Following the Money: French Banks' Activities in Tax Havens

Starting point

In 2015, French banks published for the first time key information on their activities, which included the taxes they pay in the countries in which they operate.

CCFD-Terre Solidaire, Oxfam France and Secours Catholique – Caritas France, in partnership with the Plateforme Paradis Fiscaux et Judiciaires [tax and legal havens platform] analysed this information in detail. By focussing their investigation on the activities of the five biggest French banks, this led them to the heart of tax havens. The investigation demonstrates the important, unique role played by these territories in the international activities of the top French banks. It also confirms that transparency must be extended to all sectors of the economy in order to combat tax avoidance.

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Introduction

What are the banks up to in tax havens? Since the financial crisis in 2008, this question has been regularly asked as tax avoidance and evasion*[1] scandals have filled the press time and time again.

First of all, concerns have arisen about **the way banks use tax havens for the same purposes as other multinationals – they can artificially transfer profits made in the countries where they actually operate to reduce their tax bill**. Some scandals, like Swissleaks* which broke in February 2015, demonstrate that banks can also use tax havens to allow their customers to cheat the tax authorities. Others, like the collapse of the UK's Northern Rock bank in 2007[2] show how banks use these territories' lack of transparency to avoid their regulatory obligations.

Such practices could not exist without legal and administrative facilities, minimal tax rates* and the lack of transparency inherent in tax havens. Importantly, tax havens aren't for tax purposes only. To be precise we ought to speak consistently of tax, legal and regulatory havens*.

Each of these practices has serious consequences. With regards to tax, it means hundreds of billions of euros go unpaid to the treasuries of countries in the North as well as the South. This vast amount of money is vital for funding public services, infrastructure and social services as well as redistributing wealth in order to reduce growing inequality. According to a recent parliamentary report[3], France loses between €40 and €60 billion in tax revenue each year, which is almost equivalent to the national education budget, one of the top budget areas of 2015[4]. In addition to the countries in the North, it must be emphasised that developing countries are particularly affected by tax evasion and avoidance. A recent IMF study[5] revealed that the loss of tax revenue due to tax evasion by large corporations is proportionately 30% greater in developing countries than in the OECD. With regards to regulation, the consequences are just as serious. Banks are allowed to avoid their regulatory obligations by being permitted to vastly exceed normal prudential ratios*. Regulatory havens* seriously endanger the international financial system.

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[1] Words marked with an asterisk are defined in the glossary, Appendice 4.

[2] LE MOIGN, C. (2011), *Centre financier offshore et système bancaire fantôme* [Offshore financial centre and the shadow banking system], Centre d'analyse stratégique [centre for strategic analysis], May 2011. Available from http://archives.strategie.gouv.fr/cas/content/note-d%E2%80%99analyse-222-centres-financiers-offshore-et-systeme-bancaire-fantome.html

[3] BRUNEAU I. et RAFFINEUR M. (2014) *Rapport d'information sur l'Union européenne et la lutte contre l'optimisation fiscale*, [report on the European Union and combatting tax planning] issued by the Commission des affaires européennes [European affairs committee] 6 October 2015. Available from http://www.assemblee-nationale.fr/14/europe/rap-info/i3101.asp

[4] Ministère de l'éducation nationale, de l'enseignement supérieur et de la recherche, [Ministry of education, higher education and research] (2014), *Présentation du projet de loi de finances 2015* [Presenting the 2015 finance bill]. Available from http://www.education.gouv.fr/cid82613/projet-de-loi-de-finances-2015.html

[5] CRIVELLI, E., DE MOIJ, R., and KEEN, M., *IMF Working Paper: Base Erosion, Profit Shifting and Developing Countries,* May 2015 available from https://www.imf.org/external/pubs/ft/wp/2015/wp15118.pdf

Country-by-country reporting – removing the first impenetrable veil

Until 2015, there was no way of establishing with any certainty that this behaviour, occasionally under the media spotlight, was common practice. All that could be done was register the widespread presence of banks in tax havens, speculate about why they selected these locations and reflect on vague responses; that they had set up there, as elsewhere, "for business reasons" and "to serve local customers" [6]. An impenetrable veil protected their international activities, as is the case today for large multinationals.

In 2013, following the widespread involvement of civil society, a first step towards transparency* was made. French and European banks are now required to publish information on their activities (profits and turnover*), staff, tax paid and subsidies received in each territory in which they are established, including tax havens[7].

The purpose of such country-by-country reporting* - a key means by which to combat tax avoidance - is to allow everyone to know if banks are really operating in tax haven territories, or if they are using them to offshore profits artificially, to avoid tax or to manage certain high risk assets* and thus avoid their regulatory obligations.

Tax havens - still at the heart of banking strategy

In 2015, for the first time, banks published full country-by-country reporting on their activities for 2014 in their annual reports.

CCFD-Terre Solidaire, Oxfam France and Secours Catholique – Caritas France, in partnership with the Plateforme Paradis Fiscaux et Judiciaires[8] [tax and legal havens platform] (PPFJ) analysed the data for the five biggest French banks. This investigation followed a previous report[9] on the initial information the banks published in 2014 (see box). Newly released information (of profits and taxes) allows us to produce new indicators that confirm our initial hypothesis – not only are tax havens at the heart of French international banking, but how the banks use them is very specific.

The information shows that French banks make a third of their profits in overseas tax havens, yet they only represent a quarter of their reported international business, a fifth of their taxes and just a

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[6] BNP Paribas stated its presence in tax havens "was to serve its customers across the world" BNP Paribas (2014), Letter from the BNP Paribas group replying to a question from Attac France, 14 March 2014. Available from https://france.attac.org/IMG/pdf/courrier_bnpp_a_attac_14_mars_2014.pdf

[7] *Loi n°2013-672 du 26 juillet 2013 de séparation et de régulation des activités bancaires*, [Law 2013-672 of 26 July 2013 on the separation and regulation of banking activities], Art 7. Available from https://www.legifrance.gouv.fr/jo_pdf.do?id=JORFTEXT000027754539

[8] Member organizations are : Les Amis de la Terre, Anticor, Attac France, CADTM France, CCFD-Terre Solidaire, CFDT, CGT, Collectif Roosevelt, CRID, Droit pour la justice, Observatoire citoyen pour la transparence financière internationale, Justice et Paix, Oxfam France, Peuples Solidaires ActionAid France, Réseau Foi et Justice Afrique Europe, Secours catholique Caritas France, Sherpa, Solidaires Finances Publiques, Survie, Syndicat de la magistrature, Transparency International France.

[9] Plateforme Paradis Fiscaux et Judiciaires, (2014) *What are the biggest French banks doing in tax havens?,* report, November 2014. Available from http://www.stopparadisfiscaux.fr/que-font-les-etats/la-france/article/que-font-les-plus-grandes-banques

sixth of their employees*. These figures alone show the disconnection between the territories in which banks operate and have staff, and those from which they derive their profits.

6 indicators that unveil banks in tax havens

The report identifies 6 indicators, derived from published data, which support the following premise – banks are using tax havens for tax and regulatory avoidance:

- ***French banks declare a third of their international profits in tax havens.*** Luxembourg on itw own represents 11% of banks' international profits.
- ***The activities of the five French banks are 60% more profitable in tax havens than in the rest of the world.*** Société Générale is the most "profitable" – for a comparable amount of business, its activity in tax havens brings in four times as much as from other countries.
- ***Employees are 2.6 times as productive in tax havens as in other countries***
  The work of a BPCE employee in Ireland brings in €1.8 million which is 31 times as much as the average bank employee in the other countries in which it operates.
- ***The riskiest and most speculative activities are always located in tax havens.*** Nothing seems to have changed since the financial crisis of 2008.
- ***Effective tax rate of French banks in tax havens is half of average tax rate in other countries.*** In 19 instances, French banks did not pay a single euro in tax despite their profits.
- ***The study of the data released by the banks is complex because of the degree of interpretation permitted by legislation***

What conclusions can we draw?

How can we explain such specific activity by banks in tax havens as demonstrated by the various indicators in this report? Several possibilities can be put forward:

- First of all, banks can **artificially shift their profits*** from one subsidiary* to another (in a tax haven) to reduce their tax. This technique, highlighted by recent scandals (such as IKEA[10] and MacDonald's[11]) is commonly used by multinationals. It allows them to reduce their tax base in countries where the bulk of their business takes place. The result is that companies declare astonishingly small profits in countries where they do huge levels of business. Profits reported in tax havens are then completely out of proportion to the business opportunities they actually represent for the company. This is described as a disconnection between reported profits and actual business activity. This piece of sleight of hand, which was up, to now, suspected of banks though it could not be proved, now appears highly probable thanks to the production of country-by-country accountancy data. It shows how obsolete the corporate taxation system is. Each entity is considered as independent from the rest of the

[10] European Greens, (2016) IKEA Flat Pack Tax Avoidance, report, 12 February 2016, Available from https://issuu.com/europeecologie/docs/flat_pack_tax_avoidance_-_greens-ef/1?e=18352256/33417593

[11] EPSU, EFFAT, SEIU and War on Want (2015) Unhappy Meal, report, 24 February 2015. Available from http://www.notaxfraud.eu/sites/default/files/dw/FINAL%20REPORT.pdf

group for tax purposes. Yet it is these intra-group relationships that permit profit transfers* and ultimately a potential tax avoidance strategy.

- Banks can also operate as **middlemen and facilitate tax avoidance for their customers**, both private and commercial, through the services they offer in their tax havens, which was the case in the UBS[12] and HSBC[13] scandals. Their widespread presence in tax havens is likely to mask an even greater exploitation of these offshore territories* by major companies and individuals.
- The lack of transparency prevalent in tax havens can allow banks to **avoid their regulatory obligations** and conduct highly lucrative or speculative and high-risk business, unrelated to the real economy. The financial sector resorts to these activities because it is not systematically subjected to the rules of financial prudence applied in other countries (such as accounting transparency and capital ratios* appropriate to credit or speculative activities)[14].The crisis of 2008 uncovered the central role played by tax havens hosting the highest risk of business operations.

Methodology

The information used in this report was taken from the 2014 annual reports published in 2015 by the top five French banking groups - BNP Paribas, groupe BPCE, Société Générale, Crédit Agricole and Crédit Mutuel-CIC[15]. In accordance with the fourth European directive of 26 June 2013[16] on capital requirements and the French banking law of 26 July 2013[17], financial institutions published data on

[12] PIEL S., LHOMME F., DAVET G., (2016), "Comment UBS a orchestré un vaste système d'évasion fiscale en France" [How UBS orchestrated a vast tax avoidance system in France], *Le Monde*, 17 February 2016, Available from http://www.lemonde.fr/evasion-fiscale/article/2016/02/17/comment-ubs-suisse-a-orchestre-un-vaste-systeme-d-evasion-fiscale-en-france_4866728_4862750.html

[13] "Un gigantesque réseau d'évasion fiscale organisé par HSBC" [A gigantic tax avoidance network organized by HSBC] (2016), *Le Parisien*, 09 February 2016. Available from: <http://www.leparisien.fr/economie/hsbc-un-reseau-d-evasion-fiscale-de-130-000-clients-et-180-milliards-d-euros-09-02-2015-4518749.php>

[14] LE MOIGN C., op.cit.

[15] BNP Paribas, (2015), *Document de référence et rapport financier annuel 2014*, [2014 annual report], pp 480-486. Available from https://invest.bnpparibas.com/sites/default/files/documents/ddr_2014_bnp_paribas.pdf
Groupe BPCE, (2015), *Document de référence et rapport financier annuel 2014*, [2014 annual report], pp 306-317. Available from http://www.groupebpce.fr/Investisseur/Resultats/Documents-de-reference
Crédit Agricole, (2015), *Document de référence et rapport financier annuel 2014*, [2014 annual report], pp 182-193. Available from http://www.credit-agricole.com/Investisseur-et-actionnaire/Espace-actionnaires-individuels/Publications
Groupe Crédit Mutuel-CIC, (2015), *Document de référence et rapport financier annuel 2014*, [2014 annual report], pp 161-171. Available from https://www.creditmutuel.fr/groupecm/fr/images/fichier_pdf/rapport_annuel/2014/groupe-credit-mutuel-2014-rapport-annuel.pdf
Société Générale, (2015), *Document de référence et rapport financier annuel 2014*, [2014 annual report], pp 57-73. Available from http://www.societegenerale.com/sites/default/files/ddr2015_final_13_03_2015_amf_version_fr.pdf

[16] *Loi n°2013-672 du 26 juillet 2013 de séparation et de régulation des activités bancaires,* [law 2013-672 of 26 July 2013 on the separation and regulation of banking activities], *op.cit.*

[17] Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, art 89. Available from http://eur-lex.europa.eu/legal-content/FR/TXT/PDF/?uri=CELEX:32013L0036&from=FR

their activities in each country in which they are based. This provision, known as public country-by-country reporting, includes:

- The names of the establishments and the nature of their activities.
- The net banking income (equivalent to turnover).
- Staff, expressed as full time equivalent.
- Profit or loss before tax.
- Tax paid.
- Public Subsidies received.

Indicators were calculated and compared on the basis of this compiled and aggregated information (shown in detail under each indicator and in the appendix). This permitted a comparison between tax havens and the rest of the world. Countries classified as being tax, regulatory and legal havens were taken from the list produced by the Tax Justice Network (TJN) with the exception of the USA, the UK and Portugal which were removed for the purposes of this investigation (see appendix 2). The terms "offshore territory" and "tax haven" are used interchangeably in the report.

The full methodology is shown in appendix 1.

The importance of tax transparency

Public country-by-country reporting - an indispensable prerequisite in combatting tax evasion

For over ten years, public country-by-country reporting has been a central demand of civil society organizations involved in combating tax avoidance by multinationals. For companies, this implies publishing detailed accounting data of their activities in each territory in which they operate. This measure is essential to check if the geographic spread of profits reflects the real nature of its business activity reported in each territory. It is then possible to determine whether or not the tax paid genuinely represents a fair amount of what companies ought to be paying in each country. Where it applies, the disconnection between reported profits and actual business activity can highlight the improper use of tax havens to avoid tax or particular regulatory requirements. Not all activities in tax havens are, a priori, reprehensible. Thanks to greater transparency about their activities, we can distinguish between "real", justified activities and those that are not genuine.

Public country by country reporting and public access to this information achieves three objectives:

- It dissuades companies from offshoring their profits improperly and artificially,
- It ensures that all tax authorities, including those in developing countries, have access to the data. If reporting is not made public as advised by the OECD, there is a definite risk that

developing countries will be unable to access the data[18],

- It allows investors, customers or company employees to better measure the risks the group could be exposed to (such as geopolitical, legal and financial).

Transparency on its way– the need to extend public reporting to every sector

French MPs were the first to introduce country-by-country reporting for French banks under the 2013 banking law, which then facilitated the adoption of similar requirements[19] by the European Union for all European banks[20]. After an initial exercise where just three categories were required

[18] With regard to exchanging information on bank data, Switzerland has already indicated that it will only share its data with its "main economic and financial partners". See Secrétariat d'Etat Suisse pour les questions fiscales Internationales [Swiss secretariat of state for international tax matters], (2014), *Questions and answers on the automatic exchange of information.* 8 October 2014. Available from http://www.news.admin.ch/NSBSubscriber/message/attachments/36827.pdf

[19] *Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013, op.cit.*

[20] In March 2013, French MEPs introduced to the banking law n°2013-672 an amendment requiring French banks to disclose information regarding their activities (turnover, number of staff and subsidiaries) in each country where they operate. The same requirement has been implemented at the European level, with the addition of profits, tax paid and public subsidies received, in the CRD IV directive adopted in June 2013. The French banking law was adopted in July 2013.

(see box), French banks published all country-by-country reporting information for the first time in 2015. This covered their subsidiaries, profit, turnover, staff, tax paid and subsidies received for each country in which they operate. This second reporting exercise by French banks proves that transparency is possible, and doesn't involve exorbitant costs or threatens banking competitiveness. This view was confirmed by a PriceWaterhouseCoopers' impact study carried out for the European Commission. It concluded that the costs associated with reporting would be negligible and that transparency would even have a positive influence on investor confidence and banking competitiveness[21]. Civil society had long been demanding access to specific country-by-country accounting data. Since this measure has been applied, the work of the PPFJ[22] proves that this information is essential in clarifying companies' activities in tax havens.

The requirement is now to extend this obligation to every sector of the economy. The proliferation of tax avoidance scandals affecting major multinationals shows this is not a practice confined to one sector, so we need to act quickly. Publishing information is essential in dissuading companies from avoiding tax, guaranteeing that all the tax authorities involved have access to information and permitting public oversight. However in November 2015, the G20 and OECD countries adopted a non-public reporting obligation applying to companies with a turnover of over €750 billion, covering 10-15% of multinationals[23]. Yet at the same time, the European Parliament adopted an amendment

[21] PriceWaterhouseCoopers, (2014), *General assessment of potential economic consequences of country-by-country reporting under CRDIV*, study prepared for the European Commission Internal Market and Services Directorate General (DG MARKT), September 2014. Available from: http://www.pwc.com/gx/en/eu-institutions-services/pdf/pwc-cbcr-report-en.pdf

[22] Specifically via the Plateforme Paradis Fiscaux et Judiciaires report, op cit.

[23] (OECD 2015), Action 13*: Guidance on the Implementation of Transfer Pricing Documentation and Country-by-Country Reporting,* p4. Available from http://www.oecd.org/ctp/beps-action-13-guidance-implementation-tp-documentation-cbc-reporting.pdf

in favour of public reporting in its shareholder rights directive[24], reaffirming its support for public reporting on three separate occasions in 2015[25]. European-level negotiations on adopting this directive are, however, suspended until the publication of an impact study by the European Commission, expected in April 2016, which should then be followed by a European proposal[26]. French MPs also showed their support for public reporting for all sectors by voting for it twice last December, before the bill was eventually rejected as the result of a political move in government[27]. The stakes are high, since extension of this disposition would finally allow the public, investors and public bodies to have a more precise understanding of the business activities of large companies in tax havens and ensure that these companies pay the tax due in the countries in which they have real activities.

The activities of French banks in tax havens carry on between 2014 and 2015

For two consecutive years, the organizations in the Plateforme Paradis Fiscaux et Judiciaires (PPFJ) have examined the country-by-country accounts reported by the top five French banks (BNP Paribas, BPCE, Crédit Agricole, Crédit Mutuel-CIC and Société Générale). At the time of the first analysis of this type, published in November 2014[28] in accordance with the banking law which was applied in two stages, the banks only divulged three of the six categories of information that now make up public country-by-country reporting (subsidiaries, turnover and staffing). The new data published in 2015 allow us to develop our analysis in new areas, but the comparison with last year already confirms the conclusions of the first report.

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[24] European Parliament, amendments adopted by the European Parliament on 8 July 2015 on the proposal for a directive of the European Parliament and of the Council amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement, article 18 a. Available from http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2015-0257+0+DOC+XML+V0//FR

[25] *European Parliament resolution of 8 July 2015 on tax avoidance and tax evasion as challenges for governance, social protection and development in developing countries,(2015/2058(INI))* point 7. Available from http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2015-0265+0+DOC+XML+V0//FR

European Parliament resolution of 25 November 2015 on tax rulings and other measures similar in nature or effect(2015/2066(INI)) (para 138). Available from http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2015-0408+0+DOC+XML+V0//FR

European Parliament resolution of 16 December 2015 with recommendations to the Commission on bringing transparency, coordination and convergence to corporate tax policies in the Union (2015/2010(INL). Available from http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2015-0457+0+DOC+XML+V0//FR

[26] "EU proposals will force multinationals to disclose tax arrangements", *The Guardian*, 7 February 2016. Available from http://www.theguardian.com/world/2016/feb/07/eu-multinationals-tax-arrangements-us-google-amazon?CMP=share_btn_tw

[27] Plateforme Paradis Fiscaux et Judiciaires, (2015), "Une manœuvre à l'Assemblée nationale fait voler en éclats l'ambition de transparence fiscale des députés", [a maneuver in the National Assembly destroys MPs' ambitions for tax transparency] press release, 16 December 2015. Available from http://www.stopparadisfiscaux.fr/qui-sommes-nous/plateformes-regionales-43/article/reactive-une-manoeuvre-a-l

[28] Plateforme Paradis Fiscaux et Judiciaires, op.cit.

- **A quarter of French International banking business is from “haven” countries**

In 2014, the first PPFJ report stressed that a quarter of French banks’ business activities took place in tax havens. In 2015 this proportion stayed the same, with French banks reporting a total turnover of €13.5 billion in these territories (from an international turnover of €53 billion).

- **A third of foreign subsidiaries are located in tax havens**

In 2014, the banks reported 577 subsidiaries in tax havens (out of 1,859 outside France). In 2015, there were 641 (out of 1,854). This still represents a third of all their foreign subsidiaries.

The 6 indicators that unveil the French banks’ use of tax havens.

Indicator 1: Offshoring profits is common practice

A third of French banks’ international profits are located in tax havens

In 2015, French banks reported almost €5 billion in profits in tax havens, which is a third of their international profits (€15.3 billion). This figure confirms that tax havens play a key role in their international development strategy. However, they do not mention the assets held by individuals and companies in tax havens, nor the financial flows transiting these territories.

BNP Paribas and Société Générale are the banks with the biggest profits, in absolute terms, located in offshore jurisdictions* (2.4 and 1.3 billion respectively). However it is Crédit Mutuel-CIC that has the highest proportion of international profits reported in tax havens (44%), bearing in mind that it has the smallest international presence of the five banks being studied. BPCE is the least visible since tax havens represent a proportion of international activity that is 3 to 4 times lower than other banks.

Table 1: Breakdown of international and tax haven-derived banking profits as a percentage (2014)

	Total profits (€ Million)	International profits (€ Million)	Profits in tax havens (€ Million)	Proportion of international profits reported in tax havens (%)
BNP Paribas	8,741	6,892	2,432	35.3 %
BPCE	5,925	1,344	160	11.9%
Crédit Agricole	2,605	2,451	701	28.6%
Crédit	6,852	652	287	44%

Mutuel–CIC				
Société Générale	4,376	4,010	1,327	33.1%
Total	28,499	15,349	4,907	32.0%

Tax havens with no palm trees

With more than €1.7 billion of reported profits, Luxembourg is the favourite destination of the 34 tax havens in which French banks have a presence. In Europe, Belgium (1.66 billion), Ireland (272 million), and the Netherlands (189 million); and in Asia, Hong Kong (436 million) and Singapore (346 million) are also favourites of the French groups' international strategies[29].

Apart from Hong Kong, none of the above countries appear in the list of 30 offshore territories published by the European Commission in June 2015 even though they offer countless opportunities for avoiding taxation[30]. The validity of the list of jurisdictions that member states consider as "uncooperative" is seriously questionable. When it published its external strategy for effective taxation on 28 January 2016, the European Commission announced its desire to draw up a new list[31] based on its own criteria. However it cannot get round the question of including European countries in this list. Four of the top ten tax havens where French banks reported profits are in fact European member states[32].

Luxembourg : a tax haven leading Europe

Appearances can be deceptive. While the heavenly small islands (the Bahamas, the Cayman islands, the British Virgin Islands, Jersey, Guernsey, etc) are the typical offshore territories in the mind of the general public, they are in reality only the palm groves concealing the forest. Take for example the dominant position of Luxembourg in French banking. Following France and the USA, the Grand Duchy is in third place amongst the countries in which French banks make the highest profits; specifically, 6% of total profits and 11% of international profits. Another astonishing fact is that

[29] The list of the top 5 tax havens in terms of profits is shown in appendix 6

[30] MICHEL A. (2015), "La liste Moscovici des paradis fiscaux fait grincer des dents" [The Moscovici list of tax havens sets your teeth on edge] Le Monde 18 June 2016.Available from http://abonnes.lemonde.fr/economie/article/2015/06/18/la-liste-moscovici-des-paradis-fiscaux-fait-grincer-des-dents_4657400_3234.html

[31] European Commission (2016), *Communication from the Commission to the European Parliament and the Council on an external strategy for effective taxation*, 28 January 2016.Available from http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1454056581340&uri=COM:2016:24:FIN

[32] Luxembourg, Ireland, Belgium and the Netherlands

Luxembourg alone represents ⅓ of all profits reported in tax havens and hosts 23 % of French banks' tax haven subsidiaries. Given the 563,000 inhabitants in this mini state[33], these figures justify such an investigation into how banks obtain such results.
Luxembourg is renowned for its benign regulatory and tax regime applied to the finance industry and multinationals. It is the number one centre for private banking and asset management in the Eurozone (managing €800 billion) and the second centre in the world for investment funds (€2,500 billion in assets)[34]. The country overflows in facilities and mechanisms that are favourable to multinationals – a low taxation of dividends[35], a preferential regime for taxing profits on intellectual property[36] (known as "patent boxes") and tax rulings*, such agreements being reached directly on a case-by-case basis between top companies and governments. Tax rulings are not exclusive to Luxembourg, as this practise was brought to light in the "Luxleaks"* affair. Amongst others, BNP Paribas, BPCE and Crédit Agricole benefited from it[37]. Luxembourg has wanted to demonstrate a desire to reform, especially during the second semester of 2015 when it held the presidency of the EU Council. Nonetheless, it continues to represent 12% of the offshore financial services market and is ranked 6th amongst the world's least transparent jurisdictions according to the Financial Secrecy Index of the Tax Justice Network[38]. The legal proceedings taken by the Luxembourg authorities against Antoine Deltour, the former PwC employee and source of the Luxleaks, show that this culture of secrecy persists.

Indicator 2: The benefit of doubt

Business is 60% more profitable in tax havens

The in-depth analysis that country-by-country reporting allows for, clearly shows the gap between tax havens and other territories. The activities of the top five French banks are, on average, 60% more profitable in tax havens than in other countries. This profitability rate* means that for the same turnover (or the same amount of business), profits from banking activities in tax havens are 1.6 times higher than in the rest of the world. In other words, for a turnover of €1,000, French banks earn €362 in tax havens compared to €227 in other countries. With the same level of turnover, profits made in France would be €205. That is to say profits in tax heavens would be 1.8 times as high as in France.

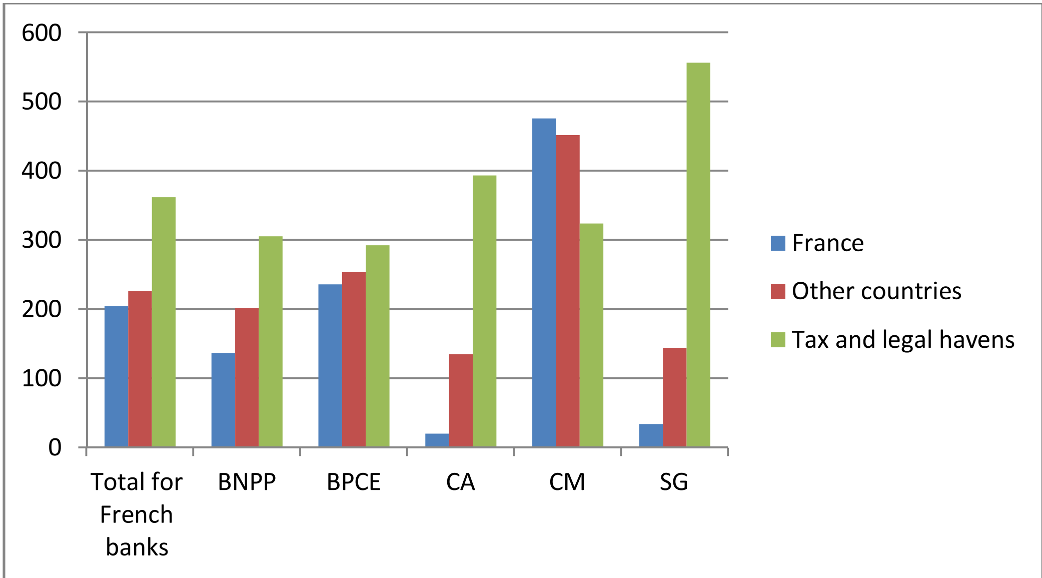
The variation between banks shows further results.

[33] Institut National de la Statistique et des études économiques [national statistics and economic studies institute], *Le Luxembourg en chiffres* [Luxembourg in figures] *2015*.
[34] Tax Justice Network, (2015), Financial Secrecy Index, *Narrative report on Luxembourg*. Available from http://www.financialsecrecyindex.com/PDF/Luxembourg.pdf
[35] Luxembourg permits the registering of holding companies, entities that allow multinationals to "pass along" their dividends to Luxembourg where they are hardly taxed at all.
[36] Luxembourg permits the registering of intellectual property on its territory such as patents, trademarks, brands etc. As a result, if a subsidiary wishes to use or acquire these intellectual property rights, the fees or capital gain can be paid to the Luxembourg subsidiary which receives an 80% tax exemption on such income.
[37] Tax rulings granted to three banks as shown in the database of the International Consortium of Investigative Journalists (ICIJ). See ICIJ (2014) "Explore the documents: Luxembourg Leaks Database", 9 December 2014. Available from http://www.icij.org/project/luxembourg-leaks/explore-documents-luxembourg-leaks-database
[38] Tax Justice Network, op. cit.

Société Générale is the bank showing the greatest variation in profitability between tax havens and other countries. For the same volume of business, its activity in tax havens brings four times as much benefits as in other countries. Compared with business operations in France, the gap is even greater for the same level of production; the activities of Crédit Agricole and Société Générale are, respectively, 19 and 16 times as profitable in tax havens as in France.

It must however be emphasised that Crédit Mutuel-CIC and BPCE stand out in this area. The profitability rate is lowest for BPCE, and Crédit Mutuel-CIC is the only bank with a profitability rate lower in tax havens than in other countries. This may be explained by the fact that the Crédit Mutuel-CIC group has the lowest involvement in corporate and investment banking, especially compared to the other four French groups[39].

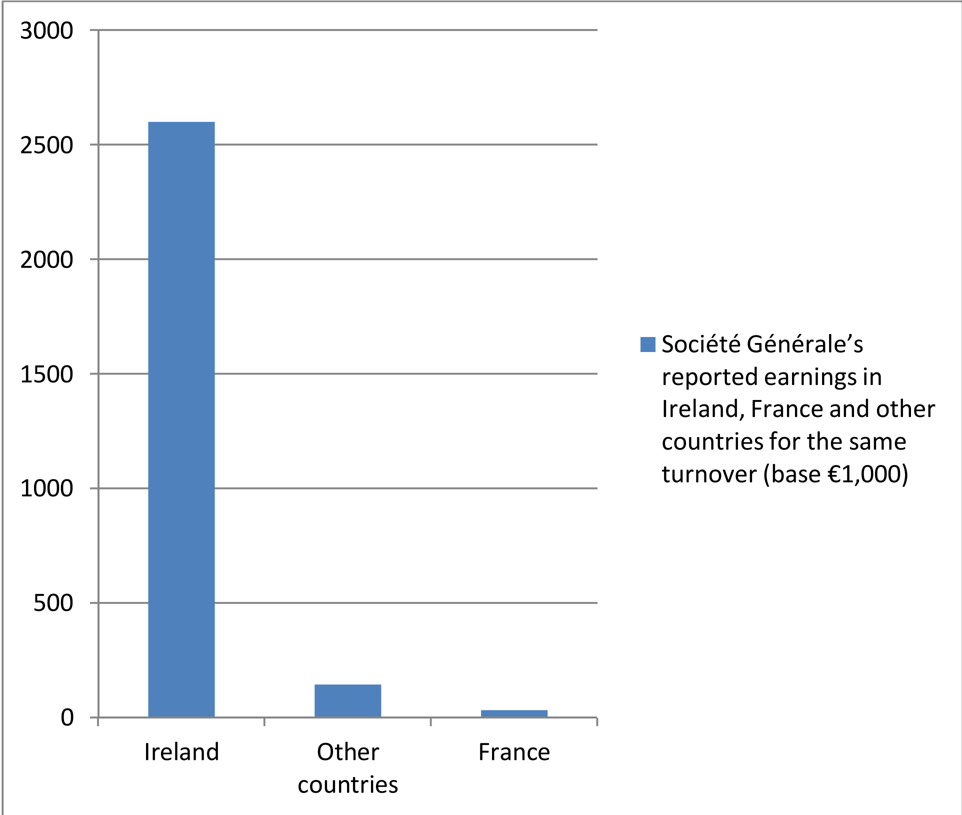
Graph 1: Reported profits for the same turnover of the top five French banks in tax havens and in other countries (base €1,000) (2014)



Such averages, covering all territories, hide large disparities between countries. For example in Ireland, the activities of Société Générale generate profits that are 18 times as great as inother countries and 76 times as high as inFrance.

[39] Financial and investment activities, including trading, according to the banks, are often highly international in nature and based in offshore jurisdictions. Crédit Mutuel-CIC's modest profit from such activities may be linked to its limited involvement in this type of business. In 2014, CM-CIC's net receipts from banking derived from these activities totalled €921 million. Those of BNP Paribas, for example, were €8,888 million. See the annual reports of the banks in question.

Graph 2: Société Générale profits in Ireland, France and other countries for the same turnover (base €1,000) (2014)



How is it possible for the finance industry to earn margins that are systematically higher in tax havens? Where do such disparities in profitability between entities in the same group come from? Specialisation of banking activities by country may partially explain these differences. Tax havens host fewer retail banks* than other countries and specialise in highly financialised and more profitable activities (see indicator 5).

These figures also confirm suspicions around profits being shifted artificially as previously indicated by the Tax Justice Network's expert, Richard Murphy, when he performed similar calculations on data from the top 28 European banks for a report submitted by the Greens/European Free Alliance to the European Parliament in July 2015[40].

These suspicions appear all the more real when the volume of business (or turnover) is equivalent to the profits produced. This situation arose 6 times in 2014 with BPCE, Crédit Agricole and Crédit Mutuel-CIC in the Cayman Islands, Société Générale in Cyprus and Bermuda, and BPCE in Malta. Do banks have no outgoings or operational costs in these territories where they make such profits? Is it artificially shifting profits to the territory in question? Or are they exploiting the relaxed regulations offered by these jurisdictions to indulge in speculative and risky but very profitable activities? The

[40] MURPHY R., (2015), "European Banks' Country by Country reporting: a review of CRDIV data", a report for the European Greens, July 2015. Available from : http://www.sven-giegold.de/wp-content/uploads/2015/08/CbCR-report.pdf

disconnection between profits generated and real economic activity in the tax havens then becomes quite evident.

Indicator 3: Havens that make you productive

On average, there are a 2.6 times less employees in tax havens

Another element distinguishing tax havens from other countries is the number of employees per subsidiary. It turns out there are 2.6 times less employees in a tax haven subsidiary than in other countries. This gap can be much bigger for certain banks. For example BPCE has almost 8 times fewer employees per subsidiary in tax havens than in other countries. Some subsidiaries even operate without a single employee. In 34 cases[41], banks report subsidiaries in offshore territories without any staff. In five countries (Bermuda, Cyprus, the Cayman Islands, the Isle of Man and Malta), French banks have no employees. The "shell award" goes to the Cayman Islands. In total, the five French banks have 16 subsidiaries there but none have reported any employees. Not even BNPP, though it reports two retail banks or Crédit Agricole that reported profits of €35 million. Some banks explain this situation by saying that the employees are in the USA[42]. How can a subsidiary be entirely managed from overseas? What is the point of having a subsidiary in a tax haven if it is not to exploit the regulatory and tax facilities? The Cayman Islands and Bermuda are renowned for the ease with which banks can set up special purpose vehicles*, in other words shell companies that can be used to take on excessive debt without it appearing on the group's accounts[43]. Financial analysts and the public are therefore given a limited picture of the risks the bank is taking and, moreover, the dangers it is placing on the entire economy.

.... but they are at least 2.6 times as productive

The lack of human resources in tax havens, together with the huge profits reported in these territories, demonstrates a further feature of tax havens – a level of productivity per employee 2.6 times as great as that of other countries where they operate. Far from proving a genuine difference in ability between employees, the evidence of this indicator further emphasises the unique nature of activities in tax havens.

Table 2: Widely varying productivity

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[41] BNPP (the Cayman Islands, Isle of Man); BPCE (Cambodia, the Cayman Islands, Jersey, Lebanon, Malta); SG (Bermuda, Cyprus, Curaçao, Estonia, Guernsey, the Cayman Islands, Hungary, British Virgin Islands, Latvia, Lebanon, Lithuania, Malta, Mauritius, New Zealand, the Philippines, Thailand); CA (the Cayman Islands, Guernsey, Bermuda, the Bahamas, Vietnam); CM (Hong Kong, the Cayman Islands, Morocco, Canada, the Netherlands, Tunisia).

[42] BNPP stated *"Profits from entities in the Cayman Islands are taxed in the USA and staff is also located in the USA"* See BNPP op. cit. p446 .

[43] Scandals such as Enron demonstrate how companies made massive use of special purpose vehicles to reduce the proportion of debt in their balance sheet. A report prepared by French Senator Eric Bocquet for the Senate's commission of enquiry into capital flights from France and its impacts on taxation included witness statements corroborating this argument. See BOCQUET E. (2013), *Évasion des capitaux et finance : mieux connaître pour mieux combattre* [Capital and financial flight: to be forewarned is to be forearmed]. Available from http://www.senat.fr/rap/r13-087-1/r13-087-12.html

Average productivity per employee for all banks and per country group in the top five tax havens (2014)

Country	Productivity per employee
Ireland	€685,000
Luxembourg	€233,000
Monaco	€146,000
Jersey	€137,000
Netherlands	€123,000
Average in tax havens	**€114,000**
Average in non-tax haven countries	**€45,000**
France	**€43,000**

Thus, while the work of an employee generates €43,000 in profits in France, the Irish employee's output generates €685,000 – almost 16 times as much.

A bank-by-bank calculation of productivity ratios* shows an even greater gap between tax havens and other countries. With the exception of Crédit Mutuel-CIC (for reasons similar to those explained under indicator 2, such as limited exposure to corporate banking) it is clear that employees in tax havens "bring in" higher profits than their bank's employees working in other countries. Société Générale comes out on top since its employees "bring in" almost 12 times as much profit in tax havens as in other countries, and 39 times as much as in France. Crédit Agricole employees bring in almost 36 times as much profit in tax havens as their colleagues in France.

Table 3 Productivity gap per employee between tax havens and other countries (2014)[44]

	Productivity per employee in tax havens	Productivity per employee in non tax havens countries	Productivity per employee in France	Productivity multiplier in tax havens compared with other countries	Productivity multiplier in tax havens compared with France
BNP Paribas	€86,000	€42,000	€32,000	2.1	2.6
BPCE	€96,000	€57,000	€49,000	1.7	1.9
Crédit Agricole	€145,000	€28,000	€4,000	5.2	35.9

[44] The productivity multipliers above only apply to a comparison of employees within the same bank.

Crédit Mutuel-CIC	€86,000	€88,000	€94,000	1	0.9
Société Générale	€274,000	€23,000	€7,000	11.8	39.2

Offshore tax havens do not constitute a homogeneous group of territories and there are many reasons for banks to establish themselves there. While they are not creating new levels of productivity in all jurisdictions sometimes considered to be tax, legal and regulatory havens, the profits produced per employee in certain countries are nevertheless astonishing, particularly in Ireland. (see appendix 5, the list of the most productive employees).

"And the employee of the year award goes to….. BPCE staff in Ireland"

Ireland wins hands down when it comes to the country with the most productive employees. The BPCE group employee in Ireland is 31 times as productive as the bank's average employee, he generates €1.778 million on his own in a single year. He is followed by the BNP Paribas and Crédit Agricole employees, again both in Ireland, who bring in €845,000 and €596,000 respectively. Note the fact that the productivity of the Irish Crédit Agricole employee is thus 147 times as great as that of the French employee – a performance that gives pause for thought.

These figures do not necessarily mean that the skills of Irish labour force are better than that of other countries, rather it highlights the country's particular regulatory and tax regime.

Ireland has been used in the past for tax avoidance purposes. The country offers one of the lowest taxation on profits in Europe (12.5%), significant tax-breaks for Research and Development (R&D), intellectual property and intangible assets, in addition to a highly advantageous treatment of holding companies*[45].
Ireland has also instituted legal provisions renowned for their flexibility regarding high risk market activities[46] which, when compared to the number of employees, would appear to be extremely lucrative. Consequently, Ireland facilitates the establishment of companies often known as "special purpose vehicles" (SPVs) that allow banks to indulge in highly leveraged* and extremely lucrative deals.

Steps by Ireland in recent times to counteract tax avoidance include beginning the phasing out of the Double-Irish structures, publishing a spillover analysis on the effects of the Irish tax system on developing countries and introducing country-by-country reporting (though this reporting will not be made publicly available). However, Ireland is considering some new tax reforms that might put

[45] WALLACE B., (2014), Why Ireland? Tax considerations. Guide to company taxation in Ireland. Available from *http://byrnewallace.com/uploadedFiles/Services/Service_List/Why%20Ireland%20-%20Guide%20French.pdf?n=2332* and PriceWaterhouseCoopers, (2014), *Pourquoi l' Irlande?* [why Ireland]. Available from http://download.pwc.com/ie/pubs/2015-pwc-ireland-why-ireland-french.pdf

[46] Section 110 of the Taxes consolidation Act is the cornerstone establishing the regulatory and tax regime facilitating Special Purpose Vehicles and securitization. See GODFREY B., KILLEEN N. and MOLONEY K., (2015), "Data Gaps and Shadow Banking: Profiling Special Purpose Vehicles' Activities in Ireland", Central Bank, *Quaterly Bulletin 03*. Available from https://www.centralbank.ie/publications/Documents/Data%20Gaps%20and%20Shadow%20Banking%20Profiling%20Special%20Purpose%20Vehicles%20Activities%20in%20Ireland.pdf

at risk this progress, replacing one loophole by another.

Indicator 4: Highly specific activities in tax havens

Speculative products, asset management and investment solutions remain at the heart of tax havens.

It is well known that since the crisis of 2008, offshore tax havens account for most financial innovation and speculation.

Any examination of banking activities in the various territories where they have set up shows that tax havens continue to stand out because of the types of activity they permit compared with other countries. In contrast to normal retail banking, most corporate and investment banking* are concentrated in tax havens due to the tax regulatory and prudential incentives offered for such activities. These include operations that are highly financialised and extremely lucrative such as structured financing* or investment management. It is noticeable that, proportionately, there are relatively few retail banks. This fact confirms the tendency identified during the last financial crisis that tax havens – at least for French banks – continue to host complex, non-transparent financial activities[47].

It is vital to know what kind of operations banks are undertaking in tax havens. This provides an additional criterion with which to judge whether or not banks have set up in tax havens for reasons other than those applicable in other countries. Banks insist that they are carrying out "genuine financial activities[48]" in these territories or that they are there for local customers.

It is important to note that in the absence of a breakdown in similar activities by the five banks, analysis is difficult. Some banks like BPCE, break their activities down into 87 different categories, while others like Crédit Agricole only specify five (local banking, savings and assurance management, specialised financial services, corporate and investment banking and non-core business). In these

[47] CHAVAGNEUX C, (2009), "Comment les paradis fiscaux nourrissent l'instabilité financière" [How tax havens foster financial instability], *L'économie politique,* 23 September 2009. Available on http://alternatives-economiques.fr/blogs/chavagneux/2009/09/23/comment-les-paradis-fiscaux-nourrissent-l%e2%80%99instabilite-financiere/

[48] FABRE T., (2014), "Mais que font les sociétés du CAC 40 avec des filiales offshore dans les paradis fiscaux ?" [What are CAC40 companies doing with offshore subsidiaries in tax havens], Challenges, February 2014. Available from http://www.challenges.fr/economie/20140212.CHA0350/que-font-les-geants-du-cac-40-dans-les-paradis-fiscaux.html

circumstances, comparison or drawing general conclusions becomes impossible. Nevertheless, on a bank-by-bank and case-by-case basis, we have been able to identify the following trends – a different range of activities in tax havens compared to other countries, particularly regarding retail banking.

- **Very few, if any, retail banks in tax havens**

Taking Crédit Agricole as an example, the bank only lists seven retail banking entities among its 159 subsidiaries in tax havens, which is four times fewer than in other countries[49]. It also needs to be pointed out that of the 60 subsidiaries of French banks in Ireland, there is only one retail bank. Some activities appear to be exclusively carried out in tax havens. It is even possible to see a degree of 'specialisation' per offshore territory, demonstrated through the type of tax or regulatory facilities on offer in each territory.

- **Tax havens specialised in high-risk trading**

75% of BNP Paribas' Irish subsidiaries (15 of 20) specialise in corporate and investment banking*, including trading*. Such a large presence does not appear to be solely related to the financial needs of the Irish economy. The motive is the tax, regulatory and prudential facilities Ireland offers[50]. BPCE's nine subsidiaries specialising in structured financing are all located in tax havens (Ireland, the Cayman Islands, Malta, Mauritius and Singapore).

- **Countries specialising in asset management and private banking**

Tax havens are home to over half of BNPP's subsidiaries that specialise in wealth management. All Crédit Mutuel-CIC's Swiss and Bahamian subsidiaries specialise in asset management* and private banking, while three out of BNPP's four Jersey subsidiaries specialise in investment solutions.

It is quite clear that tax havens host different types of banking activities to other territories. The proportion of trading, especially securitization* and structured financing again raises the question of whether these territories are being used for tax and regulatory avoidance. If a presence in tax havens allows the banks to avoid tax themselves or for their customers, it is likely that they are also used by banks to avoid their regulatory obligations, especially by setting up vehicles for managing high-risk assets (as shown in the box). Their role in the banking crisis must not be forgotten. The collapse of Lehman Brothers, Bear Stearns and Northern Rock, Bernard Madoff's Ponzi scheme, as well as the Enron and Clearstream affairs all demonstrated the links between these companies and the complex financial instruments in tax havens.[51]

How else can such activity be explained in tax havens if it is not to exploit their regulatory facilities to avoid paying tax, take secretive risks, or to ensure the growth of hedge funds*?

Transparency raises doubts about BNPP's actual business in Belgium

[49] Crédit Agricole owns 20 retail banking subsidiaries out of its total of 169 foreign subsidiaries (excluding tax havens and France).
[50] See box Ireland indicator 3
[51] LE MOIGN C., op.cit.

Due to country-by-country reporting, it can be confirmed that BNPP operates a high level of retail banking in Belgium, with over 16,000 employees. It produces 18% of its total profits and pays 18% of its taxes. The presence of BNPP in Belgium appears partly justified in view of its retail banking even if Belgium is considered a tax haven because of its tax exemption on capital earnings. Similarly, Crédit Mutuel-CIC mostly owns retail banks and has over 1,700 employees. The same connection cannot be drawn when examining the activities of other banks. The Belgian example demonstrates the importance of publishing high-quality country-by-country data. It avoids the trap of oversimplification, provides clarity about the activities of banks in different territories, and can reassure shareholders, customers and investors.

Indicator 5: The varying tax rates per location

Effective tax rate of French banks in tax havens is half of average tax rate in other countries

In 2015, for the first time, banks had to divulge the tax they pay on their profits for each country in which they operate. A stark difference could be seen between tax havens and other countries. In the former, French banks paid on average 16.8% tax on earnings while in the latter, tax was 30%. Société Générale and Crédit Mutuel-CIC paid the lowest effective tax rate* with an average of 13.6% in tax havens. However the many obstacles to calculating effective tax rates (see box) tend to vastly overestimate the tax paid by banks.

An effective tax rate is hard to calculate

Calculating the effective tax rate, the tax contribution banks actually pay on their profits, has proved to be complicated in practice for various reasons. Primarily because all the banks presented their tax in different ways. Crédit Mutuel- CIC even created a category headed “other tax”.

But the real problem lies in the presentation of profits or losses before tax. This is needed to check whether tax corresponds to what ought to have been paid according to the applicable tax rate. Now, profits declared by banks do not correspond to taxable profits. The figures the banks supplied correspond to pre-tax profit that is likely to contain non-recurrent (or exceptional) items, as in the case of the €6.6 billion fine BNP Paribas paid to the US government for doing business in US dollars with countries under American embargo[52]. To analyse BNP Paribas’ data more accurately, this exceptional fine included in the bank’s profit and loss statement was not taken into consideration (see methodology, appendix 1).
Furthermore, since banks are publishing their country-by-country earnings and tax for the first time this year, it is possible that the results reflect compensation for losses from previous years or tax carried over to the following year, which can influence calculating the effective tax rate. For example, BNPP reported paying no current tax in Hong Kong in 2015 but earnings of €16 million appear in the deferred tax column due to compensation from the previous year. Results are therefore skewed. Only by monitoring how this evolves over the coming years will trends emerge more clearly.

[52] LAUER S, (2014), "La BNP paiera une amende de près de 9 milliards de dollars aux Etats-Unis", [BNP will pay almost $9 billion in fines in the USA] Lemonde.fr, 30 June 2014. Available from http://abonnes.lemonde.fr/ameriques/article/2014/06/30/la-bnp-devra-regler-8-834-milliards-de-dollars-d-amende-aux-etats-unis_4448280_3222.html

The havens where banks pay little or no tax

The variation in tax rates between tax havens and other countries can be partly explained by the various jurisdictions where banks do not pay a single euro in tax, whether that is due to local legislation (such as the Bahamas, Bermudas, Guernsey) or not (as in the case of Société Générale in Cyprus and Ireland). In the latter case, this means that banks receive tax breaks in these territories. This occurred 19 times within tax haven territories.[53].

Even in countries with a very low statutory tax rate, banks do not always pay as much tax on earnings as they should. For example, they pay 5% of their earnings in Hong Kong despite the official rate being nearly 17%. It is a similar situation in Ireland where only BNPP pays the legal rate of 12.5%, whereas BPCE pays around 6% tax, Crédit Agricole 4 % and Société Générale 0 %.

Table 4: Difference between statutory and effective tax rates in Hong Kong and Ireland (2014)

	Hong Kong	Ireland
Statutory tax rate	16.5%	12.5%
Effective tax rate for BNPP	0%	12.5%
Effective tax rate for BPCE	4%	6%
Effective tax rate for Crédit Agricole	15.8%	4%
Effective tax rate for Société Générale	8.2%	0%
Overall	4.4 %	8.5%

NB: Crédit Mutuel-CIC does not feature in the table because it has no operations in either country

Total blackout on tax credits

One of the elements country-by-country reporting provides is to reveal the amount of public subsidies banks receive. Without exception, none reported any subsidies from any country in which they operate.

So do French banks not receive any public subsidies? They do however receive benefits in the form of tax credits or a reduction in employer's costs, which need to be included if we are to have a full picture of public support received. In France, both the *Crédit d'impôt pour la Compétitivité et l'Emploi* (CICE) [competition and employment tax credit] and *Crédit d'impôt recherche* (CIR) [R&D tax credit] are prime examples of state aid that are not considered as subsidies, but which raise questions around how they are used..

In 2014, the top five French banking groups alone received hundreds of millions of euros in CICE:

- BPCE: 107 million[54]
- BNPP: 39 million[55],

[53] BNPP in Guernesey, the Cayman Islands, Jersey and Monaco; BPCE in the United Arab Emirates, Hungary, the Cayman Islands, Malta, Mauritius and Vanuatu; Société Générale in the Bahamas, Bermuda, the Cayman Islands, Cyprus, the United Arab Emirates, Ireland and Lebanon; Crédit Agricole in the Cayman Islands and Crédit Mutuel in the Cayman Islands and Monaco.

[54] BPCE, op.cit., p.177

- Société Générale: 38 million[56]
- Crédit Mutuel–CIC: 82 million[57]
- The information for Crédit Agricole could not be found. [58]

There is however no mention of these credits under the "subsidies" heading for reporting in France. The lack of information regarding the end use of these tax exemptions granted to banks is equally problematic, because their effectiveness is far from proven[59]. Yet the banks seem to benefit from a great deal[60], where the benefits contribute only slightly[61] to achieving the original purpose of CICE, "financing improvements in competitiveness through improvements in investment, research, innovation, training, recruitment, researching new markets, ecological and energy transformation, and rebuilding working capital"[62]. There is no way of identifying how this money was used by companies[63]. Moreover, even if it were proven that the banks took advantage of the CICE's benefits, using it for ends other than its original purpose, it would not stop them receiving it the following year[64].

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[55] BNP Paribas, op.cit., p. 406

[56] Société Générale, op.cit., p. 466.

[57] Crédit Mutuel-CIC, op.cit., p. 198.

[58] Of the top five French banks, only Crédit Agricole did not declare the amount of CICE it received in its annual report. Crédit Agricole was also one of the companies that declined to report the amount in the Journal du Net. See DELENEUVILLE M. (2015), "24 grandes entreprises ont touché 1,6 milliard d'euros en 2014" [24 major companies raked in €1.6 billion in 2014], *journaldunet.com*, 8 July 2015. Available from http://www.journaldunet.com/economie/magazine/1157975-cice-2014-des-grandes-entreprises-francaises/

[59] We refer in particular to the reports by Sciences en Marche and Brigitte GONTHIER-MAURIN for CIR and the interim report by the Syndicat national de la banque [national banking union] (SNB/CFE-CGC) on the use of CICE. See Sciences en Marche (2015), "CIR et R&D : Efficacité du dispositif depuis la réforme depuis 2008" [CIR and R&D – the effectiveness of this measure since 2008], page 21. Available from: http://sciencesenmarche.org/fr/wp-content/uploads/2015/04/RapportSenat_SeM.pdf.
See also LAROUSSERIE D.,(2015), "Crédit d'impôt recherche, un rapport passé sous silence" [R&D tax credit, report ignored], 10 June 2015, Lemonde.fr. Available from: http://abonnes.lemonde.fr/sciences/article/2015/06/10/credit-impot-recherche-un-rapport-passe-sous-silence_4651097_1650684.html
And see, GOANEC M. & EL AZZOUZI R., (2015), "Pacte de responsabilité: Valls refuse de le réorienter comme réclame le PS", [responsibility pact – Valls declines to redirect it as demanded by the socialist party] 26 August 2015., Médiapart. Available from https://www.mediapart.fr/journal/france/260815/pacte-de-responsabilite-valls-refuse-de-le-reorienter-comme-le-reclame-le-ps?page_article=3

[60] Ibid.

[61] GOANEC M. (2015), "Difficiles à évaluer, les effets du CICE restent très limités" [Hard to evaluate, the effects of CICE are limited], Médiapart.fr, 22 September 2015. Available from https://www.mediapart.fr/journal/economie/220915/difficiles-evaluer-les-effets-du-cice-restent-tres-limites

[62] Ministère des Finances et des Comptes Publics (2016), [Ministry of finance and publiic accounts], le CICE c'est quoi ? [what is CICE ?] (on line). Available from http://www.economie.gouv.fr/pacte-responsabilite/cice/detail

[63] Due to the principle of fungibility, a company can reassign tax credits without the regulator knowing. See Ministère des Finances et des Comptes Publics (2012), "Guide pratique de la LOLF : Comprendre le budget de l'Etat" [Practical guide to LOLF {public finance legislation} - understanding the national budget], page 74. Available from http://www.performance-publique.budget.gouv.fr/sites/performance_publique/files/files/documents/ressources_documentaires/publications/guide_pratique_lolf/2012/guidelolf2012.pdf.

[64] Assemblée Nationale (2013), Government reply to written question 16646 from Mme Isabelle Le Callennec (on line). Available from http://www2.assemblee-nationale.fr/questions/detail/14/QE/16646 "This information relates to a requirement for transparency, but does not affect the granting of the CICE based on their end-use, nor can it be challenged, as a result"

With regards to the *Crédit d'Impôt Recherche* (R&D tax credits), it is even less clear. None of the banks we contacted agreed to tell us how much CIR they received in 2014. Yet CIR remains one of the most generous tax credits in the world. [65]

Indicator 6: Half-hearted transparency

Incomplete information, published in a format difficult to use

Examination of the information provided by the country-by-country reporting revealed many gaps in data, inconstancies in reporting and variations in data presentation that made analysis complicated and at times impossible. It appears that banking law allows for much room for interpretation and it does not require a specific, harmonised format. It is also the case that banks are sometimes reluctant with regards to transparency.

All the banks examined in this report were contacted with questions about different gaps noted in the reporting. Only three replied - Société Générale, BPCE and Crédit Mutuel-CIC – and their comments are incorporated in our analysis. BNP Paribas and Crédit Agricole however did not reply.

Complicated format

Country-by-country reporting is hard to work with because it is published in pdf format. Manual data capture and refining (due to the different formats used by each banks) is lengthy, and a leads to potential mistakes. This makes data analysis much more difficult than if, as originally requested, it was all published on the internet in open format. This is all the more surprising considering that France signed the G8 Open Data Charter[66] in 2013, which recommended that as much data as possible be published in standard formats that are freely available and usable on line. Furthermore, in 2016 it will take over the chairmanship of the Open Government Partnership (OGP), a multilateral initiative promoting the use of open formats for public data[67]. However France's own record is poor, as testified by the scarcity of information on tax matters that can be accessed as open data. The amount of effort required to capture and refine the data in a processable format questions the initial purpose of public reporting. It was intended to allow everyone, the public, journalists and MPs, to understand more clearly what banks are doing in France and abroad.

Incomplete information and unexplained data

The most surprising gap is, unquestionably, the blanks left in country-by-country reporting regarding three of the five banks examined (Crédit Agricole, Société Générale and BPCE).

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[65] OECD (2014), *Examen de l'OCDE des politiques d'innovation : France,*[OECD review of innovation policies - France] page 24, Available from http://www.oecd.org/fr/sti/inno/innovation-france-ocde.pdf

[66] G8, (2013), G8 Open Data Charter, 18 June 2013. Available from http://www.modernisation.gouv.fr/sites/default/files/fichiers-attaches/charte-g8-ouverture-donnees-publiques-fr

[67] Elysée (2015) "La France présidera le 'Partenariat pour un Gouvernement Ouvert" [France will chair the Open Government Partnership], press release, 24 April 2015. Available from http://www.elysee.fr/actualites/article/la-france-presidera-le-partenariat-pour-un-gouvernement-ouvert/>

See for example an extract from BPCE's CBCR:

	Produit net bancaire (en M€)	Bénéfice ou perte avant impôts (en M€)	Impôts sur les bénéfices (en M€)	Effectifs ETP
	Exercice 2014			31/12/2014
Lettonie	1			7
Lituanie	2	1		13
Luxembourg	196	115	(7)	272
Malte	1	1		
Pays-Bas	21	10	(2)	71
Pologne	21	7	(2)	212
Portugal	31	4	(2)	149
République Tchèque	2	1		7
Roumanie	7	3	(1)	91
Slovaquie	1			8
Suède	3	1		16
Autres pays d'Europe				
Jersey	1			
Monaco	11	10	(3)	32
Russie	16	7	(3)	70
Suisse	5	(14)	0	71
Afrique et bassin méditerranéen				
Afrique du Sud	4			66
Algérie	69	40	(9)	693
Cameroun	82	37	(9)	620
Congo	21	8	(3)	224
Djibouti	20	3	(1)	277

BPCE explained that according to the bank's guidelines, a "gap" meant "0" when the amounts were less than a million euros. At first glance this is not clear, especially since BPCE, like other banks, uses "0" elsewhere.

The story is different for Société Générale. It said that if there is no data for some countries (Estonia, Hungary, Lithuania, Lebanon, Mauritius and the Ukraine), this is because the entities in those countries were consolidated into the group accounts under the equity method. The profits of certain subsidiaries are applied to a higher-level entity, rather than shown directly in the overall accounts.

Such explanations are not convincing. Why would a consolidation procedure exempt them from declaring the number of employees in a country? This raises doubts around the usability of such reporting. We should not have to contact banks directly to understand why they left gaps in their declarations, particularly while there is no explanation in their respective annual reports.

Missing subsidiaries

As the PPFJ previously indicated in its 2014 report, one of the main limitations of country-by-country reporting is the degree of interpretation permitted to banks in defining their scope of consolidation*[68]. Banks are in fact free to decide themselves which subsidiaries they include and

[68] The scope of consolidation applies to all entities contributing to the consolidated balance sheet. The comprehensive income is derived from consolidating the activities each of these entities. The scope of consolidation needs to include all the companies which the parent company owns outright or in partnership (by holding at least half of the votes) or in which it has a sizeable stake (presumed to be at least a fifth of the votes).

those that are not sufficiently significant (in terms of turnover, profits etc)[69]. In other words, it is possible that many subsidiaries (including those in tax havens) appear neither in the scope of consolidation nor in country-by-country reporting because they fall below the threshold of significance decided by the banks; a threshold they declined to communicate to us.

A further complication is that some subsidiaries appear in the scope of consolidation but not in the list of subsidiaries required by the banking law's country-by-country reporting, even though both lists should be identical. This is the case of Société Générale for example, with 18 subsidiaries missing, and Crédit Agricole with 281 missing.

There are also countries in which banks say they have one or more subsidiary, but which are missing from their country-by-country reporting. To quote just one example, BNP Paribas said it had a subsidiary in Bermuda (Cronos Holding Compagnie Ltd (Groupe)) but Bermuda does not appear in the list of territories in which BNPP has a presence. Similar anomalies were detected for all the banks.

In reply, some banks indicated that it related to reporting under the equity method (see above). In country-by-country reporting, only top-ranking entities appear. This explains the lower number of subsidiaries, but not how this criterion is used or justified.

The decisions that banks can make regarding which subsidiaries are important enough to appear in the scope of consolidation or reporting, is the source of much confusion and makes comparisons difficult.

[69] As explained in footnote 67, the definition of scope of consolidation is supposed to be the same for all banks. It corresponds to entities which it owns outright or in partnership (by holding at least half of the votes) or in which it has a sizeable stake (presumed to be at least a fifth of the votes). Nevertheless, the International Financial Reporting Standard permits exceptions. Banks may, for example, decide that below a certain threshold, (balance sheet, turnover or staff) certain subsidiaries are "not significant" and therefore not consolidated, meaning that they do not appear in reporting. For example BNP Paribas raised its consolidation thresholds in 2011. This explains why BNPP went from 1409 entities (360 of which were in tax havens) in 2011 to 870 (214 of which were in tax havens) in 2012. See BNPP (2011), *2010 Nouvelles Séries Trimestrielles*, [new quarterly series] 21 April 2011. Available from https://invest.bnpparibas.com/sites/default/files/documents/communique-presse_v_21_04_2011_fr_.14340.pdf

Conclusion

This second round of country-by-country reporting by French banks has confirmed that free public information is indispensable to understand banking activity, especially in tax havens. In fact the information released over the last two years does nothing to end any doubts about the reasons behind such intense use of offshore territories. The additional information from 2015 provides a better grasp of some activities and territories in question, also demonstrating the disconnect between reported profits and banks' actual business operations. Ultimately, the examination of this information confirms our initial assumption that behind the French banks' presence in tax havens, there are systems potentially used for avoiding tax and certain regulations.

Reporting will, however, need to improve in content and format, and it especially needs to be extended to multinationals in all sectors. Given the role banks play for their customers, we can easily imagine that they have also established themselves in tax havens to meet such demands, from multinationals in particular.

This exercise in banks' economic and fiscal transparency proved that reporting was feasible and useful, and shows that we urgently need to know more about the actual activities of all companies in tax havens. In order to tackle the scandal of tax evasion and re-establish fairness for small and medium-sized enterprises, the importance of transparency must be recognised.

Making such data available, as well as our conclusions from them, should inform public decision making and expose the activities of companies so that they can no longer profit from loopholes in the international tax system to limit the amount of tax they pay.

There are two historical opportunities through which to extend this obligation at national and European level in 2016. In France, Michel Sapin's bill on transparency in the economy is due to be debated in Parliament in April 2016. In Europe, via the shareholders rights directive that is still under discussion, the European Union also has an opportunity to create the tools required for member states to reclaim the tax system without harming the competitiveness and attractiveness of European companies. By adopting such a measure, not only will EU members be strengthened but so too will all its partners.

Almost 10 years after the last financial crisis began and tax evasion scandals filled the front pages, we urgently need to adopt ambitious tax reforms if we ever want to put an end to the era of tax havens.

Recommendations:

As a result of studying the figures published by French banks, we are making the following recommendations on (i) the need to extend country-by-country reporting, (ii) its use politically and legislatively and (iii) the need to improve existing reporting. We would also reiterate the need to adopt complementary measures to (iv) set an ambitious political agenda to combat tax avoidance.

These measures are addressed to the French and European authorities

1. Extend reporting to all multinationals

Add obligatory **public country-by-country reporting by all large French multinationals** to the law on transparency in business in France and actively support the proposal on public reporting passed by MEPs in the shareholders' rights directive that is still being debated at EU level. Such public reporting needs to contain the following information – list of subsidiaries, profits, turnover, tax paid, staff, subsidies, assets, sales and purchases.

2. Political and legislative use of bank reporting

French and European tax authorities, and French and European members of parliament need to **learn the political and legislative lessons from the demands for transparency that banks have been subjected to since 2015 and they should**:

- Use this information to conduct an in-depth investigation into the worst cases and draft effective legislation to tackle such practices.
- Increase the penalties against individuals and legal entities when evidence of shell companies or tax evasion is found.

3. Improving existing reporting

By analysing the country-by-country data from the banking sector we encountered various difficulties. Consequently, we are putting forward recommendations regarding the reporting format, which is all the more crucial when discussing extending public country-by-country reporting to all sectors in the European Union. These recommendations are addressed to both France (to improve the existing reporting obligations for French banks) and the European Union, who should:

- Require publications to follow **standard formats that are usable and available in open format online,** as stated in the G8 Open Data Charter France signed in 2013[70].
- Define a standard **list of activities** for all banks
- Publish the **significance thresholds** used to define banks' scope of consolidation.
- Provide the **full address of the subsidiary**, at least indicating the territory or region.

[70] G8 (2013), op. cit.

- Specify the **taxable profits** within the profits reported. Harmonise the format for publishing taxation on profits to show the total amount, prevailing tax rate, tax carried forward, ignoring any type of tax other than that on profits.
- In the definition of "**subsidies**" for bank reporting, include all state aid received (such as loans, tax credits, gifts, exemptions).
- Expand reporting by providing more specific data on activities within territories and data that will quantify activities carried out on behalf of customers.

If French banks are willing to ensure full transparency of their activities, they should include these recommendations in their next reporting exercise for 2015.

4. Setting an ambitious political agenda to combat tax evasion

- Put an end to **tax loopholes** and other prejudicial tax structures like "patent boxes" (tax regimes favourable to intellectual property).

- **Harmonise tax bases in Europe**. Using a common consolidated corporate tax base, multinationals would no longer be in a position to select the country that offered them the best tax breaks. While the European Commission is due to issue a proposal regarding this in the autumn[71], it needs to be a priority if we are to put an end to tax evasion in the European Union.

- **Publish tax rulings** granted to multinationals that allow them to reduce their effective tax rate and simplify the taxation system of multinationals, thus making recourse to tax rulings unnecessary.

- Draw up a **public register of the actual beneficiaries of companies and trusts** as part of the adaptation of the fourth anti money-laundering directive in France

[71] European Commission (2016), *Anti-Tax Avoidance Package: Next steps towards delivering effective taxation and greater tax transparency in the EU*, 28 January 2016, Available from https://ec.europa.eu/transparency/regdoc/rep/1/2016/FR/1-2016-23-FR-F1-1.PDF

Appendix 1: Methodology

Scope of the study

This study was carried out on the five biggest French banking groups in terms of Net Banking Income[72]. The companies involved were BNP Paribas (BNPP), the Banque Populaire-Caisses d'Epargne group (BPCE), Société Générale (SG), the Crédit Agricole group (CA) and the Crédit Mutuel-CIC group (CM-CIC). They represent just over 85% of the entire French banking sector[73].

Sources:

The information used in the report was taken from the 2014 annual report each bank published in 2015[74]. In accordance with the Fourth Capital Requirements Directive (CRD IV) of 26 June 2013[75] and the French banking law of 26 July 2013[76], financial institutions published information on their activities in countries where they have a presence. This measure, known as "public country-by-country reporting", comprises of the following:

- The names of their establishments and the nature of their activities
- The net banking income
- Their staff, expressed as full time equivalent
- Profit or loss before tax
- Taxes paid
- Subsidies received

[72] ACPR, (2015), "Analyses et synthèses, la situation des grandes groupes bancaires français à fin 2014" [analyses and summaries, the situation of the top French banking groups at the end of 2014]. Available from https://acpr.banque-france.fr/fileadmin/user_upload/acp/publications/analyses-syntheses/201505-AS46-Situation-grands-groupes-bancaires-francais-fin-2014.pdf

[73] ACPR (2014), "Analyses et synthèses, activité internationale des grands groupes bancaires depuis 2006" [analyses and summaries, international activity of the top banking groups since 2006]. Available from https://acpr.banque-france.fr/etudes/analyses-et-syntheses.html

[74] BNP Paribas, (2015), *Document de référence et rapport financier annuel 2014*, [2014 annual report] pp 480-486. Available from https://invest.bnpparibas.com/sites/default/files/documents/ddr_2014_bnp_paribas.pdf
BPCE Group, (2015), *Document de référence et rapport financier annuel 2014*, [2014 annual report] pp 306-317. Available from http://www.groupebpce.fr/Investisseur/Resultats/Documents-de-reference
Crédit Agricole, (2015), *Document de référence et rapport financier annuel 2014*, [2014 annual report] pp 182-193. Available from http://www.credit-agricole.com/Investisseur-et-actionnaire/Espace-actionnaires-individuels/Publications>
Crédit Mutuel-CIC Group, (2015), *Document de référence et rapport financier annuel 2014*, [2014 annual report] pp 161-171. Available from https://www.creditmutuel.fr/groupecm/fr/images/fichier_pdf/rapport_annuel/2014/groupe-credit-mutuel-2014-rapport-annuel.pdf .
Société Générale, (2015), *Document de référence et rapport financier annuel 2014*, [2014 annual report] pp 57-73. Available from http://www.societegenerale.com/sites/default/files/ddr2015_final_13_03_2015_amf_version_fr.pdf

[75] Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, art 89. Available from http://eur-lex.europa.eu/legal-content/FR/TXT/PDF/?uri=CELEX:32013L0036&from=FR

[76] *Loi n°2013-672 du 26 juillet 2013 de séparation et de régulation des activités bancaires*, [Law 2013-672 of 26 July 2013 on the separation and regulation of banking activities] Art 7. Available from https://www.legifrance.gouv.fr/jo_pdf.do?id=JORFTEXT000027754539

This data has been assembled in Excel tables on the *Plateforme Paradis Fiscaux et Judiciaires'* website to make them available to individuals, civil society, the media and MPs.

Indicators used:

From the compiled and aggregated data, several indicators were calculated, by groups of countries, by country and by bank, so that comparisons could be made:

- Profitability (indicator 2): corresponds to the profit / net banking income ratio. The closer this ratio is to 1, the more it suggests a high profit for a given banking activity. Comparisons can be made between ratios and provide multipliers that reflect the gaps between two groups of countries, between one country and a group of countries, between two banks etc.
- Productivity per employee (indicator 3): corresponds to the ratio of profit to the number of employees (expressed as full time equivalent). This then provides the average profit made per employee. As with the profitability indicator, different levels of productivity were compared against each other, using multipliers.
- Effective tax rate (indicator 5): corresponds to the ratio of reported profits to tax paid. It is therefore different to the statutory tax rate*, applied in countries. When a country displays a significant difference between the statutory tax rate and the effective tax rate, this can represent an existence of mechanisms to reduce tax payments in that country. In addition to a statutory tax rate that is usually very low, this is a further characteristic of tax havens. The tax rulings* Luxembourg granted to multinationals that were the source of the Luxleaks scandal illustrate this. Calculating the effective tax rate has certain limitations, as explained in indicator 5.

The BNP Paribas fine

In June 2014 BNP Paribas was fined by the US Justice Department for permitting dollar transactions between 2004 and 2012 with countries under American embargo (Cuba, Iran and Sudan) [77]. As part of this penalty, it had to pay the US authorities €6.55 billion and implement a "remediation plan" costing €250 million[78]. BNP Paribas had previously set aside €800 million charged to its 2013 balance sheet[79]. There was therefore an exceptional charge of €6 billion affecting BNP Paribas' 2014 profit and loss account. Given the size of the amount, in order to work properly on the study, the bias created by such an extraordinary event had to be amended as follows. €2.855 billion of the fine was shouldered by the group's Swiss entity and €3.145 billion[80] by the French entity. Profits before tax,

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[77] BNP Paribas, (2014), "BNP Paribas annonce un accord global avec les Etats-Unis relatif à la revue de certaines transactions en dollars" [BNP Paribas announces a comprehensive agreement with the US regarding certain dollar transactions], BNP Paribas press release, 30 June 2014. Available from http://www.bnpparibas.com/actualites/presse/bnp-paribas-annonce-accord-global-autorites-etats-unis-relatif-revue-certaines-tra

[78] BNP Paribas, annual report 2014, pp.107, 118, 119

[79] Ibid.

[80] BNP Paribas did not specify how the fine was handled within the group, i.e. how much of the fine was shouldered by the Swiss subsidiary (that committed the offence) and the parent company in France. However the BNP Paribas (SA) Suisse annual report showed that the consolidated net profit before exceptional items for BNP in Switzerland was +126 million Swiss francs or €104 million. The figure for BNP in Switzerland before tax

once the fine is deducted, are -45 million instead of -€2.900 billion in Switzerland and €1.849 billion instead of -€1.296 billion in France. In total BNP Paribas reported profits of €8.741 billion before tax - excluding exceptional items - instead of €2.741 billion.

It may be the case that other fines affected profits of the subsidiaries of banks in other countries. We did ask the banks that question but those that replied did not mention any. We therefore only corrected BNP Paribas' figures, given that its size was out of the ordinary.

Comparisons between groups of countries:

For the purposes of this study, the countries in which French banks were established were put into two groups – the tax havens (countries from the TJN list except the USA, the UK and Portugal) and the rest of the world including France. This distinction was used throughout the report when comparing banking in tax havens and other countries.

Contacts with the banks in this study:

A request for further information was sent to the five banks included in this study. The questions related to the differences identified between reported subsidiaries in the scope of consolidation and those in country-by-country reporting, missing information from country-by-country reporting, the materiality criteria the bank used, the existence of exceptional items that could distort the operational operating result, and the amount of CICE and CIR received. Société Générale, the BPCE group and Crédit Mutuel–CIC replied[81] but BNP Paribas and Crédit Agricole ignored the request.

Appendix 2: The list of tax havens used

The list of tax, regulatory and legal tax havens:

Currently, there is no official, agreed definition of a tax haven. Countries, international institutions and civil society organizations have produced lists of tax havens using different criteria and have not, as a result, been able to agree on a common list. In 2016 the OECD's black list[82] no longer contained any "non-cooperating state or territory" and France only lists 6[83]. As for the European Commission's list, it contains 30 territories[84] none of which are EU Member States.

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and exceptional items, therefore is -€45million. Because of the results declared by the bank in Switzerland in country-by-country reporting, -€2.900 billion, we deduced that BNP Paribas Suisse paid €2.855 billion and BNP Paribas SA (France) paid the remaining €3.145 billion. This took BNP Paribas France's result before tax and exceptional items to €1.849 billion instead of -€1.296 billion. See BNP Paribas Suisse SA (2015), *Annual report 2014*. Available from http://cdn-pays.bnpparibas.com/wp-content/blogs.dir/88/files/2015/10/BNPP-RA2014_FR_V10.pdf & RICHIER Jean-Paul, (2014)"L'amende de BNP Paribas" [the BNP Paribas fine], blog "Pour un monde un peu moins pire", [for a slightly less bad world] *Médiapart.fr,*1 August 2014. Available from https://blogs.mediapart.fr/jean-paul-richier/blog/010814/lamende-de-bnp-paribas-partie-v

[81] In their response, the banks in question declined to reveal how much they received in Crédit d'impôt recherche [R&D tax credit] (CIR) in 2014.

[82] Between 2000 and 2009, the 31 jurisdictions thus designated by the OECD were removed from the list after having undertaken to implement the OECD principles on transparency and meaningful exchange of tax information. See OECD, "List of uncooperative tax havens". Available from http://www.oecd.org/fr/pays/monaco/listedesparadisfiscauxnoncooperatifs.htm

[83] Nauru, Guatemala, Brunei, the Marshall Islands, Botswana, Niue. See Ministère des Finances et des Comptes Publics (2015), "Michel SAPIN, ministre des Finances et des Comptes publics, a mis à jour la liste des états et

The members of the *Plateforme paradis fiscaux et judiciaires* consider a tax haven to be any jurisdiction or territory that has intentionally adopted tax or legal regimes that allow non-resident individuals and legal entities to limit the tax they would have to pay where they are resident for tax purposes (individuals), or where they carry out a substantial economic activity (companies) and/or to avoid regulations applicable in other countries. Although the lack of transparency varies in these territories, tax, regulatory and legal havens all share one or more of the following criteria:

- They facilitate harmful tax practices and provide tax incentives to non-resident individuals and legal entities without enquiring whether the taxed profits derive from actual economic activity in their territory.
- They offer effective tax rates that are very low or zero.
- They have laws or administrative practices in place which prevent the exchange of tax information between governments.
- They have adopted legislative, legal or administrative provisions that hide the structure of legal entities (such as trusts and foundations) and preserve the anonymity of the actual owners or beneficiaries of assets.

Our study is based on the more exhaustive list of 60 territories produced by the Tax Justice Network in 2009[85]. This includes the jurisdictions that have been identified at least twice as being tax havens in lists produced by organizations, academic research, and specialist authors between 1970 and 2009. In PPFJ's view, this list is still valid, as the complex tax evasion mechanisms set up by these countries demonstrate (see Appendix 3).

The UK, the US and Portugal were purposely excluded from this list.

These three countries appear in the TJN list because they harbour non-transparent territories - Delaware for the US, the City of London for the UK and Madeira for Portugal. Country-by-country reporting is insufficiently detailed to identify which subsidiaries and activities are linked to these non-transparent territories and which are not. In order not to skew the conclusions of this report, these three countries were excluded from the group of tax havens. However this decision tends to understate our evaluation of the activity of banks in tax havens.

FSI (2009)

territoires non coopératifs" [Michel Sapin, minister of finance and public accounts, has updated the list of non-cooperative states and territories], press release, 21 December 2015. Available from http://proxy-pubminefi.diffusion.finances.gouv.fr/pub/document/18/20261.pdf

[84] European Commission (2015), "Tax good governance in the world as seen by EU countries", 31 December 2015. Available from http://ec.europa.eu/taxation_customs/taxation/gen_info/good_governance_matters/lists_of_countries/index_fr.htm

[85] Tax Justice Network (2009), Financial Secrecy Index. Available from http://www.financialsecrecyindex.com/Archive2009/FSI-2009/FSI%20-%20Rankings%20-%202009.pdf

Territories mentioned at least twice in 11 official or academic lists published since the 70s[86]
Anguilla
Antigua & Barbuda
Aruba
Austria
The Bahamas
Bahrein
Barbados
Belgium
Belize
Bermuda
Brunei
The Cayman Islands
The City
The Cook Islands
Costa Rica
Cyprus
Delaware
Dominica
Gibraltar
Grenada
Guernsey
Hong Kong
Hungary
Ireland
The Isle of Man

[86] See methodology http://www.financialsecrecyindex.com/Archive2009/Notes%20and%20Reports/SJ_Mapping.pdf

Israel
Jersey
Jordan
Lebanon
Liberia
Liechtenstein
Lithuania
Luxembourg
Macao
Malaysia (Labuan)
The Maldives
Malta
The Marshall Islands
Mauritius
Monaco
Montserrat
Nauru
The Netherlands
The Netherlands Antilles
Niue
Panama
The Philippines
Portugal (Madeira)
St Christopher and Nevis
St Vincent and the Grenadines
St Lucia
Samoa
San Marino
The Seychelles

Singapore
Switzerland
The Turks and Caicos Islands
United Arab Emirates (Dubai)
Uruguay
Vanuatu
The American Virgin Islands
The British Virgin Islands

Appendix 3: Analysis of mechanisms facilitating tax avoidance in the main tax havens

The table below presents the main mechanisms facilitating tax avoidance in the first 10 tax heavens in which banks declare the most profits.

Luxembourg

- A large number of tax rulings provided to multinationals (eg the Luxleaks[87] scandal and the European Commission's investigation into the tax rulings granted by Luxembourg to FIAT[88])
- Almost total tax exemption on intellectual property such as royalties paid for use of patents, trademarks, know-how etc[89] (eg McDonald's[90]).
- Exemption on foreign dividends received by Luxembourg holding companies (SOPARFI) if they own a 10% stake in a subsidiary[91].

Ireland

- Nominal tax rate of 12.5%, one of the lowest in Europe[92].
- The "double Irish" arrangement which is valid till 2020[93]. (The ability of an Irish subsidiary to register its tax residence in another country and transfer its earnings there without being taxed[94]).

[87] The Luxleaks scandal revealed agreements between the authorities in the Grand Duchy and 343 multinationals between 2002 and 2010 providing the latter with an effective tax rate far below the nominal rate of 21%. See ICIJ (2014) "Explore the documents: Luxembourg Leaks Database", 9 December 2014. Available from: http://www.icij.org/project/luxembourg-leaks/explore-documents-luxembourg-leaks-database and Lux Business, "Les avantages du Luxembourg" [the advantages of Luxembourg]. Available from http://www.luxbusiness.eu/en/avantage.php

[88] The European Commission ruled that the tax ruling given by Luxembourg to FIAT was illegal under EU rules on state aid. The Commission added that this ruling allowed the company to artificially reduce the company's tax base (around €30 million since 2012) by permitting a form of taxation of earnings out of line with the company's market conditions. See European Commission (2015), press release, 31 October 2015. Available from http://europa.eu/rapid/press-release_IP-15-5880_fr.htm

[89] LPG (2014), "Exonération des revenus de propriété intellectuelle : application aux groupes de sociétés" [Tax exemption on earnings from intellectual property as it applies to groups of companies], 2 April 2014. Available from http://www.fiduciaire-lpg.lu/fr/publications/fiscalit%C3%A9-des-entreprises/exon%C3%A9ration-des-revenus-de-propri%C3%A9t%C3%A9-intellectuelle

[90] The McDonald's case is typical. The Luxembourg subsidiary of the fast food chain received income from other European subsidiaries for use of the trade mark. These earnings, which were then exempted from taxation by Luxembourg, allowed the company to avoid paying over a billion euros in taxation in Europe between 2009 and 2013. The European commission is also looking into the affair. See PSU, EFFAT, SEIU and War on Want, (2015), *Unhappy Meal,* 24 February 2015. Available from http://www.notaxfraud.eu/sites/default/files/dw/FINAL%20REPORT.pdf

[91] E&Y, Worldwide tax guide / Luxembourg [on line], Available from http://www.ey.com/GL/en/Services/Tax/Worldwide-Corporate-Tax-Guide---XMLQS?preview&XmlUrl=/ec1mages/taxguides/WCTG-2015/WCTG-LU.xml

[92] IDA Ireland (2015), Taxation in Ireland 2015 [on line]. Available from: http://www.idaireland.fr/news-media/publications/Taxation_in_Ireland_2015_FRA_LR.PDF

[93] E&Y (2014), "Ireland publishes draft legislation phasing out "Double Irish"", E&Y Tax alerts. Available from http://www.ey.com/GL/en/Services/Tax/International-Tax/Alert--Ireland-publishes-draft-legislation-phasing-out-Double-Irish

- 6.25% tax on income from intellectual property from 2016[95]. Research and development costs can also receive a 25% tax credit[96].
- Tax exemption on capital gains.[97]
- Wide range of exemptions on withholding tax on dividends[98].
- No regulation of Controlled Foreign Companies (CFCs). This type of regulation is intended to cover earnings transfers between a company in one jurisdiction and an entity of the same group in a jurisdiction where taxation is more advantageous[99].
- No regulation to avoid thin-capitalization[100] – in putting together their capital, some companies purposely favour debt over equity since the interest of loans, paid to other entities in the group, is tax deductible[101].
- Wide range of structured finance such as special purpose vehicles (SPV)*permitting banks to indulge in highly lucrative but poorly supervised activities. Such structured finance is not taxed and benefits from flexible regulation, it can be supervised from abroad and the capitalization requirements can be reduced to a token €1 in the case of a limited company[102].

Jersey

- Nominal tax rate of 0% except for financial establishments – banks, trusts, investment funds – operating through a fixed establishment in Jersey for which the rate is 10%[103]
- Numerous, substantial tax exemptions – on capital gains and dividends paid[104].

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[94] The double Irish consists of allowing an Irish subsidiary to declare its tax residence in another country – and therefore not be taxed in Ireland – under the excuse that it is not managed centrally from Ireland.See E&Y (2013), "Ireland publishes proposed Law on "Stateless" Companies, E&Y Tax alerts. Available from http://www.ey.com/Publication/vwLUAssets/Ireland_publishes_proposed_Law_on_%E2%80%9CStateless%E2%80%9D_Companies/$FILE/2013G_CM3907_Ireland%20publishes%20proposed%20Law%20on%20%E2%80%9CStateless%E2%80%9D%20Companies.pdf. Some companies like Google, Apple or Facebook were identified for their unfair use of double Irish. See WESLEY D. (2013), "Double Irish Deception: How Google—Apple—Facebook Avoid Paying Taxes", Visual Economics, Available from http://visualeconomics.creditloan.com/double-irish-deception-how-google-apple-facebook-avoid-paying-taxes/

[95] Mason, Hayes & Curran (2015), "Tax Update: Irish 6.25% Knowledge Development Box", 27 October 2015, Available from: http://www.mhc.ie/latest/insights/irish-6.25-knowledge-development-box

[96] Arthur Cox (2015), "Ireland as a Location for Your Intellectual Property Trading Company", p.2. Available from http://www.arthurcox.com/wp-content/uploads/2015/04/Arthur-Cox-Ireland-as-a-location-for-your-IP-Trading-Company-April-20152.pdf

[97] IDA Ireland (2015), op cit.

[98] Ibid. Taxation only applies if dividends are paid to a company or person resident in the EU or a country tied to Ireland by treaty or a non-resident company that is controlled by a person resident in the EU or a country tied to Ireland by treaty.

[99] Ibid.

[100] Ibid.

[101] HM Revenue & Customs, "Introduction to thin-capitalisation (legislation and principles)". Available from http://webarchive.nationalarchives.gov.uk/+/http://www.hmrc.gov.uk/manuals/intmanual/INTM541010.htm

[102] Mason, Hayes & Curran, "Pour des débouchés commerciaux exceptionnels" [for exceptional business opportunities] [on line]. Available from http://www.idaireland.fr/news-media/publications/MHC-Ireland-As-A-Business-Location-(French).pdf

[103] Government of Jersey, *Company tax return guidance notes: Section 1.2* [on line]. Available from: https://www.gov.je/TaxesMoney/IncomeTax/Companies/CompanyTaxGuidance/Pages/CompanyTaxReturnNotes.aspx#anchor-3

[104] E&Y, *Worldwide Corporate Tax Guide/ Jersey, Channel Islands* [on line]. Available from: http://www.ey.com/GL/en/Services/Tax/Worldwide-Corporate-Tax-Guide---XMLQS?preview&XmlUrl=/ec1mages/taxguides/WCTG-2015/WCTG-JE.xml

- The ability to set up Special Purpose Vehicles (SPVs) to facilitate securitization and structured finance under a favourable regulatory and tax regime[105].
- Total confidentiality guaranteed to beneficial owners of trusts – no requirement to report the beneficial owner to a statutory authority when creating the trust.

Hong Kong

- 16.5% nominal tax rate but based on the territoriality of profits principle (and not the residence of the company). This means:
    - Profits are taxed if they derive from activity in Hong Kong[106].
    - Extraterritorial earnings received by a Hong Kong-based company are not taxed, this includes repatriated foreign earnings, dividends paid by subsidiaries and capital gains on operations outside Hong Kong[107].
- No VAT on social security or national insurance payments[108].
- Favourable regulatory regime – no capital injection requirement to set up a company, not even residence in Hong Kong. No rules for Controlled Foreign Companies[109].
- No exchange control, thus allowing unrestricted inflow and repatriation of capital[110].

The Cayman Islands

- No corporate tax, no tax on capital gains, dividends and royalties[111].
- Fifth favourite financial location in the world (95,000 companies, 11,279 investment funds and 210 banks are registered there[112], even though the island only has 45,000 inhabitants[113]).
- No income tax[114].
- A legal regime favourable to structured finance, securitization[115], especially through special purpose vehicles (SPVs) thus facilitating high-risk speculative financial operations outside the control of supervisory authorities.

[105] Bedell Group (2015), "Special purpose vehicles and securitisation in Jersey", 15 December 2015, Available from https://www.bedellgroup.com/siteFiles/resources/docs/insights/Briefings/Structured%20Finance%20-%20Jersey%20Briefings/specialpurposevehiclesandsecuritsationinjersey.pdf
[106] Hong Kong Inland Revenue Department (n.d.), *A simple guide on the territorial source principle of taxation [on line].* Available from *http://www.ird.gov.hk/eng/paf/bus_pft_tsp.htm*
[107] Ibid.
[108] E&Y (n.d.), *Worldwide Corporate Tax Guide/Hong Kong Special Administrative Region* [on line]. Available from http://www.ey.com/GL/en/Services/Tax/Worldwide-Corporate-Tax-Guide---XMLQS?preview&XmlUrl=/ec1mages/taxguides/WCTG-2015/WCTG-HK.xml
[109] Deloitte (2015), "Taxation and Investments in Hong-Kong: reach, relevance and reliability". Available from http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-hongkongguide-2015.pdf
[110] Ibid.
[111] World Tax, "Tax System in Cayman Islands". Available from https://www.world.tax/countries/cayman-islands/cayman-islands-tax-system.php
[112] Tax Justice Network (2015), Financial Secrecy Index, "Narrative report on Cayman Islands". Available from: http://www.financialsecrecyindex.com/PDF/CaymanIslands.pdf
[113] ROCHE M. (2013), "Les îles Caïmans, trou noir de l'économie mondiale" [The Cayman Islands, black hole of the world economy], Le Monde. Available from http://www.lemonde.fr/evasion-fiscale/article/2013/04/04/les-iles-caimans-trou-noir-de-l-economie-mondiale_3153394_4862750.html
[114] PKF (2013), *Cayman Islands Tax Guide* 2013 [on line]. Available from http://www.pkf.com/media/1954332/cayman%20islands%20pkf%20tax%20guide%202013.pdf
[115] Conyers Dill & Pearman, *Securitization in the Cayman Islands* [on line]. Available from http://www.conyersdill.com/publication-files/Pub_Cay_Cayman_Islands_Securitizations-0.pdf

- Secrecy regarding the beneficial owner of a company, trust or non-declared bank account. Beneficial owners can hide behind intermediary companies[116].

Singapore

- No withholding tax on dividends paid by companies registered in Singapore, for residents or non-residents[117].
- No taxation of repatriated earnings[118].
- No taxation of capital gains[119].
- The ability of a loss-making entity to transfer its losses to a profit-making entity in the same group to reduce or cancel out the latter's tax liability[120].
- 400% tax rebate on expenses linked to intellectual property and research and development (up to SGD 400,000 (€262,000))[121].
- Provision of numerous other tax incentives and deductions, particularly in the finance sector[122] – banks, fund management, leasing etc
- The availability of a wide range of banking products and legal entities guaranteeing secrecy, including the "Private Trust Company " used by the well-off to avoid tax[123].

The Netherlands

- Widespread use of tax rulings allowing large companies to negotiate their tax rate directly[124] (condemned by the European commission in the case of Starbucks)[125].
- No taxation of interest or royalties plus numerous exceptions in the taxation regime on dividends[126].

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[116] Tax Justice Network (2015), Financial Secrecy Index, "Narrative report on Cayman Islands". Available from http://www.financialsecrecyindex.com/PDF/CaymanIslands.pdf

[117] E&Y (2015), *Doing Business in Singapore* [on line]. Available from http://www.ey.com/Publication/vwLUAssets/ey-doing-business-in-singapore-2015/$FILE/ey-doing-business-in-singapore-2015.pdf

[118] ibid

[119] ibid

[120] ibid

[121] KPMG (2015), *Singapore Tax Profile* [on line], Available from https://home.kpmg.com/content/dam/kpmg/pdf/2015/08/singapore-2015.pdf

[122] Ibid

[123] Tax Justice Network (2015), Financial Secrecy Index, "Narrative report on Singapore". Available from http://www.financialsecrecyindex.com/PDF/Singapore.pdf

[124] PwC (2015), *Doing Business in the Netherlands* [on line]. Available from https://www.pwc.nl/nl/assets/documents/pwc-doing-business-in-the-netherlands-2015.pdf

[125] In 2015 European Commission ruled that the tax ruling given by Luxembourg to Starbucks was illegal under EU rules on state aid. The Commission added that this ruling allowed the company to artificially reduce the company's tax base (around €30 million since 2008) by permitting a form of taxation of earnings out of line with the company's market conditions, European Commission press release, 21 October 2015 [on line]. Available from http://europa.eu/rapid/press-release_IP-15-5880_fr.htm

[126] PwC (2015), ibid

- Reduced tax rate of 5% on earnings from "innovative activities" and earnings connected to intellectual property, to which must be added a 60% deduction for R&D-related expenditure[127].
- Tax exemption on investment funds[128].
- Widespread network of tax treaties[129] which can often result in "double non-taxation". Earnings are not taxed in the country where they were made nor are they taxed (or only lightly taxed) in the country to which they have been repatriated using the mechanisms mentioned above. Tax treaties signed by the Netherlands are particularly harmful to the budgets of developing countries[130].
- 12,000 "letterbox" companies set up for purely tax and regulatory reasons – the companies controlling these letterbox companies claim to be established in the Netherlands but they carry out no actual business there[131].
- Regulation that is particularly favourable[132] to setting up Special Purposes Vehicles (SPVs)[133], entities which facilitate securitization and risk-taking. [134].
    - Many of the Special Purposes Vehicles controlled by Lehman Brothers, which set off the financial crisis in 2008, were based in the Netherlands[135].

Belgium

- "Notional interest deduction" is a tax incentive mechanism on venture capital[136] that allows an entity based in Belgium to deduct fictional interest on its own funds from its taxable earnings[137].

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[127] PwC (2015), ibid

[128] Deloitte (2015), *Taxation and Investment in Netherlands 2015* [on line]. Available from https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-netherlandsguide-2015.pdf

[129] KPMG (2013), *Netherlands country profile: key factors for efficient cross-border tax planning involving Netherlands* [on line]. Available from https://www.kpmg.com/Global/en/services/Tax/regional-tax-centers/european-union-tax-centre/Documents/eu-country-profiles/2013-netherlands.pdf

[130] SOMO, (2013), *Should the Netherlands sign tax treaties with developing countries.* Available from http://www.somo.nl/publications-nl/Publication_3958-nl

[131] SOMO (2014), "End harmful tax regimes, references and data". Available from http://www.somo.nl/news-en/the-2018dark-side2019-of-the-netherlands

[132] Baker & McKenzie (2014), "Dutch SPV in European CLO transactions", Available from http://www.bakermckenzie.com/files/Uploads/Documents/Amterdam/BR_Amsterdam_DutchSPVs_Jun14.pdf

[133] Boekel, PLC Cross-border Structured Finance and Securitisation Handbook 2009/10, "country Q&A, The Netherlands". Available from http://www.boekel.com/media/88246/plc%20finance%20and%20securitisation%20200910%20-%20angelique%20thiele%20jan%20broekhuizen.pdf

[134] Cyril Sanati, Fortune (2014), "Collaterilized loan obligations, our next financial nightmare", 14 April 2014. Available from http://fortune.com/2014/04/10/collateralized-loan-obligations-our-next-financial-nightmare

[135] HOLLANDERS. D, Social Europe, "What Europe needs to know about the Dutch Tax Haven", 5 January 2016. Available from https://www.socialeurope.eu/2016/01/what-europe-needs-to-know-about-the-dutch-tax-haven

[136] Service public fédéral des Finances [Federal public service for finance], "La déduction d'intérêt notionnel, un incitant fiscal belge novateur" [the deduction of notional interest, an innovative Belgian tax incentive] [on line]. Available from http://finances.belgium.be/fr/entreprises/impot_des_societes/avantages_fiscaux/deduction_interet_notionnel

[137] The subsidiary can then play the role of "internal bank" for the other foreign subsidiaries in the group. In return, the latter pay interest on loans to the Belgian entity holding the debts. This mechanism is doubly beneficial for the group since interest is deducted from the tax base of foreign entities while it attracts an

- Multiple exemptions in the taxation regime on interest, royalties and dividends through holding companies[138]. In particular, 95% exemption on dividends[139] paid to a Belgian holding company by a subsidiary outside the EU[140]. 20 of the top 100 companies in the world take advantage of this loophole to avoid paying tax[141].
- 80% tax deduction on earnings related to intellectual property (patents) reduces the effective tax rate from 34% to 6.8%[142].
- 13.5% deduction on the value of R&D investments[143].
- Numerous tax rulings granted to multinationals. Amongst the favourite Belgian tax rulings are the "excess profit rulings" permitting multinationals to deduct from their tax base income that would not have been earned without the international nature of the group, in other words if the company had only been established in Belgium[144]. The European Commission ruled that this was "illegal state aid" last January[145].
- Wide range of tax treaties, permitting low taxation on dividends paid into Belgium[146].
- Despite recent improvements[147], banking secrecy has not been totally abolished in Belgium. Belgian tax authorities have very limited access to their nationals'[148] information, which de

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extremely low rate in Belgium. See Tax Justice Network (2015) "Financial Secrecy Index , Narrative report on Belgium". Available from http://www.financialsecrecyindex.com/PDF/Belgium.pdf

[138] Extract from MALHERBE DE LAVELEYE, *Planification successorale et structures sociétaires: comment choisir, optimaliser, gérer et…liquider* [Succession planning and company structures – how to select, optimise, manage and …liquidate] *,* Anthemis, 2009. Available from http://www.uhpc.be/IMG/pdf/09_02_PLASUC_Malherbe_de_Laveleye_-_avec_commentaires.pdf

[139] KPMG (2013), *Belgium country profile: key factors for efficient cross-border tax planning involving Belgium* [on line]. Available from https://www.kpmg.com/Global/en/services/Tax/regional-tax-centers/european-union-tax-centre/Documents/eu-country-profiles/2013-belgium.pdf

[140] Tax Justice Network (2015) Financial Secrecy Index , "Narrative report on Belgium". Available from http://www.financialsecrecyindex.com/PDF/Belgium.pdf

[141] L'écho (2013), "Comment les multinationales esquivent l'impôt grâce à la Belgique" [How multinationals dodge tax thanks to Belgium], quoted by Gilles Klein, Arrêt sur images, 5 February 2013. Available from http://www.arretsurimages.net/breves/2013-02-05/Societes-francaises-et-paradis-fiscal-belge-id15100

[142] Service public fédéral des Finances [Federal public service for finance], "Tax incentives for R&D activities" [on line]. Available from http://www.minfin.fgov.be/portail2/belinvest/downloads/en/publications/bro_r_and_d.pdf

[143] Service public fédéral des Finances [Federal public service for finance], Ibid.

[144] BDO, "les rulings excess profit belges considérés comme des aides d'Etat illégales par la Commission Européenne " [Belgian excess profit rulings considered to be illegal state aid by the European Commission], 14 January 2011. Available from http://www.bdo.be/fr/news/professional-news/2016/excess-profit-rulings/

[145] In January 2016 the European Commission ruled that the Belgian regime providing exemptions on excess profit represented illegal state aid in contravention of the so-called "arm's length principle". It therefore ordered the recovery of around €700 million from 35 multinationals that had benefitted from selective agreements allowing them to reduce their taxation by up to 90%. See European Commission press release, 11 January 2016 [on line]. Available from http://europa.eu/rapid/press-release_IP-16-42_fr.htm

[146] EY (2011), *Gateway to Europe: Investments in Belgium* [on line]. Available from http://www.ey.com/Publication/vwLUAssets/Gateway_to_Europe._Investments_in_Belgium/$FILE/Gateway%20to%20Europe.pdf

[147] Linklaters, "New provisions regarding Belgian bank secrecy", 6 May 2011. Available from http://www.linklaters.com/Insights/new-provisions-regarding-Belgian-bank-secrecy/Pages/index.aspx

[148] Article 318 of the tax code on earnings states that "the administration is not authorised to gather information from accounts, books and documents of banking, exchange, credit and savings establishments so their customers may be taxed". Service public fédéral des finances [Federal public service for finance]. Available from http://ccff02.minfin.fgov.be/KMWeb/document.do?method=view&nav=1&id=9b933c8d-9987-40a1-b838-07b405404698&disableHighlightning=true#findHighlighted

facto hinders automatic exchange of information with third countries promoted by the G20 and the EU as a tool in combatting tax avoidance by individuals[149].

- Numerous tax breaks are available under the tax regime for the very rich, particularly as regards inheritance and donations[150].There is no tax on capital gains on the sale of shares by individuals[151].Special tax status for expatriates under which the person is considered fictitiously as a non-resident as regards Belgian income tax, thus conferring advantages such as no taxation on personal income from abroad (interest, dividends etc)[152].

Austria

- Legal framework recognizing private foundations[153], legal entities that are the equivalent of trusts in English-speaking countries. They are wealth management vehicles that are usually used the mask the identity of the beneficial owner and/or avoid tax.
- Exemptions on inheritance tax.[154]
- A subsidy of up to 50%[155] on R&D via tax credits, direct subsidies, loans at preferential rates etc[156].
- Total exemption on dividends paid to holding companies[157].
- Tax exemptions under certain conditions on dividends and capital gains[158].
- Until 2015, banking secrecy was a constitutional principle. Austria was the last country to apply automatic exchange of tax information. It should come into effect in 2018 at the same time as Switzerland[159].

Monaco

- Total absence of direct taxation – no income tax or wealth tax for individuals, no corporate tax[160]. There are three exceptions to the general rule:

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[149] STÉVENART MEEÛS F., "Mise sous pression par le G20, la Belgique réduit la portée du secret bancaire" [Pressured by the G20, Belgium reduces the scope of its banking secrecy], Justice on line, 22 November 2009. Available from http://www.justice-en-ligne.be/rubrique63.html

[150] Justice Network (2015) "Financial Secrecy Index , Narrative report on Belgium", op.cit

[151] Deloitte (2015), *Taxation and Investment in Belgium 2015, Reach, relevance and reliability*. Available from http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-belgiumguide-2015.pdf

[152] KPMG (2010), "Le régime fiscal d'imposition pour certains cadres étrangers en Belgique" [The tax regime as applied to certain foreign managers in Belgium]. Available from https://www.kpmg.com/BE/en/IssuesAndInsights/ArticlesPublications/Documents/The%20Belgian%20Expatriate%20tax%20regime%20-FR.pdf

[153] Hash & Partner (2014), *The Austrian Private Foundation: a brief guide for investors* [on line]. Available from http://hasch.eu.dedi2098.your-server.de/files/channels/publikationen/Austrian_Private_Foundation_Brochure__E_.pdf

[154] Tax Justice Network (2015), Financial Secrecy Index, "Narrative Report on Austria" [on line]. Available from http://www.financialsecrecyindex.com/PDF/Austria.pdf

[155] PKF, *Doing Business in Austria*, [on line]. Available from http://www.pkf.com/media/614328/doing-business-in-austria.pdf

[156] PwC (2015), *Global Research & Development Incentive Group*. Available from https://www.pwc.com/gx/en/tax/assets/pwc-global-r-and-d-brochure-may-2015.pdf

[157] KPMG (2015), *Austria country profile* [on line]. Available from https://home.kpmg.com/content/dam/kpmg/pdf/2015/09/country-profile-austria-2015.pdf

[158] KPMG (2015), ibid

[159] E&Y (2015), *Echange automatique d'informations: prenez vos dispositions dès maintenant* [Automatic exchange of information – take steps now] [on line]. Available from http://www.ey.com/LU/en/Newsroom/PR-activities/Articles/Article_20150115_Echange_automatique_d_informations

- French citizens with less than 5 years residence in Monaco[161].
  - Companies earning over 25% of their turnover outside Monaco are subject to the same taxation as in France (33.3%)[162].
  - Companies whose business consists of receiving income from intellectual property[163].
- No taxation on dividends and capital gains or withholding tax for companies[164]. No land or housing tax[165].
- Trusts are recognized by law[166].
- Banking secrecy is guaranteed for individuals and companies with a Monaco bank account. Automatic exchange of information with the EU is due to start in 2018[167].

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160 Praxity (2011), *Business and taxation guide to Monaco* [on line]
161 *Franco-Monegasque tax agreement of 18 May 1963*
162 IBFD (2015), "Monaco Corporate Taxation". Available from https://www.ibfd.org/sites/ibfd.org/files/content/pdf/European%20Tax%20Handbooks%202015_Corp.pdf
163 Ibid.
164 World Tax Guide, "Monaco", [on line]. Available from http://worldtaxguide.com/?page_id=669
165 Ibid.
166 Gordon S. Blair (2009), *A tax guide to living and working in Monaco* [on line]. Available from http://www.gordonblair.com/documents/GSB_Tax-and-legal-guide-to-Monaco
167 HAMEL I. (2016), "Monaco lâche son secret bancaire…et perd des clients" [Monaco gives up its banking secrecy … and loses customers], Le Point. Available from http://www.lepoint.fr/economie/monaco-lache-son-secret-bancaire-et-perd-des-clients-22-02-2016-2020281_28.php

Appendix 4: Glossary

Asset: An economic asset is any tangible or intangible item that has economic value held by an individual or company. An asset has a "real" value, from which its owner can expect future economic advantage.

Asset Management: Also known as portfolio management. This consists of managing capital or funds supplied by investors to produce profits and record the value-added over a longer or shorter period by investing in financial markets.

Base erosion and profit shifting: The term is used to describe transferring taxable profits from the country in which they were generated to a country offering advantageous or zero taxation, which has made no contribution to creating economic value. Such profit shifting erodes the tax base of the country in which the activity was carried out and consequently, reduces its tax income (see also transfer pricing).

Capital ratio, own funds ratio: A capital ratio is a threshold below which a bank risks insolvency. This ratio is calculated by comparing a bank's liabilities (the amount it has loaned on a credit for example) to its own funds (the capital provided by shareholders and the bank's earnings). The own funds requirements specified in the Basel III agreement, and incorporated in the EU under the CRD IV directive are intended to protect financial institutions from the danger of defaulting on their creditors.

Corporate and investment banks: In France they represent a category of banks operating in financial markets and mainly serving major investors and companies. Their activities focus on financing their customers and their operations (corporate banking), issuing shares and bonds on the primary market, buying and selling financial instruments (shares, bonds, derivatives etc) on the secondary market and consultancy for mergers and acquisitions.

Effective tax rate, implicit tax rate: The effective or implicit tax rate is the rate companies actually pay. This may be below the nominal rate due to tax rulings (see below) but also due to deductions for tax paid abroad. In 2011, a note from the *Direction Générale du Trésor*[168] [directorate general of the treasury] estimated that on average, large companies in France paid the equivalent of 18.6% of their profits in tax. In other words, vastly less than the nominal rate of 34.4%[169]. According to a report by the *Conseil des Prélèvements Obligatoires*[170] [council for statutory contributions] the rate was 13% for financial institutions between 2002 and 2009.

Employee: The term employee in this report means staff, expressed in full time equivalent.

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[168] Ministère de l'Economie, des Finances et de l'Industrie [ministry of the economy, finance and industry], (2011), *Le taux de taxation implicite des bénéfices en France ,* [implicit tax rate on earnings in France] June 2011. Available from https://www.tresor.economie.gouv.fr/file/325821

[169] A nominal rate of 33.33% to which must be added social security contributions on earnings for larger companies.

[170] CAPPELLE-BLANCARD G., COUPPEY SOUBEYRAN J., (2012), *Conseil des prélèvements obligatoires, L'imposition des entreprises du secteur financier est-elle ajustée à leur capacité contributive ?,* [Council for statutory contributions, Is taxation in the financial sector adapted to its ability to pay?] 2012, P.41

Hedge fund: Hedge funds are investment funds that specialise in speculation. They exploit leverage. This involves the ability to use an amount of capital several times more than the fund's own resources to create investments that are highly profitable but extremely risky and destabilising for the markets in which they operate. They are generally open to big investors, institutional investors or those with huge fortunes.

Holding company: These are companies whose only purpose is to hold the shares of other companies. Holding companies don't produce anything themselves, but "harvest" the production revenues produced by subsidiaries or shareholdings.

Leverage: Leverage is employed when using debt to increase the investment capacity of a financial or other company and the impact this investment has on its own invested capital.

Luxleaks: The Luxleaks (or Luxembourg Leaks) scandal broke in November 2014 when the International Consortium of Investigative Journalists (ICIJ) published hundreds of tax rulings granted to multinationals by Luxembourg, permitting them to reduce significantly the tax they paid. The information was disclosed by Antoine Deltour, an ex-employee of PricewaterhouseCoopers (PwC), who were the auditors that helped the multinationals obtain these rulings. The Luxleaks tax rulings revealed how hundreds of multinationals used Luxembourg's tax system to reduce their tax, sometimes down to less than 1%.

Net banking income: net banking income refers to the added value created by banking. It corresponds to the difference between a bank's operating income (interest and commission) and expenses (interest and commission) before interest on bad debts, but includes allocations for and reversal of provisions for depreciation in securities.

Offshore territory, offshore jurisdiction: These jurisdictions are famous for their low taxation. They specialise in providing professional and commercial services to non-resident individuals and companies and investment in offshore funds. Often they are linked to a certain lack of transparency. The term "offshore" can be used as a synonym for tax haven or secrecy jurisdiction.

Profit shifting: See "Base erosion and profit shifting".

Public country by country reporting: Public country by country reporting is a measure requiring multinationals to provide information on their economic activity and the tax they pay. In the case of European banks, the following information is required:

a) The names of their establishments and the nature of their activities;
b) Their turnover;
c) Their total employment (Full time equivalent)Their staff expressed as full time equivalent;
d) Their profit or loss before tax;
e) The amount of tax due on their establishments' earnings;
f) Public subsidies received.

Retail bank: Retail banks offer investment solutions, provide credit and sell their services to individuals, organizations, and small and medium-sized enterprises.

Scope of consolidation: The scope of consolidation corresponds to those entities that contribute to the consolidated balance sheet of the company. The comprehensive income is derived from the consolidated profits of each of these entities. The scope of consolidation should include the companies that the parent company owns outright or in partnership (by holding at least half of the shares) or in which it has a sizeable stake (presumed to be at least a fifth of the shares). Nevertheless, the International Financial Reporting Standard allows for exceptions. Banks may, for example, decide that below a certain threshold (balance sheet, turnover or staff), certain subsidiaries are "not significant" and therefore not consolidated, meaning that they do not appear in the reporting. For example BNP Paribas raised its consolidation thresholds in 2011[171]. This explains why BNPP went from 1409 entities (360 of which were in tax havens) in 2011 to 870 (214 of which were in tax havens) in 2012.

Securitisation: Securitisation is a financial technique developed by financial engineering. It consists of transforming assets into tradable securities that are then sold to investors. The special value of securitisation is that it transforms credits, usually medium or long term credits into market products, with the market providing the cash flow for these products. Securitization improves the appearance of balance sheets and transfers the debt holder's risk to the financial markets.

Special purpose vehicle: Special purpose vehicles are entities which are usually established in offshore territories to carry out securitisation activities, highly leveraged, risky investments or project financing.

Statutory tax rate, nominal tax rate: The statutory or nominal tax rate is the rate set by tax authorities

Structured finance, structured products: These are financial products and activities that are structured in a complex manner by banks (or other economic institutions) to provide finance, while limiting exposure to risk and the tax base. A structured product is a combination of several financial products (shares, bonds and/or derivatives such as options, futures or swaps) which, once assembled, offer a profitability profile adapted to certain needs of investors. The value of a structured product depends directly on that of a reference variable (known as underlying) that may be an asset, a market indicator, a basket of shares, an investment strategy or any other variable. Customers using these products are engaging in an investment strategy that couples high risk linked to the possibility of equally high financial profitability. In general, financial speculation is the main motive for this strategy, although these products can be used to cover a market risk.

[171] See BNPP (2011), *2010 Nouvelles Séries Trimestrielles*, [new quarterly series] 21 April 2011. Available from https://invest.bnpparibas.com/sites/default/files/documents/communique-presse_v_21_04_2011_fr_.14340.pdf

Subsidiary: The generic term, "subsidiary", (the equivalent of the term "establishment" used in legislation) is used in this report to describe entities included in the scope of consolidation that banks are required to disclose, in addition to information more strictly related to country-by-country reporting. Where the lists of subsidiaries in the scope of consolidation* and country-by-country reporting do not match, we have used the former to count entities in each territory. In addition, we took account of subsidiaries that were included or excluded from the scope of consolidation in 2014 and were therefore active during the year being examined.

Swissleaks: The Swissleaks scandal broke in 2015 when the International Consortium of Investigative Journalists (ICIJ) leaked 60,000 files containing the identity of over 100,000 HSBC customers in Switzerland. The information was obtained from Hervé Falciani, a former IT specialist employed by the bank. This data showed, inter alia, how HSBC helped customers to create secret bank accounts in which to hide their money and cheat tax authorities across the world; also helping those involved in arms smuggling, blood diamonds or corruption to hide their illegally acquired assets.

Tax avoidance: This is the practice whereby, to the detriment of the country where the wealth was generated, an individual or company purposely transfers profits and assets to territories with low or zero taxation to avoid paying tax. Tax avoidance is only just legal (unlike tax evasion) and is a "grey area" created by the degree of interpretation permitted by legislation, the differences between each country's tax regimes and, therefore, the absence of international tax harmonisation.

Tax evasion: This is an activity that allows an individual or company to illegally hide earnings and/or assets from taxation in order to pay very little (or none at all). Unlike tax avoidance that exploits international tax loopholes, tax evasion is illegal and is subject to criminal prosecution.

Tax, regulatory and legal havens : They are the black holes of international finance; typically they offer a high degree of privacy, mainly due to banking secrecy or the opportunity to create intermediary companies that let owners remain anonymous. They also offer low or zero taxation to non-residents and generally do not cooperate with foreign tax authorities or judiciaries. Tax havens are commonly differentiated by specialism (low tax regime, courts that turns a blind eye and non-application of rules of financial prudence). Nicholas Shaxson, of the Tax Justice Network, defined a tax haven as a "*place that attracts economic activity by offering individuals or entities a politically stable framework that allows them to get round the rules, laws and regulations applied in other countries*"[172].

The organizations in the Plate-forme paradis fiscaux et judiciaires consider tax havens to be jurisdictions or territories which have in common one or more of the following criteria:

- They facilitate harmful tax practices and provide tax incentives to non-resident individuals and legal entities without enquiring whether the taxed earnings derive from actual economic activity in their territory.
- They offer effective tax rates that are very low or zero.
- Their legislation or administrative practices hinder the exchange of tax information between governments.

[172] VERSAILLE A., (2012), *Les paradis fiscaux. Enquêtes sur les ravages de la finance néolibérale*, [Tax havens. Investigations into the havoc caused by neo-liberal finance] editor André Versaille, p.230

- They have adopted legislative, legal or administrative provisions that hide the structure of legal entities (including trusts, foundations etc) and preserve the anonymity of the real owners or beneficiaries of assets.

The OECD and the French government use the expression "non-cooperative countries and territories" because they are only basing themselves on rules covering exchange of tax information.

Tax ruling: A tax ruling is a written interpretation of the law issued by a tax authority to a taxpayer. These rulings are, potentially, legally binding. Rulings are regularly used by companies, as taxpayers, and many of them cause no concern. However some tax rulings have attracted attention and increasing criticism, as shown in the Luxleaks scandal: those known as Advance Pricing Agreements (APA). APAs are used by multinationals to validate their transfer pricing mechanisms, thus providing legal endorsement of their tax avoidance. Documents leaked in the Luxleaks scandal were APAs.

Transfer pricing: Pricing conditions for transactions between subsidiaries of the same group. Such intra-group trading is governed by the OECD's "arm's length" principle requiring companies to apply the same conditions as if trading with third companies. These intra-group transactions are often used to avoid taxes.

Transparency: Transparency of companies, especially regarding tax, gives other interested parties (the public, civil society organizations, journalists, MPs and investors) access to data of public interest. This is in order to have a clear view of the company's contribution and the different risks to which it is exposed.

Turnover: The term "turnover" is used in this report as a simplification for net banking income, which is the equivalent of the turnover for the banking sector. It equates to the added value created by its activity. Turnover represents the amount of business (before tax) carried out by the company in its ordinary day-to-day operations. It equates to the total sales of goods, manufactured products, services and earnings from related activities. The turnover indicates the volume of business generated by the company and gives an idea of its size.

Appendix 5: French banks' favourite tax havens

Position	COUNTRY	Total reported profits (€ million)
1	Luxembourg	1.711
2	Belgium	1.660
3	Hong Kong	436
4	Singapore	336
5	Ireland	272

Appendix 6: Table of most productive employees

Bank	Country	Productivity per employee	Productivity per employee outside tax havens	Productivity per employee in France	Increased productivity multiplier compared with non-tax havens	Increased productivity multiplier compared with France
BPCE	Ireland	€1,778,000	€57,000	€49,000	31.3	36.0
BNPP	Ireland	€845,000	€35,000	€14,000	24.4	62.2
CA	Ireland	€596,000	€28,000	€4,000	212	147.3
SG	Luxembourg	€463,000	€23,000	€7,000	19.9	66.2
BPCE	Luxembourg	€423,000	€57,000	€49,000	7.4	8.6
SG	Singapore	€293,000	€23,000	€7,000	12.6	41.9