

Briefing Note

07

Avoiding solutions: How Export Credit Agencies help companies that continue to evade tax

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Guided tour of the financial district of Saint Helier, Jersey. Image: TaxJustice

At the London G20 meeting in April 2009, new measures were taken to stimulate the global economy to help deal with the global credit crunch that started in 2008. The Communiqué of the meeting called for an increase in the capacity of export credit agencies (ECAs) to help the global response to the financial crisis. At the same time, the G-20 agreed to take action against some tax havens.

This briefing note shows the folly of increasing ECAs' capacity without ensuring they bring in regulations aimed at halting their support for companies that take advantage of tax avoidance loopholes such as offshore financial centres. It ends with a series of recommendations for ensuring ECAs are held to government policies.

Export Credit Agencies (ECAs) are governmental or quasi-governmental departments that use taxpayers' money to help companies invest and export overseas. ECAs typically provide financial backing in the form of guarantees, insurance or direct loans. Their purpose is to protect companies

against the commercial and political risks of not being paid while operating abroad. ECAs underwrite 10 per cent of global exports from large industrial countries. The European ECA Reform Campaign works to achieve binding environmental, social and human rights guidelines for ECAs.



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Introduction

In the wake of the economic downturn, following the global credit crunch starting in 2008, industrialised countries pledged extra support for official export credits as “absolutely critical to oil the wheels of the global economy”.¹ They stated a determination “to maintain their export credit support and ensure that sufficient capacity is available with the aim of supporting international trade flows”.² At the same time as commercial export credit insurance companies were withdrawing cover for thousands of clients, the demand for government backed ECAs to facilitate trade flows has been sharply increasing. This has meant that ECAs are gaining new importance in terms of the international trade market and are being used as a vehicle to implement bail-outs of companies facing difficulty, and support government export strategies.

Meanwhile, G-20 Leaders at the London Summit of April 2009 launched a Multilateral Initiative on Trade Finance to ensure the availability of at least \$250 billion to support trade finance over the next two years. Other topics at the meeting included financial regulation and tax havens, with G-20 participants agreeing to take action against tax havens which fail to comply with the Organisation for Economic Cooperative Development’s (OECD) standards governing transparency and exchange of information. In September 2008, French President Sarkozy, while addressing the European Parliament as President of the EU, stated that companies and banks operating through tax havens and offshore financial centres should not receive public support as part of the unprecedented government bailouts given to deal with the financial crisis.³

Looking at the dual aims of increasing ECA support and taking strong action against tax avoidance, it becomes clear that there is presently a major contradiction because ECA support is often given to companies and banks using offshore tax havens.

There does however appear to be a simple answer to this glaring contradiction. Following the G-20 summit conclusions on the fight against tax havens and tax evasion, the European Investment Bank (EIB) adopted a strengthened policy “to ensure that no offshore financial centre structures in which the Bank participates is intended to be used to facilitate prohibited activities.”⁴ This refers, amongst others to tax fraud and tax evasion. Among other measures, it approved strengthened policies that make its loans conditional on firms first relocating out of jurisdictions that do not meet international standards on the sharing of tax information.

This includes “monitored jurisdiction”⁵ and not just prohibited ones. Furthermore, the EIB will include specific provisions in financial contracts that make beneficiaries liable if they operate through offshore financial centers and do not comply with the Bank’s policy. The EIB also retains powers to attach specific additional ad hoc assessment and binding recommendations to loans on a case-by-case basis. Although there are still problems with the EIB policy, such as the presence of serious loopholes and lax implementation, it is an initiative on which world leaders, if they are serious about ensuring public money does not support the use of tax havens, should build by making similar demands of their ECAs.

Why focus on tax havens?

Each year the global South is estimated to lose US\$1 trillion⁶ through illicit trade flows. Sixty-five per cent of this capital is channeled through commercial activities that operate through tax havens. To put this in some kind of context, tax evasion and tax avoidance from developing countries represents up to ten times the amount of Overseas Development Assistance (ODA) that Southern countries receive each year, thereby draining resources from the South to the North. Strong statements made during the G-20 summit show that there is comprehension of the problem, but concrete multilateral actions on tax havens are yet to happen. The OECD has attempted to set up lists defining countries as being either compliant, intending to be compliant, or non-compliant with its standards on transparency and information exchange. This is a start, but is mired by the fact that as yet the OECD has no powers to impose sanctions on countries that do not implement the standards. Moreover, there are no countries in the non-compliant section which suggests that this categorisation is insufficient.

A third of international trade goes through multinational companies. These same multinationals are the main beneficiaries of ECA support and yet many of them operate through the tax havens which the G-20 hopes to regulate. However, it does not appear that ECAs take into account whether projects are arranged through a tax haven or whether the consortium implementing a project is located in a tax haven. Therefore, in March 2009, the ECA watch network wrote to the ECAs in an attempt to ascertain whether they performed a due diligence check to see whether funded projects operated through tax havens. At the time of writing, September 2009, not a single ECA had responded.

Case studies of ECAs supporting companies avoiding tax

The Baku-Tbilisi-Ceyhan (BTC) oil pipeline in the Caspian region runs over 1,700 km from Baku, Azerbaijan through Georgia to the Mediterranean port of Ceyhan in Turkey. BTC Co., the consortium of eleven companies led by BP⁷ which built and now operate the pipeline, is registered in the Cayman Islands. In addition, BTC Co. negotiated a range of tax exemptions from Georgia, Azerbaijan and Turkey.⁸ Human rights and environmental organisations have raised serious concerns over the pipeline's social and environmental impacts.⁹



Pipeline to transport Azerbaijani oil to the European markets. Image: @aliyev-heritage.org

The Sakhalin II oil development project, is sponsored by Sakhalin Energy Investment Company, Ltd., a company incorporated in Bermuda.



Roads being built for the Sakhalin II are the first incursions into forests. Image: Pacific Environment

Sakhalin II remains very environmentally and socially controversial because of its socio-economic impacts and threats to endangered wildlife. The project's Environmental Impact Assessment was deemed "unfit for purpose" for several years and the project never managed to win environmental approval from the European Bank for Reconstruction and Development, the UK Export Credit Guarantee Department or the US Ex-Im Bank. Although the project's fundamental environmental non-compliance was certainly an issue, these banks ultimately withdrew from the project due largely to geopolitical concerns linked to revenue disputes with the Russian government. The project sponsors now include Gazprom, Shell, Mitsubishi and Mitsui who continue to benefit from the project's incorporation in a tax haven. Despite all of the financial, environmental, social and geopolitical concerns, the Japan Bank for International Cooperation continued to finance the project.

The Nigeria Liquid Natural Gas [LNG] project at Bonny Island, Nigeria, is another project where the exporters who ultimately benefited from ECA support were registered in a tax haven. The engineering, procurement and construction (EPC) contractor was the TKSJ consortium (a joint venture consisting of Technip, Snamprogetti, M W Kellogg and JGC Corporation), who operated through three offshore companies set up in Madeira Portugal. The bribes were channelled through companies set up in Gibraltar by the agents used to negotiate the contracts.¹⁰ The project was heavily tainted by corruption. On September 3, 2008, former director of TKSJ, Albert Stanley pleaded

guilty in a US court to helping orchestrate a scheme involving US\$182 million in bribes paid to secure the EPC contracts.¹¹ In February 2009, Kellogg Brown & Root, the joint owner of MW Kellogg, pleaded guilty to bribery in the project and agreed to jointly pay (with its then-parent firm, Halliburton) \$579 million in criminal and civil penalties, the second largest settlement in the history of the US Foreign Corrupt Practices Act.¹² Despite these offshore account and problems with corruption, the Nigeria LNG project benefits from financing from the ECAs of the US, UK, the Netherlands and Italy.

Conclusion

With the effects of the credit crunch still being felt, governments are trying to increase available trade finance by giving more power to their respective ECAs.¹³ Whilst ECAs continue to support companies registered in tax havens, such increased ECA finance is at odds with the public announcements by the G-20 to fight tax avoidance and evasion. ECAs must put in place adequate policies to prevent their main beneficiaries from receiving public support whilst adopting dubious tax practices. Without these policies, additional support for trade finance may harm global economic recovery in the long run and further exacerbate capital flight from poor to richer countries.

Recommendations

European governments and ECAs should, as a first step, adopt policies to ensure support is withdrawn for companies registered in offshore financial centres. Furthermore, they should push for their non-EU G-20 partners to do the same. ECA policies should ensure the following:

- **Any actor associated with supported projects is not based in off-shore financial sectors. This would include both prohibited and monitored jurisdictions according to criteria defined by international institutions such as the OECD,**
- **A requirement for ECAs to assess all jurisdictions that might allow tax avoidance or evasion,**
- **Beneficiaries are required to sign a legally binding agreement not to operate through offshore tax havens whilst benefiting from ECA support,**
- **ECAs should ensure that any banks they support have a stringent policy against the use of tax havens.**

Moreover and to pursue the efforts initiated at the Summit in Washington in November 2008,¹⁴ we call upon the European governments to advocate for:

- **A multilateral agreement on automatic information exchange between all jurisdictions on any related tax matter,**
- **Country-by-country corporate reporting to open up multinational companies' accounts,**
- **A redefined and stricter definition of Tax Havens according to their compliance with binding international norms mentioned above and fundamental norms of financial transparency.**

End Notes

01. Speech by Angel Gurría, OECD Secretary-General at the Second International Business Forum on Financing for Development (ICC), Doha, 28 November 2008

02. Financial Times, November 24, 2008

03. "If we provide banks with loans, can we have them working with tax havens?" EU united on financial measures in European Voice

04. EIB Interim revised policy Towards Offshore Financial Centres, 1.4 Basic Principles

05. Classified as weakly regulated and/or weakly supervised and/or non-transparent and/or uncooperative

06. Global Financial Integrity. "Illicit financial flows from developing countries 2002-2006", November 2008

07. The companies currently in the consortium are: BP, AzBTC, Chevron, Statoilhydro, TPAO, ENI, Total, Itochu, Inpex, ConocoPhillips, Hess – see: <http://www.bp.com/managedlistingsection.do?categoryId=9007998&contentId=7015010>.

08. See for example, Article 9, "Contractors" and Article 9 (ii) of the Host Government Agreement for the Turkish section of the pipeline: "No taxes shall be imposed on, or withheld with respect to, the Construction Contractor or Back-

Back subcontractor in connection with MEP

activities". See also, HGA, Georgia, Article 8.3 Contractors: "No taxes shall be imposed on, or withheld with respect to payments to, any Contractor in connection with MEP activities, and Contractors shall have no Tax compliance or filing obligations arising from or related, directly or indirectly, to MEP Activities." 09. For further details, see: www.baku.org.uk

10. US District Court, Southern District of Texas, Houston Division, "USA vs Kellogg Brown and Root", 6 February 2009, para 9.

11. US Department of Justice, "Former Officer and Director of Global Engineering and Construction Company pleads Guilty to Foreign Bribery and Kickback charges", 3 September 2008, http://www.usdoj.gov/criminal/pr/press_releases/2008/09/09-03-08stanley-guilty.pdf

12. US Department of Justice, "Kellogg Brown & Root LLC pleads guilty to foreign bribery charges and agrees to pay \$402 million criminal fine", 11 February 2009, <http://justice.gov/opa/pr/2009/February/09-crm-112.html>.

13. For instance, governments in 10 European Member States have provided their ECAs with increased insurance /guarantee capacity of the magnitude of 36 billion euro. For these ECAs, this represents an average increase of 35 per cent. Council initiative on ECA trade finance monitoring, April 2009.

14. http://www.g20.org/Documents/g20_summit_declaration.pdf

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