

TAX AVOIDANCE MECHANISMS, THEIR IMPACTS ON POPULAR CONSENT TO TAXATION AND SOCIAL COHESION

Grassroots mobilisation and the recent media coverage of certain scandals in France and worldwide (such as *Swissleaks*, *Luxleaks*, *Panama papers*, *Bahama leaks* and *Football leaks* to mention but a few) have brought to light the sheer extent of tax avoidance mechanisms and their impact on the funding of public services. The European Commission puts the loss of tax revenue every year at more than €1,000 billion for the European Union. In France, these estimations are in the range of €60 to 80 billion. Regarding developing countries, they would appear to be 30% more affected than OECD nations by this phenomenon, because of prejudicial tax treaties and failing government departments.

Tax avoidance involves the use of illegal mechanisms which are clearly prohibited by law or case law (especially abuse of rights, irregular management practices and other techniques which may be described as tax fraud punishable as a criminal offence), and the excessive use of

legal mechanisms to the extent that it risks being prejudicial to and going against the general interest. Turned to their advantage by businesses and individuals alike, these mechanisms particularly exploit the legal loopholes of States through complex arrangements which make it possible to avoid paying taxes. With financial flows going paperless and the economy going digital, new challenges are emerging which, despite technological progress, are making the work of government departments more difficult.

The changing impact of avoidance mechanisms on popular consent to taxation is not easy to measure, since there have been no studies conducted at regular intervals on such issues.

And yet these mechanisms significantly undermine social cohesion. The loss of earnings for the public purse often results in the tax burden being transferred over to those with the least room for manoeuvre. Not only that, they also introduce or increase a distortion of competition between different-sized businesses. Employees' earnings are impacted by these mechanisms too, which also



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reduce the base for social security contributions, thereby weakening the financing of social protection.

What is more, they spark a sense of injustice in taxpayers who do not wish to or are unable to escape from all or part of their tax obligations, and thus feel like they are the "only ones who are paying". Media coverage of scandals does not go hand in hand

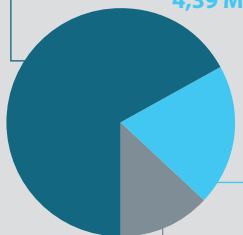
VOLUME OF TAX REAPPRAISALS IN 2015 IN FRANCE

Breakdown of results per type of taxpayer

In €bn

14,15 Mds

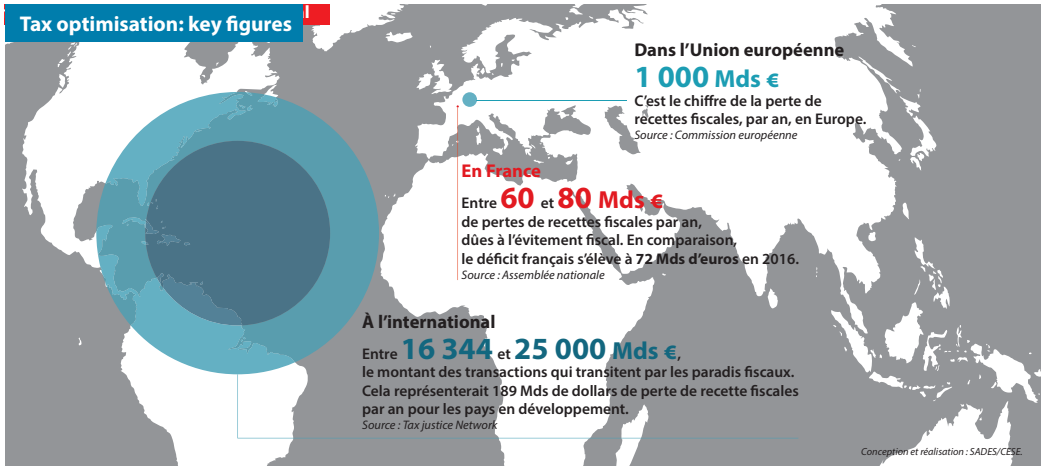
4,39 Mds



2,66 Mds

- Les entreprises
- Individuals
- STDR : Service de traitement des déclarations rectificatives

Source: Ministry of Finance, press pack 03/03/2016.



with media coverage of crackdowns, which often take time to set in motion, giving the impression that "a blind eye is too often turned to fraud which thus too often goes unpunished". Moreover, the fact that tax avoidance is becoming ever more commonplace, with tax perceived in the same light as other costs, is calling into question citizens' acceptance of tax. In April 2016, close to one in five French citizens admitted they would be prepared to avoid paying tax if they had lots of money.

In the wake of the 2008 financial crisis and under pressure from a society increasingly wised up to such problems, the international community and France alike have taken a series of measures to stamp

out aggressive tax optimisation and fraud. On the world stage, the OECD has facilitated the automatic exchange of information and published 15 actions through a plan to counter Base erosion and profit shifting (BEPS). The European Union's efforts in this regard involve the adoption, in January 2016, of the Anti Tax Avoidance Package and relaunch of the draft directive aimed at adopting a "Common Consolidated Corporate Tax Base" (CCCTB), which seeks to establish a single set of rules to calculate multinational enterprises' taxable profits in the EU. France, meanwhile, has adopted a raft of schemes over recent years for the purposes of beefing up its law enforcement apparatus on the one hand (lengthening of sentences, creation of the offence of tax fraud

money laundering, pressing charges for organised tax fraud so that those who facilitated the fraud are brought to justice (accounting and legal professionals, etc.) and greater transparency on the other (public "country by country" reporting for banks and the trust register, etc.)

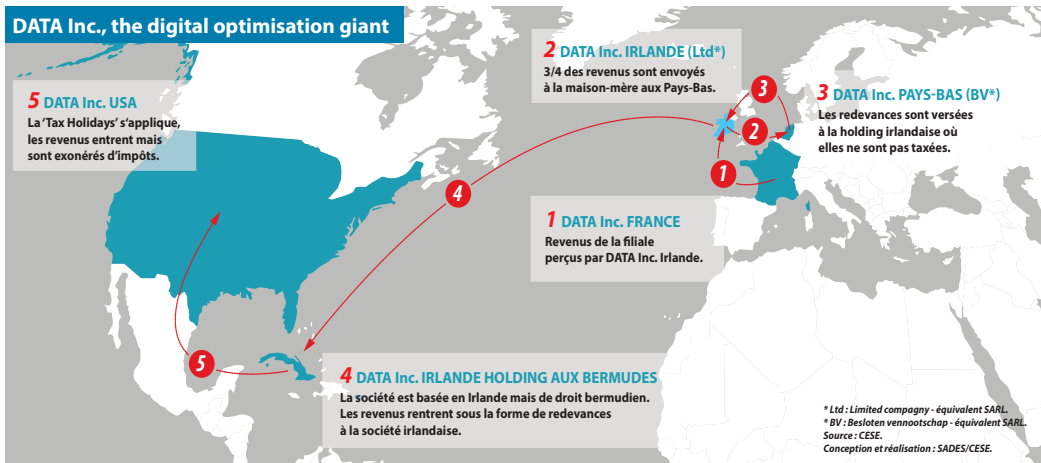
In spite of these measures though, the fight against tax avoidance – one of the conditions conducive to popular consent to taxation – still does not go far enough. The ESEC recommends that the public authorities step up regulation at European and international level, develop financial transparency, improve legal recourse options and tax administration and show support for action at grassroots level to enhance the legitimacy of tax.

83 %

of French people believe that a blind eye is too often turned to fraud which thus too often goes unpunished

1 French person in 5

admitted they would be prepared to avoid paying tax if they had lots of money



THE ESEC'S RECOMMENDATIONS

CEMENT FRANCE'S PLACE IN THE CLAMPDOWN ON TAX AVOIDANCE AT EUROPEAN AND INTERNATIONAL LEVEL

- **At European level**, France must support the swift adoption of *BEPS* recommendations for all Member States and encourage the development of a **common list of tax havens** which incorporate European territories and harmonise sanctions.
- Convinced that **tax harmonisation** is vital to Europe's recovery, the ESEC supports the CCCTB project and recommends adding minimum and maximum permitted rate bands as is already the case for VAT. It would like France to undertake a stronger cooperation procedure if unanimity between the Member States is not obtained.
- **At international level**, France must call for the organisation of a **tax COP – United Nations Conference of the Parties**. This would make it possible to involve all Member States (including developing countries) and to address a certain number of outstanding issues: notion of stable establishment, *Patent boxes*, etc. This would provide a suitable setting for launching the setup of an **international register** grouping together the links between the different economic entities across all countries and developing more systematic international cooperation, organised between the public departments concerned by tax avoidance.

INCREASE THE TRANSPARENCY AND ACCOUNTABILITY OF PRIVATE AND PUBLIC ECONOMIC STAKEHOLDERS

- Given the development of shell companies and trusts, the ESEC recommends **more clearly identifying who the actual beneficiaries are** by compiling a directory of economic entities and relationships binding corporate groups together in terms of control and holding. In addition to the automatic exchange of information, the ESEC recommends establishing a French **Foreign Account Tax Compliance Act (FATCA)**, which obliges financial institutions to report all accounts held by French taxpayers, abroad, as well as flows with tax havens.
- The ESEC recommends that **taxation form part of businesses' corporate social responsibility (CSR)**. In this respect, our assembly advocates including a tax section in businesses' financial reporting requirements.
- The ESEC also urges **greater involvement on the part of staff representative bodies in businesses' tax strategies**. It recommends that information communicated to the tax administration for "country-by-country" reporting purposes also be shared with the latter bodies, and would like a requirement to be introduced to the effect

that staff representative bodies are informed and/or consulted about the applicable regulations in their company, the price of transfers, the monetisation and transfer of patents and brands, the use of patent boxes, tax rulings, etc.

- The ESEC draws attention to the progress made in terms of **protection for whistleblowers**, and would like the Defender of Rights to be given sufficient resources for carrying out its mission and staff representative bodies to play a role in collecting allegations made by an employee.
- Lastly, the ESEC recommends that the State and local authorities give due credit to economic stakeholders who demonstrate fiscally responsible practices. For that, it advocates that **a tax obligations compliance criterion be added** when selecting the successful tenderers for a public procurement contract, when using public financing and in their shareholder interest policy.

STRENGTHEN CAPACITY FOR CRACKING DOWN ON TAX AVOIDANCE IN FRANCE

- In order to step up anti-tax avoidance efforts and be able to process all data, the ESEC recommends **scaling up the technical and human means assigned to supervisory, investigatory and judicial bodies**.
- To **prevent the use of fiscally aggressive arrangements**, the ESEC recommends that these be subject to prior approval from the tax administration.
- For the sake of greater transparency and clearer public debate, the ESEC recommends that **comprehensive information be published on tax audits** along with an assessment of the legislative measures taken to counter tax avoidance. **The statistics tool on taxation** must be considerably strengthened.
- Lastly, our assembly would like consideration to be given to the possibility of the justice system being accorded greater autonomy on matters of tax fraud. Furthermore, it encourages **fresh consideration to be given to the notion of abuse of rights**, indicating that these discussions must also address a scale of applicable sanctions.

ENHANCE THE LEGITIMACY OF TAX TO CRACK DOWN ON TAX AVOIDANCE

- For our assembly, clamping down on tax avoidance is one of the conditions conducive to popular consent to taxation. **It should not be possible for anyone today to evade their contribution to funding public services.**
- It would be well worth clarifying the utility of tax to the population through appropriate tools. The ESEC recommends that **an educational campaign be rolled out at different levels on the merits of tax and the risks incurred by avoidance**. It advocates the annual publication of figures, explained in a clear and instructive way, on the use of government revenue.
- Lastly, efforts must also be invested in the **training of practising and future taxation specialists** so that this include a thorough examination of the budgetary, social and societal aspects of taxation - and more broadly the citizen dimension of tax.

Tax optimisation among some top-ranking athletes and artists

Comment un chanteur peut-il échapper à l'impôt en France ?

