EPSU
EUROPEAN PUBLIC SERVICE UNION

Brussels, 20 May 2016

Dear honourable members of the Economic and Monetary Affairs Committee,

We are writing to you concerning the upcoming vote in the Economic Monetary Affairs committee on the Anti-Tax Avoidance Directive report by Mr Bayet.

The European Federation of Public Service Unions (EPSU) represents 8 million public service workers across Europe, including those in tax administrations. For several years now, we have been actively campaigning against corporate tax avoidance and for a fairer, more progressive tax system which is essential to finance public services and redistribute wealth and income.

We would like to bring your attention to some specific recommendations regarding proposed thresholds, scope and definitions.

We were critical of the Commission's proposed Anti-Tax Avoidance Directive, and made it clear that it needs to be strengthened if we are to ensure that the most blatant and abusive tax-avoidance practices are curtailed and that cross-border companies pay their fair share of tax where profits and value are created.

As stated by the Commission, the objective of the ATAD is also to pave the way for a compulsory common consolidated corporate tax base (CCCTB) and for introducing a minimum level effective taxation rate. EPSU, as well as the European Trade Union Confederation, support a mandatory CCCTB for all multinationals with a common minimum tax rate of 25%, as a way for reversing the long-time downward trend in corporate tax rates across Europe. It is becoming increasingly clear that the ultimate goal of many in the financial and business lobby is to do away with corporate taxation by questioning the very principle of progressive corporate income tax. So far they have been quite successful in this endeavour resulting in a fall of 13 percentage points in the EU27 between 1995 and 2014.[1]

Against this background, we urge you to support a strong report in the European Parliament on this proposed directive. Although this is a special legislative procedure, the Parliament again has a chance to send a strong message to member states and the Commission that serious and coherent measures must be taken at European level to tackle this problem. Incomplete legislation with many exceptions and too much slack for multinationals will only reproduce the loopholes, or create new ones, on which tax avoidance thrives.

[1] http://ec.europa.eu/taxation_customs/resources/documents/taxation/gen_info/economic_analysis/data_on_taxation/statutory-tx-rates.xls

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Interest deductibility

Specifically, we ask you to support the lowering of the threshold on interest deductibility from 30% to 10%. This would still fall within the scale elaborated by the OECD BEPS project and would reduce the discrimination in favour of debt financing over equity. Given that intra-group loans are one of the most common forms of profit shifting, only strong limitations of interest deductibility will serve to make this an effective measure against tax avoidance. As governments are clearly engaged in fierce tax competition, it is unlikely they will set lower national thresholds should the proposed threshold remain capped at 30%.

Switch-over clause and CFC rules

We support Mr Bayet's proposal to modify the thresholds for the switch-over clause and controlled foreign company rules to an effective tax rate of 25%. The proposed ceiling of 40% of the member state's corporate tax rate in the current Commission proposal would legitimise tax avoidance within this very generous threshold which, given the extremely low corporate tax rates in some member states, could be as low as single digits.

There are indications from the Council that a higher threshold for CFC rules is being considered, which we would welcome. Given these reports, it is even more pressing that the Parliament send a strong signal that it supports a higher threshold.

Yet, there are also reports of a split in the Council over the scope of these CFC rules, with some member states seeking to water down the criteria on which companies will be assessed. EPSU supports full inclusion CFC rules, with automatic criteria for assessment of entities. We urge you to again send a strong message to member states that the criteria to asses the applicability of these rules must not be subjective. Such subjective treatment would reproduce the problems of arbitrariness we have already witnessed with tax rulings.

Exit taxation

It has become common practice for companies to shift their high value assets, such as intellectual property or patents, from a high tax country to no or low tax countries (in or outside the EU), to avoid paying tax on the profits they generate from these assets. The proposal that all Member States apply an exit tax on assets moved from their territory either to another Member State or to a third country is therefore welcome. Since companies are obliged to send tax authorities their balance sheets containing information on their taxable assets, Member States can see when an asset such as intellectual property have "disappeared". Exit taxation, which is not properly addressed by the OECD's anti-BEPS action plan, will ensure that profits from high value assets cannot be shifted out untaxed and should therefore help increase the tax base.

The proposal applies to assets shifted both outside, and within, the EU. However, to be operational, clearly the proposed directive must include a common definition of permanent establishment.

Permanent establishment

Mr Bayet is correct in highlighting that, without a common definition of permanent establishment across the Union, tax avoidance will still be possible by finding the loopholes in definitions between various jurisdictions. We ask you to support the amendments (article 5

a) introducing such a common definition, without which the other proposed measures (exit taxation, switchover clause) will lose their potential effectiveness.

Patent boxes

We reiterate our call for the phasing out of patent boxes, and ask that you support such a call in the committee vote. These instruments allow multinational companies, such as McDonald's which we have closely examined, to pay extremely low tax rates on income derived from a normal, and indeed essential, business activity: research and development. Encouraging special tax regimes for IP or royalties prioritises one form of corporate income over others and lends an unfair advantage to companies in sectors which are better placed to take advantage of such reductions.

This inequality between forms of income needs to be to address and the loopholes that allow tax avoidance through complex royalty systems, often based on franchising models like McDonald's, closed. As such, we support a **royalties limitation rule** to ensure that tax is paid on the income by the royalty recipient in order for it to be tax deductible for the taxpayer incurring the royalty cost.

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A general anti-avoidance clause rule is an essential tool to tackle or prevent artificial tax arrangements, it already exits in various forms in a large number of Member States although they do not seem to be used consistently, otherwise many tax stratagems such as the one used by McDonald's, which we have examined closely, would have been seriously challenged.

The EC proposes that "non-genuine arrangements (or a series thereof) carried out for the essential purpose of obtaining a tax advantage and therefore not put in place for valid commercial reasons based on economic reality shall be ignored for calculating corporate tax liability if there is no other anti-avoidance rule that specifically covers such an arrangement".

We support this proposal which is again indispensable for an effective fight against tax avoidance based indeed on artificial company structures or entities.

The European Parliament has consistently taken a strong stance on this issue and we urge you to once again send a clear message that large companies must play by the rules and contribute their fair share. We urge you to support a strong call by the Parliament for ambitious European action to tackle tax avoidance.

Yours sincerely,

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