Group of the Progressive Alliance of
Socialists & Democrats
in the European Parliament

FAIR TAX REPORT

CONTENT

THE S&D ACKNOWLEDGES THE ASSISTANCE OF BROOKE HARRINGTON, SOL PICIOTTO AND PREM SIKKA.

S&D

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EXECUTIVE SUMMARY

€825 000 000 000. This is the minimum amount missing from European public coffers every year. It is very likely that this tax gap measurement remains an underestimation, as it is very difficult to assess tax avoidance, which includes all tax schemes that are not illegal, but which do not respect the spirit of the law.

What does €825 billion mean? Well you can try to think of 1,.8 tonnes of €500 notes or of a €500 notes pile of more than 300 km.

Surely, this is less than a few years ago when the Socialists and Democrats showed that tax evasion and tax avoidance would represent a loss of €1000bn each year, including €865bn of tax fraud and evasion. It has indeed decreased by 11.7% since our first estimate back in 2012. In between, no less than 14 pieces of legislation, from VAT to corporate income tax reform, have been issued on tax at European level. A record.

This means European leaders have started to understand that something needed to be done to reduce public deficits not just through austerity policies implemented after the 2008 financial crisis, but also by increasing state revenue in a way that addresses wealth inequality and fosters social justice.

However, those much-needed tax bills have also been adopted due to public pressure. Scandals such as Luxleaks or the Panama Papers increased the role of scrutiny of the European Parliament on tax evasion and tax avoidance issues, backed by increasing demand for greater tax justice by a large majority of European citizens*.

We are only at the early stages of the long awaited European tax reforms. Much remains to be done to collect what is due and deliver essential public services, reduce income inequality and ensure wealth redistribution. These are prerequisites to restore European citizens' trust in Europe.

What has been done and was it effective?

According to the Treaties, EU finance ministers must decide unanimously when it comes to reforming tax policies at European level.

Despite their strong reluctance from some member states, the EU managed to introduce legislation establishing automatic exchange of information between tax administrations, including financial account information, tax rulings granted to companies by national administrations or country-by-country reports on financial information submitted by multinational enterprises. The EU also adopted the Anti-Tax Avoidance Directive implementing some international standards to prevent profit shifting, but also going a little deeper in proposing common anti abuse measures, allowing member states to tax the cash remaining in tax havens.

Finally, in 2017, and after years of pressure from the European Parliament and civil society, the EU adopted its first EU blacklist of tax havens. Surely, it was not perfect and did not assess EU countries, among which there are some tax havens; but it triggered a huge set of reforms in many jurisdictions around the world to improve transparency and tax governance.

* Standard Eurobarometer 89, March 2018

Both the European Commission and the European Parliament have pushed for more ambitious reforms, but due to the unanimity requirement in Council, key proposals remain blocked by EU finance ministers, including :

- the Common Consolidated Corporate Tax Base, a measure that would allow EU countries to agree on a same set of tax rules and which would end profit shifting in the EU, a scheme that allows large multinationals to report profit where it is the least taxed regardless of the place where business is carried and value is created;

- public country by country reporting, a transparency measure requiring large multinationals to disclose publicly on profits, employees and taxes paid, per country. Although this legislation does not require unanimity in Council, the file is blocked due to intransigence from some EU finance ministers;

- a fair taxation of the digitalisation of the economy, as it's easier for companies to set up tax avoidance schemes and operate in some EU countries without having a real physical presence there. A proposal by the Commission to introduce the concept of digital presence has been put forward in 2018, but was not taken yet on board by EU finance ministers;

- a definitive and more fraud-proof VAT system. The current EU VAT system is still a temporary one, which has lasted more than 20 years. The Commission has already proposed an overhaul of the system to turn it into a definite VAT regime, but EU finance ministers remain timorous.

Therefore, while the path of reforms has never been so significant, citizens are still waiting for more results.

What could speed up the path of reforms and which reforms do we need to prioritize?

The good news when it comes to tax reforms is that tax laws are written by humans and therefore can be changed. The only thing needed is political will to build a fairer and more equal society. For years now, the Socialists & Democrats have pushed for ambitious tax justice reforms.
In 2019, the EU could already adopt:

- tax transparency measures such as public country by country reporting;

- a common consolidate corporate tax base which includes the concerns posed by the digitalisation of the economy;

- the definitive VAT system which could grant additional €50 billion to public coffers currently lost in VAT fraud.

The next European Commission should pursue its work as a leader of global tax reform by:

- proposing a package which would ensure a minimum effective taxation of corporate profits in the EU including anti-abuse measures. As Socialists and Democrats, we would propose a minimum effective tax rate of 18%;

- building up a common methodology to ensure that each member state conducts a tax gap estimate, including an assessment of the cost of all tax incentives;

- defining, reviewing and proposing rules to ensure that dodgy tax schemes (so-called harmful tax practices) are repealed in Europe;

- organising a global tax summit aiming at the creation of an intergovernmental tax body.

EU finance ministers, if they want to positively respond to the demands and expectations of EU citizens, shall immediately adopt the measures which remain currently locked and:

- Do away with the unanimity requirement in Council on certain tax issues to ensure that no single member states can veto much needed tax reform to its own benefit;

- improve the criteria of the EU tax havens list to capture all tax havens, including EU member states and push for an improved list at OECD level;

- reform and ensure greater transparency of its work on corporate taxation (in the so-called Code of Conduct Group);

- call for a second set of international tax reforms (post G20 OECD-led BEPS project) to tackle the corporate tax race to the bottom and solve the question of allocation of taxing rights. Such reforms should ensure all countries participate on an equal footing.

TOP 5 RECOMMENDATIONS

1. Proposing a package which would ensure a minimum effective taxation of corporate profits in the EU including anti-abuse measures. As Socialists and Democrats, we would propose a minimum effective tax rate of 18%;

2. Ensuring each member state conducts a tax gap estimate, including an assessment of the cost of all tax incentives;

3. Defining, reviewing and proposing rules to ensure that dodgy tax schemes (so-called harmful tax practices) are repealed in Europe;

4. Following-up on the European Commission's proposal to get rid of the unanimity requirement in Council on certain tax issues to ensure that no single member states can veto much needed tax reform to its own benefit;

5. Improving the criteria of the EU tax havens list to capture all tax havens, including EU member states and push for an improved list at OECD level;

In addition, the S&D group calls for a second set of international tax reforms (post G20 OECD-led BEPS project) to tackle the corporate tax race to the bottom and solve the question of allocation of taxing rights. Such reforms should ensure all countries participate on an equal footing.

INTRODUCTION

The past three decades have seen income inequality rising exponentially in the United States and Europe. The world's wealthiest have become wealthier, whereas citizens living on their wages have seen their income remain stagnant or experienced continuing decline in real terms as a result of the 2008 global economic and financial crisis. Although economic growth resumed, existing inequalities were exacerbated with the wealthiest one percent appropriating an increasing share of wealth.

According to a report published by Oxfam on 22 January 2018*, approximately 82% of the money generated in 2017 went to the top 1% of the global population, whereas the bottom 50% received nothing. 2017 also saw the biggest increase in billionaires in history, with a new billionaire emerging every two days.

Indeed, the widening gap between rich and poor has emerged as one of the biggest threats to the global economy and social stability. Wage disparity and degradation of public services have contributed to growing polarisation, the rise to anti-globalisation movements and populism.

The momentous political changes of the past two years demonstrated the enormous disruptive potential of inequalities and posed a grave threat to liberal democracies. In 2016, the anti-establishment mood led to the Brexit vote and Donald Trump's election as President of the U.S., whereas we continue to witness rampant populism posing a threat to democracy itself in Europe. The national elections in France, Netherlands and elsewhere are illustrative of the extent of the problem of inequality and the implications thereof for citizens, businesses and the Union.

One central example is linked to the new information technologies, which have created a whole range of companies that have become extremely profitable (Google, Amazon, Facebook...), while becoming stateless (as shown in the Apple state aid case), ownerless (i.e. shareholding duration in listed companies is shrinking) and adept at avoiding taxation.

While booming global stock markets are considered the main driver for the last year's surge in wealth, there are other reasons for the widening inequality gap. Oxfam cites tax dodging, the erosion of workers' rights, cost-cutting and businesses' influence on policy decisions as the main reasons for the increasing concentration of wealth at the top. These findings are documented by the Zucman study, which contends that tax evasion rises sharply with wealth. According to the study, the top 0.01% of the wealth distribution, a group that includes households with more than 40 million dollars in net wealth, evades approximately 30% of its personal income and wealth taxes. The average evasion rate is of about 2%.

In addition to evasion, it seems clear that there has been an enormous growth of schemes for tax avoidance, especially of taxes on income from capital. This has several causes. One is that they are harder to collect, and often rely on self-reporting, instead of direct deduction from payments as with employment income and sales taxes or VAT. Taxes on capital are much more vulnerable to tax 'planning', based on ingenious interpretations claiming to comply with legal rules while defeating their purpose. Tax authorities find this hard to combat, since it demands time and skilled staff, and they cannot match the resources available to wealthy people and to large corporations, especially in times of austerity and government cuts. Governments have also been tempted to reduce taxation of capital, due to competition to attract investment, and to the view that taxing corporations and the rich discourages investment. This results in a proliferation of incentives and special preferences, as well as declining corporate tax rates - a tax race to the bottom. The line between legal avoidance and illegal evasion is often very blurred, and it is hard to prove the deliberate intent needed for a criminal conviction, especially when avoidance schemes are devised

* Report of 22 January 2018 by Oxfam, https://www.oxfam.org/en/research/reward-work-not-wealth

by professionals.

The growth of a culture of increasingly aggressive tax planning and its toleration as a valid business practice has affected the boundaries of acceptable behaviour. Shifting the burden on working people and the poor undermines the legitimacy of taxation, as well as making it hard to maintain spending on basic public services, infrastructure, and welfare.

Furthermore, it is the wealthy and multinational corporations who have been most able to take advantage of economic globalisation to refine the international tax haven and offshore secrecy system for the purposes of tax evasion and avoidance. This has greatly weakened the enforcement and tax powers of national governments.

Although it is difficult to measure with precision the scale of tax evasion and avoidance, mainly due to limited transparency and different accounting and conceptual frameworks affecting the availability of comparable data, research produced in the past years clearly shows that tax evasion, tax avoidance and tax havens deprive economies and societies from duly owed taxes.

A new research, commissioned by the S&D Group in the European Parliament and performed by tax expert Richard Murphy[*], estimates the current EU Tax Gap at approximately €825 billion per year. This represents a decrease of 11.7% compared to a first estimate released in 2012, (when allowing for inflation) which shows that political action which took place since 2012 has delivered some results. However, the tax gap number remains gigantic and surely calls for more immediate reforms at national, European and global levels.

Research by the IMF -covering 51 countries- concluded that profit shifting between tax jurisdictions results in an average revenue loss of about 5% of current corporate income tax revenue – but of almost 13% in non-OECD countries[**]. According to the European Commission, econometric evidence shows that foreign direct investment (FDI) sensitivity to corporate taxation has increased over time and each year. The most conservative estimates point to global yearly losses for national budgets due to tax corporate avoidance of at least some €50 billion[***] and up to €190 billion[****].

* Richard Murphy, the European Tax Gap, Tax Research LLP, January 2019

** IMF policy paper ‘Spillovers in international corporate taxation’, 9 May 2014, p. 20.

*** ‘European added value of legislative report on bringing Transparency, coordination and convergence to corporate tax policies in the European Union’, Dr Benjamin Ferrett, Daniel Gravino and Silvia Merler

**** Bringing transparency, coordination and convergence to corporate tax policies in the European Union, II - Evaluation of the European Added Value of the recommendations in the ECON legislative own-initiative draft report, European Parliamentary Research Service, PE 558.776 - October 2015

CHAPTER 1

TAX EVASION AND TAX AVOIDANCE IN THE EU: ROOT CAUSES OF THE PROBLEM

The scale and some of the mechanisms of tax dodging in Europe were laid bare by the revelations of LuxLeaks in 2014, SwissLeaks, the Panama Papers in 2016 and the Paradise Papers in 2017.
They demonstrated how some wealthy individuals and multinationals alike exploit legal loopholes, looking for favourable jurisdictions and hiding money offshore to evade or avoid tax. Gabriel Zucman, in his book 'The Hidden Wealth of Nations', estimates that 8% of the world financial wealth is held in offshore financial centres globally. It represents €6 trillion for Europe as a whole. He maintains that only a fraction is duly taxed, leaving about 80% of all offshore wealth untaxed.

These various estimates, albeit not homogeneous, reflect the immense amount of money lost each year due to tax avoidance and evasion practices, which cannot be reinvested into public services, infrastructure or fighting inequality. The direct consequence is an inefficient tax system, which does not provide a level playing field for business and entrepreneurship, or allow a fair distribution of wealth, thus distorting the very basic principle of taxation. In addition, this situation risks feeding into democratic mistrust and affecting overall tax compliance.

Hence, it is vital that we establish principles for a fair tax system in all European countries so that everyone pays their fair share and no exceptions, exemptions or tax evasion are tolerated. Because a fair tax system is about equality. It is about justice and democracy. A fair tax policy is also a prerequisite for curbing wealth inequality and achieving income distribution. To this end, adequate and effective institutional and policy arrangements are paramount (Piketty and Saez, 2013).

We need change. The EU has created an enormous market and economic block with the potential to increase the prosperity of all its citizens, as well as to help resolve global economic problems.
Regrettably, the benefits have disproportionately gone to large corporations and the wealthy, leaving ordinary people feeling left behind and disillusioned. A new political agenda is needed to overcome the crisis of Europe and restore confidence in the values of fairness and justice which were the foundations for the vision of European integration. An essential part of this agenda should be agreement on common principles for taxation, and a strengthening of tax cooperation and harmonisation, within the EU.

The global economic context combined with publicity, research and various taxation leaks have brought to attention the unsustainable status quo of our international tax rules and lack of convergence and harmonisation of tax laws of the EU member states. This unsustainable system is still based on rules devised a century ago, and attempts at reform have produced increased complexity. The result is a fragmented and disharmonised system providing plenty of opportunities to be exploited to the detriment of our social economic model.

Furthermore, efforts to improve legislation, harmonisation and coordination are undermined by short-sighted insistence on tax sovereignty and arguments for tax competition, so that states, within the EU and elsewhere, remain with conflicting interests when it comes to tax. Many of those that protest about tax avoidance and evasion themselves maintain preferential tax regimes, and privileged relations with special tax jurisdictions*.

The political argument for maintaining secrecy, tax loopholes, a race to the bottom, inefficient tax collection and unfair competition conditions can no longer be justified, and it is high time that corporations and individuals pay their fair share of taxes, instead of radically reduced or eliminated tax bills through the legal machinations created by intermediaries.

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* UK overseas territories and crown dependencies, such as the BVI, Cayman Islands, Gibraltar, Isle of Man, Guernsey. France: blabla, etc

Rethinking, redefining and implementing fair and effective tax systems, based on agreed broad principles and strong coordination at the EU level is a long-term political process, and one which is long overdue. Our EU citizens and companies deserve a better-functioning system, which is thought through, and one which draws the obvious link between a fair, efficient and transparent tax system to basic societal needs.

1. Loopholes, competition and lack of harmonisation create tax evasion and avoidance opportunities

Globalisation and digitalisation of the economy have radically altered the way markets operate, and national and international rules in the field of taxation have simply not kept pace with the evolution of the business environment. The enormous growth of multinational corporations since the 1950s, and financial liberalisation since the 1970s, have made it easier for the owners and controllers of capital to create sophisticated structures in order to reduce their global tax contribution and to organise their activities through offshore financial centres.
Recent leaks such as the Panama Papers and the Paradise Papers[*] have shown that wealthy individuals also use complex offshore structures, offered by intermediaries and enablers to reduce their tax liabilities on individual taxes or VAT, thereby increasing the tax gap. Gabriel Zucman estimates that individual tax evasion and avoidance amount up to US$200 billion in losses each year worldwide[**]. In addition, austerity measures imposed by politicians as a reaction to the global economic crisis have meant that most EU member states have significantly reduced their tax administration staff, thereby negatively affecting their capacity to prevent, detect and fight aggressive tax planning, which in turn generates substantial erosion of our tax revenues.

There have been political initiatives and regulatory attempts to reform and strengthen regulatory arrangements, both intra-EU and globally. However, a progressive vision and coherent solutions across the board have still not been adopted or implemented, and the attitude has usually been reactive and overcautious, instead of being bold and proactive. Indeed, experience shows that EU bodies, which should prevent the introduction of harmful tax measures (e.g. the Code of Conduct Group set up by member states in 1998) have served to generalise and legitimise the current behaviour Coordination and cooperation have too often been insufficient, so that that new tax preferences are introduced in the EU at a pace much faster than the political reaction.

In parallel to an outdated system remains the challenge of an EU with 28 different and uncoordinated tax systems, as well as the special jurisdictions with autonomous tax regimes of jurisdictions associated with EU states.

* https://www.icij.org/

** Gabriel Zucman, The hidden wealth of Nations, University of Chicago press, September 2015.

TAX BASE COMPETITION

As shown once again in the Paradise Papers, the most recent leak from the ICIJ, companies and individuals are able to exploit the differences between national tax systems to reduce their overall tax contributions. Tax havens are no longer only palm-fringed islands with zero taxes; many countries including some EU member states are competing to facilitate tax avoidance schemes by offering specific advantages to companies, such as tax rulings, low tax rates for income attributable to intellectual property (IP or patent boxes), special approvals for transfer pricing, notional interest deductions, and dual residence for legal persons (hybrid entities).

With regards to taxation of multinationals, the root cause of the problem is well-known - it is the 'separate entity' or 'arm's length' principle, which requires tax authorities to treat the various subsidiaries of a multinational as if they were independent of each other. This provides a perverse incentive for Multinational Enterprises (MNEs) to create complex corporate groups, creating intermediate entities in convenient locations to exploit tax differences and incentives. This has become easier due to digitalisation and the shift to knowledge-based business and services. Highly digitalised companies have come to dominate the economy, through their control of intangibles and data. Their ability to avoid tax has further strengthened their monopolistic power, by creating enormous pools of untaxed revenues, which are used to buy up start-ups and competitors.

This kind of tax avoidance is a negative sum game for all national budgets taken together, as the increases in tax revenues resulting from harmful practices in one member state do not compensate the reduction in tax revenues in other member states. In addition to the economic loss, the unfair allocation of the tax burden increases the dominance of large corporations, and prevents fair competition, adding to the increase of societal inequality.

The over-complex rules of national tax systems and their differences create loopholes that are used (and often purposefully created) by MNEs and wealthy individuals for aggressive tax planning purposes which leads to base erosion, profit shifting, a race to the bottom and, ultimately, to a suboptimal economic outcome. A main point of action therefore is to tackle loopholes between EU national tax systems' legislation.

TAX RATE COMPETITION

Also, member states currently determine their own corporate tax rates. Since 2000, nominal corporate tax rates in the EU have decreased by 46%– from an average of 32% in 2000 to 21.9% in 2018[*]. Governments in the EU, but also across the OECD, have gradually cut statutory rates of corporation tax, partly to attract mobile activities and profits[**] and several EU member states have maintained very low levels of corporate tax rates to attract FDI. European governments should not lead a race to the bottom which will see average global corporate tax rates hit zero by 2052, according to NGOs.[***]

As long as member states have more to gain from engaging in tax competition than from coordination, meaningful change will remain difficult to achieve.

* Taxation trend in the EU, Table 4: Top statutory corporate income tax rates (including surcharges), 1995-2018, European Commission 2018

** John VELLA, "Nominal vs. effective corporate tax rates applied by MNEs and an overview of aggressive tax planning tools, instruments and methods", EP study for the TAXE committee, 2015

*** Tax Games – the Race to the Bottom: Europe's role in supporting an unjust global tax system, Eurodad, 2017

TRANSPARENCY

Whereas secrecy can be considered partly addressed in comparison to just a few years ago, much remains to be done to achieve an adequate level of transparency.

Citizens are still not allowed to know what level of business activity and tax payments individual MNEs have in the different countries where they operate, since these numbers are kept confidential.
Therefore, except when information gets leaked, it is difficult for citizens to know whether MNEs are engaging in aggressive tax planning, or whether they are paying a fair share of taxes. To solve this, the EU proposal for public country-by-country reporting (which would force companies to disclose financial data) should be approved, and eventually adopted globally. All the more so since exchange of information mechanisms have also not yet lived up to their full potential, and many tax administrations still struggle to get the information they need to stop international tax dodging.

As long as regulation does not clearly define the limits of the game tax dodging will remain attractive for the wealthy and powerful.
The lack of willingness to tackle these issues, not only by the blocking minorities within the EU, but also at a global level, largely contribute to the recent surge of whistle-blowers culminating in various revelations and media scandals.
In the context of the financial crisis, it is time to increase scrutiny and construct a system which puts the citizen at the centre.

2. Tax havens

ORIGINS OF THE TAX HAVENS SYSTEM

Tax havens emerged at the beginning of the 20th century. The creation and continuation of the tax haven and offshore secrecy system results from a fundamental flaw in international tax rules, designed in the 1920s*. The primary rights to tax business profits ('active' income) were given to the country where the business was located, while returns on investment (interest, dividends, etc., or 'passive' income) were taxed in the country of residence of the investor. MNEs posed problems, since it is hard to determine the appropriate level of profits of the parts of a corporate group, so tax authorities were given powers to adjust the accounts of related entities. However, these two aspects were contradictory: while based on the understanding that the parts of a MNE are under unified control, the basis for adjustment was that income should reflect what might be expected if the entities were independent.

Especially from the 1960s, MNEs began to exploit this independent entity principle to reduce their overall tax liabilities, by creating intermediary entities in convenient jurisdictions. Entities, which might exist only on paper, can own assets or perform functions for which operating affiliates pay royalties, interest or fees, which are deductible from profits, and so reduce tax on business profits. Yet these payments can remain untaxed, if channelled through conduits to take advantage of treaty benefits, to affiliates in zero-tax countries. Such techniques enable deferral of tax on retained earnings, which has been a major factor in financing the expansion of MNEs, and their competitive advantage.
Another problem has been the role of tax departments in these companies, which in many cases were seen not as a compliance body, but a profit-making unit. Some companies also incentivised line-managers to adopt tax avoidance structures, by setting targets based on profits after-tax.

* For further details see S. Picciotto (ed.) Taxing Multinational Enterprises as Unitary Firms (2017), International Centre for Tax and Development.

The shift to the knowledge economy and digitalisation has facilitated the restructuring of operations around global value chains, which can be tax-driven.
This enables the fragmentation of different business functions (research, design, assembly, marketing, distribution, and back-office activities). The independent entity principle enables MNEs to attribute only routine levels of profit to entities in high- tax countries, while using payments for intangibles, finance and fees to channel substantial revenue to low-taxed affiliates to which high-value functions are attributed. This system has also lead to tax competition between countries to offer tax advantages to attract the location of entities which perform such high value-adding functions.

The tax haven and offshore secrecy system was developed to facilitate tax avoidance and evasion mainly by wealthy families and MNEs. However, financial liberalisation from the 1970s made this system easy to use also for laundering proceeds of corruption and crime.

The G7 and the OECD have tried to tackle the problem in the 1990s, but this resulted only in a lengthy process of improving exchange of information bilaterally between countries.
Following the financial crisis and the ensuing fiscal austerity, political pressure led to a renewed effort through the G20 leaders. They gave their support to the project on base erosion and profit shifting (BEPS) led by the OECD, to provide recommendations for taxation of profits where the economic value is created. However, the outcomes so far have mostly aimed at strengthening existing rules, and failed to provide clear criteria for the allocation of profit. The main achievement was the establishment of a system for country-by-country reporting by the largest MNEs in one of the recommendations. This will provide an overview of each MNE group, details of its parts, and data on its profits, tax paid and employees in each country, which, in the standard proposed by the OECD, will only be given to tax authorities*.

DIFFERENT TYPES OF TAX HAVENS

Tax havens can be either secrecy jurisdictions, for example allowing people to hide money in anonymous trusts or shell companies officially registered in the name of nominee directors, or low/no corporate tax havens, where large undertakings shift profit to reduce their overall tax contribution. Some of the countries which fall into the latter category, such as Luxembourg or the Netherlands, officially have relatively high corporate tax rates, but use harmful tax practices to allow multinational corporations to lower the effective tax rate they pay in the country.
The low/no corporate tax havens also play different roles – some act as sinks (the place where profits are parked without being taxed), and others act as pass-through countries (conduits) that allow multinationals to channel profits from the countries where the business activities take place and into the sinks, without paying much – if any – tax.

The EU itself has the power to tackle the issue of tax havens by, for instance, imposing strong sanctions and by creating strong dissuasive measures for companies to use the offshore system.

After much pressure from the European Parliament, and through the leading role of Commissioner Pierre Moscovici a first step forward in this regard when Council published a first EU list of non- cooperative jurisdictions on 5 December 2017**. This list continues to be updated following the individual country commitments to change their internal tax systems. It shows that the EU has the power to improve the international tax rules and have influence globally. The criteria and the screening process as suggested by the Commission were credible and ambitious, but unfortunately it was watered down by the Council in the Code of Conduct Group - notably by taking out zero or close to zero corporate tax rate as a stand-alone criterion (it has still been considered in criterion 2.1 on harmful tax regimes).

* In the EU, the automatic exchange of country-by-country information between tax authorities was approved by the Council under the Directive on Administrative Cooperation in 2016

** http://www.consilium.europa.eu/media/31945/st15429en17.pdf

The key issues is the grey list: the commitments taken by the jurisdictions that are followed-up by the Commission and the member states and carefully monitored to ensure that reforms happen in practice.
Recent studies have shown that there has been a recent tendency of specialisation of tax havens. Since the economic crisis, the G20 with the support of the OECD has compelled special tax jurisdictions to sign bilateral tax treaties to exchange financial information.* However, rather than putting an end to tax havens, these new treaties have led to shifting bank towards countries where no bilateral treaties were signed with the home country of the tax evader. The result has been a relocation of the money towards the least compliant tax havens.

It should be mentioned however, that many of the smaller EU island economies cannot offer their citizens a good standard of living by relying solely on agriculture, fishing or tourism as they are dependent on the vagaries of weather. In the absence of any sustained economic development, many of the smaller states have used their law making capacities to offer shelter to corporations by offering low/no tax regimes, secrecy and poor enforcement. Therefore, EU assistance is necessary many to offer alternative and more sustained economic development programmes in these jurisdictions.

* Niels Johannesen, Gabriel Zucman, « The End of Bank Secrecy? An evaluation of the G20 Tax Havens Crackdown", American Economic Journal: Economic Policy 2014, 6(1): 65–91

3. Industry investing in existing loopholes

DESCRIPTION OF THE SECTOR

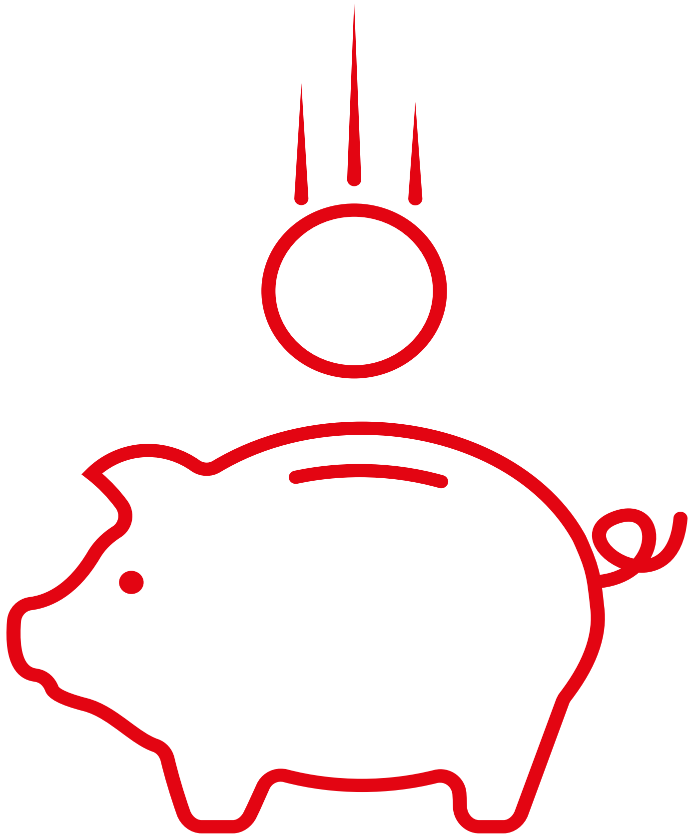
The tax advice sector - be it banks, accountants, lawyers, auditing firms, consultants or other professionals - is an active part of the unfair and inefficient system and are to be properly addressed and regulated. These intermediaries give highly sophisticated advice to multinational corporations, exploiting existing legal loopholes with the aim to reduce overall tax contribution without breaking the law, but rather creatively complying with it. Adding to the problem, our legislators and tax administrations have not anticipated but merely reacted, sometimes with great delay, to these innovative tax avoidance schemes designed and promoted by the industry.

The enablers, when it comes to individual taxation, are also known as wealth managers. They are generally trained as lawyers, bankers, accountants and auditors and invent complex structures, using a chain of entities such as shell companies, foundations and trusts, and move the money through secrecy and/or low-tax jurisdictions, in order to avoid paying taxes. Avoidance schemes are based on interpretations of the law which take advantage of ambiguities and loopholes.
These arrangements are not always illegal.
For a criminal prosecution it is necessary to prove intent, such as deliberate deception, which is difficult. They may fail, if the tax authorities have sufficient resources and support to challenge them, in which case they can be said to be unlawful. But usually those who devise such arrangements are not subject to any penalties, so they can keep on trying new schemes.

TAX RULINGS

The Luxleaks scandal showed that accountancy firms negotiated tax rulings, also known as 'sweetheart deals', with national governments on behalf of multinational companies, reducing the overall tax contribution of those companies, in turn putting small and medium-sized enterprises (SMEs) - which do not have the resources to invest into such practices - at a competitive disadvantage vis-à-vis multinational corporations.

Tax advisers are represented at the same time in bodies advising governments and public institutions on tax matters, such as the EU Platform for Tax Good Governance. Instead of investing in the tax avoidance and evasion industry, intermediaries could have played a positive role in combatting the erosion of national tax bases by, for instance, better cooperating in the exchange of information at their disposal.



CHAPTER 2:

SOLUTIONS:

TOWARDS A FAIR, EFFICIENT AND TRANSPARENT TAX SYSTEM FOR THE EU IN A GLOBAL CONTEXT

1. Objectives of an optimal tax system at the EU level

Taxation is at the heart of the social contract in our societies. Its main objective is to allow a redistribution of wealth to ensure that everyone is given a fair and equal chance. An efficient and fair tax system should aim at reducing inequality in income and wealth, providing accessible and quality public services, healthcare and education for all and it should make the link to the employment market, the financial world, consumer protection, desired policy goals and social welfare overall.

A FAIR TAX SYSTEM

A fair tax system should first of all be based on the principle of progressivity, meaning a tax system that takes a proportionally larger amount from high-income earners than it does from low-income earners and takes account of ability to pay and the marginal utility of income. This ensures that everyone contributes with their fair share of taxes to the public purse. Fairness also means providing a level playing field, so that that the same rules apply to income from all types of income. Bigger companies should not have access to advantages which smaller companies cannot access, and income from capital, as well as capital gains, should be taxed similarly to income from work. This also reduces the opportunities for tax avoidance, which often works by re-characterisation of revenue, for example of income as a capital gain, or individual income as corporate profit, to take advantage of a lower tax rate. Above all, there should be no exceptions, exemptions, or 'sweetheart deals' for certain privileged tax payers and no wilful blindness should be tolerated at any level.

Fairness should also apply between countries, especially within the EU, so that one country's tax policies never act to the detriment of the economy of another country. Indeed, tax pollution traveling across borders should be eradicated both within and outside the European Union.

AN EFFICIENT TAX SYSTEM

An efficient tax system is sustainable and modern and one which is adapted to current economic reality. It should ensure that taxes are paid where economic activity takes place and value is created, and that all economic transactions and activities are appropriately taxed, applying clear rules which are easy to administer. An efficient tax system also provides for a redistributive mechanism which ensures an optimal utilisation of the tax revenue collected and which is in the interest of all. An efficient system has full collection and tax gaps disappear. Such a system provides clear definitions, minimises ambiguity and eliminates discretion in the legal and soft law frameworks, and offers simple and user-friendly rules for taxpayers. Whereas there might be little political appetite for a harmonised taxation framework, an efficient tax system also avoids fragmentation by ensuring strong coordination and finding common solutions to global challenges, starting at the EU level.

The fiction of separate legal personality of corporations should be disregarded for tax purposes, to prevent abuse through transfers within corporate groups. In other words, incentives for MNEs to set up intermediary entities in low-tax jurisdictions should be tackled, and a key step in effective reform of these rules would be to treat corporate groups in accordance with the economic reality under which they operate as unitary firms under central ownership, control and direction, as does for instance the Commission Proposal on the the Common Consolidated Corporate Tax Base.

A TRANSPARENT TAX SYSTEM

An optimal tax system is also transparent, to allow public scrutiny, and block secrecy. It is high time the member states take their responsibilities and stop discussing behind closed doors; this debate largely concerns the general public. The offshore industry and creatively engineered aggressive tax planning schemes are maintained by the constant desire to hide for personal economic benefit. In parallel, these advanced aggressive tax planning schemes are developed faster than the public policy response can be formulated. Public reporting and public access to tax information increases mutual trust in society, and limits possibilities to hide behind fake numbers, fake identities and other invented structures. Indeed, no entity regardless of form and size has any valid reason to hide basic information such as revenue, income, number of employees, unless they are doing business which is sensitive to public scrutiny. To prevent tax gymnastics and avoid tax nomadism, transparency on tax deals made between governments and multinational corporations is essential, as is the role and activities of tax advisers and intermediaries.

RESPONSIBILITY OBLIGATIONS ON PROFESSIONALS

To improve transparency, some countries have introduced requirements to notify avoidance arrangements to the tax authorities. The EU first scheme specifically aimed at requiring reporting of cross-border tax avoidance arrangements, and for these reports to be shared between tax authorities, was put forward by the European Commission in June 2017, approved by the Parliament in March 2018, and quickly agreed by the Financial and Economic Affairs Council*. This measure should help introduce transparency of cross-border tax planning arrangements and improve the ethical standards of suppliers of such schemes. However, a notification requirement alone is little deterrent, as the tax can remain unpaid, and may never be paid if the scheme is found to be successful. Even if a scheme is found unlawful, the work of having devised it is not necessarily illegal.

Obligations should also be placed on company directors to ensure responsible tax practices. This should include not only their own companies' practices, but in the case of companies providing tax advice, an obligation to do so in a lawful and ethical manner. As an example to draw from and to combat aggressive tax planning advice, the UK in 2017 introduced a criminal offence of failure to prevent facilitation of tax evasion**.

* COM(2017) 335 final, 21.06.2017.

** Criminal Finances Act 2017, sections 44-48. http://www.legislation.gov.uk/ukpga/2017/22/contents/enacted

2. The road towards fair, efficient and transparent tax systems in the EU

In the fight for a better tax system, the first step must be to have a clear political objective. Therefore, coupled with quantification of the scale of tax evasion and tax avoidance, the best way to effectively collect tax revenues is to clearly define the grey zones between legal and illegal tax behaviour via clear cut interpretation of tax legislation, and to avoid loopholes, exemptions and special tax treatments that could be exploited both by large corporations doing cross-border business as well as individuals with an interest in hiding economic benefit. In parallel, an optimal, fair, efficient and transparent tax system should also reduce incentives for exploiting any remaining tax legislation loopholes through binding rules and sanctions on intermediaries (bankers, lawyers, and accountants) and wealth managers to make it less profitable and attractive for them to facilitate tax avoidance.

3. Solutions

This chapter puts forward an agenda for the necessary policy changes.

DEFINING THE FIGHT

While various estimations on the scale of tax evasion and tax avoidance in the member states already exist, it is important to establish an official European Union quantification of reliable statistics of the scale and impact of these problems to better target policy measures. Therefore, the Commission in cooperation with member states should - hand in hand with the work on transparency - work as from today on quantifying the scale of tax evasion and avoidance.
In addition, the quality of enforcement at member states level varies, and so annual reports should be published in which maladministration and bad enforcement is highlighted, and an EU parliamentary committee should hold hearings on these cases.

In parallel, it is of key importance that a common understanding of the problem exists, which is why a European definition of the key terms such as Offshore Financial Centre (OFC), tax haven, secrecy haven, non-cooperative tax jurisdictions and high-risk country in terms of money laundering, is important.

Another important point is the need to eradicate all excuses to not tackle the issue which clearly is at stake, namely fairness. To this end, clear guidance on what is illegal and what is against the spirit of law in the framework of tax evasion and tax avoidance is needed.
Furthermore, a clear, transparent and publicly accessible overview of harmful tax measures used in the member states (and the counter measures in place) would clearly help direct the necessary measures to take and, as such, it should be a priority. In cases where an EU economy is sustained by its use of tax haven behaviour, an EU solution for alternative economic models is needed, as well as adequate financial support during a limited and transitional period.

In order to assess the risk that tax practices and policies in EU member states have in terms of negative effects on developing countries, a comprehensive EU-wide spill-over analysis should be produced.

To sum up, the most pressing measures needed are:

1. The European Commission, with the help of the member states, to quantify tax evasion and tax avoidance in the EU by building up a common methodology to ensure that each member state conducts a tax gap estimate, including an assessment of the cost of all tax incentives; including an assessment of the cost of all tax incentives, and a commitment to produce tax spillover analyses of the type recently proposed by Baker and Murphy*

2. Annual reports to be published on maladministration and bad enforcement and an EU parliamentary committee should hold hearings on these cases

3. European definition of:
    a. Tax haven
    b. Secrecy haven
    c. Non-cooperative tax jurisdiction
    d. High-risk country in terms of money laundering
    e. Offshore Financial Centre (OFC)

4. European guidelines of illegal and activities considered to be against the spirit of law in the framework of tax evasion and tax avoidance/aggressive tax planning

5. European public list of harmful tax measures used in the member states and the counter measures in place

6. Introduction of alternative economic models, EU grants and subsidies during a limited and transitional period to phase out EU economies reliant on aggressive tax planning

7. An EU-wide spill-over analysis identifying risks that member state tax policies and practices have on developing countries

* Appendix 5, Richard Murphy, the European Tax Gap, Tax Research LLP, January 2019

ENSURE A ROBUST TAX HAVENS LIST

PUTTING OUR OWN EU HOUSE IN ORDER

Starting with the essentials. While the super-rich and large corporations have greatly benefited from the creation of the EU and its single market, there has been inadequate coordination and cooperation between member states on matters such as tax. This has fostered unfair tax competition, allowing and even encouraging the exploitation of tax differences and loopholes. There is an urgent need to create an umbrella organisation at the EU level to strengthen national tax authorities and facilitate cooperation between them.

The main problem in the EU when attempting to advance in taxation matters is that one single individual member state, whether small or big, rich or less rich, has the power in Council to block any taxation proposal, which they consider go against their national interests.
The **unanimity requirement in matters of direct taxation** is difficult, but not impossible, to change, and could already be side- stepped without Treaty change, either via the "passerelle clause", which would still require a first unanimity vote from the Council to introduce qualified majority in certain procedures, or via the Article 116 TFEU, which allows the Commission to make a proposal under ordinary procedure as a way to prevent distortion of competition in the EU.

Then, we need to reform the Code of Conduct Group on Business Taxation (CoCG), which was set up in 1998 by the member statesto address harmful corporate taxation measures. The work of the CoCG is carried out behind closed doors, with no visibility for the public, and no feedback on its discussions. Since it operates by consensus, only the worst measures are found harmful. Hence, those which are not disapproved are copied by other states and become generalised, as occurred with the 'innovation boxes', offering low tax rates for income from products based on intellectual property. As a first step, **transparency of this Group is urgently needed, and any unfinished CoCG business should be made publicly available as soon as possible**. As a second step, this crucial and opinion-shaping political platform of discussion needs to be **reformed to become, on the one hand, inherently transparent and, on the other hand, more efficient in its decision and implementation procedures**.

Striving for further cooperation and harmonisation in taxation matters within the EU, a **European umbrella body should be established**, to strengthen the cooperation and coordination of the national tax authorities in the fight against tax evasion, **tax avoidance and aggressive tax planning**. This body would (i) coordinate and supervise the EU policy initiatives for administrative cooperation and exchange of information in tax matters, (ii) harmonise efforts and produce relevant and timely policy reports and proposals for further strengthening of EU tax cooperation and coordination, and (iii) comment on taxation legislation in the member statesand promote best practices.

Along the same line of thought and for the purposes of effectively fighting both money laundering and tax evasion, an efficient and timely communication between the national Financial Intelligence Units (FIUs) is necessary. This is why an **EU FIU should be established** so that databases become centralised,automatic exchange of information between the national FIUs becomes immediate and cross-border cases of money laundering can be fought more effectively.

One current major outstanding issue in the European Union is the case of taking a clear position on internal irregularities. Looking at various sources of possible, plausible and objective criteria on the definition of a tax havens, the European Union would not escape from having a few member stateson the list, and a few more if the Overseas Countries and Territories were to be added to this list. In short, the Commission should **establish a scrutiny mechanism which could lead to a list of EU tax havens** based on objective and politically neutral criteria, and following this, taking up the fight to eradicate the measures and practices which land these countries on the list.

Tax practices which are already known to be harmful, such as patent boxes and letterbox companies, should be banned in the EU, and multinational corporations should be required to publish basic information about tax rulings issued to them by governments.

To sum up the most pressing measures needed are:

8 Change from the unanimity requirement in matters of direct taxation matters to a system of qualified majority

9 Reform of the Code of Conduct Group to become transparent and inclusive and more efficient in its decision procedures

10 Code of Conduct Group paper outlining any unfinished business to be made publicly available

11 A European umbrella tax body to be established

12 A European Financial Intelligence Unit to be established

13 A list of European tax havens

14 An EU ban on tax practices that are known to be harmful, including patent boxes and letterbox companies

15 Multinational corporations should be required to publish basic elements of tax rulings issued to them by governments.

DRAWING THE CONSEQUENCES: CALL FOR RESPONSIBLE POLITICAL BACKBONE

Once the basic elements on which to base the fight have been agreed and the criteria of putting our own house in order have been put forward, it will be time to install consistent and consequent political decisions. The goal should be **to end the use of any kind of tax haven or offshore secrecy structure**.

In this sense, any natural or legal person using any such structure should be required to **make publicly available the reasons for this decision**. In particular, it is intolerable that European institutions or member statepublic sectors claim to be committed to the fight against tax evasion and tax avoidance, while making use of dubious structures. In view of this, all **European Union bodies and member state public institutions should make publicly available all financial activity via such structures** together with any justifications for their use.

Going a step further, no **EU/public funding or any public project, public procurement or similar should in any way contribute to help tax evasion and tax avoidance**, and consistent blocking of any such projects are to be prescribed by law.

To sum up the most pressing measures needed are:

16 Ban the use of secrecy structures such as letterbox and shell companies as well as tax havens

17 The use of secrecy structures to be subject to:
a. Compulsory declarations of justifications
b. Compulsory reporting of all details regarding each transaction and business relationship

18 No public funding, public procurement procedure or similar should in any way contribute to or help tax evasion and tax avoidance and if this is found to be the case, the ongoing project is to be stopped with immediate effect

WEALTH MANAGERS AND INTERMEDIARIES

It is key to tackle the foundation and network of the few who have access to and provide services **of enablers in the wealth management industry**.

For developed countries and tax havens, strong provisions on reciprocity should be applied to ensure that automatic exchange of information goes both ways. For developing countries, a transition phase should be offered to allow countries, which comply with the confidentiality requirements, but are not yet able to send information back, to receive information without any reciprocity requirements.

Furthermore, research into the various tax leaks reveal that much aggressive tax planning behaviour is maintained and exacerbated via some largely self-regulated sectors. In the forthcoming revision of the Anti-Money Laundering Directive, the Commission should ensure a shift from self-regulation to appropriate supervision in a first step via either a **separate and independent national supervisor, or a new EU Anti-Money Laundering Authority**.

It has to be said that whereas the tax evasion and tax avoidance industry are prominent financial sectors, a relatively small portion of actors is concerned in the financial world. Indeed, often it is the very same technical experts drafting the legislation in the field who also advise entities and rich individuals in circumventing these very laws. It is therefore vital that the issue of conflict of interest is thoroughly addressed and that existing codes of conduct and corporate social responsibility policies are strengthened. Ultimately, however, conflicts of interests of this kind should be made made illegal by law. Indeed, strict legislation on the **separation of accounting firms and financial or tax service providers as well as for all advisory services should be put into place as soon as possible at the same time that a European incompatibility regime for tax advisers preventing them from advising both public revenue authorities and taxpayers should be implemented**.

Lastly, strong protection of whistleblowers who act in the public interest and expose criminal activity, tax evasion and avoidance is required. The 2018 Commission's proposal to strengthen whistleblower protection across the EU is, therefore, welcome.

To sum up the most pressing measures needed are:

19 Legislation on the separation of accounting firms and financial or tax service providers as well as for all advisory services

20 Legislation on a European incompatibility regime for tax advisers preventing simultaneous advice to public revenue authorities and taxpayers should be implemented

21 Legislation to ensure strong protection of whistleblowers

CORPORATE TAX: HALTING THE RACE TO THE BOTTOM AND TAX COMPETITION

Countries compete with each other on both the tax base and the tax rate. To limit the negative effects of tax competition, politicians must propose solutions to favour cooperation instead.

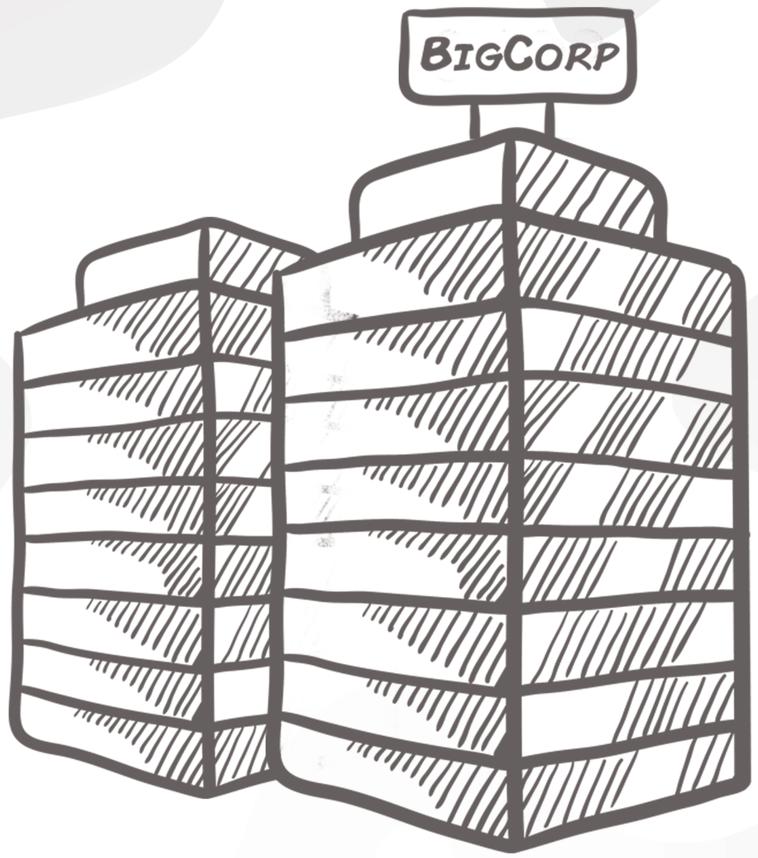
To solve the challenged posed by tax base competition, we must stop the fragmentation of the tax systems which is mainly due to an outdated system not taking into consideration the economic reality of our globalised cross border activities and digitalised world.

To this end, the **Common Consolidated Corporate Tax Base (CCCTB)** proposal is a vital instrument in the fight against base erosion and profit shifting within the EU. The European Parliament swiftly adopted its response to the Commission proposal, adding criteria to tax digital activities as well without physical establishment, but progress in the Council remains locked.
The CCCTB would streamline the tax base calculation in member states, making it comparable across EU jurisdictions . It would eradicate fragmentations and allow for clear rules on intra-community cross-border movements.
To strengthen the proposal and to progress on the taxation of multinational firms however, the **EU should apply the formula apportionment to global profit of corporations** and not simply the EU profits so that transfer pricing does not apply anymore. Whereas tax rates are indeed a member state competence, it is also clear that an even more efficient version of the CCCTB, would be one with harmonised minimum **effective tax rate**.

In fact, tackling tax base competition goes hand in hand with stopping corporate tax rate competition. Such limitation can be ensured through a minimum effective level of tax paid, otherwise, there is a high risk that the tax race to the bottom we are witnessing continues to speed up.

Setting up a minimum effective tax rate means to develop a set of tools allowing to duly tax revenues exiting the EU but also to avoid having intra EU tax competition. As the current EU corporate tax rate average is set at approximately 22% in 2018*, it is proposed to ensure a **minimum level of taxation on corporate profit at 18%**.

* Taxation trend in the EU, Table 4: Top statutory corporate income tax rates (including surcharges), 1995-2018, European Commission 2018



A MINIMUM EFFECTIVE CORPORATE TAX OF 18%

Such minimum effective tax rate can be implemented at EU level through a common minimum effective tax rate within the CCCTB proposal. It should be accompanied with anti-abuse measures such as strong Controlled Foreign Company (CFC) Rules, withholding taxes on risky types of payment such as Interests and Royalties, and a general anti abuse rules in double taxation agreements. Some EU member states have set up their corporate income tax rate at a lower level than 18%. For those six countries*, it is proposed, as a first step, to require them to ensure a minimum effective level of taxation representing 80% of the nominal tax rate.

It is also important to tackle the issue of cross-border conversions, and **clear rules on the transfer of a company's headquarters in the European Union** should be established. From a very practical perspective, this could be done via the Company Law Directive.

A level playing field for all taxable actors must be a fundamental cornerstone of any new tax system aiming to be fair. Regarding favourable treatment and tailor-made "special conditions", it seems clear that a shift away from favouritism is needed, and one option could be that no tax exemptions are granted. As an alternative, any individual, entrepreneur, company, multinational who contributes in a positive way to the overall good of the society via e.g. job creation, green and/or sustainable initiatives or similar initiatives could benefit from other rewards of incentives such as public subsidies, economic schemes, certified positive branding or other.

In any case, the EU should have a **better understanding of tax incentives** on its territory to limit tax competition. This means it would be essential to list all type of incentives, assess how much it cost to the EU and agree on common rules to limit the harmful financial impact of tax incentives. Tax incentives should indeed be submitted to rigorous economic and risk assessments and should also be regularly reviewed. When no positive economic impact has been proven on inclusive growth, the incentive of the scheme should be considered as harmful and repealed.

Tax and financial transparency also has a key role to play. Country-by-country reporting information concerning major banks has been publicly available since the introduction by the Parliament of this provision in the Capital Requirement Directive IV legislation, and has revealed that these major financial institutions set up subsidiaries in special tax jurisdictions or jurisdictions with low or non-existent corporate tax rates. The reporting information also showed** remarkable discrepancies between their overall profit made in overseas jurisdictions, their activity, their amount of tax paid and the number of employees in those same jurisdictions.

No company has any real valid reason to not be transparent about its tax information, unless the purpose to benefit from secrecy and aggressive tax planning schemes. Therefore, **public country-by- country reporting should be made compulsory** for all large multinational corporations operating in the European Union, requiring those large companies to disclose information of where they make profits, where they create economic value and where they pay taxes, per country, for each country where they operate. This would enhance transparency on tax information and public scrutiny of companies by giving the wider public access to information about the profits made, subsidies received and the taxes they pay in each jurisdiction where they operate. It would also work as an incentive for all major companies to engage in responsible tax compliance.

To further enhance transparency and as a supplement to public CBCR, all large companies should publicly file their tax returns. Public CBCR shows indeed how much tax is paid in each country but it will not shed light on how companies translate their accounting profit into taxable profit. **Public tax returns** filing for large companies is a vital tool in the battle against organised tax avoidance.

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* Bulgaria, Ireland, Cyprus, Lithuania, Hungary, Romania in 2018

** Oxfam study 2017: Opening the vaults: the use of tax havens by Europe's biggest banks

Such measures would bring both the benefit of increased transparency, as well as certainty that that the measure will not have unwanted side-effects on the tax income of governments.

<u>To sum up, the most pressing measures needed are:</u>

22 CCCTB, including a digital permanent establishment and a minimum effective tax rate

23 A European legislative package aiming at ensuring a minimum effective level of taxation of 18% through a combination of anti-abuse measures and limitation to tax deductions

24 Clear rules of the transfer of a company's headquarter in the European Union

25 Soft law: positive incentive policy as an alternative to tax incentives

26 Definition, review and common rules to ensure that dodgy tax schemes (so-called harmful tax practices) are repealed in Europe

27 Public CBCR, including full disaggregated accounting from all countries where a multinational corporation operates

28 Public filing of large companies' tax returns

EXTERNAL DIMENSION

The Council published on 5 December 2017 a **common EU list of non-cooperative tax jurisdictions**. Whereas efforts to tackle tax havens are to be welcomed, there is a clear need for further political engagement to ensure that this list is fit for purpose and used to bring about changes in the legislation of the jurisdictions concerned. For instance, **the list should capture jurisdictions which seemingly comply with European and international tax rules, but in practise operate as tax havens**. Then, **no corporate tax or a close to zero effective corporate tax rate should be a mandatory criterion for including a country on the list**. Lastly, for such a list to serve its purpose, **strong and deterrent counter-measures and sanctions should be foreseen against companies, financial institutes and intermediaries proven to be involved in economic activities in those jurisdictions or proven to have facilitated illegal or harmful corporate tax arrangements**, also when involving legal vehicles in those jurisdictions. These **sanctions should include exclusion from EU procurement procedures, from EU funding and from EU investment programmes and the suspension of third country equivalence regimes in the financial sector, as well as of double taxation agreements.**

A powerful instrument which the EU could create is that of conditioning its external relations on commitment to the fight against tax evasion and tax avoidance. As already noted, this is a fight which should be fought together, the problems are global and therefore ultimately requires a global response. As a first step, the European Union should **include measures for tax cooperation and against harmful tax practices in all its trade agreements**. In any case, the EU should **refrain from concluding trade agreements at all with jurisdictions defined by the EU as tax havens**.

Lastly, it is also key to ensure that developing countries are fully able to participate in the setting-up of international standards and in the formulation and reform of global tax policies. Whereas the OECD and G20 have highly selective memberships, the United Nations allows equal participation for all countries. Therefore, a **global tax commission within the UN framework**, well-equipped and with sufficient additional resources, should be set up so as to allow all countries, including developing countries, to take part on an equal footing.

To sum up the most pressing measures needed are:
(pending unitary approach)

29 Criteria of the common EU blacklist of non-cooperative tax jurisdictions are to be strengthened, namely:

a. Jurisdictions which seemingly comply with European and international tax rules, but which in practice operate as tax havens should be caught by updated rules
b. Jurisdictions with no corporate tax or a close to zero effective corporate tax rate
c. Countermeasures and sanctions to apply to companies, financial institutes and intermediaries proven to be involved in non-substantial economic activities with the objective of reducing their (or of their clients) tax obligations:
i. exclusion from EU procurement procedures, from EU funding and from EU investment programmes
ii. the suspension of third country equivalence regimes in the financial sector and double taxation agreements

30 Inclusion of anti-tax dodging clauses in all EU trade agreement with third countries

31 EU to block any trade agreement with jurisdictions defined by the EU as a tax haven

32 A global, transparent, well-resourced tax commission in the UN framework to coordinate efforts to fight tax havens and ensure that all countries participate on an equal footing

ABOUT THE S&D GROUP

The Group of the Progressive Alliance of Socialists and Democrats (the S&D Group) is the second largest political group in the European Parliament with 187 members from all 28 EU Member States.

We stand for an inclusive European society based on principles of solidarity, equality, diversity, freedom and fairness. We campaign for social justice, jobs and growth, consumer rights, sustainable development, financial market reforms and human rights, to create a stronger and more democratic Europe, and a better future for all citizens.

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