closing loopholes fear that being a ‘first mover’ will result in businesses and wealthy individuals registering themselves in other jurisdictions. Through truly global negotiations, governments can agree on coordinated global action and ensure a level playing field.

vii) **Stronger implementation**. No government will feel obliged to implement tax standards and norms adopted in closed rooms where it was not welcome. The UN is the only global institution where all governments participate as equals, and therefore the place to achieve a global commitment to action.

viii) **Less double taxation and double-non-taxation**. The wide variety of mismatches between national tax systems is the core reason why some get taxed twice on the same income while others don’t get taxed at all. Only truly global cooperation can put an end to these problems.

ix) **More financing for development in the poorest countries**. Currently, the world’s poorest countries are excluded from decision making on global tax standards, and international systems often don’t take into account their realities and interests. This means lower tax income and thereby less available financing for development in these countries. A global tax body would ensure the voices of the countries where tax avoidance hits the hardest will have an equal say in the design of the new global system.

x) **Fair and consistent global action against tax havens.** Many governments are currently trying to protect their tax base through national blacklists based on criteria that are often both unclear and inconsistently applied. While random blacklisting can be burdensome for impacted countries, it will not solve the tax haven problem. It also punishes some developing countries without offering alternatives to help transition away from the reliance on the small benefits of being a tax haven. Action against tax havens must be fair, consistent and globally coordinated in order to be effective.

2. End tax secrecy: New Zealand must commit to <u>public</u> country by country reporting

Oxfam urges New Zealand to join the growing momentum for greater tax transparency. Tax transparency is an essential step in fighting global tax avoidance. A lack of transparency over what profits are made and what taxes are paid by MNCs in every country in which they operate makes it hard to identify abusive tax practices.

The complex way in which many MNCs are structured means that citizens and governments often have limited insight into the taxes paid by large corporations. An MNC's reporting rules depend on where it is registered, and whether and where it is listed on stock exchanges.

Most countries require publicly listed companies (i.e. those listed on a stock exchange) to publish audited annual reports and accounts, although these are often on a consolidated basis for the entire group, rather than separating out individual subsidiaries. However, for private companies, there are often no public reporting requirements at all. The structure of MNCs, with a parent company and multiple subsidiaries, makes collecting and assessing all relevant information hard, especially when subsidiaries are based in tax havens that do not require the publication of financial information.

New Zealand and country by country reporting

BEPS currently requires large MNCs to provide accounting information on a country by country basis to tax authorities so that they can assess whether an MNC is meeting its obligations. In New Zealand these requirements have already been adopted and apply to corporate groups headquartered in New Zealand with annual consolidated group revenue of over EUR 750 million (approximately $1.3 billion). New Zealand IRD initial population analysis suggests that around 20 New Zealand-headquartered corporate groups are affected. First reporting of country by country data was due to take place during the 2017 calendar year.[13]

However, all forthcoming reports will be accessible only to tax authorities, not the public, and will not include all MNCs in New Zealand. People in New Zealand and in developing countries need transparency about what taxes MNCs pay and where, so that avoidance can be better detected and understood and better rules agreed. As the RB case study demonstrates, we do not know the scale and precise nature of avoidance because of a lack of publically available information.

Oxfam is not alone in this thinking: the globally respected Tax Justice Network, Global Alliance for Tax Justice and other international agencies such as ActionAid, Transparency International, Christian Aid and Nobel Award winning economist Joseph Stiglitz believe that greater tax transparency will tackle tax avoidance.

[13] http://www.ird.govt.nz/international/business/international-obligations/country-by-country-reporting/new-country-by-country-reporting-requirements.html

Oxfam urges the Tax Working Group to recommend to Cabinet that MNCs based in New Zealand are required to publicly declare income, profits and tax paid in each country where they operate, including New Zealand.

Benefits

This data will allow the public to see if MNCs are paying their fair share of taxes in each country in which they operate. This would help hold MNCs to account, ensuring that transfer pricing is not openly abused, and help governments improve tax rules to prevent avoidance in the first place. Research also shows that public scrutiny has a positive effect on curbing tax avoidance by MNCs.[14] It also helps shareholders make informed decisions on where to invest. This should lead to fairer tax systems and greater confidence in the system itself.

How does tax transparency benefit MNCs?

a. Paying tax is an investment by MNCs in the countries in which they operate. It supports the development of the type of societies in which profitable, sustainable companies can thrive – peaceful, stable societies that have healthy and productive workforces, prosperous economies, viable transport systems and strong consumer bases with purchasing power.

b. Transparent behaviour also mitigates reputational risk. A diverse range of stakeholders, including consumers, now have expectations about MNCs' behaviour on tax. MNCs seen to be behaving unfairly are exposed to adverse publicity and all the risks to brand that entails. Tax behaviour can impact a company's reputation as a good corporate citizen, impact on shareholder expectation and call into question whether its behaviour is consistent with, for example, its commitment to sustainable development or its stated social purpose.

c. Perhaps less obvious, but just as serious, are the risks that tax avoidance poses to profit; a successful challenge to an MNC's filing position can reduce share price and lessen investor confidence in the good management of the company's tax affairs. Investors are also increasingly screening companies for tax risk, and a higher investor risk categorisation may increase the cost of funds needed to finance the business.

Current thinking

- Public country by country reporting is already mandatory for financial companies in the European Union. A number of companies such as Vodafone, Unilever and Barclays are already voluntarily providing more information about their tax practices.

[14] *For instance, Dyreng et al. (2016) find that firms that are subject to public scrutiny engage less in tax avoidance, indicating that public pressure can exert some influence on MNCs. In a similar vein, Herbert et al. (2015) contend that reduced public disclosure is positively correlated with international tax avoidance.*

- The European Commission found that public country by country reporting was likely to also boost, not harm, economic growth[15]. Having more company tax data in the public domain would provide more certainty for investors at a time when so many other aspects are uncertain.
- Many investors in MNCs are also calling for public country by country reporting. For example, Legal & General Investment Management Limited[16] and Norges Bank Investment Management [17] have called for public country by country reporting.

If any further information is required please do not hesitate to contact Oxfam New Zealand [1]

END

[15] European Commission. (2016). *Common Consolidated Corporate Tax Base (CCCTB)*. Available at: https://ec.europa.eu/taxation_customs/business/company-tax/common-consolidated-corporate-tax-base-ccctb_en
[16] *Legal and General Investment Management. (2015). Active Ownership: Positive engagement to enhance long-term value. Corporate governance report. Available at: http://www.lgim.com/library/capabilities/CG_Annual_Report_2015.pdf*
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