Progress report on taxation matters (draft)

This is summary of tax developments over the past year regarding EU measures to fight tax fraud and avoidance and to introduce a tax on financial transactions (FTT). A number of our demands[1]as well as those of the European Parliament, EESC and social, tax justice NGOs have or might become subject to EU legislation. These aim to lift the secrecy of tax dodging by multinationals and wealthy individuals via the introduction of automatic exchange of bank information to tax administrations, country by country reporting by multinationals and banks; public registries of wealth. This is undeniable progress.

But major culprits with the EC approach remain:

- Impact of austerity is overlooked in both ways
  - ✓ Fewer human and material resources in tax administrations that makes it even more difficult to clamp down on tax dodgers[2] (an EPSU update of the scale of job cuts will soon be available)
  - ✓ The above not only deteriorates the quality of public service provision but also delegitimises the purpose of taxation
- Domination of business interests in EC tax expert groups
- EC broader approach to taxation remains biased towards increasing indirect tax to the detriment of direct progressive tax, as it continues to be reflected at the national level. To note also the ongoing EC consultation regarding VAT exemptions for the public sector

Automatic exchange of information (AEI)- Towards the end of bank secrecy?

A recent study by French economist Zucman at the LSE on tax havens, estimates *The hidden wealth of nations* at € 5.8 trillion, of which 80 % is undeclared to tax administrations, which represents an annual fiscal loss of €120bn for governments. This does not take account of aggressive tax planning by multinationals. It is based on various sources including statistics from the Swiss national bank which it is claimed have not been used before. Last November, Tax Commissioner Šemeta said that "*it is clear that the era of bank secrecy is coming to an end"*. Yet according to Zucman, tax havens have never been so prosperous. The largest share of undeclared wealth "belongs" to EU citizens, not Russian oligarchs or African dictators. Hence the need for EU-coordinated actions.

With the world's two largest economic blocks, the EU and US, now pushing the automatic exchange of information (AEI), there has been a positive shift in this direction. Under this system, member states collect data on income earned in their territory by non resident individuals so that it can be taxed in line with the rules of the Member state of residence. The big difference with the existing systems at EU or OECD levels is that AEI will become a generalised automatic system, not upon request which has proven to be ineffective, has created double standards and led to the proliferation of secretive yet legal company structures to hide wealth.

<u>At present, at EU level two directives deal with AEI:</u>

- the savings taxation directive - STD (2005)
- the administrative cooperation directive (2010).

Both have been subject to revision proposals, that must be agreed by unanimity in Council, to extend their scope in light of international developments.

The (tax) **Administration cooperation directive** entered into force in January 2013 and will, introduce automatic exchange of *available* information from 1 January 2015 on income from

[1] see http://www.epsu.org/a/9521
[2] for example the UK tax administration has 65 employees in the area of aggressive tax planning compared to the UK-based 250 transfer pricing specialists amongst the big 4 accountancy firms

employment, directors fees, life insurance products, pensions and ownership and income from immovable property.

Last June, the Commission proposed a revised directive to extend the scope to dividends, capital gains, other financial income and account balance by the same deadline, in a stated effort to fight tax fraud and evasion. For these items, the AEI will be mandatory. This is because EU member states will have to make that information available to the USA in line with its FATCA - Foreign Account Tax Compliance Act.

The European Parliament (under consultation procedure, Romanian S&D MEP Cutaş) delivered a positive opinion in December 2013 with some helpful comments. It rightly reminds that the purpose of AEI is that the information must be used and not just passed on. As called for by EPSU, it also urges Member States to mobilise all human, technological and financial resources needed, taking into account the amount and the complexity of information subject to the automatic exchange starting from 2015.
The proposed directive is now awaiting Council agreement by unanimity. It should be in place in time for the emerging OECD global standard on automatic exchange of information (see below).

The **savings taxation directive (STD)** introduced in 2005, provides for automatic exchange of information on the *interest* that non-residents receive from savings in their territory. Austria and Luxembourg, amongst the largest tax havens when it comes down to wealth management, were allowed to apply a withholding tax of 35% instead. Last year, Luxembourg, announced it would apply the directive from 2015. Austria conditioned its support to Switzerland reciprocating similar arrangements to lift its bank secrecy.

In 2008, the EC proposed a **revised directive** to cover investment funds, pensions, innovative financial instruments and importantly payments made through trusts and foundations- the latter exclusion from the initial directive has led to transferring savings into those legal yet bogus letter box type company structures. The proposed revision was opposed by most economic operators as well as Luxembourg and Austrian governments.

Six years later, the revised directive was finally endorsed by the **European Council of 20 March last,** given its significance in combating tax fraud and tax evasion based on a *"look-through approach, requiring reasonable steps of tax authorities to establish the identity of beneficial owners."* It was formally adopted at a Council meeting on 24 March. The deadline for transposition in domestic law is January 2016. This is good news.

Interestingly, the revised directive contains the following two annexes:

- A list of jurisdictions not subject to effective taxation and related legal structures such as trust, foundations, etc – this looks like a **European blacklist of tax havens** as we call for, the Commission denies it is the case;
- List of items to be provided annually by Member States to the Commission to include economic items as well as beneficial owners resident in other Member States and Dependent/Associated Territories – this provides a good basis for a **centralised registry of beneficial owners** of legal structures, as we call for.

That said, the revised directive has two weaknesses. It does not cover dividends or capital gains (the bulk of hidden wealth[3]) from the speculative financial instruments. The EC argues that the directive is not the most suitable for those items of income whose tax treatment varies considerably between Member States.

[3] Zucman, *The hidden wealth of nations*, a study on tax havens, 2013

Also non-EU financial centers are not covered. The EC response is that once all MS agree, bilateral/EU tax agreements can be revised accordingly.

To this effect, last year, the Commission was mandated by Council to negotiate stronger savings tax agreements with Switzerland, San Marino, Andorra, Monaco and Lichtenstein[4], renown tax havens. Switzerland is in the process of formalising its mandate. The other 4 now have their own negotiating mandates, and formal negotiations have begun. Other major tax havens that attract savings such as Cayman Islands, Bermudas, Singapore and Macao and partially Japan have yet to engage in the same level of transparency and exchange of information (EC list). Switzerland as well as Liechtenstein and Singapore have committed to FATCA agreements with the US[5].

At International level, the OECD, with a G20 mandate, is preparing the ground for a new global standard of automatic exchange, planned to become operational in 2016. In brief, the OECD seeks to "multilateralise" the FATCA.

On 23 February last the G20 Finance Ministers agreed the new global standard, implementation plans of which are to be agreed at their next meeting in September.

This is also good progress but not universal yet. Whilst some non OECD countries are taking part in the OECD discussion, without widespread participation in the process, some clandestine activity will always be displaced to jurisdictions that refuse to cooperate.

Proposals for sanctions are also needed to pressure recalcitrant jurisdictions. EPSU (as well Parliament and Oxfam) is calling for sanctions targeting the users of secretive or non-cooperative jurisdictions through a ban on public contracts and state aids; but it remains difficult to know who the real users are. Another stick could be used in the context of trade with the application of customs duties for those jurisdictions that refuse to cooperate (Zucman's proposal). This demand could be pressed in the framework of EU bilateral trade agreements.

To conclude, don't count your chickens before they're hatched. There is undeniable progress towards lifting bank secrecy, but the above legislative or OECD measures should be implemented rather sooner than later, be universal and supported by stronger sanctions including trade sanctions. The information received by tax administrations will also have to be checked against the economic and tax reality that hide behind shell companies and opaque financial reports.

This is why, tax administrations also need centralised public registry on trust, foundations, etc and Country by country reporting, as essential additional tools..

Public registries of the real beneficial owners of companies, trusts and other corporate structures: progress via the anti money laundering directive

When governments implement automatic exchange of information, tax administrations will need to check that the information is accurate. For this they need compiled, centralised lists to reduce their share of detective work. So far the discussion has focused on national registries but clearly there is a strong case for an EU-wide (see above re: Savings Directive) and ultimately a global registry.

[4] To be confirmed whether this is on the basis of the amending directive

[5] In case of non compliance the FATCA provides for a withholding tax of 30% on interest and dividends; however banks and investment funds may well decide to invest in other parts of the world in which case there is no sanction foreseen; to help support compliance the US system relies on whistle-blowers in exchange for financial awards

An opportunity arose at EU level in the context of the review of the **anti money laundering directive.** The reviews aims to close regulatory loopholes and put an end to the ownership secrecy that is a key tool to dodge tax payments and to hide money from tax evasion as well as drugs and arms trafficking and corruption.

The revision proposes that all companies, trusts and similar legal arrangements internally hold their own beneficial ownership information and make this available to relevant government authorities and financial institutions *upon request (*Articles 29 and 39). Now this bears the same limitations as with exchange of information upon request which proved ineffective which is why it is now replaced by an automatic system. At present, companies that undertake illegal activity can move their dodgy business elsewhere before responding to authorities' investigation with nothing to declare.

The proposed change implies that law enforcers know already about infractions and would have to pro-actively approach a company for its ownership information. This is not efficient, is subject to political vagaries and arguably expensive.

To be effective, the draft directive should provide for public registries of ownership of companies and other corporate vehicles. A central register would be much more efficient and cheaper including in the many cases where one company uses several banks.

On 11 March, Parliament agreed, in first reading stage, by a very large majority to introduce a public centralised registry on wealth.

These registries will allow public authorities to access information on beneficial ownership very quickly and without companies knowing when they are checked.

Social NGOs want these registries to be accessible to the public to increase the deterrent effect and thus a far higher rate of compliance. This would include access by overseas agents such as the police and financial institutions, including in developing countries and by researchers, media and non-governmental organisations who can shed light on illegal practices.

EPSU supports this demand, after all, the above proposals would not have been on the table without civil society asking for them. Company owners are a matter of public interest and concern. Increased transparency and public debate can give Member States the public support they need to clamp down on economic crime. Local authorities should also have access to this registry.

Further pressure from civil society and EPSU members will need to ensure that Council, and newly elected MEPs support the above amendment to the anti-money laundering directive.

Country by country reporting (CBCR)

Multinationals' country by country reporting to tax administrations, across the board of the economy, is another essential instrument that will make the life of tax inspectors easier. Today very few companies provide a comprehensive country by country reporting.

CBCR will help tax administrations to have a relatively simple form to provide information about the companies into which they enquire so they know where those companies make their profits, and where they pay tax and how many employees they employ and where. It would help them to know, for example, that a high proportion of profits were being transferred to a low-tax jurisdiction. That type of information would enable them to assess risks and determine where to put their resources. It would reveal some of the most obvious tax avoidance strategies.

At EU level, CBCR is now mandatory for:

The oil, gas, mining and quarrying and logging industry

Last June, the revisions of the **Accounting and transparency directives**[6] were agreed by Council and Parliament including CBRC requirement in listed and large non-listed companies with activities in the extractive industry (petroleum, gas, mining and quarrying) and the logging of primary forests. They will have to report any payments made to governments on a country-by-country basis. This is in response to international developments, in particular the inclusion of a requirement to report payments to governments in the Dodd Frank Act in the United States. As they include the logging industry and large unlisted companies, the EU disclosure requirements are more comprehensive. They also provide for public disclosure unlike the US act.

The new rules apply to companies that exceed two of the following criteria: turnover of €40 million, total assets of € 20 million and 250 employees.

The above coverage will be on a consolidated basis rather than a stand-alone basis. In other words, a medium size holding company based in the EU with a large subsidiary extracting company in a third country would be covered and vice-versa.

The payments to governments that must be disclosed include tax on income, production or profits, royalties and dividends, payment for infrastructure improvements.

The deadline for transposing the new regulations is 20 July 2015

Member States will be required to provide that appropriate administrative sanctions and measures are applied. Parliament also introduced a review clause that will oblige the European Commission to explore the possibility of including additional sectors and disclosure provisions in the scope of the directive within three years after its entry into force.

And for the banking industry

Last year, it took only 4 months to make CBCR mandatory in the banking sector via the Capital Requirements directive IV[7], and will have to be transposed in domestic law by 1.1.14 with first reports ready for this year on 30 June. This is a fast decision by EU standards.

This measure applies to banks, building societies/credit institutions and investment firms headquarted in the EU and EU operations of groups who are headquarted outside the EU.

They will have to disclose profits, turnover, tax on profits, number of employees, government subsidies and the geographical location of their activities.

The information will have to be disclosed publicly from 2015 (with some possible exceptions to be evaluated in the first year of the implementation of the directive).

This is progress.

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6 in order to ensure a level playing field between companies, the same disclosure requirement has been incorporated in both proposals.
7 This is part of implementing BASEL III into EU law with the expressed objective to pally weaknesses in financial regulation

The above provides a good basis to introduce mandatory country by country reporting across all sectors of the economy. The information requirements for the banking industry are broader and more in line civil society demands than those for the extracting industry.

A number of NGOs are pressing for the introduction of across the board CBCR in the context of the **Revision of the Accounting directives**[8] as regards disclosure of non-financial activities submitted to Council and Parliament by the Commission on 16 April 2013.

The objective is to increase EU companies' transparency and performance on environmental and social matters. It applies to companies with more than 500 employees. They will be required to disclose in their annual reports relevant and material information on policies, results and risks concerning environmental aspects, social and employee-related matters, respect for human rights, anti-corruption and bribery issues, and diversity on the boards of directors. According to the Commission, fewer than 10% of the largest EU companies disclose environmental and social information regularly- which shows that the existing directive has not been effective. Business Europe is lobbying against many of the EC proposals.

In Parliament an indicative plenary vote is scheduled for 15 April (1st reading/single reading) – an initial agreement was however reached by Council (vote by QMV) and Parliament on the amendments to the directive. A review clause has been tabled that will include CBCR.

The **OECD** is working on a global template on CBCR in the context of its action plan against Base Erosion and Profit Shifting (BEPS). TUAC, the OECD' s trade union advisory committee, is coordinating the trade union responses to OECD consultations http://www.tuac.org/en/public/e-docs/00/00/0E/3D/document_doc.phtml

The OECD template aims to facilitate transfer pricing risk assessment, especially for complex aspects such as financing (including use of derivatives). The details are still under discussion, with regard to the definition of profits (by country or by business segment?), the way they are reported (tax or financial accounting basis?), the measurement of taxation (tax liabilities & taxes actually paid?), the disclosure of profit drivers (employees headcount & payroll, physical assets, sales to third parties by destination) and to whom the report should be sent to (all relevant tax authorities, or only the administration where the headquarters are located?).

Importantly, TUAC is examining the impact of business tax restructuring on workers' rights to information and consultation, on wages and jobs. Trade union experience points to increased opacity of corporate structures – including reduced worker access to information on the company's business planning.

There is definitely an area worth exploring further including the use of CBCR that could be made in the context of European or Gloabal Works Councils.

General Anti Abuse Rule and tackling aggressive tax planning via hybrid loan arrangements – EP progress via the revision of Parent-subsidiary directive

On 25 November 2013 the Commission adopted a proposal to amend the **Parent Subsidiary Directive (PSD).**

The Directive's initial purpose was to avoid companies' double taxation in the single market, however some of provisions have led to double non taxation in particular through the **hybrid loan arrangements** which were found harmful by the EC Business Code of Conduct Group.

[8] Fourth and Seventh Accounting Directives on Annual and Consolidated Accounts, 78/660/EEC and 83/349/EEC, respectively

The proposed amendment would stop the hybrid loan arrangement by making the payment taxable in the member state of the parent company if the member state of the subsidiary treats the payment as a tax-deductible debt repayment.

It is also proposed to introduce **a mandatory common anti-abuse rule (GAAR)**. The rule will allow member states to ensure that taxes are levied based on the actual economic substance of a transaction. This would be quite a significant change to common practices, allowing a more preemptive and proactive approach to tax avoidance.

EPSU welcomes both amendments.

In Parliament (consultation procedure), the rapporteur is Ms Kleva Kekus, S&D MEP[9]). Her report supports the introduction of an obligatory GAAR and seeks, amongst others, to strengthen the requirements with regard to hybrid loans (subject-to-tax clause).

To conclude this report, EPSU welcomes the above legislative progress that will certainly help lift bank and company secrecy. But this progress must first be properly implemented and be matched by public centralised wealth registries, generalised anti tax avoidance rules, EU-coordinated sanctions against tax havens (see below) and a positive progressive tax agenda supported by well-resourced tax administrations. The case to end large scale cross border tax dodging cannot be effective if the case for a positive agenda for progressive taxation to fund public services is not equally forcefully made.

EC good tax governance platform: obstruction by business

The tax good governance platform, an expert group chaired by the Commission, was established in June 2013 and will run until 2016.

Its mandate is relatively clear: to help implement the EC action plan notably two recommendations regarding tax havens (not based in the EU) and aggressive tax planning. The action plan was endorsed by Council in May 2013.

It puts together the national tax administrations and representatives of business, tax advisers and civil society including EPSU as the only trade union organisation. The Chatham house rule applies i.e. you can say what was said but not who said it (EPSU and Christian Aid have expressed reservations as to the application of this rule since we represent not individuals but our organisations on the platform).

The platform held its third meeting on 5 February 2014.

First on the composition of the platform. EPSU and other NGOs members of the platform consider it is unbalanced in favour of corporate interest (5 to 8 seats). A change took place earlier this year whereby tax Justice Network, that could not attend the meetings, had been replaced by CESI. This does not alter the unbalanced composition of the group. Alter-EU of which EPSU is a member, after a number of complaints to the Commission, Parliament, is now hoping that the European ombudswoman will launch an official enquiry into EC expert groups.

Second on content, concrete proposals were the table, such as how best and how to start blacklisting tax havens – which ones should we go first, how to coordinate national blacklisting against common criteria to define tax havens i.e; transparency, exchange of information and fair tax arrangements; introduction of a general anti-abuse clause against aggressive tax planning, and coordinating and reinforcing G20-backed OECD's plan against base erosion and profit shifting (BEPS).

[9] Also rapporteur for the report on EC action plan against tax fraud that reflects most EPSU demands

Instead of moving forward, corporate/employers' representatives blocked progress on terminological grounds. The length and frequency of their interventions were clearly problematic, that can be summed up as follows:

- EU rules duplicate or overlap with the OECD initiatives including BEPs,
- add administrative burdens,
- do not draw the lines between unintended double non-taxation and intended exemptions in the Member State's national tax legislation, in other words between illegal tax fraud and legal tax avoidance.

Clearly any measures to clamp down on tax evasion/avoidance are cost effective , for governments in terms of public revenues, but also for Business who also benefit from an educated workforce, infrastructures etc. The OECD measures are not as binding as EU directives. Moreover, any potential increase in compliance burdens for business should be balanced against the burden for tax administrations and set into the context of the broader benefits for society of enhanced transfer pricing reporting.

More positive was a presentation by the Commission on the state of play with the revised proposal for a Common Consolidated Corporate Tax Base (CCCTB) which has been in gestation for now 10 years. The proposal would be arguably a first step towards setting a unitary taxation system of intra group transfers. There is no space to go into detail in this report. EPSU as well as the ETUC support a mandatory CCCTB that should include not only a common base but also a common minimum tax rate. Today, in light of the budgetary constraints and renewed appetite to recuperate lost tax income from multinationals, Council may be better disposed to support the proposal.

To conclude, so far the work in the platform has not led to tangible results.

The list of members and minutes of platform meetings are published @
http://ec.europa.eu/taxation_customs/taxation/gen_info/good_governance_matters/platform/index_en.htm

Actions by affiliates

Amazon case– tax dodgers are also wage dodgers!

GMB together with French CGT and German Ver.di are coordinating protest and strike actions at Amazon plants to protest at both poor pay and working conditions and tax dodging practices (whilst being a state aids recipient).

- UK : On 13th February last GMB held a protest at nine workplaces in protest at Amazon's failure to pay proper taxes and a living wage of £7.45 per hour to their employees and to respect the rights to union representation and collective bargaining. Amazon has paid no corporation tax in the UK for the last three years although they had sales of more than £7billion in the UK. Amazon is able to avoid taxes, including some VAT, by driving sales through a European head office in Luxembourg that employs 380 people compared to 15 000 in the UK. The Amazon transfer of UK operations to Luxembourg was reclassified as " order fulfilment" business http://www.gmb.org.uk/newsroom/asbo-for-amazon
- Germany: in December 2013, Verdi held strike actions at Amazon's logistic centres in Bad Hersfeld, Leipzig and Graben. A delegation of German workers also protested at Amazon's headquarters in Seattle
- France: CGT has called for a number of strikes last year and earlier this year to protest at anti-social working conditions. Amazon is subject to a tax adjustment notice of $250 million for the period 2006-2010.

Tax haven free cities

A local politicians-led initiative seems to be gaining ground in a number of EU cities to ban tax havens in cities in France, Sweden, Norway, Finland, Spain and the UK, see www.taxhavenfree.org or in French http://www.stopparadisfiscaux.fr/. Whilst tackling tax evasion is mainly a responsibilty for politicians at national, EU and international levels, in anticipation of an international framework a network of local politicians seek to stop taxpayers' money from going to companies, banks or funds that use tax havens for tax evasion. The proposed alternatives are in line with EPSU's, e.g. remunicipalisation of services, imposing requirements for country-by-country reporting, so that local authorities can check whether bidders in public procurement have paid a fair rate of tax in every country they operate in.In addition, a Fair Tax Mark is being launched in the UK, the world's first independent tax accreditation scheme: www.fairtaxmark.net.

EESC hearing on follow up to EC action plan against tax fraud and avoidance

On 13 March, EPSU took part in a panel at a hearing organised by the European Economic and Social Committee to follow up on the implementation of the abovementioned EC action plan against tax fraud and aggressive tax planning. EPSU was invited to share its experience as a member of the EC good tax governance platform. Speeches and presentations are available @ Thematic discussion on The Fight Against Tax Fraud and Tax Evasion

Financial transactions tax - FTT

One year after the publication of the EC proposal for a FTT via enhanced cooperation of 11 Member States - Belgium, Germany, Estonia, Greece, Spain, France, Italy, Austria, Portugal, Slovenia and Slovakia – tractations are ongoing regarding its final scope.

A decision is expected on 22 May.

There has been much renewed mobilisation of anti-poverty networks and trade unions ahead of the 19 February Franco-German summit where decision on the scope of the draft directive was expected. This came on the heels of press reports that the French government was seeking to reduce the scope of the proposed directive notably by exempting derivatives.

A coordinated mailing was addressed to the largest governments of the 11 FTT coalition, that was signed by more than 300 organisations including EPSU, PSI and ETUC.A meeting was also organised by a group of French and German Socialist and Green MEPs, with the participation of the ETUC, to reiterate the support for a broad FTT which should be adopted before the European elections. For a summary of the above actions http://www.epsu.org/a/10208

This followed on the letter last November sent by the French unions, ETUC, ITUC and TUAC to President Hollande who, in a short response, expressed his support for a European tax with a broader base than the French FTT recently re-introduced in the country.

The Franco-German Summit on 19 February, announced that a decision on the FTT would be reached before the EU elections on 22 May.

The absence of public detail on the scope and allocation was disappointing, but it can also be an indication that Germany wants a more ambitious FTT than France, and will hopefully actively be harnessing support from other countries to this effect.

Ahead of 22 May, EPSU affiliates are reminded to circulate widely the web petition addressed to the 11 governments to agree a broad FTT now www.financialtransactiontax.eu