ETUC position on the European Commission's Anti Tax Avoidance Package

Adopted at the Extraordinary Executive Committee on 13 April 2016.

On 28 January 2016, the European Commission released its Anti Tax Avoidance Package which aims to prevent aggressive tax planning, increase tax transparency and create a level playing field for businesses. The package consists mainly of an Anti Tax Avoidance Directive, a Recommendation on Tax Treaties, a revision of the Administrative Cooperation Directive and a Communication on the External Strategy. The ETUC believes that it is urgent to take action against tax avoidance and therefore welcomes these new measures.

The package also sets out to implement the standards approved by the OECD in autumn 2015, particularly to address tax-base erosion and profit shifting (BEPS). It is also referring to the Common Consolidated Corporate Tax Base (CCCTB) as a single set of rules that companies operating within the EU could use to calculate their taxable income and therefore as a tool to prevent profit shifting. The ETUC is calling on the Commission to quickly come up with a proposal for a mandatory CCCTB with a minimum rate of 25 per cent.

Although the ETUC welcomes the initiative, we believe that important concerns remain unanswered by the Commission's package. The magnitude of tax avoidance makes this an urgent issue to address. The European Parliament Research Service estimates that the European Union is losing about €70 billion of tax revenue each year as a consequence of tax avoidance practices[1], representing slightly more than 16% of public investment in the EU or, for example, 90% of public investment in France and 110% of public investment in Germany. The recent revelations in the Panama Papers suggest that the real amount is significantly higher. Therefore, the ETUC calls upon the Commission to arrange for an independent expert to carry out an investigation into the actual amount of lost tax revenues, in order to expose the true magnitude of tax avoidance and evasion, both legal and illegal.

While the ETUC supports the proposal to introduce country-by-country reports to tax authorities from multinationals, we regret that the Commission does not propose to make them public. If reports were public, this would allow trade unions, NGOs and other interested parties to take part in the debate on taxes paid by each multinational company in each country, enabling abusive practices and allowances to be detected.

The Anti Tax Avoidance Directive aims to prevent companies with residence in the European Union transferring part of their income to low-tax jurisdictions. To this end, the Commission proposes rules to re-attribute the income of a low-taxed subsidiary to its parent company. The ETUC is however concerned that the definition of low-tax jurisdiction depends on the corporate tax rates in each Member State. These jurisdictions are defined only in relative terms compared to the different tax rates (profits are subject to an effective corporate tax rate lower than 40% of the effective tax rate that would have been charged under the applicable corporate tax system in the Member State of the taxpayer). This is regrettable with regard to the amount of taxable income in Member States in which multinationals are located and for avoiding profit-shifting into low-tax jurisdictions. Member States with higher corporate tax rates will benefit from such a measure. However, given the different corporate tax rates and the fact that Member States cannot be counted as low-tax jurisdictions in the Anti Tax Avoidance Directive, it potentially enables multinational companies to coerce Member States into taking part in a fiscal race to the bottom. For example, a multinational company could transfer its tax residence from a high corporate tax-rate Member State to a low one, in order to avoid paying high taxes in the original Member State and to decrease its taxes on the income

[1] http://www.europarl.europa.eu/RegData/etudes/STUD/2015/558773/EPRS_STU(2015)558773_EN.pdf

transferred to a third country (or even avoid paying taxes if the tax rates are zero). If the high corporate tax-rate Member State wishes to keep this multinational company in its jurisdiction, it has an incentive to lower its corporate tax rate.

The ETUC is thus demanding a band of corporate tax rates with a minimum under which a country would be considered as a low-tax jurisdiction. This would allow the concept to be defined without reference to the different Member States' corporate tax rates. We are also calling for it to be a possibility to classify EU Member States as low tax jurisdictions. This could be a way to incentivise Member States to harmonise corporate tax rates.

In addition, the ETUC believes that there should be lower limitations to multinationals deducting interest payments from their taxable income. Very often this has been abused by multinationals to decrease the tax base in high-tax jurisdictions and increase it in low ones. A number of studies reveal that the very high limits being proposed in the Anti Tax Avoidance Directive – 30% of multinationals' operational profit[2] or up to €1 million – will not cut the amount actually deducted.

Finally, the ETUC regrets that the Commission does not impose limitations on tax rulings in Europe. We request the publication of tax rulings in country-by-country reports which should be publicly available. The ETUC also deplores the fact that the Commission's legislative proposals do not ban patent boxes, giving special tax treatment to multinational companies for income derived from intellectual property. We believe that it is not sufficient to rely on the "modified nexus approach[3]", requiring tax benefits to be linked to research and development activities undertaken, as suggested in the June 2015 Commission communication on "Fair and Efficient Corporate Tax System in the European Union[4]".

[2] *Earnings before interest, tax, depreciation and amortisation (EBITDA).*

[3] *http://www.oecd.org/ctp/beps-action-5-agreement-on-modified-nexus-approach-for-ip-regimes.pdf*

[4] *https://ec.europa.eu/priorities/sites/beta-political/files/com_2015_302_en.pdf*