# ETUC resolution on tackling tax evasion, avoidance and tax havens

Adopted at the ETUC Executive Committee on 10-11 March 2015

There has been a very substantial growth in tax avoidance, which together with tax evasion constitute a massive loss in taxes estimated at 1 trillion euros a year in the EU. This has been facilitated by globalisation, financialisation, the digital economy, the growth in trade and the rise in capital's share of national income and lack of political will to address the tax gap. Whilst capital is global, rules on taxation remain national. Evasion and avoidance is flourishing because of the lack of information on capital flows and ownership of assets internationally, the non-existence of automatic exchange of taxation data between administrations, and because national governments are more focused on tax competition than cooperation, and more on administration than investigation.

Since the start of the financial crisis in 2008, many EU governments have, instead of investing in tax administrations, done the opposite by reducing human and material resources that are necessary to tackle tax dodging. The austerity programmes in particular, have had counter-productive effects.

The rewards of concerted international action on evasion and avoidance will be increased economic growth, employment, fairness and tax revenue, if pursued with vigour. Increased tax revenue is crucial to fund public services, which in some countries have deteriorated dramatically, finance social security, and for combatting poverty.

## Tax evasion

Tax evasion is illegal and is not just undertaken by criminals but also by some firms and many individuals. It is costing vast sums in lost taxes and it generates unfair competition for compliant firms.

The level of tax evasion in Europe is estimated to be almost 20 percent of GDP. In 2013 the size of the undeclared or shadow economy was estimated at around 18-19 percent of GDP in Europe. The undeclared economy is much larger in the Eastern states and in countries in southern Europe which have lower direct taxes and/or flat taxes. There is, however, no correlation between higher taxes and larger undeclared or under-declared economies.

The moves to curb evasion and against bank secrecy are in the interest of all. But much more needs to be done, with the automatic transfer of information and the publication of as much financial information as is possible.

## Tax avoidance

Tax avoidance is the legal minimisation of tax payments. With globalisation, aggressive tax planning is now widespread, is growing and it is facilitated by the use of so called mediator firms, such as holding companies. The sense of fairness around taxation and politics has been greatly undermined. Tax havens play a key role in tax avoidance in the globalised world.

Tax avoidance is big business and driven by the Big Four accounting firms and other major tax planners. Not only do they give advice, but they sell tax avoidance schemes to profitable companies. The Luxembourg Leaks have revealed the institutionalised scale of corporate tax avoidance through tax rulings whereby companies secretly negotiate their tax payments. This trend of tax competition has spiralled out of control, with the only long term winners being big MNCs and the very rich. Next to governments who see their revenue decline, the true 'losers' are the workers of the MNCs who are involved in aggressive tax planning.

## Tax havens

Tax havens are finally being addressed by the EU and international bodies such as the OECD and G20. In December 2012, the Commission launched an action plan to tackle tax fraud and evasion, but the recommendations are not binding, sanctions are too weak and EU-based tax havens are excluded. Much more needs to be done to eliminate tax havens. The Commission should start by introducing a definition of a tax haven.

No EU bank nor any other bank operating (e.g. a US bank) in the EU should be allowed to have any subsidiary or affiliate in any tax haven. If they operate in any way in any tax haven, their EU banking licence should be revoked. Exploiters of tax havens should also be banned from public contracts.

## Tax competition is unhealthy

Tax competition between nation states, especially those in the EU, is unhealthy for those states and for citizens who have to pay their taxes. Tax competition leads to reduced tax rates, exemptions, incentives (loopholes) and the reduction of effective tax rates for MNCs, rich people and for those states which were early starters in offering them.

Despite the code of conduct for business taxation adopted by the ECOFIN Council in 1997[1], many more exemptions and amendments (loopholes) have been introduced by most Member States. Furthermore, direct progressive tax rates on capital, high income and inheritance have only gone in one direction - that is down whilst levels of indirect regressive tax on consumption such as VAT have gone up in many EU Member States.

Taxation policy is a national competence and an area which is central to the sovereignty of EU Member States. This, however, does not prevent a certain degree of coordination to end the race towards the bottom and ensure that companies pay tax where they make profits. A mandatory common consolidated corporate tax base is important to prevent profit shifting.

## The International tax system is broken – BEPS to the rescue

Multinational enterprises have a strong responsibility due to recurrent practices of shifting profits to low and zero-tax countries, including tax havens, and base erosion. This deprives governments of revenue, undermines tax compliance and implies that others must take on a greater share of taxation.

In response, the OECD launched an Action Plan on Base Erosion and Profit Shifting (BEPS) in 2013, which is a two-year policy process containing 15 action items with the goal to curb aggressive tax planning by multinational enterprises. Although the BEPS deal is an important initiative, there are some concerns. First, is that no public disclosure is foreseen for the new country-by-country MNC reporting. Secondly, there remains much uncertainty regarding the tax treatment of shadow banking and of private pools of capital.

## Transfer pricing documentation and country-by-country reporting

In 2014, in an effort to combat transfer mispricing, the OECD set standards for MNCs on their internal documentation for pricing goods and services internally. It set out a template for country-by-country reporting of revenues, profits, taxes paid and measures of economic activity, but those countries participating have until the end of 2020 to assess these standards and they are not binding on MNCs. The EU allows companies to consolidate accounts and so avoid publication of country-by-country accounts even though such accounts still have to be submitted to each country's tax authorities.

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[1] *http://ec.europa.eu/taxation_customs/resources/documents/coc_en.pdf*

What is needed is public disclosure of the country-by-country tax reporting by MNCs and action on the taxation of shadow banking and private pools of capital. In this perspective the European Market Infrastructure Regulation (EMIR) should be used. This Regulation will create the obligation to declare all transactions related to OTC derivate contracts.

**Tax competition - some tax avoidance schemes**

Tax competition generates tax avoidance schemes. Most are devised by tax planners in accounting firms (whose taxation departments' fees exceed corporate revenue in some smaller states) but the material they work upon (abuse) is the tax incentives offered by governments.

Luxembourg, Ireland and the Netherlands stand out in the EU for the incentives/loopholes and low or no taxes which they offer the rich and major mobile MNCs. Ireland did lead in its offers of low corporate taxes but many states have followed with major cuts in the rates everywhere (and with more avoidance schemes). Portugal has also introduced measures to reduce companies' tax base with special benefits to the large companies. Thus any advantage from even more tax "incentives" is diminishing and fast for sovereign states. The win is all with the MNCs who face lower tax rates everywhere in Europe.

There is a criticism of the Netherlands as a tax "haven" and of the Luxembourg loophole which allows many MNCs and rich people to greatly reduce tax that would pay for enhanced public services throughout Europe. Luxembourg's tax minimising regime, on which much of its economy is based, gives it an income level of 2.5 times the average in Europe.

**The tax power brokers**

The strength of powerful organisations in influencing taxation policy should not be underestimated and is undermining faith in the democratic system. The experts from big accounting and legal firms, who are often paid by MNCs and rich people, fund government policy meetings on tax, have staff within government tax departments influencing policy and fund "research" on taxation in many universities, so that these university academics also influence policy.

**Tax and the digital economy**

There are complex tax issues raised by the growing business use of the internet. The new business models and the increasing proportion of value added coming from intangible assets, like intellectual property, but also gambling, mean that taxing such products and services is more difficult. Steps are being taken in this area, but it is one which only international cooperation and not tax competition will address effectively.

## Recommendations

**General**

Establish an ETUC working group on taxation after the Congress 2015 with a view to monitoring and responding to relevant EU and OECD initiatives as well as developing ETUC policy in this area.

Establish EuroTax as an international European-wide tax investigation centre, well-funded, with wide powers of investigation into tax evasion and avoidance by wealthy individuals, companies and criminals.

The European Commission should set up a widely representative once-off Commission on European Taxation to chart the broad evolution of taxation for the EU, to be based on broad principles of taxation. A target of reducing the tax gap should be put in place alongside investment in tax administrations.

A key mechanism in countering tax evasion and avoidance is to introduce a periodic assessment of all citizen's net assets, including those held abroad. It would also contribute to better informed policy-making and taxation policy.

EU Member States should start discussing broad principles on taxation of income and wealth.

The tax system in Member States should be simplified by abolishing unnecessary exemptions and allowances especially for large corporations. Simplification of the overall system by such eliminations will allow higher revenue or lower rates and will help make income tax and social security systems far more effective and fairer.

A tax on financial transactions to be introduced in all Member States.

The moves to deal with tax avoidance by MNCs through the EU compulsory introduction of country-by-country reporting in the banking sector and extracting industry is welcome, but should be extended to all sectors. With regard to BEPS, there must be a) public disclosure of country-by-country company accounts; and b) deal effectively with shadow banking and private pools of capital.

The fight against tax evasion and avoidance require more transparency at enterprise level including more democracy at work, limitation of provisions regarding trade secrets and public disclosure of beneficial ownership.

**Curbing tax avoidance**

Tax competition between Member States to win FDI is unhealthy and ultimately self-defeating. It is the greatest incentive to tax avoidance, forcing Member States to compete on the offers of ever lower tax rates and a myriad of avoidance mechanisms promoted as “incentives”. Taxation must be coordinated effectively within the EU, to end the current race towards the bottom. There must be full transparency with regard to tax rulings, and Member States must exchange information on taxation.

The ETUC supports the introduction of a mandatory common consolidated corporate tax base in the EU, possibly with the introduction of a minimum tax rate of 25%.

Europe should make it difficult for individuals from the 28 Member States and digital companies to conduct business in the European Union unless they undertake to register for tax in the EU under EuroTax or in one Member State.

Europe’s tax system should ensure greater cooperation by Member States to counter avoidance of income tax and social security by MNCs basing employees in low tax Member States and by the use of (bogus) self-employment schemes and contractors.

The Big Four accounting firms should be broken up and steps taken to separate responsibility for functions such as auditing, taxation and consulting to avoid conflicts of interest and governments should cease embedding their staff in economic and tax departments. Meanwhile, they should be banned from advising the Commission on good tax governance policies.

MNCs should be required to publish full accounts in each country in which they operate including information on the relative and absolute amounts of economic activity in each country (at least turnover, employment, investment, profits and taxes paid). Thus EU group companies, unlimited companies, and other loopholes and exemptions from financial disclosure by large firms in each Member State should be terminated.

All major companies should be required to publish the annual cash tax payment made by the company in the economy and communicate this information in a formal setting to its workers. In short, the actual tax payment for each year and not some provision or evasive figure.

All MNCs should disclose the degree of dependency of a local operation on the group as a whole (i.e. what is the level of intra-group trading data, level of local purchases, value added etc.).

The erosion of the tax base could also be limited by the introduction of a withholding tax on interest payments and royalties. This also applies to the limitation on the deduction of interest payments and royalties.

Tax avoidance by the use of trusts including family trusts is widespread by wealthy people and other legal entities and must be greatly curbed. In addition all trusts should now have to publish accounts in accordance with EU rules for companies if their assets are of similar size to medium and large companies, with no exemptions.

**Eliminating tax evasion**

Member States should be required to invest in tax administrations and build up the necessary investigative capacity in taxation to curb avoidance and evasion and all should aim to operate at the highest standards. Member States should pool their financial means, personnel and competencies of their tax investigation departments.

The moves to exchange information on individuals and companies is welcome, but the level of tax evasion remains very high. Much more rigorous investigation in Member States, at a European and international level is required to deal with it. The beneficial ownership of all companies and trusts must be registered publically. It is therefore important that the Council decision in January 2015 on the directive on the prevention of money laundering, to list the ultimate company owners in central registers, is rapidly implemented.

The ETUC supports measures to force tax havens such as Switzerland, Monaco, Lichtenstein and others to disclose information on European citizens, but the European Commission should move against all tax havens within its geographical area to eliminate any loss of tax revenue on the basis of the criteria identified in the EU action plan against tax fraud and evasion, rules on state aid and exchange of tax information.

The EU should not hesitate to introduce sanctions against non-cooperative jurisdictions. No EU bank nor any other bank operating (e.g. a US bank) in the EU should be allowed to have any subsidiary or affiliate in any tax haven. If they operate in any way in any tax haven, their EU banking licence should be revoked. Exploiters of tax havens should also be banned from public contracts.