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The press review

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Prepared by Transparency International Luxembourg

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National news

Le Quotidien

Fraude fiscale: l'attitude du Luxembourg et de l'Autriche irrite les ministres européens

2013-12-10 14:18:00

Lors de cette réunion, le nouveau ministre des Finances Pierre Gramegna a confirmé l'engagement du Luxembourg à avancer en matière d'échange automatique d'informations et a notamment souligné les actions illustrant la détermination du Luxembourg

Plusieurs ministres européens des Finances n'ont pas caché leur irritation mardi devant l'attitude du Luxembourg et de l'Autriche, qui refusent toujours de voter un texte sur l'échange automatique d'informations pour lutter contre l'évasion fiscale.

La révision de la directive européenne sur la fiscalité de l'épargne doit permettre d'élargir son champ pour étendre l'échange automatique d'informations fiscales aux versements effectués via des trusts ou des fondations. Un accord était prévu avant la fin de l'année au niveau des ministres des Finances, et le sujet figurait à l'ordre du jour de leur réunion mardi à Bruxelles.

Mais les décisions en matière de fiscalité requièrent l'unanimité des 28, et le Luxembourg et l'Autriche, qui bloquent les discussions depuis 2008, ont continué de s'y opposer. L'Autriche, qui n'a toujours pas de nouveau gouvernement de coalition, a notamment invoqué le fait qu'il n'y avait pas de négociations avec cinq pays tiers, dont la Suisse, pour que ceux-ci appliquent les mêmes règles que l'UE. Or Vienne et Luxembourg considèrent que l'égalité de traitement avec ces pays est un préalable à leur propre signature du texte. La directive ne pourra donc "pas être adoptée dans les délais requis par nos dirigeants", a déploré le ministre lituanien des Finances, Rimantas Sadzius, qui présidait la réunion. Cette position intransigeante a exaspéré plusieurs ministres européens. C'est une "impasse tout à fait inacceptable", a déclaré le ministre espagnol, Luis de Guindos.

Son collègue italien, Fabrizio Saccomanni, a regretté qu'à cause de ce blocage l'UE, qui était en pointe dans la lutte contre l'évasion fiscale, soit "maintenant à la traîne". Les négociations avec les cinq pays tiers sont "une excuse", a-t-il estimé, regrettant que le statu quo "ne profite qu'à ceux qui fraudent le fisc". "Franchement, cela devient incompréhensible pour les citoyens", a jugé pour sa part le ministre français, Pierre Moscovici, estimant "indispensable de faire remonter le dossier aux chefs d'Etat et de gouvernement" qui se réuniront en sommet à Bruxelles à la fin de la semaine prochaine.

Lors de la réunion Ecofin du 10 décembre, la fiscalité de l'épargne était à nouveau à l'ordre du jour.

Lors de cette réunion, le nouveau ministre des Finances Pierre Gramegna a confirmé l'engagement du Luxembourg à avancer en matière d'échange automatique d'informations et a notamment souligné les actions illustrant la détermination du Luxembourg:

- l'application, à partir de 2015, de l’échange automatique d'informations pour les paiements d'intérêts au sein de l’UE
- signature, le 3 décembre 2013, de la déclaration initiée par le pays du G5 soutenant le développement au sein de l'OCDE de l’échange automatique d’informations entre les autorités fiscales comme standard global unique
- dépôt d'un projet de loi autorisant la ratification avant la fin de l'année de la convention OCDE sur l'assistance administrative mutuelle en matière fiscale.

Concernant l'extension du champ de la directive sur la fiscalité de l'épargne, le ministre regrette que les travaux avec les pays tiers n’ont pas encore produit un résultat qui suffirait aux circonstances définies par le Conseil européen pour l’adoption de la directive révisée.

Communiqué

Échange d'informations

Évasion fiscale: l'attitude grand-ducale irrite

Plusieurs ministres européens des Finances n'ont pas caché leur aigreur, ce mardi à Bruxelles, devant l'attitude du Luxembourg et de l'Autriche, qui refusent toujours de voter un texte sur l'échange automatique d'informations, censé lutter contre l'évasion fiscale.

Par : paperJam.lu / Publié par paperJam.lu
Mis à jour : 10.12.2013 16:03

Le Luxembourg et l'Europe ont encore des notes discordantes. L'échange automatique ne passe pas bien.

(Photo: archives paperJam)

Le gouvernement luxembourgeois a changé. Mais la position dans les grands débats européens n'a pas (encore) pu s'adapter. Ainsi, ce mardi à Bruxelles, plusieurs ministres européens des Finances «n'ont pas caché leur irritation devant l'attitude du Luxembourg et de l'Autriche», rapporte l'AFP. Ces deux pays refusent toujours de voter un texte sur l'échange automatique d'informations, censé lutter contre l'évasion fiscale.

La révision de la directive européenne sur la fiscalité de l'épargne doit permettre d'élargir son champ pour étendre l'échange automatique d'informations fiscales aux versements effectués via des trusts ou des fondations. Un accord était prévu avant la fin de l'année au niveau des ministres des Finances, et le sujet figurait à l'ordre du jour de leur réunion mardi à Bruxelles. Mais les décisions en matière de fiscalité requièrent l'unanimité des 28.

Exaspération palpable

Depuis 2008, le Luxembourg et l'Autriche font blocage. L'Autriche (qui elle n'a toujours pas de nouveau gouvernement de coalition) continue notamment d'invoquer l'absence de négociations avec les «pays tiers», dont la Suisse. Vienne et Luxembourg considèrent que l'égalité de traitement avec ces pays est un préalable à leur adhésion au texte sur l'échange automatique.

La directive «ne pourra pas être adoptée dans les délais requis», a déploré le ministre lituanien des Finances, Rimantas Sadzius, qui présidait la réunion. Plusieurs ministres européens ont manifesté une exaspération certaine. Le ministre espagnol Luis de Gundos parle d'une «impasse tout à fait inacceptable», son homologue italien une Union «à la traîne» dans la lutte planétaire contre l'évasion fiscale alors qu'elle était à la pointe. Selon Fabrizio Saccomanni, cité par l'AFP, la question des pays tiers est «une excuse» pour maintenir un statu-quo «qui ne profite qu'à ceux qui fraudent le fisc». Le ministre des Finances français, Pierre Moscovici, a surenchéri: «Franchement, cela devient incompréhensible pour les citoyens».

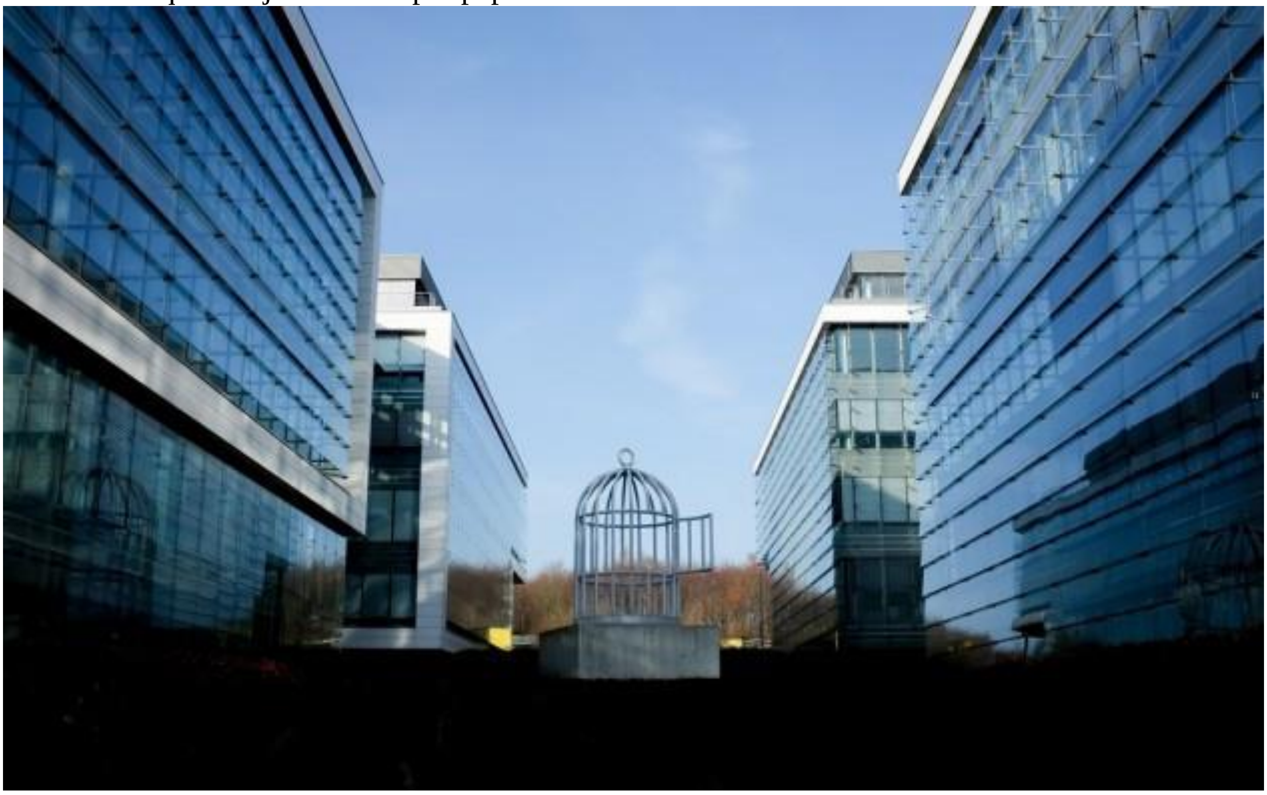
Il est probable que le dossier va maintenant remonter aux chefs d'État et de gouvernement ; ils se retrouveront en sommet à Bruxelles à la fin de la semaine prochaine. Xavier Bettel, pour sa première, risque d'y être attendu avec un regard sévère.

Crise financière

Il y a cinq ans: Madoff…

L'arrestation, fin 2008, de Bernard Madoff révéla la plus grosse escroquerie de l'histoire de la finance, dont certaines ramifications sont passées par le Luxembourg… Mais le travail de la Justice est très lent, voire totalement à l'arrêt.

Par : Véronique Poujol / Publié par paperJam.lu



Madoff est en cage. Mais des actions, entravées, voire au point mort, restent ouvertes au Luxembourg. (Photo: Jessica Theis)

150 ans de prison pour quelque 65 milliards de dollars engloutis: la peine de prison à laquelle le financier-escroc Bernard Madoff a été condamné est à l'image du gigantisme inédit de cette «affaire» qui a ébranlé tous les fondements de la finance mondiale. Selon le principe d'un mécanisme «cavalerie», les intérêts faramineux issus du fonds qu'il gérait et payés aux «premiers» investisseurs n'étaient, concrètement, financés que par les apports des derniers investisseurs. Le déclenchement de la crise financière, quelques mois plus tôt, avait provoqué l'effondrement du système lorsque ces investisseurs ont commencé à vouloir sortir de ce fonds.

C'est le 12 décembre 2008 que Bernard Madoff a finalement été arrêté par le FBI, puis remis en liberté sous caution (10 millions de dollars), avec d'être finalement condamné, en juin 2009, à un siècle et demi de prison…

Depuis cinq ans, une longue et complexe procédure judiciaire est en cours, mais elle n'avance plus beaucoup. Au Luxembourg, concrètement, depuis l'été 2012, c'est même le blocage complet pour une bonne partie des procès au civil intentés par les liquidateurs des fonds d'investissement (ayant été placés dans les sociétés de l'escroc Bernard Madoff), contre la banque dépositaire UBS et les différents acteurs (notamment les deux sociétés de gestion Luxalpha et Luxinvest, mais aussi des administrateurs et des réviseurs et même la CSSF) qui ont rendu possible la fraude, bien qu'ils s'en défendent.

La procédure, qui vise à obtenir des banquiers dépositaires qu'ils remboursent les victimes et assument leurs responsabilités inscrites dans les lois et directives européennes sur la protection de l'épargne, est bloquée par une cascade d'autres recours émanant, pour l'essentiel des avocats d'UBS.

La CSSF attendue au tournant

Dans l'édition de paperJam à paraître ce jeudi, découvrez les coulisses de cette affaire, notamment les révélations faites au juge d'instruction français Renaud Van Ruymbeke de deux anciens cadres d'UBS Luxembourg indiquant qu'en interne, le groupe UBS n'avait pas le droit de toucher à Madoff, ce qui ne l'a pas empêché de faire commercialiser à grande échelle des produits de l'escroc américain à des milliers de petits clients en utilisant le label luxembourgeois des fonds réglementés.

La Commission de surveillance du secteur financier (dont on attend toujours qu'elle publie les résultats de son enquête en cours) est évidemment montrée du doigt, alors que la plupart des victimes de l'escroc américain croient de moins en moins dans ses capacités – ni en celles de la justice luxembourgeoise – d'être capable d'apporter des solutions et de reconnaître les responsabilités de la banque UBS dans le schéma de fraude et de prononcer les sanctions qui s'imposent.

Il faut dire qu'à Luxembourg, on en est encore à s'interroger sur l'étendue de la responsabilité de la banque dépositaire et sur ses obligations en matière de dédommagements des investisseurs. Les juristes se battent sur les concepts très théoriques pour déterminer si les banques qui détiennent l'argent des clients dans la gestion collective ont seulement une obligation de conservation, de surveillance ou, quand même, de restitution. Parce qu'évidemment ni la réglementation luxembourgeoise ni les textes européens ne fournissent de réponses limpides susceptibles d'éclairer la justice locale et le gendarme de la place financière…

International/regional news

EU Commission fines banks $2.3 billion for benchmark rigging

BY FOO YUN CHEE

BRUSSELS Wed Dec 4, 2013 7:16am EST

European Union Competition Commissioner Joaquin Almunia addresses a news conference at the EU Commission headquarters in Brussels December 4, 2013. CREDIT: REUTERS/YVES HERMAN

(Reuters) - EU antitrust regulators fined six financial institutions including Deutsche Bank, Royal Bank of Scotland and Citigroup a record total of 1.71 billion euros ($2.3 billion) on Wednesday for rigging financial benchmarks.

The move confirms what a source familiar with the matter had previously told Reuters.

The penalty is the biggest yet to be handed down to banks for rigging the benchmarks used to determine the cost of lending, one of the most brazen violations of conduct since the financial crisis. It is also the highest antitrust penalty ever imposed by the Commission, the EU's competition regulator.

The other banks penalized are Societe Generale, JPMorgan and brokerage RP Martin.

Deutsche Bank received the biggest fine of 725.36 million euros.

The European Commission said it would continue to investigate Credit Agricole, HSBC, JPMorgan and brokerage ICAP for similar offences.

The benchmarks involved are the London interbank offered rate, or Libor, the Tokyo interbank offered rate and the euro area equivalents. They are used to price hundreds of trillions of dollars in assets ranging from mortgages to derivatives.

"What is shocking about the Libor and Euribor scandals is not only the manipulation of benchmarks, which is being tackled by financial regulators worldwide, but also the collusion between banks who are supposed to be competing with each other," EU Competition Commissioner Joaquin Almunia said in a statement.

LIKELY SANCTIONS

RP Martin and ICAP could not be immediately reached for comment. Deutsche Bank said it has set aside enough money to cover most of the 725 million euro fine.

JPMorgan confirmed its 79.9 million euro penalty in the Libor case but said it would defend itself in the Euribor case. [ID:nWNBB037YI]. Societe Generale declined to comment.

Unlike the six banks which admitted liability in return for a 10 percent reduction in their fines, Credit Agricole has refused to settle and will likely face sanctions next year. HSBC has also contested the EU's proposed penalty.

Both banks are expected to be formally charged on Wednesday.

A spokesman for HSBC said the bank would defend itself vigorously in the Euribor case, while Barclays confirmed its cooperation with the Commission which helped it stave off a 690 million euros sanction.

RBS said its 391 million euro penalty had been fully provisioned for.

Authorities around the world have so far handed down a total of $3.7 billion in fines to UBS, RBS, Barclays, Rabobank and ICAP for manipulating rates, while seven individuals face criminal charges.

UBS paid a record fine of $1.5 billion late last year to the U.S. Department of Justice and the UK's Financial Services Authority for rate-rigging.

EU fines can reach up to 10 percent of a company's global turnover.

UBS blew the whistle on the Libor and Tibor cases and will not be fined as a result.

Barclays will escape a fine in the Euribor case because it alerted the Commission to the offence.

(Additional reporting by Matthias Blamont in Paris, Steve Slater and Kirstin Ridley in London, Ludwig Burger and Clare Hutchison in Frankfurt, Lionel Laurent in Paris; Writing by John O'Donnell; Editing by Luke Baker and David Holmes)

THOMSON REUTERS FOUNDATION

Expansion may weaken OECD anti-bribery convention-experts

Source: Thomson Reuters Foundation - Thu, 5 Dec 2013 05:41 PM

Author: **Stella DawsonMore news from our correspondents**

Angel Gurria, secretary-general of the Organisation for Economic Co-operation and Development (OECD) (2nd L) gestures during a joint news conference with Italian Prime Minister Enrico Letta at Chigi Palace in Rome. Photo May 2, 2013. REUTERS/Tony Gentile

WASHINGTON (Thomson Reuters Foundation) – The OECD's Anti-Bribery Convention needs to consider adding emerging powers to its ranks if it is to remain a major global force in combating business corruption, but expansion risks weakening its powerful oversight role, experts in foreign bribery said.

When the Anti-Bribery Convention was launched in 1997, its signatories represented 80 percent of world trade and investment flows. Today it represents about 60 percent. China is not a member, nor is India, and other emerging economies with growing export sectors such as Indonesia, Malaysia, the Philippines and Thailand are absent.

“If you are going to succeed, the club that was must recognize it is no longer the dominant force in world trade and investment. How do you bring in those who matter in world trade and still have something manageable?” said Lucinda Low, a leading anti-bribery lawyer at the Washington law firm Steptoe & Johnson LLP.

Mark Pieth, outgoing chairman of the OECD’s Working Group on Bribery, said the organisation confronts two major issues – how to expand its membership while ensuring it maintains an effective monitoring system that can pressure countries to enforce their anti-bribery laws.

“We will have a real challenge to maintain the standards. We are having trouble in getting standards in the existing countries,” Pieth said at a George Washington University Law School conference on Wednesday on the International Fight Against Corruption.

Under the OECD’s Anti-Bribery Convention, **signatory countries** must criminalise bribing a foreign public official in business transactions. The 34 members of the Organisation for Economic Cooperation and Development, which represent major developed countries involved in international trade, plus six others - Russia, South Africa, Brazil, Argentina, Colombia and Bulgaria – are signatories.

The Working Group on Bribery holds quarterly meetings to monitor each country’s progress in implementing the anti-bribery laws and record on enforcement. The greatest strength of the **OECD’s anti-bribery** mechanism is the frank feedback each country receives from its peers in closed-door meetings and in periodic public reports on the progress a country is making, officials who have attended the OECD sessions said.

This naming and shaming mechanism has succeeded in cajoling countries into toughening their legislation and their investigations and prosecution efforts, Pieth and others said. They cited the U.K’s passage of the 2010 Anti-Bribery Act after the BAE Systems bribery scandal as a prime example.

“Suddenly it gets very real when you can write into a diplomatic text you should do extra due diligence,” said Pieth. By flagging to the business community that there is a high risk in doing business with a country, it creates immense political pressure for reform, he said.

Charles Duross, deputy chief of the business fraud section at the U.S. Department of Justice, said he had been highly skeptical of peer review -- until he attended a gloves-off session at the OECD.

“I was shocked by the fact countries deeply cared about what other countries had to say about them. It has had a dramatic impact,” Duross said.

Peer review has prompted the United Kingdom, Canada, the Netherlands and others to strengthen their anti-bribery frameworks. In the United States, criticism over how it decides on prosecutions under the Foreign Corrupt Practices Act – the landmark 1977 legislation which was the first to criminalise bribing foreign officials to win business contracts – prompted the Justice Department last November to issue its FCPA guidance document, he said.

"It really has fundamentally changed the corporate bribery landscape. Peer review is tough, and it embarrasses the people who want to do well and receive accolades from their peers," Duross said.

Expanding the Working Group's membership beyond 40 countries will make it unwieldy to have the type of frank exchanges that have characterized its work to date, but to lose this peer pressure risks watering down the group's effectiveness, experts said.

Fritz Heimann, chairman of Transparency International-USA and counsellor to General Electric, said the OECD's Working Group is at "a tipping point." Enforcement of anti-bribery legislation is already sorely lacking, and expansion risks pushing the enforcement side further into the background, he said.

According to a **Transparency International report**, half the countries that are signatories to the convention have have had few or no prosecutions of foreign bribery cases.

"Why? The answer is that there is no high-level government support," Heimann said.

Drago Kos, who takes over the chairmanship of the Working Group on Bribery in 2014, said the report shows the importance of remaining vigilant on enforcement.

"The fact that there are no cases in 20 countries tells us they are not doing enough work in this area. We just have to keep on pressing and pushing. There is no other way," he said.

theguardian

UK 'should tighten controls on those with dubious sources of wealth'

Transparency International Russia says UK should be asking more questions about foreigners with suspicious fortunes

Wednesday 11 December 2013 07.00 GMT

'People who launder money, launder money in very dark corners, but they like to live in nice places like London,' says TIR director Elena Panfoliva. Photograph: EPA

British authorities should tighten controls on foreigners with suspiciously large fortunes, according to a Russian anti-corruption campaigner.

In a speech at a City law firm on Wednesday, Elena Panfilova, director of Transparency International Russia, will say that the UK government should be asking more questions about individuals with dubious sources of wealth.

"My problem is that the UK keeps accepting people with very questionable money from my country. A lot of purchases in the real estate market and a lot of investment are being done from those who should be asked what is the nature of their wealth and that is not happening."

She stressed this applies not only to Russians but any public officials, whose salary would not enable them to buy London property, lead a luxurious lifestyle or make other lucrative investments in the UK.

Between 1994 and 2011, $212 bn (£130bn) in illicit transfers and evaded taxes left Russia, according to the New York-based watchdog Global Financial Integrity. "Quite a lot" ended up in London, said Panfilova. "People who launder money, launder money in very dark corners, but they like to live in nice places like London."

In a report this week Transparency International accused the UK financial sector – banks, lawyers and accountants – of wasting millions on ineffective anti-money laundering procedures. The campaign group are calling for a new law against corrupt enrichment, that would make it easier to seize suspicious assets.

Panfilova said the top priority was stronger enforcement of existing laws. "They have all the instruments in the UK if they would exercise stricter control on the banking sector and inflow of money." She would like to see more control over trusts that help foreigners bring money into the UK and checks on their ultimate beneficiaries.

The transparency campaigner was speaking after a Moscow court on Tuesday ruled that Transparency International Russia would have to register as a "foreign agent" – a term synonymous with spying in the Soviet Union.

Vowing to appeal the court's ruling, Panfilova said no Russian NGO could accept being called a foreign agent, and warned that the crackdown against civil society in Russia was making it harder to fight corruption. "There is a definite and very serious crackdown against civil society including anti-corruption organisations like ours … and without parallel anti-corruption controls nothing is possible. There should be a watchdog, there should be a system of checks and balances."

Russia is ranked 127th in Transparency's latest index of corruption perceptions, behind other emerging economies including Brazil, China and India. Endemic graft will come under the spotlight at the Sochi Winter Olympics, where half of the $51bn cost is estimated to have been swallowed up in kickbacks and dodgy building contracts. One 18-mile road reported to have cost $8.6bn – an amount that campaigners say would have allowed it to be paved in gold or caviar – has become emblematic of a deep-rooted culture of bribes and kickbacks.

Panfilova said corruption could topple Russia's political system: "I can imagine corruption reaches a level where it really endangers the sustainability of everything including the current regime. Corrupt officials, corrupt police officers, corrupt business they want more and more … and that is difficult in a situation of very strict budgeting. I don't know who is stronger, those who have habits of having everything or our political institutions."

In her lecture she will also say that the least corrupt countries – including the UK (ranked 14th by Transparency) – need to do more to curb "greyskimming", allowing firms to create shell companies and other "strange schemes" that might be legal in one jurisdiction and illegal in another.

Insight: The Luxembourg tax break that helps firms profit from loss

BY TOM BERGIN LONDON Tue Dec 17, 2013 5:32am EST

1 OF 2. The Petrusse river is seen in the general view of the city of Luxembourg in this November 20, 2012 file photo.

CREDIT: REUTERS/FRANCOIS LENOIR/FILES

(Reuters) - "Life in Luxembourg is simply different," says its government website. The same could be said of tax in the Grand Duchy. It's known for its generous tax policies, but what's less familiar is a Luxembourg rule that lets companies cut their income taxes using costs that they haven't actually borne - a break offered by almost no other state.

The rule, which dates back to World War Two, helps companies save hundreds of millions of dollars in taxes each year, a Reuters analysis of the accounts of several major international corporations shows. The profits that escape tax have often not been earned in Luxembourg, but in countries like Britain, the United States and Germany. Those countries may lose out.

New York-listed telecoms group Vimpelcom, U.S. internet group AOL Inc., building equipment maker Caterpillar and UK mobile telecoms group Vodafone are just four of those to have made use of the system, accounts for their Luxembourg subsidiaries show. Other firms have similar arrangements, tax advisers say, but have not made them public.

What these firms can do that companies in most other countries cannot is use notional losses - like a fall in the value of an asset that a business still holds - to cut their corporate income tax. In other countries, such an asset would have to be sold, so that the loss is realized, before the company could use it to reduce its tax bill. The only other country to offer a similar tax break is Switzerland, according to 20 tax advisers from a dozen countries interviewed by Reuters; but they said the Swiss are more restrictive.

In the European Union, where some countries use tax incentives to attract corporate investment, Luxembourg's rule is a unique lure. Tax advisers say it has helped attract more than 40,000 holding companies and thousands of high-paying jobs for the population of nearly half a million.

"For a government that wants to collect taxes ... this is just a stupid idea," said Reimar Pinkernell, tax partner in Flick Gocke Schaumburg in Bonn. "But if you don't want to collect taxes, if you are just happy that the company is there, and employs some people, then this is a perfect system."

The leaders of the Group of 20 biggest economies pledged in September to close some international loopholes in company tax, but their plans won't target country-specific practices like Luxembourg's. EU sources said in September the European Commission, the executive arm of the EU, wrote to Luxembourg, Ireland and the Netherlands asking for details of tax deals they had cut with foreign companies, to see if they meet competition rules.

Tax advisers point out that other countries offer different tax breaks to attract investment. The Luxembourg Ministry of Finance said its tax rules are sensible, and not intended to help companies shift profits from other countries.

"A lot of countries use tax competition," said Heather Self, partner at law firm Pinsent Masons in London. "There's nothing wrong with it and there's nothing wrong with companies taking account of different tax rates. Tax is just another cost of business."

Spokespeople for the U.S., UK, French and German finance ministries declined to comment or said it would be inappropriate to comment on another country's tax rules. A spokesman for the EU Commission said the issue was not one it has examined in detail.

AN "INTERNAL BANK"

Here's how the rule works. If a company makes an investment, say it buys another firm, and the business turns out to be worth less than it paid, the company will follow international accounting rules to reduce, or write down, the value of the asset in its accounts. In countries like Britain and the United States, that impairment does not generate a tax saving. But in Luxembourg it does.

The case of Dutch-based Vimpelcom Ltd, one of the biggest phone operators in Russia with operations in Canada, Italy and North Africa, shows how firms can benefit.

At the end of 2012 a Vimpelcom subsidiary, a holding company called Weather Capital Sarl, made a 1.1 billion-euro ($1.51 billion) write-down in relation to some shares it held in a subsidiary, Weather Capital Special Purpose 1 Sarl, also a holding company. It also

reported an 840-million euro decline in the value of a loan it had made to the holding company.
Under Luxembourg rules, those two losses could save hundreds of millions in tax.
But the loss doesn't give a saving on its own: It must be offset against profits. And Luxembourg's domestic market is too small to make much profit; Vimpelcom doesn't even have a telephone business there.
So the company found another way to benefit.
In January this year, it told investors at a presentation in London that it planned to establish an "internal bank" that would borrow money and lend it on to operating units around the world, to fund their investments.
Henk van Dalen, its Chief Financial Officer at the time, said the company planned to route $13 billion to $15 billion of loans each year through the new financing unit. The in-house bank would generate large profits by charging more in interest than it had to pay. And these profits would escape tax because the financing operation would be based in Luxembourg, where Vimpelcom had big tax losses to use.
The "tax saving" would be $200 million to $250 million each year, van Dalen said.
Vimpelcom declined to comment or answer questions about its Luxembourg operations. Van Dalen did not respond to requests for comment.
It could go on indefinitely, van Dalen told the London meeting, a video of which is available on the company website. "Of course, at a certain moment you will run out of these tax losses and then there will be a new phase developed for the financing company," van Dalen said.
One investor on the video described the structure as "fairly ingenious."
But University of Connecticut School of Law Professor Richard Pomp said the system made no sense. "It's absurd," he told Reuters of the Luxembourg rule. "It gives the taxpayer too much control in managing their tax bill."
AOL'S LUXEMBOURG MOVE
Luxembourg's practice was actually inherited from Germany and dates back to the occupation of the Grand Duchy during the Second World War, said Ministry of Finance spokeswoman Veronique Piquard.
Indeed, Germany allowed companies to create such tax losses until 2001, although Berlin was less generous, German tax lawyers say.
Another difference was that while Germany gave deductions for write-downs, if a firm made a profit when it sold an investment, the company would be taxed on that.
In Luxembourg, if the investment goes up in value or is sold at a profit, the gain isn't taxable. Pomp, the University of Connecticut professor, calls that a "one way bet" for companies. "There should be symmetrical treatment," he said. "This is a pure tax incentive."
Tax advisers say Germany changed its approach because it stopped taxing capital gains, so it no longer made sense to give a deduction for losses. Piquard said Luxembourg's

treatment of write-downs was not a tax incentive and the tax authority only gave deductions for write-downs which were justified.

The deductions can be quite quickly arranged, as illustrated by the case of internet group AOL Inc.

AOL told investors in its 2009 annual report that it was experiencing weakness in its European display advertising business.

In 2010, it transferred ownership of several European advertising subsidiaries from a British to a Luxembourg-based company.

Months later, that company, AOL Europe Sarl, wrote down the value of the advertising units as part of a 27-million-euro impairment. It then offset this against royalty income totaling 6 million euros, which could otherwise have incurred tax of almost 2 million euros.

Had AOL left the units with the British holding company and taken the losses there, it would not have received any tax benefit.

Piquard declined to comment on individual companies' tax affairs. AOL also declined to comment.

CATERPILLAR'S CONSOLATION

Boosting the appeal of Luxembourg's rule is the fact that many takeovers - more than half, according to some studies - don't work out for the acquirer.

Take Caterpillar, which shocked investors in January by writing down almost all of the value of ERA Mining Machinery Ltd., a Chinese company it agreed to buy for more than $653 million in 2011. Caterpillar cited alleged accounting irregularities at an ERA subsidiary, and the write-down wiped out more than half its earnings for the fourth quarter of 2012.

However, there was some consolation for Caterpillar investors, because the deal was structured through a Luxembourg holding company.

The write-down generated a tax deduction of $445 million that could be used to offset Caterpillar's future income in Luxembourg.

Caterpillar declined to comment.

VODAFONE'S PROFITS POWERHOUSE

One of the most successful users of the Luxembourg rule is Vodafone. The losses it built up in Luxembourg are so big the Grand Duchy's approach to taxing write-downs has helped it save billions of euros in taxes over the past 13 years.

Vodafone became the largest mobile phone company in the world after a buying spree in the late 1990s, with deals such as the $180 billion takeover of Germany's Mannesmann AG. After the tech bubble burst, Vodafone had to write down these assets.

They were held in Luxembourg, which meant that the 70 billion euros in charges it reported could be used to offset future profits.

These have been significant. Since Vodafone's first write-downs in the year to March 2002, just four Vodafone Luxembourg subsidiaries have earned almost 30 billion euros.

Two have been like Vimpelcom's "internal bank". Vodafone Luxembourg 5 Sarl (VL5), made $15 billion in profits from lending to the group's U.S. arm, while Vodafone Investments Luxembourg Sarl (VIL) made 18 billion euros lending to affiliates such as Vodafone's German arm. Interest payments are tax deductible in the United States and Germany, so the U.S. and German units' taxable income, which could have exceeded 60 billion euros, was also reduced by this arrangement.
More recently, two other Vodafone subsidiaries have gone beyond lending, to start business operations in Luxembourg. The firms - Vodafone Procurement Company Sarl (VPC) and Vodafone Roaming Services Sarl (VRS) - trade phone equipment and telephone bandwidth between affiliates and external suppliers. Their 300 staff generated an average 1.7 million euros per head in profit in the year to March 2013, compared with a group average of around 44,000 euros per worker.
Combined, these arrangements mean Vodafone reports more profit in Luxembourg than it does in any other country apart from the United States, group accounts show.
And thanks to the tax losses it has built up in Luxembourg, it has paid only around 100 million euros in tax since 2001. If Vodafone had paid the headline tax rate on this profit, it would have faced a bill of almost 9 billion euros.
Vodafone said it did not use contrived arrangements to shift profits. "Vodafone acts with integrity in all tax matters and operates under a policy of full transparency with the tax authorities in every country in which we operate," the company said in a statement.
Head of Group Media Relations Ben Padovan said the profits reported in Luxembourg reflected genuine economic activity there and the arrangements had no impact on Vodafone's UK tax bill.
Vodafone added that the decision to hold its investments and base its inter-company financing in Luxembourg reflected a variety of factors including the country's location within the euro zone, "the stability and predictability of the tax, regulatory, social and political environment and the availability of relevant skills within the labor market."
If companies do use Luxembourg's rules to avoid taxes in other countries, said Luxembourg tax lawyer Thierry Lesage, then it was up to other countries to change their systems.
The system is "really part of the DNA of the Luxembourg holding (company) taxation system," he said. "As a sovereign state Luxembourg is allowed to determine its fiscal policy."
($1 = 0.7283 euros)
(Edited by Sara Ledwith and William Waterman)

THOMSON REUTERS FOUNDATION

Countries must do more to avoid being havens for dirty money - OECD

Source: Thu, 19 Dec 2013 09:38 AM
Author: **Luke BallenyMore news from our correspondents**

Euro banknotes which were damaged during the recent floods, are laid out for inspection at the money analyzing laboratory of Germany's Federal Reserve bank, Deutsche Bundesbank, in Mainz July 31, 2013 REUTERS/Kai Pfaffenbach

LONDON (Thomson Reuters Foundation) – Rich countries are failing to stem the enormous flow of dirty money from developing countries, and are essentially becoming havens for funds from money laundering, tax evasion and bribery, while depriving poor source countries of much-needed public funds, according to a **report** released on Wednesday.

The Organisation for Economic Cooperation and Development (OECD) report examined the group’s 34 member countries efforts in combating economic and financial, and found them falling short.

“OECD countries still have weaknesses that allow the entry of illicit funds. It is important that OECD countries take measures to avoid becoming safe havens for illicit financial flows from the developing world,” the report said.

Washington-based **Global Financial Integrity** estimates illicit financial flows from developing countries in the decade through 2011 at **$5.9 trillion** - money that is diverted, the OECD report says, from public use for hospitals, schools, police and roads, to private consumption of luxury cars, mansions, art and precious metals.

“Every year huge sums of money are transferred out of developing countries illegally. These illicit financial flows strip resources from developing countries that could be used to finance much-needed public services, from security and justice to basic social services such as health and education, weakening their financial systems and economic potential,” it said.

“The social impact of a euro spent on buying a yacht or importing champagne will be very different from that of a euro spent on primary education.”

TAX EVASION

The report measured the efforts of OECD countries against international standards in five policy areas: money laundering, tax evasion, bribery, asset recovery and the role of donor agencies in combating illicit financial flows from developing countries.

“Fighting international tax evasion is important because it is a major source of illicit financial flows from developing countries,” the report said. “Sub-Saharan African countries still mobilise less than 17 percent of their gross domestic product (GDP) in tax revenues.”

While OECD countries have signed 1,300 bilateral agreements with developing countries on exchange of information between authorities to tackle tax evasion, there is room for improvement, the report said.

The 121 member countries of the OECD’s Global Forum on Transparency and Exchange of Information on Tax Purposes in November established a new group for global automatic exchange of tax information between countries, which would deter tax evaders and increase the amount of taxes paid voluntarily.

The European Union agreed this year to introduce an automatic exchange of tax information between countries in the EU, and the Group of 20 (G20) richest countries also agreed to implement automatic exchange of tax information by the end of 2015.

However, the report adds that some developing countries suffer such weak capacity and corruption that they may struggle to enact exchange of tax information agreements effectively.

MONEY LAUNDERING

The report also rated OECD countries on their compliance with the 40 anti-money laundering recommendations of the **Financial Action Task Force** (FATF), an intergovernmental body set up in 1989 to combat money laundering and terrorist financing.

On average, OECD countries’ compliance with FATF recommendations is low, and they scored worst on the recommendation to identify the “beneficial owners” - that is, the actual person(s) - behind a company, partnership or trust that controls an account or investment. This is key, “given the tendency of criminals to hide behind various corporate or legal structures in order to launder money,” the report said.

Nearly 80 percent of OECD countries were either non-compliant or partially compliant with the corporate beneficial ownership recommendation, while 90 percent were non-compliant or partially compliant with the recommended provision of information regarding the beneficial owners of trusts.

OECD countries also scored poorly for compliance with FATF recommendations on customer due diligence and record keeping by financial institutions, and the reporting of suspicious transactions by financial institutions.

For example, banks in OECD countries have to seek senior management approval for a “politically exposed person” (PEP) and determine the source of their wealth and funds, but enforcement of these requirements is often lax, the report said.

“Many banks rely on self-reporting, by simply asking a person at the time of opening an account whether or not they are a PEP or closely related to one, without any subsequent verification,” it said.

“Where customers have been identified as PEPs, enhanced due diligence measures have not always been taken and red flags have not always been followed up.”

Once illicit funds are spotted, progress in repatriation has been modest, the report said, with only a limited number of countries having frozen or returned assets.

“Repatriation of stolen assets to their country of origin can provide developing countries with additional resources, offering a powerful deterrent as well as justice for the societies whose funds are repatriated,” it said.

“Proving that assets are linked to criminal conduct can be a complex process. As seen in some cases, one successful way to counter this problem is to require proof that excessive wealth has a legitimate origin.”