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Sweden as a tax haven

A research regarding if a tax haven can conduct high taxes and what other characteristics may be

by

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Preface

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The subject of the thesis was something that became an idea after a discussion with my brother on Christmas Eve. I am very grateful to him.

Helsingborg, 26 May 2022

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Summary

This thesis is a research regarding if Sweden should be classified as a tax haven. To be able to classfie Sweden, four organisations have been researched, this is because there is no clear definition of the term tax haven. This research has gone through four organisations' views on tax havens and what they see as indicators in a country that could be classified as a tax haven. Have the four organisations researched in this paper the same point of view or have they different views from each other regarding the indicators of a tax haven?

A test has been done with the indicators of the four organisations. This test has gone through how Sweden and its taxes stand towards the indicators of a tax haven. Sweden has usually been seen as a country with high taxes on labour, hence there is no inheritance tax, wealth tax and property tax. The corporate tax rate is currently 20.6 percent, which may be seen as a favourable tax rate compared to the corporate tax rate in the 1980's at 52 percent. There is also tax exemption on certain capital assets for corporations.

Some people say that Sweden should be deemed a tax haven. The reasons that has been given for this is that there is neither an inheritance tax, a wealth tax nor a property tax. With the right tax plan income for labour can be changed to capital income that is taxed with a lower tax rate. Corporations can gain assets without taxes and then pass them to their owners for a lower taxation. With this research and with the defined indicators of a tax haven, one should be able to conclude whether the above statements are enough to determine Sweden to be a tax haven.

Abbreviation list

BEPS	Base Erosion and Profit Shifting
CIT	Corporate income tax
CJEU	Court of Justice of the European Union
EU	European Union
EEA	European Economic Area
FACTI	UN Financial Accountability, Transparency and Integrity
GNP	Gross National Product
ICRICT	The Independent Commission for the Reform of International Corporate Taxation
NGO	Non Governmental Organisation
OECD	Organisation for Economic Co-operation and Development
TJN	Tax Justice Network

1. Introduction

1.1. Background

Sweden with its big forests, diverse and unpredictable weather and high taxes may not be the first country you associate with the word *tax haven*. The word *tax haven*, especially after the *Panama papers*[1], is something that associates with white beaches, crystal clear tropical water, an all year enjoyable and warm weather and very low taxes.

“Sweden is a tax haven - for the rich" was something the Swedish economist *Stefan de Vylder* stated in an article when the *Panama papers* had been discussed in different Swedish TV and radio programs.[2] de Vylder points out Sweden as the only industrialised country that has abolished inheritance tax, wealth tax and property tax. The Swedish corporate tax has also decreased from 52 percent in the 1980´s to 20.6 percent today.[3]

The total tax burden in Sweden is relatively high when compared to other EU Member States. Sweden's total tax burden for the year 2021 was 42.9 percent of the GNP.[4] The highest marginal tax on labour in Sweden is 52.5 percent and 63.8 percent if the social fees/employers contributions are included. With the high tax burden and marginal tax it might be hard to draw parallels to *tax havens* that occured in the *Panama papers*. But a rich person in Sweden will have the possibility to plan the tax they are paying, especially changing high tax income of labour to low tax income of capital. If the change of capital falls in the scope of the so-called “3:12” legislation, the tax on dividends will only be taxed at 20 percent. A great difference from the high marginal tax at 52.6 percent (63.8 percent).
The taxes in Sweden are high and de Vylder says: “It is hard to get rich on labour in Sweden, but it is costless to be rich”.[5]
With economist de Vylders view that Sweden is to be seen as a *tax haven* the question arises what from a tax law perspective is the definition of a *tax haven* and can Sweden qualify as such?

1.1.1. From a historical view

In today's modern and globalised world the *offshore* world is not far from us and is circled around us. On paper half of the global trade goes through so-called *tax havens*. But still, there is little agreement on what the definition of a *tax haven* is.[6] The term *offshore* has not any clear defeation as well, but can be described as a country that the countries with high taxes do not have control over.[7] This may be the best description even though *offshore* means islands situated far from the shore in the ocean.
The concept of *tax havens* is not something new and modern, the concept dates back to ancient Greece. In the city of Athen a tax was implemented.

[1] The leak regards papers from the panamanian law firm Mossack Fonesca on the 3 april 2016.
[2] de Vylder, Stefan. *Sweden is a tax haven - for the rich.*
[3] Chapter 65, 10 §, the Swedish tax act (1999:1229), as in this thesis 2022.
[4] Armelius, Hanna. *Skattetryck.*
[5] de Vylder, Stefan. *Sweden is a tax haven - for the rich.*
[6] Shaxson, Nicholas. *Treasure Islands.* p. 8.
[7] Wolters Kluwer. *History and Current Status of the Offshore Sector.*

The tax equaled a 2 percent value of the goods that were imported and exported. But there were ways even then to avoid the taxes. On neighbouring islands goods were transferred in order to, on a later date, get smuggled in, and safe havens occurred. That kind of system was then spreading across Europe and was used with success.[8]

1.1.2. The organisations discussed in this paper

In this thesis four organisations' views and classifications regarding what they define as *tax havens* will be researched, OECD, EU, Oxfam International and Tax Justice Network.

Within the OECD, governments work together in order to develop global standards, identify common challenges and then find solutions for those and see what is the best way in order to promote better policies that equals a better life. There are 37 member countries within the OECD.[9] One of the areas that OECD works in regards to taxes, international taxes. Here the work is about developing international rules so that cross-border trade and investments have some kind of free flowing. However, it is also a work to tackle tax evasion and tax avoidance.[10] In the work against tax evasion and tax avoidance OECD created together with the G20 countries the BEPS project. The aim with the project is to ensure with 15 actions points that profits are being taxed where the value is created and the economic activities take place.[11]

Within the EU there are several institutions. In this thesis the view from the European Commision, the Council of the European Union and the CJEU will be researched.

Two organisations are NGOs. NGOs are non governmental organisations that work independently and are not connected to any government.

The first NGO is Oxfam International. Oxfam is a global organisation with the purpose to decrease inequality and poverty. The second NGO is TJN. TJN's purpose is to create an equal society with the help of taxes and financial systems.

1.2. Aim and research question

This research will focus and analyse the circumstances that are considered when countries qualify as *tax havens*. When those circumstances have been analysed following question will be answered:

I. *Does Sweden meet one or more of the definitions for being a tax haven?*

To answer the main question of this research the following sub question shall be answered:

I. *What are the definitions of a tax haven from a EU perspective?*
II. *What are the definitions of a tax haven from OECD´s perspective?*
III. *How do Non Government Organisations define tax havens?*
IV. *What are the differences and similarities between the definitions?*

[8] Orlov, Mykola. *The Concept of Tax Haven: A legal Analysis.* p. 97.
[9] OECD. *Secretary-General's Report to Ministers 2021*. p. 22.
[10] OECD. *Secretary-General's Report to Ministers 2021*. p. 104.
[11] OECD. *BEPS - Inclusive Framework on Base Erosion and Profit Shifting.*

1.3. Method and material

In this research the method that is used is the legal-dogmatic research. The legal-dogmatic research method will lay out how the current law stands today.[12]

In this research valid sources of law will be analysed, that includes directives from EU that are secondary law, however it shall be interpreted in the light of regulations that are considered to be primary law. Case laws from the Court of Justice are also so-called primary law and are analysed. Other sources of law that qualify as secondary law are also analysed in this thesis, that includes national legislations, recommendations and opinions.
To give this thesis a more comprehensive approach to the legal problem at issue legal articles, papers, newspaper articles, articles that are non legal and statements from Non Government Organisations will also be a part of the material in this research.

1.4. Delimitation

In this thesis, no research on how the different organisations work against tax avoidance and tax base erosion has been made. Neither have there been any upbring regarding what these organisations think could be a solution in the work to eliminate *tax havens*. Regarding the implementation of directives and regulations, there is not a description how these have been implemented in Swedish legislation. This thesis has neither brought up under what circumstances one can taxplan in Sweden, or how certain laws can be interpreted in order to get a more favourable taxation. Any political view is not of interest in this thesis.

1.5. Outline

The second chapter is a review of the four organisations' categorisations indicators on what they consider indicaties a *tax haven*.
The third chapter will go through the similarities and differences between the organisation's indications that has been given in chapter two.
The organisation's indicators have then been put in light towards how Sweden fulfils these in the fourth chapter.
The fifth chapter analys what the organisations sees as a *tax haven* and if Sweden is considered to be one.
The sixth and last chapter is the conclusion of the analysis and the findings.

[12] Douma, S.C.W. 2014. p. 17-20.

2. Definition of tax havens

When talking about countries with favourable taxes they are usually referred to as *tax havens*. Despite that it is not something new, there is no clear legal definition of what a *tax haven* is. What one and other sees as a *tax haven* can have different definitions. In 1981 the american special counsel Richard Gordon defined a *tax haven* as follows: "a country is a tax haven if it looks like one and if it is considered to be one by those who care".[13] That is a vague definition and it is not an academic definition. Another non-academic definition, that has a completely different view on *tax havens* is in the Black's law dictionary: "a country that imposes little or no tax on the profits from transactions carried on there or on persons resident here".[14] In order to categorise under which circumstances a *tax haven* will occur, this chapter will go through different organisations' views on how to identify a tax haven. Following organisations will be brought up: OECD, EU, Oxfam International and Tax Justice Network.

2.1. OECD´s definition of tax havens

OECD brought up that there is no technical definition of a tax haven.
When it comes to OECD's definition of *tax haven*, the harmful tax competition report (the 1998 report) from 1998 is of interest when analysing the characteristics. The OECD report targets both OECD member states and non member states when harmful tax planning takes place through *tax havens* and harmful tax regimes.[15] The reason why the OECD categorizes tax jurisdiction in either two ways in the 1998 report is to give countries guidance, one to identify *tax havens* and one to identify tax regimes as accepted or harmful.[16] The two sided categorization that the OECD report handles are described as following:

> *i) A country is a tax haven and, as such, generally imposes no or only nominal tax on income from another country;*
>
> *ii) A country collects significant revenues from tax imposed on income at the individual or corporate level but its tax system has preferential features that allow the relevant income to be subject to low or no taxation.*[17]

In this OECD definition, both individuals and corporations are included when countries are classified as *tax havens*.
The OECD's view is that countries that can finance their public service without taxes or with low taxes, offer non-resident no taxes and the ability to escape taxes in their home residence and limit other countries to obtain information regarding taxes are to be seen as *tax havens*.[18] *Tax havens* have

[13] Gordon, Richard A. *Tax Havens and Their use by United States Taxpayers - An overview*. p. 14.
[14] Black's law dictionary. p. 4573.
[15] OECD. *The harmful tax competition report.* p. 3.
[16] OECD. *The harmful tax competition report.* p. 19. point 38.
[17] OECD. *The harmful tax competition report.* p. 19.
[18] OECD. *The harmful tax competition report.* p. 20. point 42 & 46.

no interest to obstruct the *race to the bottom*[19] or make active work against erosion of tax revenues for other countries. A harmful tax jurisdiction has, from OECD's view, a tax revenue that could be a risk of being harmful but those jurisdictions might agree to some actions.[20]

From the OECD's view a *tax haven* generally provides three main things: a location to hold passive investments, a location to book paper profits and high secrecy and shields for the taxpayers accounts from other tax authorities.[21] In order to identify *tax havens* the OECD gives four key factors in the 1998 report that are to acknowledge as *tax havens*:[22]

a) There are no relevant income taxes or just nominal taxes.
b) There is a strict secrecy and protection from preventing effective exchange to other tax authorities regarding their taxpayers that benefit from the low tax regime.
c) Legislative, legal or administrative provisions lack transparency.
d) There are no substantial activities in the country regarding the activity that generates the income that is of interest.

The OECD says in the 1998 report that the main criteria to define a country as a *tax haven* is that there is no or low tax. However, it must also prevent transparency and be some kind of an escape for taxpayers. A country that has no or low taxes but has transparency, is willing to provide information regarding taxpayers should, from OECD's view, not be identified as a *tax haven*.[23]

In a follow up to the 1998 report, a report regarding identifying and eliminating *tax havens* and harmful tax practices was released (the 2000 report). From the 1998 report the OECD took the necessary criteria that a country with no or little tax is to identify as a *tax haven* when they stated which countries were to be seen as *tax havens* in the 2000 report.[24]

In 2001 a progress report (the 2001 report) came from the OECD to describe how the work against *tax haven* has been going. But also to describe questions that have been raised from the 1998 report and the 2000 report.[25] In the 2001 report a radical change was being made from the OECD's view of a *tax haven*. The criteria regarding no or low taxes was not sufficient in order to decide if a country was to be categorised as a *tax haven*. OECD said in the 2001 report that countries have the right to determine their own tax rate and also if they want a tax or not. OECD described that the "no or low tax criteria" just was to identify if countries should be analysed regarding the other criterias in the 1998 report. To consider a county to be a *tax haven* the main criteria are a lack of effective exchange and transparency, but it can

[19] In order to attract or restrain foregin corporation, governments reduce the corporate tax rate.
[20] OECD. *The harmful tax competition report.* p. 20. point 43.
[21] OECD. *The harmful tax competition report.* p. 22. point 49.
[22] OECD. *The harmful tax competition report.* p. 23.
[23] OECD. *The harmful tax competition report.* p. 24.
[24] OECD. *Progress in Identifying and Eliminating Harmful Tax Practices*. p. 10 & 16.
[25] OECD. *The 2001 progress report*. p. 4-6.

also lack the absence of a requirement that the activity is to be seen as substansial.[26]

In light of the new view of the identification of *tax havens* a statement was made in April 2002 from the OECD.[27] The new information from the 2001 report in order to identify *tax havens* stated just seven countries to be categorised as unco-operative *tax havens*.[28] The OECD removed in 2009 all remaining countries that had been classified as unco-operative *tax havens* from the list.[29]

2.1.1. Low tax according to the OECD

Even if OECD in the 2001 report stated that the criteria regarding non or low tax is just a tool in order to find countries that could fulfil the main criterias,[30] it is still something that is being used in order to identify countries. So what does the OECD classify as a low tax?

2.1.1.1. Pillar-two

Within the work in BEPS there was an old international tax framework, however that framework had become weak. A new framework was required in order to secure profits to be taxed where the value is created and where the economic activity takes place.[31] The OECD and the G20 joined together and developed an action plan with 15 actions in 2013. The aim with the action plan was to reinforce substance requirements, improve transparency and certainty, and initiate coherence so that domestic rules can affect cross-border transactions.

Within those 15 actions, four of them are to be considered the minimum standards and must be implemented by all members that are a part of BEPS.[32]

Action 5 is about harmful tax practices. The aim with action 5 is to improve a country's transparency and requirement regarding a substantial activity.[33]

Another action is action 6, prevention of tax treaty abuse. Members shall implement a protection so that tax treaties can not be abused through treaty-shopping. This happens when a person that is not a resident in two countries takes benefits from the tax treaty between these two countries.[34]

The third action is action 13 and it regards country-by-country reporting. The purpose with this action is that all multinational corporations shall report to each tax jurisdiction where they are conducting business. In the report there shall be information of profits, taxes that have been paid, global allocation of income and the economic activity in the tax jurisdiction.[35]

The last action that falls into the scope of minimum standard is action Action 14, Mutual Agreement Procedure. The aim with this action is to find resolution when tax-disputes occur between two countries. Disputes can

[26] OECD. *The 2001 progress report*. p. 7. Point 16.
[27] OECD. *A statement*.
[28] OECD. *The Issues List of Unco-operative Tax Havens.*
[29] OECD. *The List of Unco-operative Tax Havens.*
[30] See chapter 2.1.
[31] OECD. *Explanatory Statement*. p. 4.
[32] OECD. *How are we monitoring implementation?*
[33] OECD. *Action 5 Harmful tax practices.*
[34] OECD. *Action 6 Prevention of tax treaty abuse.*
[35] OECD. *Action 13 Country-by-Country Reporting.*

occur when both countries seem to have the right to tax a certain income.[36]
In order to continue the BEPS-work, members of the OECD and G20 joined together in 2021, to work towards a fair taxation paid by corporations. This is named the two-pillar and the aim is to reform international taxation rules so that multinational corporations will pay a fair and transparent tax wherever they operate in the world. The implementation of pillar-two is set to be in 2023.[37]

In pillar-two the OECD determined a country as a low tax country if a multinational corporation's *Net GloBE Income* is taxed at an *Effective Tax Rate* that is lower than the *Minimum Rate*.[38]
A corporation's *Net GloBE Income* is determined on the sum based on all constituent entities global incomes minus alla constituent entities global losses.[39]
A corporation's *effective tax rate* is determined based on the sum of Adjusted Covered Taxes for each Constituent Entity located in the jurisdiction divided by the Net GloBE Income of the jurisdiction for the Fiscal Year.[40]
The *Minimum tax* rate equals 15 percent.[41]

2.1.1.2. Individual taxation

There is no minimum tax rate regarding individual income stated from the OECD. OECD's action 5 of the BEPS-project, concluded 12 countries in 2021 classified as countries with no or only nominal taxes; Anguilla, Bahamas, Bahrain, Barbados, Bermuda, British Virgin Islands, Cayman Islands, Guernsey, Isle of Man, Jersey, Turks and Caicos Islands and United Arab Emirates.[42]

In the countries Anguilla, Bahamas, Bahrin, Bermuda, British Virgin Islands, Cayman Islands, United Arab Emirates and Turks and Caicos there is neither any income tax, capital tax, estate tax and or any other direct taxes towards both non-citizens and citizens.[43]
In Barbados the individual income tax rate is 12.5 percent for an income up to BBD 50 000, if the income is above that sum the tax rate is 28.5 percent. Citizens are taxable on their worldwide income and non-citizens are just

[36] OECD. *Action 14 Mutual Agreement Procedure.*
[37] OECD. *Tax Challenges Arising from the Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two).* p. 3.
[38] OECD. *Tax Challenges Arising from the Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two).* p. 60.
[39] OECD. *Tax Challenges Arising from the Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two).* p. 28-29.
[40] OECD. *Tax Challenges Arising from the Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two).* p. 28.
[41] OECD. *Tax Challenges Arising from the Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two).* p. 60.
[42] OECD. *No or only nominal tax jurisdictions first exchange information on the substance of entities*. 2022.
[43] Deloitte. *Anguilla Highlights 2022*. p. 1. Deloitte. *Bahamas Highlights 2022*. p. 3. Deloitte. *Bahrain Highlights 2022*. p. 2. Deloitte. *Bermuda Highlights 2022*. p. 1. Deloitte. *British Virgin Islands Highlights 2022*. p. 2. Deloitte. *Cayman Islands Highlights 2022*. p. 1. Deloitte. *United Arab Emirates Highlights 2022*. p. 2. Visit Turks and Caicos. *Understanding Taxes in the Turks and Caicos.*

taxed on their income that has the source from Barbados. There is no capital gain tax in Barbados.[44]
On the island of Guernsey the tax rate on individual income equals 20 percent, there is no tax on capital gains. Citizens are taxable for their worldwide income and non-citizens are taxable for the income with the source from Guernsey.[45]
The tax rate on individual income on the Isle of Man is 10 percent up to GBP 6 500, above that the tax rate equals 20 percent. There is no capital gain tax. Citizens are taxable on their worldwide income and non-citizens are taxable for the income with the source from the Isle of Man.[46]
In Jersey the income tax rate on individual income equals 20 percent and there is no tax on capital gains. Citizens are taxable on their worldwide income and non-citizens are taxable for the income with the source from Jersey.[47]

2.1.2. Conclusion of OECD definitions

In this chapter a research regarding OECD's definition of *tax havens* has been made. From the research material a conclusion can be made that there are four key factors to classify a *tax haven*:

- There are no relevant income taxes or just nominal taxes. From the research regarding tax bases in pillar-two, a low tax in the eyes of OECD is a tax below 15 percent. Even though pillar two has not been implemented when this thesis is being made and published, I would say that a tax rate below 15 percent is where the OECD views as a low tax.
- There is a strict secrecy and protection from preventing effective exchange to other tax authorities regarding their taxpayers that benefit from the low tax regime.
- Legislative, legal or administrative provisions lack transparency.
- There are no substantial activities in the country regarding the activity that generates the income that is of interest.

As has been stated in previous OECD reports,[48] a country with low or no tax is not always equal to a *tax haven*. But it gives an indication towards countries that may have the other three key factors and therefore be classified as *tax havens*.

Regarding the tax rate on individual income from the countries that the OECD sees as countries with no or only nominal taxes a conclusion can be made. Eight out of the 12 countries have no individual income tax. Barbados has the highest income tax at 28.5 percent, if the income is above a certain sum. Otherwise the countries have an income tax around 20 percent. Based on this information the conclusion is that according to the OECD a low individual income tax equals something around 20-28.5 percent.
There is no capital gain tax in either one of the 12 countries.

[44] Deloitte. *Barbados Highlights 2022*. p. 3.
[45] Deloitte. *Guernsey Highlights 2021*. p. 3.
[46] Deloitte. *Isle of Man Highlights 2021*. p. 2-3.
[47] Deloitte. *Jersey Highlights 2022*. p. 3.
[48] See chapter 2.1.

2.2. EU´s definitions of tax havens

Within the EU there is no definition regarding a *tax haven*. Instead the EU describes it as non-cooperative jurisdictions for tax purposes. Both the term *tax havens* and non-cooperative jurisdictions describe a country with favourable taxation.

If a country is classified as a non-cooperative jurisdiction for tax purposes it will be put on the *blacklist*, that dates back to 2016 and was published for the first time in 2017.[49] The tax that the *blacklist* aims at is the corporate tax system.[50] The EU states that the aim with the list is not to shame the countries that are put on the *blacklist*. Instead shall the *blacklist* be an encouragement for a positive change in their tax legislation with cooperation.[51] A tool to identify *tax havens*. One thing about the *blacklist* is that only third country jurisdictions can end up on the list.[52]

The *blacklist* builds on the definition of *harmful tax practices* from *the Code of Conduct*[53] from 1997. *The Code of Conduct* stated some criterias that could be seen as potentially harmful. The first one, that may be quite obvious, is non or lower taxation. But in order to really determine if a country practises harmful taxation with non or lower taxation other measurements shall also be considered:[54]

- Only non-residents that are favourable of the advantage, this leads to a solely attraction from income that is domestic.
- The advantage does not affect the national tax base.
- There is no substantial or real economic activity within the country that offers the advantage.
- There are no internationally accepted principles when it comes to determining profits within multinational corporations groups, especially rules that within the OECD have been agreed.
- There is a lack of transparency and a relaxation of legal provisions at an administrative level in a non-transparent way.

The *blacklist* does not include EU Member States, only third countries.[55] This is because the implementation of directives in every EU Member States and the "Treaty on the functioning of the European Union" with the fundamental freedoms makes it impossible for countries to meet the criterias that will get a country on the *blacklist*.

In order to be seen as a cooperative jurisdiction, and not a non-cooperative jurisdiction, there are three criterias that need to be fulfilled.

The first criteria is that a country should have tax transparency to the EU. Within the tax transparency scope should there be tax data exchange with all

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[49] The Council of the European Union. *Timeline - Blacklist*.

[50] Nouwen, Martijn F. *The European Code of Conduct Group Becomes Increasingly Important in the Fight Against Tax Avoidance: More Openness and Transparency is Necessary*. p. 138. Council of the European Union. *Establishment of the EU list of noncooperative jurisdictions for tax purposes.* p. 10.

[51] The Council of the European Union. *EU list of non-cooperative jurisdictions for tax purposes.*

[52] Melis, Giuseppe & Persiani, Alessio. *The EU Blacklist*. p. 253.

[53] Guidance how corporations should conduct business in an ethical, social and environmentally friendly way.

[54] The Council of European Union. *Conclusions of the ECOFIN*. Annex 1, A & B.

[55] Melis, Giuseppe & Persiani, Alessio. *The EU Blacklist*. p. 253.

the EU countries, the exchange should be through an established reporting system. There should also be possibility for tax data exchange upon requests. Countries should be a part of the OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters or another network that provides exchange arrangements with EU Member States. At the moment there are no criteria regarding beneficial ownership, but the EU says it will be incorporated later.[56]

The second criteria is fair taxation. This means that there should not be harmful preferential tax measures in a country. There neither should a country encourage offshore structures or attract arrangements that do not have any economic activity.[57]

The third and last criteria is about anti-BEPS measures. To fulfil this criteria, countries should implement the minimum standards of the OECD's anti-BEPS actions. The anti-BEPS actions include harmful tax measures, treaty shopping, country-by-country reporting and dispute resolution. If a country implements the anti-BEPS actions, there should be a positive peer-review assessment.[58]

If a third country can not fulfil those three criterias it will be classified as a *tax haven*, or as the EU calls it a non-cooperative jurisdiction. The *blacklist* has two annexes. In the annex I, countries are included that do not fulfil or plan on making any implementation for a reform.[59] In annex II, countries are included that have committed to implement implementations that are tax good governance principles.[60]

When the *blacklist* was published back in 2017 there were seventeen countries that were classified as non-cooperative jurisdictions and stated in annex I.[61] This year, 2022, when the *blacklist*[62] was published in the spring, nine countries have been classified as non-cooperative jurisdictions.[63] As of this thesis, the following countries are on the *blacklist*: American Samoa, Fiji, Guam, Palau, Panama, Samoa, Trinidad and Tobago, US Virgin Islands and Vanuatu.[64]

2.2.1. Non or lower taxation according to the EU

As we could read in the chapter above, the first and most important criteria in order to define a county as a *tax haven* or a potentially harmful

[56] The Council of European Union. *Establishment of the EU list of noncooperative jurisdictions for tax purposes.* p. 4-5.
[57] The Council of European Union. *Establishment of the EU list of noncooperative jurisdictions for tax purposes.* p. 6.
[58] The Council of European Union. *Establishment of the EU list of noncooperative jurisdictions for tax purposes.* p. 7.
[59] The Council of the European Union. *Conclusions on the EU list of non-cooperative jurisdictions.* point 9.
[60] The Council of the European Union. *Conclusions on the EU list of non-cooperative jurisdictions.* Annex II.
[61] The Council of the European Union. *Conclusions on the EU list of non-cooperative jurisdictions.* Annex I.
[62] The blacklist is published two times throughout the year.
[63] The Council of European Union. *Conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes.* p. 5-7.
[64] The Council of European Union. *Conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes.* p. 5-7.

jurisdiction is that there are non or lower taxes. No tax is easy, it is simply zero taxation. But when is the tax low?

2.2.1.1. Pillar-two's light towards the EU

Within the light of OECDs pillar-two, the European Commission proposed in December 2021 a directive regarding a *minimum corporate tax rate*, however, this minimum corporate tax rate is applicable on multinational corporations that are involved in global activities in *low-tax jurisdiction*.[65] The European Commission follows OECD's minimum tax rate in pillar-two and is proposed to be 15 percent.[66] The definition of a *low-tax jurisdiction* from the European Commission classifies as a Member State or a third country where a multinational corporation has an *effective tax rate* lower than the *minimum tax rate*.[67] An *effective tax rate* equals adjusted covered taxes of the corporations entities in that country divided with the net qualifying income of the corporations entities in that country.[68] The determination of adjusted covered taxes of a corporation's entities is the sum of tax expense accrued in the net income or the loss in regard to covered taxes for the fiscal year.[69] The net qualifying income equals the qualifying income of the corporation's entities minus the qualifying losses of the corporation's entities. This formula may not give an income in those cases the losses are above the income.[70]
The directive regarding this *minimum tax rate* will, if implemented, be applicable only towards corporations in the European Union that are members of multinational corporations that reach an annual threshold of EUR 750 000 000 of consolidated revenue.[71]

Until the directive is implemented there is still a need to have some kind of a benchmark of what a low-tax rate equals regring a low-tax country. In the case *X*[72] from the CJEU, gives is some kind of a statement regarding what a low tax rate may implicate. In German legislation regarding CFC-ruling, a low-tax rate is below 25 percent.[73] The Court said that national legislation does not have a sole right to justify what a low-tax rate may be based on their legislation. For a national legislation to justify if a country's tax-rate is considered to be low, the whole scheme with the corporation established in the other country must be constituted as an artificial arrangement.[74]

2.2.1.2. Tax rates in the countries on the *blacklist*

In American Samoa the corporate tax rate is 27 percent[75], but that rate only applies to resident corporations. For non-resident corporations there are no taxes, zero percent, they are exempt from tax regarding corporations, capital

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[65] European Commission. *Council directive- minimum corporate taxation.* p. 1.
[66] European Commission. *Council directive- minimum corporate taxation.* Article 3.12.
[67] European Commission. *Council directive- minimum corporate taxation.* Article 3.29.
[68] European Commission. *Council directive- minimum corporate taxation.* Article 25.1.
[69] European Commission. *Council directive- minimum corporate taxation.* Article 20.1.
[70] European Commission. *Council directive- minimum corporate taxation.* Article 25.2.
[71] European Commission. *Council directive- minimum corporate taxation.* Article 2.1.
[72] Case-135/17, *X.*
[73] Case-135/17, *X.* para. 8. This is defined in the German Foreign Tax Act (Außensteuergesetz (AStG) 2006), Paragraph 8(3).
[74] Case-135/17, *X.* para. 86.
[75] As of this thesis, 2022.

gains, stamp duties, dividends, earnings or interests from outside Samoa.[76]
Fiji has a general corporate tax at 20 percent that is equal for both residents and non-residents. If a corporation is listed on the South Pacific Stock Exchange the tax rate is instead 10 percent. If a non-resident established its headquarters in Fiji , regional or global, the corporate tax rate will be 17 percent.[77]
Guam belongs to the territory of the United States but has its own tax sovereignty. The corporate tax rate for resident corporations is 21 percent, non-resident corporations are obliged to pay taxes on income that sources from Guam.[78]
Palau does not have any corporate taxes and there is no taxation of the business owners regarding the corporation. Instead there is a Gross Revenue Tax of 4 percent if the gross revenue is $ 50.000 or more. This applies to all businesses operating in the islands and on all revenue they receive.[79]
Panama has a corporate tax rate at 25 percent. If corporations have a taxable income that is greater than $1.5 million they can also choose to be taxed according to the Calculo Alternativo del Impuesto sobre la Renta (CAIR). Then the tax rate is 4.67 percent of the total revenue without any deductions.[80]
Samoa has a corporate tax rate at 27 percent which applies for both residents and non-residents. A resident corporation is taxed on its global income and non-residents are taxed on their income that has Samoa as source.[81]
Trinidad and Tobago's standard corporate tax rate is 30 percent. Residents are taxed at their global income and non-resident corporations that are engaged in business in Trinidad and Tobago are only taxed at the income that sources from Trinidad and Tobago.[82]
On the U.S Virgin Island the corporate tax rate is 23.10 percent.[83] This program gives for one example a 90 percent reduction on the corporate tax (equals a tax rate at 2,31 percent). In order to get the benefits, a corporation must invest $50,000 in the U.S. Virgin Islands corporation and employ ten persons.[84]
In Vanuatu the corporate tax rate is 0 percent.[85]

2.2.2. Conclusion of EU's classification

The EU does not point out countries as *tax havens*. Instead the EU classifies them as harmful from the criterias the Code of Conduct stated in 1997, and from there they may be put on the *blacklist*.
Regarding the criteria that a country should have low or non tax it is

[76] OffShore Company Corp. *What is the taxation for international companies in Samoa?*
[77] Kado, Jarome. *Fiji Corporate - Taxes on corporate income.* Munro Leys. *Taxation and Stamp Duty.*
[78] Bray, Sean. *Corporate Tax Rates around the World, 2021.* Trading Economics. *Guam Corporate Tax Rate.*
[79] PalauGov. *Gross Revenue Tax (GRT).* Palau Small Business Development Center. *What you should know about operating a business in Palau.* p. 5.
[80] PWC. *Panama Corporate - Taxes on corporate income.*
[81] Ministry Of Customs & Revenue. *Tax Rates.*
[82] PWC. *Trinidad and Tobago Corporate - Taxes on corporate income.*
[83] Bray, Sean. *Corporate Tax Rates around the World, 2021.*
[84] The United States Virgin Islands Economic Development Authority. *Tax Advantages*.
[85] Wolters Kluwer. *Vanuatu:Domestic Taxation*. Wolters Kluwer. *Vanuatu: Offshore Legal and Tax Regimes*.

important to see and understand the case *X*[86]. A legislation can only justify and decide if another country has a low tax if a corporation is set up in that low-tax country for a wholly artificial arrangement. As can be seen in some of the countries that are on the *blacklist*, many of the countries have corporate tax rates, both for residents and non-residents, that are above 20 percent. Another example regarding a country with a high tax rate (everything is relative) is American Samoa with 27 percent, here EU's measurements regarding non-residence leading to a favourable tax treatment applies, because the corporate tax rate for non-residents corporations is zero.[87]

With the EU's view and take on pillar-two[88] one may consider that the EU view and thoughts on a low tax rate equals below 15 percent. But that is only applicable to multinational corporations and then again there's no clear and straight answer what a low tax rate really is. But the conclusion from case law *X* until the directive regarding a minimum corporate tax rate has been implemented is that a low tax country occurs if a corporation is placed there only for wholly artificial arrangements.
The other measurements that the EU consider as harmful is:

- A country solely attracts income from domestics because of a favourable treatment for non-residents.
- This favourable treatment will not affect the national tax base in a positive way.
- There is no substantial or real economic activity within the country that offers the advantage.
- There are no internationally accepted principles when it comes to determining profits within multinational corporations groups, especially rules that within the OECD have been agreed.
- There is a lack of transparency and a relaxation of legal provisions at an administrative level in a non-transparent way.

2.3. Non Governmental Organisations

2.3.1. Oxfam International

One non governmental organisation (NGO) that has been pretty involved with work against *tax havens* is Oxfam International. The aim of the organisation, back when it was established, was to maximise efficiency and decrease global poverty and injustice.[89] Oxfam identifies jurisdictions or territories as tax havens if non residents can, by allowed legal and fiscal frameworks, minimise the amount of tax they usually would have paid. Oxfam also displays some criterias that usually are fulfilled in a *tax haven*. A *tax haven* grants non-residents (can be both individual taxation and corporate taxation) fiscal advantages and there is no outcome of substantial economic activity within the country. The effective level of taxation is lower or even zero. It is not unusual that *tax havens* provide for rulings or administrative practices in order to prevent automatic exchange regarding

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86 See chapter 2.3.1.1.
87 See chapter 2.3.1.2.
88 See chapter 2.2.1.1. & chapter 2.3.1.2.
89 Oxfam. *Our history.*

information for tax purposes to other countries. *Tax havens* may also have adopted provisions that make sure that there is nondisclosure regarding the corporate structure of a legal entity or who is the owner of the assets.[90]

Oxfam identifies two types of *tax havens*, one is a secrecy country and the other one is a corporate tax haven. What classifies a *tax haven* as a secrecy country is that it is usually used by wealthy individuals. Here it is easier according to Oxfam to facilitate corruption, money laundering, avoidance and evasion of taxes. There is also no effective exchange of financial information, ownership information or information regarding who is the beneficial owner. Oxfam says that the legislation in a *tax haven* allows secretive trusts and other opaque financial structures.[91]
Corporate *tax havens* is something that is usually, according to Oxfam, used by multinational companies. In a corporate *tax haven* will multinationals be able to avoid, with low or non corporate taxes, taxes on profits from operations in other countries and then make an evasion of their taxes in that country. Oxfam also describes corporate *tax havens* to have a special tax regime that gives the result of non-taxations of certain profits or low effective tax rates. There is also no effective exchange when it comes to country-by-country information or other corporate tax information.[92]

2.3.1.1. Low tax according to Oxfam International

As can be read above, Oxfam classifies a country as a *tax haven* if non-residents (both individual and corporations) receive a favourable individual tax or corporate tax. However, what is a favourable tax according to Oxfam?

2.3.1.1.1. Individual tax

As read about above, Oxfam identifies *tax havens* used by individuals as a secrecy country. In these secrecy countries there is no effective exchange of financial information, ownership information or information regarding who is the beneficial owner. Oxfam has not made it clear what a reasonable individual tax rate may implicate. Instead, Oxfam suggests that rich people should be levied with a wealth tax. Oxfam includes property taxes and inheritance taxes within the term of wealth taxes.[93] This is something that de Vylder broughts up in his article.[94] Åsa Hansson also, just like de Vylder, a Swedish economist, believes that it is necessary to have a property tax because it would lead to less taxes that could be considered harmful. Harmful taxes occur when the tax rates are not in line with the market.[95]
Property taxes are, according to Oxfam, difficult to avoid or evade. It also gives countries a stable and predictable income to tax. Oxfam is of the opinion that property taxes must be progressive, so that poor people do not get a heavy tax burden of liability.[96]
In Oxfam's report regarding inheritance tax in India, Oxfam concluded that

[90] Oxfam. *How Oxfam identified the world's worst corporate tax havens.* p. 2.
[91] Oxfam. *How Oxfam identified the world's worst corporate tax havens.* p. 3.
[92] Oxfam. *How Oxfam identified the world's worst corporate tax havens.* p. 3.
[93] Oxfam. *Supporting fair tax systems*. p. 22.
[94] See chapter 1.1.
[95] Hansson, Åsa. *"Utan fastighetsskatt får vi mer skadliga skatter".*
[96] Oxfam. *Supporting fair tax systems*. p. 22.

tax revenue from an inheritance tax is the most unpredictable. The tax revenue from that kind of tax is based on the wealth of a dead person and the amount of wealth the heir gets. In order to set a global threshold limit when it comes to inheritance taxes Oxfam stated the United Kingdom as an example. The effective threshold in the United Kingdom is GBP 425.000, if a person inherits properties above that it will get taxed at a 40 percent rate. Because the aim with the report from Oxfam is towards India, Oxfam also gives a suggestion that the inheritance tax in India should be between 30 to 40 percent.[97]

2.3.1.1.2. Corporate Tax

In the 2016 report *Tax Battles* Oxfam brought up 15 countries they see as the world's worst *tax havens*.[98] The following countries were on the list.
Bermuda, Cayman Island, Bahamas, Jersey and British Virgin Islands are all countries with 0 percent CIT and 0 percent withholding taxes. The Netherlands has tax incentives and a 15 percent withholding tax on dividends. Switzerland has tax incentives and 0 percent withholding taxes. Singapore has tax incentives and a lack of withholding taxes. Both Ireland and Cyprus have a low CIT, according to the report equal to 12.5 percent[99] and are also providing tax incentives. Luxembourg, Curaçao and Hong Kong provide for tax incentives and have 0 percent withholding taxes. In Barbados there is a low CIT, in this thesis the highest mention CIT rate is 5.5 percent but for non-resident corporations the CIT rate is somewhere between 1-2.5 percent,[100] there is 0 percent withholding taxes. The last country Oxfam has decided to put on the list is Mauritius because of low CIT (according to the report equals 15 percent[101]) and 0 percent withholding taxes.[102]

When the OECD released their thoughts and plans regarding pillar-two the Oxfam made some criticism remarks. Pillar-two states that the minimum corporate tax rate should be 15 percent.[103] Oxfam's criticism was that the 10 year grace period to fully implement pillar-two would enable additional loopholes. Regarding the tax rate at 15 percent, Oxfam declared that it is below the recommendation from the FACTI, which says that the global corporate tax rate should be between 20-30 percent. Oxfam also brought up that ICRICT thinks a global corporate tax rate at 25 percent should be applied.[104] Oxfam's executive director stated in the light of pillar-two that a corporate tax rate at 25 percent will result in a more favourable outcome, both for poor countries but also for rich countries in a way to end the race to the bottom.[105]

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[97] Oxfam. *Inheritance Tax & Inequality: Global experience & lessons for India.* p. 4.
[98] Oxfam. *Tax Battles*. p. 12.
[99] PwC. *Ireland Corporate - Taxes on corporate income* & PwC. *Cyprus Corporate - Taxes on corporate income*.
[100] PwC. *Barbados Corporate - Taxes on corporate income*.
[101] PwC. *Mauritius Corporate - Taxes on corporate income*.
[102] Oxfam. *Tax Battles*. p. 13.
[103] See chapter 2.2.1.1.
[104] Oxfam. *OECD tax deal is a mockery of fairness: Oxfam*.
[105] Oxfam. *OECD Inclusive Framework agrees two-pronged tax reform and 15 percent global minimum tax: Oxfam reaction*.

2.3.1.2. Conclusion of Oxfam's definition of a tax haven

Oxfam identifies two types of *tax havens*, wealthy individuals and secrecy countries and *tax havens* used by multinational corporations.

Regarding wealthy individuals it's fair to say that Oxfam sees two problems. The first problem regards secrecy countries, in which wealthy individuals usually hide their assets. The reason why it is stated as a secrecy country and the ability for individuals to hide their assets is the lack of effective exchange of financial information, ownership information or information regarding who is the beneficial owner.
The other problem is that wealthy individuals are not taxed enough on their properties because of the lack of wealth taxes. One can ask if the research material from Oxfam shall be read as so when a country lacks property taxes and inheritance taxes they should be seen as a *tax haven* because wealthy individuals are not taxed on a progressive scale. With Oxfam's guidance in inheritance tax towards India with the United Kingdom as an example, I would say that, according to Oxfam, inheritance tax rate is to be considered low if it is lower than 30 percent. Oxfam did not conclude any specific rate regarding property taxes, those recommendations when it comes to wealth taxes may be guidelines to countries in what kind of area they can apply taxes.

The second one is corporate *tax havens* that are used by multinational corporations. Here the multinationals corporations with the help of low or non taxes are able to avoid taxes on profits from operations in other countries and then make an evasion of their taxes in that country. When it comes to country-by-country information there is no effective exchange.
There is no straight answer on what a low tax equals according to Oxfam. However, with the information given by Oxfam’s list of the worlds worst *tax havens* and the executive directors statement there is some guidance on what a low tax rate may imply.
Many of the countries on the list apply a CIT that equals 0 percent but some countries apply, as Oxfam refers to, a low CIT. The country with the highest CIT but is classified as low CIT according to Oxfam is Mauritius. According to Oxfam, the CIT equals 15 percent classifies as a low tax rate. Oxfam also stated that Ireland and Cyprus have a low CIT with a CIT at 12,5 percent according to the report.
In the light of pillar-two the executive director kind of made it clear that a tax rate below 25 percent is something Oxfam sees as a low tax rate.

Except the low or non tax criteria in both types of *tax havens*, Oxfam also classifies a country as a *tax haven* if following criteria are met:

- Non residents can within the legal and fiscal frameworks minimise the amount of tax they usually would have paid in another country.
- Within the *tax haven* there is no outcome of substantial economic activity.
- The *tax haven* has conducted rulings or administrative practices in order to prevent automatic exchange regarding information for tax purposes to other countries.

- There may be provisions in the *tax haven* that encourage nondisclosure regarding the corporate structure of a legal entity or who is the owner of the assets.

2.3.2. Tax Justice Network

Another NGO is TJN. It dates back to 2003 and has the punchline “Let’s take back control of our tax system”. Their aim with the work towards a fair taxation is to repair injustices and inspire governments to reboot their systems when it comes to tax and finances. According to TJN, a reboot of tax systems will lead to a society where everyone will get the needs that are necessary. A reboot will also encourage a decrease in inequality, corruption and undermining democracy.[106] TJN has 18 key topics it thinks are the main issues when it comes to tax justice, and the topic *tax havens* is one of them.[107]

Just like the Oxfam, described in the chapter above, TJN refers to two terms and groups when it comes to *tax havens*, secrecy jurisdiction and corporate tax haven. TJN sees a *tax haven* as a country that makes it possible for corporations and individuals, with that country's help, to circumvent the country's law where they are operating and pay less taxes there.[108] There is a direct effect because of a misalignment when it comes to the location of profits and location of economic activity, and then there is an indirect effect with countries lowering their corporate taxes in order to attract investors. TJN’s view is that lower taxes is not the only problem, there might also be a possibility to circumvent transparency requirements, criminal laws, inheritance and financial regulation etc.[109]
The difference between a corporate tax haven and a secrecy jurisdiction, according to TJN, is that a corporate tax haven enables tax shifting out of a country and a secrecy jurisdiction hides assets. TJN describes a secrecy jurisdiction as a specialist in hiding individuals' wealth and financial affairs from the law.[110] Secrecy jurisdictions is a kind of an offshore feature.
As examples TJN points out Ireland as a corporate tax haven and not a secrecy jurisdiction, and they point out Switzerland and Luxembourg as secrecy jurisdictions.[111]

2.3.2.1. Low tax according to the Tax Justice Network

To understand how TJN identifies a country to be either a secrecy jurisdiction or a corporate tax haven, or even both, questions arise about what a low tax rate is according to TJN. There are also two indexes from TJN that rank countries, one regarding secrecy jurisdictions and one regarding corporate tax havens. The index comes every two years and is based on assessments from experts within the TJN.[112]

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106 Tax Justice Network. *Main page.*
107 Tax Justice Network. *Topics.*
108 Tax Justice Network. *Tax havens and secrecy jurisdictions.*
109 Tax Justice Network. *The State of Tax Justice 2021.* p. 6.
110 Tax Justice Network. *The State of Tax Justice 2021.* p. 6.
111 Tax Justice Network. *Tax havens and secrecy jurisdictions.*
112 Tax Justice Network. *Tax havens and secrecy jurisdictions.*

2.3.2.1.1. Secrecy jurisdictions and tax rate

In secrecy jurisdictions wealthy individuals hide their private wealth. The tax rate in those jurisdictions is zero or low on wealth. To get a hum of what TJN maybe could see as a low tax rate regarding individuals, the six countries that rank highest on the secrecy index are investigated.[113] I know that the purpose with the financial secrecy index is not to point out tax rates. However, to have some idea of what TJN may indicate as a low tax rate, I would say that this is of interest for the research. Information given by the secrecy index indicates how much secrecy a country has with the help of secrecy score and a global scale weight. The secrecy score starts at 0, which indicates a low secrecy, to the highest score at 100, which indicates a high secrecy. The global scale weight gives an indication regarding financial services a country is providing to non-residents. TJN then combined these two and that indicates the financial secrecy index value (FSI value).[114]

The first country on the index list is the United States of America, here it is important to bear in mind that the United States of America consists of different states. Citizens and residents in the United States of America are fully taxable on their worldwide income. Non-resident are just taxed on the sources that come from the United States of America. This leads to a situation where non-residents can plan where to maintain a living and choose a state that implies no state income tax. There are for example no income taxes in Alaska, Florida, Nevada, South Dakota, Texas, Washington and Wyoming.[115]

Switzerland is the second country on the index list. Here citizens are taxed on their worldwide income and non-residents are only taxed on the income that sources from Switzerland. The federal tax rate is the same in all cantons in Switzerland, it is progressive up to CHF 176 000. From CHF 176 000 to CHF 755 200 the tax rate is 13.20 percent. Income above CHF 755 200 has a regressive tax rate at 11.50 percent. The other level of taxation is on a cantonal level. For Zurich the highest percent of tax is 13 percent for income over CHF 254 900. For Geneva the highest percent of tax is 19 percent for income above CHF 615 022. The last taxable level in Switzerland is the communal tax that equals a sum of the percentage of the cantonal taxes. For example Geneva has a communal tax that equals 45.5 percent of the cantonal tax, and the communal tax in Genthod equals 25 percent of the cantonal tax. To have some kind of indication of what a low tax is, the Genthod tax rate will be used. First is the federal tax at 13 percent, then is the cantonal tax at 19 percent and communal tax that equals 25 percent of 19 percent. Which is 4.75 percent. This renders an individual tax at 36.75 percent.[116]

Singapore is the third country on the index list. Citizens are subject to a progressive tax rate. The highest tax rate for citizens is 24 percent of the income above SGD 1 000 000. For non-citizens there is a flat tax rate at 22 percent, if the income is derived from a Singapore employment the flat tax

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113 Tax Justice Network. *Financial Secrecy Index - 2022.*
114 Tax Justice Network. *Financial Secrecy Index - 2022.*
115 PwC. *United States - Individual - Taxes on personal income*.
116 PwC. *Switzerland - Individual - Taxes on personal income*.

rate is 15 percent.[117]
The forth country on the list is Hong Kong. In Hong Kong the highest percent of salaries taxes levied on personal income over HKD 200 000 is 17 percent, this is for both citizens and non-citizens.[118]
The fifth country on the index list is Luxembourg. In Luxembourg an income tax on worldwide income applies to citizens. For non-citizens taxes are levied on the income that has its source in Luxembourg.[119] The tax is progressive and rates from 0 percent for income under EUR 11 265, up til the highest tax rate at 42 percent for income above EUR 200 004.[120]
The sixth country on the list is Japan. Citizens are taxed on their worldwide income. The tax rate is progressive, the lowest tax rate is 5 percent and the highest tax rate is 45 percent. However, citizens are entitled to deduction depending on their income. A higher income equals a higher deduction and a lower income equals a lower deduction. Non-residents are taxed on their Japan-source income with a flat tax rate at 20.42 percent.[121]

2.3.2.1.2. Corporate tax rate

TJN also has an index for corporate tax havens. Here TJN ranks countries that enable multinational corporations to pay as little corporate tax as possible. In this thesis the corporate tax rate in the six countries that tops the index list will be addressed.[122]

The three countries that top the index list are the British Virgin Islands, Cayman Islands and Bermuda. The tax rates for CIT and withholding taxes are 0 percent in all three countries.[123]
The fourth, fifth and sixth countries on the list are Netherlands, Switzerland and Luxembourg where corporations can use tax incentives and there is a 0 percent rate on withholding taxes.[124]

As can be seen from the above mentioned countries, there is no clear guidance regarding what a low tax rate is according to TJN. The chief executive at TJN Alex Cobham thought the 15 percent corporation tax rate of pillar-two was too low. According to Cobham and TJN there should not be a corporate tax rate that is above 25 percent.[125] Criticism from TJN regarding a corporate tax rate at 15 percent is that it will only continue countries' race to the bottom.[126]

2.3.2.2. Conclusion of the Tax Justice Network's definition of tax havens

If looking at the similar criterion regarding the two types of *tax havens* TJN describes, both implicate countries with non or low tax, there is none or

[117] PwC. *Singapore - Individual - Taxes on personal income*.
[118] PwC. *Hong Kong SAR - Individual - Taxes on personal income*.
[119] PwC. *Luxembourg - Individual - Taxes on personal income*.
[120] Deloitte. *International Tax Luxembourg Highlights 2022.* p. 3-4.
[121] PwC. *Japan - Individual - Taxes on personal income*.
[122] Tax Justice Network. *Corporate Tax Haven Index - 2021 Results.*
[123] See chapter 2.3.1.1.2.
[124] See chapter 2.3.1.1.2.
[125] Bou Mansour, Mark. *Live blog: Global minimum tax rate at G7*. Under: Saturday 5 June 2021.
[126] Bou Mansour, Mark. *Live blog: Global minimum tax rate at G7*.

little transparency and exchange. The term *tax haven* equals a country where the aim is to pay as little as possible.
However, as can be seen from the secrecy index there are some countries that have some amount of taxes. It may then instead be a question that these countries qualify to the list because of a low exchange policy and not a low tax rate. TJN stated that one of the qualifications for a country to qualify on the list is to impose a low or non tax rate. Looking at those six countries that were revised in this thesis the highest income tax rate is in Japan at 45 percent. One can ask if this is to be considered a low tax rate on personal income. Bear in mind that the financial secrecy index is more about the secrecy and financial services provided to non-residents than the actual tax rate.

Regarding a corporate tax rate, TJN with their chief executive made it clear that they believe that the corporate tax rate should at minimum be 25 percent, and that a corporate tax rate at 15 percent is far too low.

3. Differences and similarities in definitions

In this thesis two organisations (OECD and EU) and two NGOs (Oxfam and TJN) have been researched. From the research a conclusion can be made that there are two types of tax groups that get targeted by the OECD and NGOs within the term *tax haven*, individual taxation and corporate taxation. However, the EU only targets corporate taxation.

3.1. Corporate taxation

Regarding corporate taxation the OECD's outline is the role model for EU's decision making when it comes to directives. From both OECD and EU's point of view a low tax rate equals a rate below 15 percent. This is the similarity between OECD and EU. Oxfam and TJN's view regaring what a low tax rate equals differs. Both Oxfam and TJN see a tax rate at 15 percent as too low and argue that the global minimum corporate rate should instead be at least 25 percent. All four organisations characterise a *tax haven* as having no or restrained effective exchange of information, there is a lack of transparency and a strict secrecy. The EU is the only one that brings up that a *tax haven* only implicates non-residents favourable tax benefits that residents can not enjoy or take part of.

When looking at countries that are listed as corporate tax havens/harmful jurisdictions there are some differences. The OECD list is not of interest because it has removed every country that once qualified. On the EU's *blacklist*, only third countries are represented. This differs from the lists from Oxfam and TJN, where all countries in the world can be stated, if the country meets the criterias of a *tax haven*. It doesn't matter if you are a tiny island country in the middle of nowhere or one of the biggest countries in the world. The reason why the EU only takes third countries on the *blacklist* is because Member States within the EU are obliged to implement minimum standards that those third countries may lack.

In the following table the differences and similarities between the organisations in this thesis are shown when it comes to the characteristics of a *tax haven*.

	OECD	EU	Oxfam	TJN
Low tax rate	15%	15%	25%	25%
Strict secrecy	Yes	Yes[127]	Yes	Yes
Lack of transparency	Yes	Yes	Yes	Yes
No substantial activity	Yes	Yes	Yes	Yes
Foreign residents gets favourable treatments	-	Yes	-	Yes

[127] From the EU, a country shall have implemented the minimum standard from BEPS. If the minimum standards are implemented there is a minimum lack of secrecy.

3.2. Individual taxation

Regarding individual taxation the qualifications from OECD, Oxfam and TJN are of interest, as the EU does not target individual taxation. OECD gives one of the clearest indications of what a low tax rate equals. Mostly because it refers to those countries as countries with no or nominal taxes. According to the OECD a low tax rate is something between 20-28.5 percent. If one compares the OECD list with the TJN secrecy index there are not many countries that are on both lists. The highest tax rate on the TJN index is in Japan at 45 percent. The secrecy index from TJN is more about what kind of secrecy the country provides for citizens and noncitizens, rather than the actual tax rate. Oxfam sees a country as a *tax haven* for individuals if there is a high secrecy and no effective exchange of financial information, ownership information or information regarding who is the beneficial owner. Oxfam also gives some guidance regarding taxing wealthy individuals. Oxfam thinks that there should be property taxes, because it gives a stable and predictable income, and inheritance taxes even though the income from those taxes may be unpredictable. Oxfam does not state any specific tax rates when it comes to individual income. The only kind of guidance is with inheritance taxes and the report towards India. In that report the United Kingdom was given as an example with inheritance taxes at 40 percent, and that India should raise inheritance taxes that are between 30 percent to 40 percent, but it can not be used when giving an example regarding tax rate on income from labour. From Oxfam's point of view it is more important to increase the income sources that can get taxed, rather to just have one tax that regards income that equals a certain percent.

In the following table one can see what the characteristics of individual taxation is when it comes to *tax havens* according to three of the organisations.

	OECD	Oxfam	TJN
Low rate[128]	20-28%	No rate stated other than the word low tax	45%
Lack of transparency	Yes	Yes	Yes
Strict secrecy	Yes	Yes	Yes
Inheritance tax, wealth tax, property tax	-	Yes	-

[128] Bear in mind that those tax rates have the author of the thesis decided by doing a research from each organisation's list of those that have been mentioned in the previous chapter.

3.3. Countries on the lists

All four organisations have their own kind of lists with countries that fall in the scopes of *tax havens*/harmful tax jurisdictions, based on the categorisations from the organisations. To see both the different and similar countries on every list a table has been done. TJN is the only organisation that has one list regarding individuals (secrecy index) and one list regarding corporations (corporate index). It may be interesting that the OECD's list and the EU's *blacklist* do not have one single country that is the same. However, take in consideration that the EU only focuses on corporations and not on individuals when it comes to *tax havens*. Oxfam's list and OECD's are the two that are the most similar. Many of the countries could be found in both lists. Also the countries on both of the TJN's lists are to be founded on both the lists from OECD and Oxfam.

OECD's list from BEPS action 5	EU's blacklist	Oxfam's list regarding corporation	TJN's both lists
Anguilla	American Samoa	Bahamas	Secrecy index
Bahamas	Fiji	Barbados	Hong Kong
Bahrain	Guam	Bermuda	Japan
Barbados	Palau	British Virgin Islands	Luxembourg
Bermuda	Panama	Cayman Islands	Singapore
British Virgin Islands	Samoa	Curaçao	Switzerland
Cayman Islands	Trinidad and Tobago	Cyprus	United States of America
Guernsey	US Virgin Islands	Hong Kong	Corporate index
Isle of Man	Vanuatu	Ireland	Bermuda
Jersey		Jersey	British Virgin Islands
Turks and Caicos Islands		Luxembourg	Cayman Islands
United Arab Emirates		Mauritius	Luxembourg
		Netherlands	Netherlands
		Singapore	Switzerland
		Switzerland	

3.4. Conclusion

Most of the indications of a *tax haven* are the same in all organisations. There is a strict secrecy, there is neither transparency and effective exchange to other tax authorities regarding their taxpayers that benefit from the low tax regime. The value of the income is not created in the country, the lack of substantial activities within the country do not generate that income that is of interest when it comes to taxation.

As one can see the biggest difference is the tax rate. When it comes to the corporate tax rate both the OECD and the EU have the same opinion regarding the minimum tax rate at 15 percent. The opinion of the minimum tax rate is nothing that both NGOs, Oxfam and TJN, share. The both NGOs' opinion is that a minimum tax rate shall equal 25 percent.
When looking at the table regarding the lists from the four organisations that have been brought up in chapter 2. One can see that the *blacklist* from the EU is the one that differs the most from the rest of the three organisations lists and that the other three lists are very similar.

4. A description of Sweden's tax system

From the indication of what the different organisations think a *tax haven* equals, a compression made with Sweden's tax law in chapter 5. To be able to do the testing, one will need some knowledge of how Sweden's tax system is built up, this chapter gives an overview on that.

4.1. Sweden's corporate tax

In Sweden, corporations are seen as legal entities. In the Swedish Tax Act a legal entity is either unlimited taxable or limited taxable for its income.
A legal entity that has its registration in Sweden or the seat of the board is in Sweden classifies as unlimited taxable in Sweden.[129] The meaning of that is that the corporation's worldwide income, both from Sweden and abroad, is subject to tax in Sweden.[130]
A foregin company is deemed to be limited taxable.[131] In order for a company to be seen as foreign, the company must in the country of domicile be a legal entity that can acquire rights and assume obligations, participate in court and similar authorities and the shareholders have no right to freely dispose of the legal enitie's capital.[132] A legal entity that is limited taxable is taxed on its income that is conducted from business within Sweden, either through a permanent establishment, property, the divestment of a commercial tenant ownership and dividends from Swedish economic associations.[133]
In the year 2022, the tax rate in Sweden for legal entities is 20.6 percent of the taxable income.[134]

4.1.1. CFC-rules and low tax rate according to Sweden

In the Swedish Tax Act there are the CFC-rules. The aim with the CFC-rules is such that arrangements regarding transactions with low-taxed foreign legal entities in order to reduce the Swedish tax base should be prevented or complicated.[135] It is not the legal entity that gets taxed according to the CFC-ruling, instead it is the owner, either a physical person or another legal entity, of the legal entity that gets tax in Sweden.[136] The reason why Sweden can not tax the foreign legal entity is because there is source income from Sweden.
To be able to tax the owner of the legal entity the owner must, directly or indirectly through other foreign legal entities, control at least 25 percent of the foregin legal entities capital or votable shares. An owner that is a limited taxable legal entity can only be taxed if there is a permanent establishment in Sweden.[137]
The rules are applicable towards owners that are in a community of interest. This interest equals two persons, either a parent and subsidiary company,

[129] Chapter 6, 3§, The Swedish Tax Act (1999:1229).
[130] Chapter 6, 4§ The Swedish Tax Act (1999:1229).
[131] Chapter 6, 7§ The Swedish Tax act (1999:1229).
[132] Chapter 6, 8§, The Swedish Tax Act (1999:1229).
[133] Chapter 6, 11§, The Swedish Tax Act (1999:1229).
[134] Chapter 65, 10§, The Swedish Tax Act (1999:1229).
[135] Proposition 2007/08:16. p. 13.
[136] Chapter 39a, 1§, The Swedish Tax Act (1999:1229).
[137] Chapter 39a, 2§, The Swedish Tax Act (1999:1229).

two legal entities when one of them has a 25 percent control of the other, a physical person that controls 25 percent of a legal entity.[138]

As stated above the CFC-rules regards transactions with low-taxed foregin legal entities. If the net income of a foreign legal entity is subject to a low or a favourable tax it is considered to be low taxed. A favourable tax according to the Swedish CFC-rules is if the tax is lower than 55 percent of the Swedish corporate tax for legal entities at 20.6 percent. This means that a tax below 11,33 percent (0,55*0,206) is considered to be low.[139]

Within the CFC-rules there are two exemption rules when it comes to foreign legal entities that are considered to be low taxed.
The first one is applicable on foreign legal entities that are considered to be low taxed. If they are established in a jurisdiction that is on the *whitelist*[140], they are not to be considered low taxed.[141]
The other one, the second one, is when foreign legal entities are residents in another EEA-country, the owner will not be a subject to tax according to the CFC-rules. Hence, this is only applicable if the owner can prove that the foreign legal entity carries out through a real establishment in the EEA-country a business with real economic activity, and that it is not a *wholly artificial arrangement*[142].[143] This exemption comes from the ruling in the *Cadbury-Schweppes*[144] case. Where the CJEU ruled that the CFC-rules only apply on wholly artificial arrangements.[145]

From the EU the directive ATAD[146] was published in 2016. Rules regarding controlled foreign corporations (CFC) can be found in article 7 and article 8. The regulation in ATAD equals a minimum implementation.[147]
According to article 7.2 in ATAD there are certain incomes that should be brought up to taxation, this is something that differs from the Swedish legislation. In chapter 13, 12§ the Swedish Income Tax Act one can see that a person that falls in the scope of CFC shall take all the income to taxation.

4.1.2. Tax exemptions for companies in Sweden

Dividends on equity based shares are in Swedish tax legislation sometimes exempted from tax.[148] In order for a stake to be equity based it must be a stake in a limited liability company or an economic association. The share must also fulfil one of the following, the stake is not listed on the market, the owner of the share holds at least 10 percent of the voting in the share or the stake relates to business committed by the owner.[149] There is also a

[138] Chapter 39a, 3§, The Swedish Tax Act (1999:1229).
[139] Chapter 39a, 5§, The Swedish Tax Act (1999:1229).
[140] Annex 39 a, The Swedish Tax Act (1999:1229). If a foreign legal person has income and is a resident in one of the countries on the Whitelist, the foreign legal person will not be a subject for CFC-taxation.
[141] Chapter 39a, 7§, The Swedish Tax Act (1999:1229).
[142] An arrangement that has been put together with the purpose of avoiding taxation and getting tax benefits.
[143] Chapter 39a, 7a§, The Swedish Tax Act (1999:1229).
[144] Case-196/04, *Cadbury-Schweppes*.
[145] Case-196/04, *Cadbury-Schweppes*. p. 72.
[146] ATAD.
[147] The European Commission. *The Anti Tax Avoidance Directive*.
[148] Chapter 24, 35§, The Swedish Tax Act (1999:1229).
[149] Chapter 24, 33§, The Swedish Tax Act (1999:1229).

requirement regarding time, that the owner must have held the share over a coherent time of at least one year.[150]
It must be a legal entity that owns the equity based share, that is either a Swedish limited liability company or an economic association, a Swedish foundation or nonprofit association, a Swedish saving bank or insurance company, and at last a foreing legal entity with its domicile in a jurisdiction within the EEA-jurisdictions.[151]

Capital gains in Sweden equals the profit of the divestment of a capital asset.[152] Usually capital gains are exempted from tax in Sweden, hence there are some regulations.[153] The profit when a shell entity is divestment is subject to tax.[154] There is also some regulation regarding the tax on capital gains on shares that are listed. In order for a capital gain on a listed share to be exempted from tax, the share must have been an equity based share in the owner's hand under a coherent time of one year,[155] or hold 10 percent of the shares.[156]

4.2. Sweden's individual tax

Just as it does for legal entities, there are for individuals two different taxation categories, either unlimited taxable or limited taxable. An individual is unlimited taxable if they are either a resident in Sweden, staying permanently in Sweden or has a significant connection to Sweden.[157]
An individual that is unlimited taxable is taxed on their worldwide income in Sweden.[158]
An individual classifies as limited taxable if they are not unlimited taxable, belongs to foreign consulate, is an employee of a foreign consulate or is a spouse or a child to a person that works with the foreign consulate.[159] A limited taxable person is just taxed at the income with the source from Sweden.[160] For individuals, an income can have its source from employment, business operations and capital assets.

4.2.1. Tax rates for individuals in Sweden

In Sweden, as can be read above, there are three different kinds of source classifications, employment, business operations and capital assets.
To employment count an individual's income that is derived from employment and/or a pension.[161] The income that is taxable is the income an individual has earned from employment minus a basic allowance. The basic allowance depends on how much income a taxpayer has, a higher income equals a smaller allowance and vice-versa.
Unlimited taxable individuals are obligated to pay a municipality income

[150] Chapter 24, 40§, The Swedish Tax Act (1999:1229).
[151] Chapter 24, 32§, The Swedish Tax Act (1999:1229).
[152] Chapter 25, 3§, The Swedish Tax Act (1999:1229).
[153] Chapter 25a, 5§, The Swedish Tax Act (1999:1229).
[154] Chapter 25a, 9§, The Swedish Tax Act (1999:1229).
[155] Chapter 25a, 6§, The Swedish Tax Act (1999:1229)
[156] Chapter 24, 33§, The Swedish Tax Act (1999:1229).
[157] Chapter 3, 3§, The Swedish Tax Act (1999:1229).
[158] Chapter 3, 8§, The Swedish Tax Act (1999:1229).
[159] Chapter 3, 17§, The Swedish Tax Act (1999:1229).
[160] Chapter 3, 18§, The Swedish Tax Act (1999:1229).
[161] Chapter 10, 1 & 2§§, The Swedish Tax Act (1999:1229).

tax on their taxable income in the municipality where the individuals registered.[162] The municipality income tax rate differs from municipality to municipality. The average municipality tax rate is 32.24 percent.[163] For individuals that are limited taxable, their income with source from Sweden is taxed with a municipality tax rate at 25 percent.[164] If an individual has a taxable income, in 2022, over SEK 540 700, they are also obliged to pay a state tax. The state tax equals 20 percent and shall be paid on income that is above SEK 540 700.[165] As can be seen, Sweden is promoting a progressive tax rate that equals something between 32.24 percent to 52.24 percent.

If an individual has a business operation, the profit from the business operation is counted as a part of the individual's taxable income and taxed at the individual.[166] The tax rate follows the progressive tax rate of employment.

The last categorisation is capital assets, this equals properties, shares, interests, dividends etc. Here are some different tax rates, the normal tax rate on capital gains for individuals in Sweden is 30 percent.[167]
For individuals that get dividends or capital gains on stakes in unlisted corporations, the tax on the profit equals 25 percent.[168]
To the category capital assets is an investment form that is called *Investeringssparkonto* (ISK), translated to investment saving account. There is no flat rate on profits at 30 percent, instead it is a standard taxation on a certain calculated value on the whole value of the capital assets.[169] The certain value is based on each quarter of the month and is the sum of the market value of the capital assets, deposits and transfers to the account. Then multiplied by the loan rate of the government plus one percent. The certain amount that the above described equals is then taxed with 30 percent.[170]
When an individual sells their private property (house or apartment), the profit of that sale is taxed at 22 percent.[171]

4.2.1.1. 3:12 rules

The 3:12 rules consider how an owner shall be taxed on the profit from the business operation he is running. A certain amount should be taxed with a multiplicity tax rate and a state tax if the income is above SEK 540 700. However, there is a certain amount that classifies as capital and it is taxed at 20 percent, the so-called limit amount.[172] To be able to have the right to the limited amount, the shares in the business operation must be qualified. The important props is that the owner or someone close has been active to a

[162] Chapter 65, 3§, The Swedish Tax Act (1999:1229).
[163] Ekonomifakta. *Kommunalskatter.*
[164] Chapter 65, 4§, The Swedish Tax Act (1999:1229).
[165] Chapter 65, 5§, The Swedish Tax Act (1999:1229).
[166] Chapter 1, 5§, The Swedish Tax Act (1999:1229).
[167] Chapter 65, 7§, The Swedish Tax Act (1999:1229).
[168] Chapter 42, 15a§, The Swedish Tax Act (1999:1229).
[169] Chapter 42, 33§, The Swedish Tax Act (1999:1229).
[170] Chapter 42, 35-37§§, The Swedish Tax Act (1999:1229).
[171] Chapter 45, 33§ and chapter 46, 18§, The Swedish Tax Act (1999:1229).
[172] Chapter 57, 15§, The Swedish Tax Act (1999:1229).

significant extent.[173]

The limited amount equals the saved limited amount and the tax year's limited amount, and the tax year's limited amount can be calculated in two ways. Either it equals 2.75 income base amount of the year before the tax year and then the sum of that is distributed out on the share of the business operation, or it is based on the corporation's whole wage. The limited amount will then equal the sum of the overhead amount that would have been used if the share would have been disposed plus 50 percent of the whole wage base within the business operations.[174]

In the previous chapter de Vylder stated that a person can plan so that their income of labour instead becomes an income of capital and will then get taxed at a lower rate.[175] The planning regards the limited amount that is based on the whole wage base. To be able to use that method a person must own at least 4 percent of the company and throughout the year have had a salary that either equals; six income base amounts of the year before the tax year and five percent of the corporations (both parent and subsidiary corporations) total wage base, or 9.6 income base amounts of the year before the tax year.[176] In this way a person that holds shares and has a salary from a corporation can plan the salary so that the limited amount becomes a dividend that is taxed at 20 percent.

4.2.1.2. Inheritance tax, wealth tax and property tax in Sweden

In Sweden there is no inheritance tax. It was abolished on January 1 2005. The wealth tax was abolished on January 1 2007. And the property tax has also been abolished in Sweden. Instead a muncilipity property (alt. property taxation) fee was introduced on January 1 2008. This fee equals 0.75 percent of the taxable value of the house, however there is maximum funding that in 2022 equals, for the declaration of the income year 2021, SEK 8 524.[177] The muncilipity property fee that Sweden has today is not fair according to Åsa Hansson.

The lack of fairness, according to Hansson, occurs because individuals who own highly valued properties usually are high-income earners and low-income earners usually own low valued properties. The fee for a high valued property might be lower than the fee for a low valued property due to the maximum funding at SEK 8 524.[178]

A problem with the old property tax in Sweden was that it was unpredictable. The value of a property in an area could increase from one year to another because of the rise of popularity in that area, however the owners of the property in the same area might not have had an increase of their income.[179]

[173] Chapter 57, 4§, The Swedish Tax Act (1999:1229).
[174] Chapter 57, 11§, The Swedish Tax Act (1999:1229).
[175] Chapter 1.1.
[176] Chapter 57, 19§, the Swedish Tax Act (1999:1229).
[177] The Swedish Tax Authorities. *Municipal and national property tax*.
[178] Hansson, Åsa. *”Utan fastighetsskatt får vi mer skadliga skatter”*.
[179] Hansson, Åsa. *”Utan fastighetsskatt får vi mer skadliga skatter”*.

4.3. Transparency and exchange of information in Sweden

How transparent and to what extent a country is providing exchange of information is two major indications if a country should be classified as a *tax haven* according to the four different organisations.

In Sweden a person can contact the Swedish Tax Authorities and request public information. When it comes to public taxation information a person can get what an individual gets for decision regarding taxation, if there is a registration and if so, the registration and declaration numbers according to the Swedish Tax payment Act, if an individual is registered for A-tax or F-tax, information regarding VAT and employer contribution and a corporation identity number and for for legal entities the name and type of business operations.[180]

4.3.1. Swedish legislation

There are from both EU and OECD actions how countries shall cooperate when it comes to exchange of information.

The Directive on Administrative Cooperation (DAC) obliges Member States to give and receive important information that is relevant for the domestic tax law.[181] Within DAC there are three types of information exchange. One is mandatory exchange on request.[182] Another type of exchange is the automatic exchange, which involves predefined information that is being systematically communicated. This information can be provided in five categories, income from employment and pensions, directors' fee, life insurance that is not covered by other exchange instruments and income from real estate and ownership conducted to real estate.[183] The scope of DAC has been extended to include exchange of information when it comes to financial account information,[184] cross-border tax rulings and advance pricing arrangements,[185] country by country reporting,[186] information regarding anti-money laundering,[187] and automatic exchange when it comes to crossborder arrangement that is reportable.[188]

There is also a possibility for a Member State to exchange information spontaneously.[189]

OECD presented a global standard in 2014. The aim with this standard is to exchange information regarding foreign accounts that otherwise would be hidden and therefore be a scheme of tax evasion. This global standard is called a Common Reporting Standard (CRS). CRS enable to specify what information will be exchanged and when.[190] In DAC many of the

[180] The Swedish Tax Authorities. *Public Information*.

[181] Terra, B.J.M., and Wattel, P.J., *European Tax Law Volume 1*. p. 281.

[182] The Directive On Administrative Cooperation 2011/16/EU. Terra, B.J.M., and Wattel, P.J., *European Tax Law Volume 1*. p. 284.

[183] DAC, section II, article 8.1. Terra, B.J.M., and Wattel, P.J., *European Tax Law Volume 1*. p. 285.

[184] DAC 2.

[185] DAC 3.

[186] DAC 4.

[187] DAC 5.

[188] DAC 6.

[189] Terra, B.J.M., and Wattel, P.J., *European Tax Law Volume 1*. p. 284. The Directive On Administrative Cooperation 2011/16/EU, article 9.

[190] Terra, B.J.M., and Wattel, P.J., *European Tax Law Volume 1*. p. 287-288.

information categorised has been taken from the global standards that can be found in CRS from OECD.

Sweden was obliged to incorporate DAC 2 which includes CRS in Swedish legislation in 2016.[191] The implementation led to regulations regarding identification and reporting of reportable accounts. Financial institutions are from 2016 obliged to report accounts, both from natural persons and legal entities. The information that financial institutions have regarding accounts shall be submitted to the Swedish Tax Authorities annually. The information about accounts that are reportable can the Swedish Tax Authorities exchanges with other countries.[192] Both DAC 3 and DAC 4 had the obligation to be implemented in Swedish legislation so it applied in 2017.[193] The implementation of DAC 3 was done with a change in already existing legislation so it also concludes automatic exchange of information regarding cross-border tax rulings and advance pricing arrangements.[194] The implementation of DAC 4 led to a new act within the Swedish tax act and changes in three existing legislations regarding country by country reporting.[195] DAC 5 had the obligation to be implemented into Swedish legislation in 2018.[196] DAC 5 was implemented through small changes in already existing legislation because it did not extend the scope of DAC. Sweden was obliged to implement the latest DAC, DAC 6, so it applied in 2020.[197] The implementation DAC 6 has made a reporting obligation for tax advisors when they give advice in cross border arrangement that falls in scope of reporting arrangements. The report shall be given to the Swedish Tax Authorities. Information can then be automatically exchanged.[198]

4.4. Conclusion

The corporation tax in Sweden is 20.6 percent. There are possibilities for legal entities to have dividends and capital gains exempted from tax. According to Sweden, a low tax country is a country where the corporation tax is below 11.33 percent. If a legal entity that is limited taxable in Sweden has profits with the source from Sweden, it will be obliged to pay the same tax rate as a unlimited legal entity.

Individuals are either taxed at a progressive tax rate according to the income from employment, where also their business operation is included. The tax rate is between 32.24 percent to 52.24 percent, social fees are not included. When it comes to their taxation of capital there is normally a flat tax rate at 30 percent. However, there are regulations that enable business owners to take out dividends at a 20 percent tax rate, a favourable tax at ISK and a lower tax on the capital gain when a property is being sold.

For individuals that are limited taxable, they have a more favourable municipality tax rate at 25 percent for the source income from Sweden. One

[191] DAC 2. Article 2.1.
[192] The Swedish Tax Authorities. *What are CRS and DAC?*
[193] DAC 3. Article 2.1. DAC 4. Article 2.1.
[194] Proposition 2016/17:19. p. 5-11.
[195] Proposition 2016/17:47. p. 6-24.
[196] DAC 5. Article 2.1.
[197] DAC 6. Article 2.1.
[198] Proposition 2019/20:74.

can ask if the new property fee is to be equal with a property tax. There is no inheritance tax or wealth tax.

Sweden is to be seen as a tax transparent country. There are possibilities to get public information reging an individual's taxation and other relevant information regarding both corporations and individuals from the Swedish Tax Authorities. Sweden has implemented DAC which also concludes OECD standards. The Swedish legislation obtains today ruling on how corporations, advisers etc shall report to the Swedish Tax Authorities. The information that is given falls in the scope of automatic exchange of information that the Swedish Tax Authorities can use.
This should be seen that Sweden is a country with a developed and organised system regarding exchange of information and transparency.

5. Analysis on the findings and testing Sweden against them

From the research regarding what the four different organisations see as indications of a *tax haven*, this chapter will analyse these indications towards Sweden. First the low taxes are analysed, then the indication of a substantial activity/ no real economic activity and at last the transparency and exchange information indications. The testing will be about Sweden's corporate tax rate and individual tax rate, both when it comes to citizens and non-citizens. The testing will also research how transparent and co-operative Sweden is when it comes to effective exchange of information.

5.1. Low taxes according to the four organisations vs Sweden's taxes

5.1.1. Corporation tax

When it comes to the corporation tax rate, both the OECD and EU are of the view that the minimum tax rate shall equal 15 percent. This is something that probably will be implemented with pillar-two. The NGO's, Oxfam and TJN, have a different view and that is that a low corporate tax rate is below 25 percent. It is a pretty huge difference. Sweden on the other hand thinks a low corporate tax equals 11.33 percent when it comes to other countries. For corporations in Sweden the tax rate is 20.6 percent, both for those who are unlimited or limited taxable. The Swedish tax rate is not, when seeing the definition from OECD and EU, to be considered low. However, according to the NGO's Sweden's corporate tax rate is low. That there are also tax exemptions on certain dividends and capital gains may be seen as a favourable taxation. On the Corporate Tax Haven index from TJN, Sweden is ranked as 26 out of 70 countries.[199] One can question if this gives an indication of TJN's view that Sweden should be considered a *tax haven*.

5.1.2. Individual tax

When it comes to the individual tax, the EU will not be a part of this analysis because the EU only considers corporate taxation in the scope of *tax havens*. According to the OECD a low individual income tax equals something around 20-28.5 percent, worth pointing out that neither one of these countries had any individual capital taxes. Both Oxfam and TJN put the weight on how secret a country is, when hiding individuals assets. Oxfam also lays weight that individuals should be obliged with inheritance taxes, property taxes and wealth taxes, and from the report, where both India and United Kingdom was brought up, a fair inheritance tax rate is around 30-40 percent. I would not say that this is a rate that is applicable on income from employment because there is a difference regarding the source of income, money that comes from work and money that has been given/inherited. Individuals in Sweden are conducted with a progessive tax rate on income from employment and business operations at 32.24 percent to 52.24 percent, social fees excluded. The taxes on capital gains are around 20 percent to 30 percent.

On the latest secrecy index from TJN, Sweden is ranked as 64 out of 133

[199] Tax Justice Network. *Corporate Tax Haven Index - 2021 Results.*

countries.[200] This gives a place that is above the middle, and if a country is above the middle does it classify as a *tax haven*?

5.2. Substantial activity/No real economic activity

According to both OECD and EU one indication for a country to be a *tax haven* is if corporations can set up business operations that do not have any substantial activity or any real economic activity. Sweden has the CFC-ruling, with the purpose to target wholly artificial arrangements. Neither it is favourable to set up a shell company in Sweden, because the income with the source from Sweden will get taxed in Sweden.

5.3. Transparency and exchange of information

All four organisations put weight on how important it is for a country to be transparent and willing to exchange information. A country that lacks transparency and the willingness to exchange information gives indication that they are to be seen as a *tax haven*.

In Sweden it is not difficult to take part of public information from the Swedish Tax Authorities regarding individuals and corporations taxation. Also the implementation of DAC and CRS give indication that Sweden is a country with a high transparency and a great willingness for exchange of information.

5.4. Foreign residents get favourable treatment

Both the EU and Oxfam have one categorisation regarding favourable treatment when it comes to foreign residents in the scope of corporation taxation. Foreign corporations are according to Swedish legislation seen as limited taxable. Income that sources from Sweden will get taxed according to the taxation of corporations that also applies on resident corporations in Sweden. A favourable treatment will not occur.

5.5. Conclusion

If looking at the corporation rate, Sweden will with its 20.6 percent tax rate not fall in the categorisation according to what the OECD and the EU sees as a low tax rate at 15 percent. However, if looking at the NGOs (Oxfam and TJN) view that a low tax rate is below 25 percent, Sweden seems to be a low tax country for corporations.

When it comes to the individual tax rate it is hard to do a fair testing because of the lack of a stated rate from each one of the organisations. Taking OECD’s definition of a low rate somewhere between 20-28.5 percent, one can see that Sweden does not fall in the scope of *tax haven* with the individual tax rate that starts somewhere around 32.24 percent. However, Sweden would be considered a *tax haven* if one looks at the TJN’s secrecy index and sees Luxembourg's individual tax rate at 42 percent and Oxfam’s opinion of the importance of inheritance tax, wealth tax and property tax. Do not forget that TJN’s opinion of a *tax haven* for individuals put more weight on how transparent and how high the secrecy was in a country.

Sweden is a country with high transparency and low secrecy. One can see in chapter 4.3. that Sweden has been obligated to implement directives (DAC)

[200] Tax Justice Network. *Financial Secrecy Index - 2020 Results*.

that have the aim to strive for a more transparent world with effective exchange.
When it comes to attracting foreign corporations with a more favourable treatment, Sweden does not have a legislation that gives a straight favourable taxation for those corporations. Even though there is no classification regarding favourable treatment in individual taxation, one can ask if the multiplicity flat tax rate for limited taxable individuals at 25 percent shall be seen as a favourable treatment.

6. Conclusion

The aim with this thesis was to do research to analyse under what kind of circumstances Sweden is qualified as a *tax haven*. The aim with that research in this thesis was to answer the question of whether Sweden meets one or more of the definitions for being a *tax haven*. To have a slight understanding of what could indicate as a *tax haven*, four organisations were researched according to what indication they qualify to a *tax haven*.

Looking at OECD and the EU, both of them have almost the same output on how a *tax haven* is classified, the biggest difference is that OECD both take individual and corporation taxation into the scope and the EU only considered corporations taxation when identifying *tax havens*. Sweden that has its legislation, implements regulations and directives from the EU, is not to be considered as a *tax haven*. Sweden is not a low tax country, neither when seeing what is considered to be a minimum corporate tax rate and when it comes to the individual taxation.
There is no lack of transparency within Sweden and there is an exchange of information, because of that it is difficult for individuals to hide taxable assets within Sweden.

Looking at the NGOs, Oxfam and TJN, they also have similarities in their output of what they considered to be a *tax haven*. They both think that a low corporate taxation is 25 percent, this would consider Sweden as a *tax haven* with a corporate tax rate at 20.6 percent and that there are possibilities for tax exemptions on dividends and capital gains. Looking at their view on individual taxation, both the NGOs put weight on how high the secrecy is in a country. As stated above, Sweden is a transparent country and the exchange of information about individuals is not in question.
When it comes to property tax, wealth tax or inheritance tax, I would not say that the lack of those render into a situation that could qualify Sweden as a *tax haven*. Both Åsa Hansson, de Vylder and Oxfam have all brought up the importance of a property tax that would be applicable on the rich. One can say that the system that Sweden has today with a property fee might not be a fair system for people with a lower income. Hence, one can argue if it is fair to tax persons higher only because of the value of their housing increases. The question of fairness and what one may think is fair is not a tax law question, that is something that is more political. This is something that lies in Sweden's sovereignty to decide, and individuals are already being taxed in other aspects. It lies within Sweden's sovereignty to decide on which sources of income taxes should be levied.

From this research one can see that from neither of the four organisations is there a clear definition of a *tax haven*, especially the NGOs are very vague regarding what they really define as a *tax haven*. The lack of a clear and defined definition makes it difficult to understand what they really regard as a *tax haven*.

I can not agree with de Vylder that Sweden is to be seen as a *tax haven*. Not when seeing what all four organisations see as indications of a *tax haven*. It might be so that Sweden has some indication according to what the NGO sees as a *tax haven*, however that might be more a question of politics rather than juridical observation.

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