TRADE UNION ADVISORY COMMITTEE
TO THE ORGANISATION FOR ECONOMIC
COOPERATION AND DEVELOPMENT
COMMISSION SYNDICALE CONSULTATIVE
AUPRÈS DE L'ORGANISATION DE COOPÉRATION
ET DE DÉVELOPPEMENT ÉCONOMIQUES

Report on the TUAC Corporate Tax Planning Meeting

Paris, 20 March 2015

Table of contents

The TUAC meeting on aggressive tax planning, held on 20 March 2015 at the OECD conference centre, aimed at a stock taking on the implementation of the OECD/ G20 Action Plan on Base Erosion and Profit Shifting (BEPS) and, beyond, what would remain to achieve to effectively curb cross-border tax avoidance by companies. In addition to a presentation by the OECD Secretariat during the morning session, the meeting included a number of country-specific presentations by trade union and NGO representatives.

Key findings

The two-year timetable of the BEPS Action Plan, to be completed by end-2015, is very ambitious, but the work remains on track and compares favourably with other G20 initiatives and its financial reform track in particular. Maintaining political momentum for tax reform is crucial. There are however a number of concerns with the design and implementation of the Action Plan.

The lack of inclusiveness of the Action Plan is manifested by the limited voice of both non-OECD developing countries and of civil society. This stands in contrast with tax advisers and accounting firms who have been dominating the public consultation rounds. It is only half way in the implementation of the Action Plan that the OECD took the initiative to broaden the participation and to include a selected number of developing countries at the heart of the BEPS process.

There is a serious risk that the outcome of the process will lead to more mess in the revised OECD Transfer Pricing Guidelines than there is today. The integrated business model of MNEs has become a major challenge for the OECD arm's length principle upon which are founded the Transfer Pricing Guidelines. While a shift to a full formulary apportionment system is not feasible in the short term, on the longer term it would be a far more superior method in meeting the BEPS mandate to tax MNEs "where economic activities take place". The OECD continues to oppose any move in that direction. However, the apportionment approach is making some inroads in the BEPS Plan (OECD draft proposals on debt interest payments and on central management services). The case for unitary taxation could also benefit from a renewed discussion at EU-level on a mandatory Common Consolidated Corporate Tax Base.

The agreement on a country-by-country reporting framework is a major step forward. It will be a helpful tool for tax administrations. However the filing system does not provide sufficient guarantees of access for developing countries. More fundamentally, the fact that the agreement leaves no option for public disclosure to protect "business confidentiality" is a serious disappointment. There is nothing in the reporting template that can be considered as commercially sensitive.

The Action Plan is concerned with tax rules and regulations that prevent abusive practices. It is not concerned with institutional aspects and the broader political economy tax planning, including the role of legal professionals in promoting tax avoidance and evasion under the veil of "tax compliance". The Luxleaks scandal exposed not only the opacity of the system of rulings, but also the pivotal role of global accounting firms in setting up aggressive tax planning schemes. For the ETUC, the "big four" audit firms should be split up and steps should be taken to separate key functions such as auditing, taxation and consulting to avoid conflicts of interest.

OECD governments' commitment to curb aggressive tax planning contrasts with post-crisis budget austerity cuts that have hit tax administrations severely. In Belgium in the finance ministry, including tax administrations, job cuts reached -21% for 2006-2014 and are expected to amount to -15% for the next 4 years. Yet the "return on investment" of a Belgian tax administration employee is estimated at €2m per year. For the ETUC, member States should pool their financial means, personnel and competencies of their tax investigation departments. For EPSU, European government must stop job cuts and reinvest in tax administrations if any of the above is to be implemented effectively. At the meeting, it was proposed that governments establish ambitious yet realistic targets for reducing revenue losses due to tax planning and that a monitoring system, through reporting to parliaments, be created to ensure public accountability and to maintain the political momentum for reform.

Several trade union initiatives related to BEPS and tax evasion were reported at the meeting.

In Australia, United Voice conducted research in partnership with the Tax Justice Network on the tax practices of the top 200 listed companies over the past ten years exposing the very low effective tax rate of companies. The report was made public end-2014 and triggered a public debate which led to the creation of a formal parliamentary enquiry into corporate tax planning, with public hearings in April 2015.

In Europe, in the context of high profile tax scandals, the ETUC adopted a resolution in March 2015 among others calling for public country-by-country reporting requirements for all sectors - current EU regulation covers the banking sector and extracting industry. It also calls for limitation of provisions regarding trade secrets, full transparency over beneficial ownership of assets and funds and aligning transparency and reporting requirements of private funds and trusts with those of medium and large companies.

Weeks before the meeting, the EPSU released a report jointly prepared with other trade union centres, exposing the tax evasion schemes set up for McDonald's European operations. In 2008 the MNE transferred all its European licenses and intellectual property rights to a Luxembourg entity to benefit from a low tax "IP box" regime (5.8% reduced tax rate on royalties). With only 13 employees between 2009 and 2013, the entity made €3.7bn in revenues and paid €13m in taxes. According to the report, the schemes allowed McDonald's to save over €1bn in tax in other European countries where it has significant economic presence.

In the US, the AFL-CIO is campaigning to prevent corporate "inversions" overseas of US companies - US corporations re-incorporating abroad through a "merger" in order to effectively eliminate US taxation of overseas profits. Last year over 15% of all US M&As involved some form of corporate inversions. The AFL-CIO has in particular engaged with pension funds on the risks of inversions and of aggressive tax planning in general. The role of pension funds in holding companies to account for their tax practices was raised by other participants, including representatives from United Voice (Australia) and the Local Authority Pension Fund Forum (UK). It was noted that there still is a lot of caution and "conservatism" among institutional investors in getting involved in any tax considerations.

The BEPS Action Plan

Discussion with the OECD Secretariat

David Bradbury (OECD Secretariat) gave an overview of the BEPS Action Plan implementation and, following questions by participants, responded to a number of key issues.

The two-year timetable of the BEPS Action Plan is very ambitious, but the work remains on track and compares favourably with other G20 reform tracks. While the OECD has been undertaking wide-ranging consultations as part of the BEPS project, including through more direct engagement with developing countries, the two-year timetable has meant that there are some constraints on the extent to which such consultation can occur. He noted that it is important to keep the process on track, as the momentum in support of reform could quickly pass.

He acknowledged the concerns that had been raised about the complexity of certain aspects of the BEPS Action Plan – including transfer pricing, but also noted that international taxation is inherently complex and the on-going discussions on transfer pricing reflect that complexity. It should be acknowledged that tax complexity often arises as a result of the introduction of measures designed to combat tax avoidance schemes, and by the need to catch up with the growing complexity of MNEs' own business models. Calls for simpler tax systems are legitimate on the grounds of mitigating compliance costs – but sometimes they reflect an opposition to new measures to prevent tax avoidance practices.

The OECD does not have the power to legislate and it develops its recommendations through consensus among its membership and that of the G20 BEPS associates. In comparison to most areas, taxation issues largely involve questions relating to national sovereignty. Once agreement is reached, countries would still have to act and effectively implement the rules in their jurisdictions. Stakeholders such as civil society will no doubt ensure that a focus is placed upon governments that may appear reluctant to implement the BEPS commitments into domestic legislation, however, not all BEPS recommendations will require all countries to implement them for them to be effective.

Public disclosure of the country-by-country (C-b-C) reporting framework never had the support of participating countries in the course of the BEPS process. There will be a review of the implementation of C-b-C in 2020 during which framework and filing considerations will be reviewed. C-b-C will be an enormously helpful tool for tax administrations, including those in developing countries. It will deliver the type of information that many tax administrations just cannot access today.

What EU institutions are doing – including the recent proposals on automatic exchange of information on tax rulings – is highly complementary and consistent with the BEPS Action Plan. Obviously, there are areas where the EU can move further and have the power to deliver rules that have binding effect. When a measure is implemented at the EU-level, it can also have a significant effect on other G20 countries and can raise expectations among an important core group of countries. This can help maintain momentum for reform.

Following the session with the OECD Secretariat, participants addressed several issues and concern both with the design of the Action Plan and how it is being implemented by the OECD and its members.

Financial transparency and accountability

For Christian Chavagneux (Alternatives économiques), the BEPS Action Plan and the Global Forum's standard on automatic exchange of information are welcome. However, international cooperation on tax evasion and tax avoidance does not end with the OECD Action Plan and automatic exchange. To the contrary this is where it all begins. On top of the 15-action points of the BEPS, six additional conditions would be needed:

- Stop and reverse the trend in job cuts in tax administrations, which have been severely hit by public budget austerity measures;
- Have governments establish goals to reduce tax losses that are ambitious, transparent and realistic;
- Report regularly to parliaments, to reinforce public transparency accountability to citizens and maintain political momentum. Reports could be integrated into the Eurozone fiscal monitoring process ("European semester");
- Protect whistle-blowers through regulation that effectively extends the scope of information that can be reported and disclosed, the scope of persons eligible for protection and prevents abusive use of business confidentiality rules to intimidate and punish whistle-blowers;
- Regulate and prevent abusive practices by some legal professionals – auditors, tax experts, lawyers, etc. – who under the veil of tax compliance and planning are acting as supporters and promoters of tax evasion and avoidance. The LuxLeaks scandal is first and foremost a scandal involving PwC. Regulation could include increasing sanctions for malpractice and establishing a system of ratings.
- Remove the banks from tax havens. All the financial institutions that triggered the 2008 crisis (Northern Rock; Bear Stearns, etc.) were heavily exposed to tax havens. Many reports, including from the US Congress GAO, have pointed to the central role of tax havens in shadow banking. On that, C-by-C reporting by banks, as required in Europe, is essential. The most recent filings show that, based on the ratio employee / turnover for French Banks, Irish employees are 11 times more "productive" than the company's worldwide average, for Deutsche Bank, employees in Luxemburg are 4 times more than worldwide average.

Sol Picciotto (BEPS Monitoring Group) contested the strict confidentiality rules attached to the filing process of the C-b-C reporting. Yet there is nothing in the reporting template that can be considered as commercially sensitive. For Picciotto, the only reason business groups and some governments would want to keep it confidential is that they do not want a spotlight on the relationship between declared profits and taxes paid and where employees are located.

The voice of developing countries

For Susana Ruiz (OXFAM) the lack of inclusiveness of the BEPS Action Plan and the limited voice of non-OECD developing countries are of serious concern. At the inception of the Plan, the process only included "regional roundtables". It is only half way in the implementation of the Action Plan that the OECD has taken the initiative to include a selected number of developing countries as observers in the OECD committees and working groups in charge of the process. As welcome as they may be, these measure are implemented just seven months before the end of the two-year process and hence are coming too little too late. Other barriers to meaningful participation have not been addressed: language (no translation of documents), and the financial and human resource constraints to participate in the public consultation rounds and meetings at the OECD in Paris.

The implications of the lack of inclusiveness of the process are already appearing in the BEPS deliverables. The agreements of February 2015 on the C-b-C reporting framework and on exchange of information on tax rulings do not meet developing countries' expectations. The review of the OECD TP Guidelines are not moving toward greater simplicity. Some deliverables might in fact be counterproductive for them, should strict confidentiality rules result in uneven access of countries to tax information. Other critical issues are kept out of the process such as the source vs residence taxation debate, the elimination of tax incentives, and the specific tax treatment of the extractive industries taxation.

Oxfam is calling for the OECD/G20 to support a World Tax Summit alongside the UN Financing For Development (FFD) Summit in Addis Ababa in July 2015 to establish an intergovernmental tax body where all countries would have an equal say. Together with other civil society organisations, Oxfam also helped establish an Independent Commission for the Reform of International Corporate Taxation which should deliver its final report ahead of the FFD summit.

Sol Picciotto also raised the concern about the public consultations of the BEPS process on the ground that they were dominated by tax advisers and accounting firms – the very people who have the most vested interest in keeping the current system in place. Civil society, by opposition, has hardly been heard in the process, which in part explains why the Independent Commission was established: to create a counterweight to the BEPS process and to help bring more civil society views in the corporate taxation debate.

Transfer pricing rules

Sol Picciotto also commented on the on-going discussions on transfer pricing within MNEs, which is central to the BEPS Action Plan. The integrated business model of MNEs has become a major challenge for the OECD "arm's length" principle upon which are founded the OECD Transfer Pricing (TP) Guidelines and article 9 of the OECD Model Convention. Because it treats MNEs' subsidiaries *as if* they were independent of each other, the arm's length principle requires companies and tax authorities to have access to comparable transactions in the market ("comparables") to ensure that the transfer pricing is consistent with market conditions. The arm's length / separate entity principles not only is "economically illiterate", Picciotto argued, but it actually provides incentives for MNEs to organise their entities to artificially attribute profits in low tax jurisdictions. And these arrangements are not limited to well know tax havens. They also involve OECD jurisdictions (Luxembourg, Netherlands, Ireland, etc.)

The mandate of the BEPS Action Plan is clear about the need to change tax rules to ensure that economic activities are taxed where they actually take place. Many academic experts have argued that, for that to happen, rules need to move away from the artificial arm's length / separate entity principle toward treating MNEs on a unitary basis. They have put forward an alternative proposal: the formulary apportionment method whereby profits are distributed according to an allocation key (revenues, employees, assets, etc.). The OECD rejected the formulary apportionment method on the ground that it is not market-based and that it would not be realistic to expect governments to agree on the common method. Picciotto accepted that it is understandable that moving towards a full formulary apportionment system is not feasible in the short term. However, he argued that the BEPS proposals would be much more coherent and effective if they explicitly stated that taxing MNEs 'where economic activities take place' requires treating them as unitary business enterprises.

Resistance to the apportionment method is manifested in the other important deliverables of the BEPS, including the C-b-C reporting framework. The agreement makes clear that the framework should be used for a "high level" risk assessment by tax authorities only, and not for the purpose of taxing MNEs based on a formulary apportionment method.

Still, the apportionment approach is making inroads in some Action Points of the BEPS Plan, as seen for example in OECD draft proposals for the tax treatment of debt interest payments. The OECD draft includes a proposal to treat all third party debt interest service costs of an MNE on a consolidated basis and apportioned using an appropriate allocation key, such as EBITDA. In the same vein there appears to be some agreement on apportionment of some central service costs – although there is resistance, and for a cause, from developing countries to move too far in that direction. These developments on apportionment of costs show that unitary taxation is technically feasible.

The real issue is on the revenue side however, with the review of the OECD TP Guidelines and the extent to which the BEPS process will move away from the arm's length / separate entity principle. At recent OECD consultations, the Chinese representative said clearly that comparables – which are needed to apply the arm's length principles – are missing in "100% of the cases". "The arm's length principle" she stated, "does not work". Such acknowledgement used to be made off the record only, or by former or retired officials. Now it is being said loud and clear. At the same OECD meeting, a representative from the French law firm TAJ made a strong case for the profit split method.

At this stage, the OECD is accepting a very limited form of apportionment method – the profit split method – but it has done so only reluctantly. For the OECD, profit split is considered as a residual method, to apply on a case-by-case basis and, importantly, after a full and time consuming "functional analysis" has been conducted. Therefore it is quite unattractive to apply such a method.

It is hard to predict precisely what the final outcome of the negotiations will be. As it looks, and given the insistence of the OECD to maintain the arm's length principle, it is likely that the outcome will lead to more mess in the revised OECD TP Guidelines than there is today. It is also possible that a group of emerging countries – Brazil, China, Mexico to mention a few – would go it alone and unilaterally move toward alternative approaches.

Interestingly, several business representatives understand that profit split has value, and would apparently accept to engage further into that direction, but in a very cautious way and beyond the BEPS timeline. What could then be within reach, is to agree on a default allocation key – with a right balance between employment and sales – and, from there, to develop sector-specific allocation keys. It would provide businesses with security and stability of their tax treatment over the long term, and it would be a simple method that would be easier for tax authorities to apply.

For that to happen, the negotiations should involve tax authorities and businesses themselves, and the middlemen should be cut out: the tax lawyers and the auditors. The "big four", the audit firms and the tax lawyers are the ones selling services to MNEs to set up all these complex tax arrangements. Even government services are becoming dependent on this industry. Recently the US IRS had to hire tax lawyers and experts for USD2m in fees, to help them with the tax auditing of Microsoft. So, if the US is forced to hire tax lawyers, what chance do we give to other tax authorities and those of emerging and developing countries in particular?

Country reports

In addition to the above discussion on the BEPS Action Plan, several country-specific initiatives were presented at the meeting.

Australia

Grant Belchamber (ACTU) and Jason Ward (United Voice) reported on the Australian labour and civil society campaign agenda. Corporate tax evasion and its impact on public revenues is a rising concern for trade union members. Revenue losses due to tax dodging are inherently difficult to estimate – but they are estimated at AUSD1-3bn per year at minimum. Out of the 200 largest Australian companies reporting on CIT, between a quarter and a third pay no CIT at all.

In conjunction with TJN Australia, United Voice conducted research on the tax practices of the top 200 listed companies (the ASX 200) over the past ten years exposing the very low effective tax rate of companies. The report was made public end 2014 and triggered a public debate which led to the creation of a formal parliamentary enquiry into corporate tax planning, with public hearings in April 2015.

On the government side, the Treasury is "speaking big but walking small" on tax planning. It has announced its intention to require C-b-C reporting, based on the OECD model. While labour and civil society groups have been calling for its public disclosure, there has been a big push by business groups and employers to oppose it, arguing that, with public disclosure, corporations could be "kidnapped" and "ransomed". Overall the government has been keen to look proactive on tax evasion in order to pass other parts of its reform programmes, including austerity measures that have hit employment in the tax administrations head on. For the labour movement Australia has "a revenue problem, not a spending problem", a view that clearly is not shared by the government.

Belgium

For Christophe Quintard (FGTB), Belgium exemplifies the contradictions between post-crisis OECD-wide austerity measures and the BEPS agenda. The current government has engaged major cuts in public spending and in public services. In the finance ministry, including tax administrations, job cuts reached -21% for 2006-2014 and are expected to amount to -15% for the next 4 years. Yet, the “return on investment” of a tax administration employee, considering tax collection revenues, is estimated at €2m per year.

On the policy front, the current government policy is to further increase the regressivity of the tax system through new exemptions granted to SMEs, to entrepreneurs and professionals. It will also maintain some form of bank secrecy in the system. Belgian tax authorities still do not have easy access to beneficial ownership of bank accountholders. The lack of political engagement is also to be seen in the context of the Luxleaks scandals, which – it is argued – could well have taken place in Belgium, given the country’s established policy for opacity of its rulings and other individual tax arrangements with MNEs.

Spain

In Spain, and as reported by Susana Ruiz, corporate income tax collection dropped dramatically between 2007 and 2014. 34 out of the 35 largest Spanish companies have subsidiaries in tax havens, totalling 810 subsidiaries, an increase of +44% in one year. In volume, Spanish FDI to tax havens increased +205% last year. Looking at the total Spanish FDI outflows, 26% consist of intragroup loans, 12.4% are round-trip investment (“Spain is the second foreign investor in Spain”) and 71% of flows to the US transit via a tax haven.

EU

Veronica Nilsson (ETUC) presented a resolution by the ETUC on tackling tax evasion, avoidance and tax havens, in the context of a series of high profile tax scandals – SwissLeaks, LuxLeaks, etc. On tax evasion, the text calls for automatic exchange of information between tax authorities – including on bilateral agreements with individual companies (“rulings”) and as proposed in a draft EC Directive published in March 2015. C-by-C reporting requirements, which currently cover the banking sector and extracting industry, should be extended to all sectors. There should be limitation of provisions regarding trade secrets, and no barriers to the public disclosure of beneficial ownership of assets and funds. Private funds and trusts should be bound by the same transparency and reporting requirements as those applying to medium and large companies, with no exemptions.

The ETUC text also takes aim at the tax advisor industry. The “Big Four” audit firms should be broken up and steps taken to separate responsibility for functions such as auditing, taxation and consulting to avoid conflicts of interest. Public procurement should specifically exclude competitors that have tax arrangements in non-cooperative tax jurisdictions.

To curb tax competition and prevent MNE transfer pricing manipulation, the ETUC calls for the EU to engage discussion on common principles on taxation which should be more progressive and simplified, including abolishing unnecessary exemptions and allowances especially for large corporations. It should re-engage negotiations on the introduction of a mandatory Common Consolidated Corporate Tax Base (CCCTB) in the EU, possibly with the introduction of a minimum tax rate of 25%.

On tax enforcement, a “EuroTax” investigation unit should be set up with wide powers of investigation into tax evasion and avoidance by wealthy individuals, companies and criminals. More broadly, Member States should pool their financial means, personnel and competencies of their tax investigation departments.

Nadja Salson (EPSU) presented a report jointly prepared by EPSU, EFFAT, SEIU and War on Want, exposing the tax evasion schemes set up for McDonald’s European operations, including 7850 restaurants which generated €20.3bn in sales in 2013. McDonald’s business model relies heavily on franchising – independent franchised restaurants paying back the

MNE for the use of McDonald’s branding and IP rights. In 2008 the MNE transferred the European licenses for the use of its intellectual property rights to a newly created entity in Luxembourg, “McD Europe Franchising Sarl” which benefited from the country’s low tax IP box regime (5.8% reduced tax rate on royalties). With only 13 employees, between 2009 and 2013, the entity made €3.7bn in revenues and paid €13m in taxes. The schemes allowed Mc Donald’s to save over €1bn in tax in other European countries where it has significant economic presence.

The case of McDonald’s European operations, Nadja Salson argued, further exposes the urgency for the EU to act promptly to prevent abuses of IP tax regimes and to apply EU state aid and competition rules strictly. A shift to unitary taxation of MNEs would help resolve most of the MNE schemes associated with transfer pricing. On that, the decision by the EC to reengage discussion on the creation of an EU-wide CCCTB is welcome. Last but not least, European governments must stop job cuts and “reinvest” in tax administrations if any of the above is to be implemented effectively.

US

Brandon Rees (AFL-CIO) gave a briefing on “inversions” overseas of US companies. A distinct feature of the US tax system is that it allows US corporations to permanently defer overseas profits and hence escape US taxation. Business groups have defended the system arguing that the US nominal CIT is among the highest in the OECD. However, the US tax regime also offers one of highest number of tax exemptions across OECD economies which allows US corporations to benefit from a considerably lower effective tax rate than the nominal CIT.

In the early 2000s US corporations began to pursue re-incorporation abroad in tax havens – Bermuda, Cayman Islands, etc. – in order to effectively eliminate US taxation of overseas profits. This created a problem with investors because of the very weak corporate governance regulation of tax havens, including very limited shareholder rights. In response, and following the corporate scandals at the time – Enron, WorldCom among others – legislative reform in 2004 made reincorporation abroad much more difficult to achieve. There was however a loophole in the new regime, that allowed reincorporations through a “merger” with a foreign entity. In recent years, a number of companies have used this loophole to pursue what is now called inversion with foreign corporations. Last year over 15% of all US M&As involved corporate inversions.

The role of pension funds

Aggressive tax planning is a rising issue in forums on responsible investment and the integration of Environmental, Social and Governance (ESG) criteria in the investment policy of institutional investors. Together with the International Trade Union Confederation, the TUAC helped coordinate in November 2014 a Global Union Call for Action for Pension Fund Responsible Tax Practices.

US

Brandon Rees (AFL-CIO) presented the case of Walgreens, a US retail drugstore company, which announced plans to merge with the British company Boots Alliance and to move domiciliation in the UK although the predominant operations of the new group would have been in the US. The inversion was advocated for by hedge funds that had concentrated short term positions in Walgreens. They would have benefited from the immediate tax benefits of the inversion. However, long term investors, including pension plans and individual retail funds, that had diversified portfolios, would not have benefited on the long term of the inversion. From the perspective of a diversified long term investor, the inversion of an individual company should be contemplated in the context of the entire portfolio. An inversion creates unfair competition in the market place and diversified shareholders would be negatively impacted via theirs holdings in the capital of competitors. On the long term also, the inversion would have negatively impacted Walgreens' own brand name and reputation as well as its relationship with the US government. Over 40% of Walgreens' revenues stem from the US government through Medicare and retirement insurance programmes. Members of the US Congress started to discuss prohibiting the US government from contracting with companies that pursue corporate inversions.

Trade union pension plans placed a resolution at Walgreens' AGM to challenge the inversion which was ultimately rejected. Drawing on the lessons of Walgreens, the AFL-CIO has since engaged with pension funds on the risks of inversions and of aggressive tax planning in general. Inversions are also taken on board in the AFL-CIO campaign on executive compensation. CEOs often have a strong incentive to proceed with a corporate inversion because of the "tax gross-up" arrangements (whereby the company takes over the CEO's personal tax liability associated with the inversion's "golden parachute"). For the 2015 (shareholder voting) proxy season, the AFL-CIO has been targeting SP500 companies that offer such tax gross-up plans that benefit executives and have filed shareholder resolutions to oppose such plans.

UK

For Andrew Whiley (UK Local Authority Pension Fund Forum, LAPFF), despite the visibility of tax evasion issues in the media and the many high profile scandals in the past year, there is still a lot of caution and "conservatism" among UK institutional investors in getting involved in any tax considerations. Current levels of corporate disclosure and audit reporting on tax is poor and does not contribute to investors' awareness either. The reticence to get involved even at the most basic level was evident when LAPFF sought investor participation for an initial statement in mid-2014 voicing broad support for the OECD Action Plan. Pension funds both in the UK, US and Australia did not feel confident to enter the debate at any level.

The LAPFF again brought forward the issue of tax planning as a matter of corporate transparency and disclosure, based on the G20/OECD adoption of a country-by-country reporting framework. This approach has helped bring discussions on tax evasion in pension fund boards to a level of understanding that fits within a traditional corporate governance framework. Technical aspects of international and national tax practices can indeed become a barrier to pension funds becoming involved in the wider debate.

LAPFF is framing all tax initiatives around support for 'transparency and disclosure' at a corporate level and 'international tax reform' at a national/international level to try and find entry points for funds that are initially easy to understand.

In this context, the LAPFF has engaged a tax expert to help devise a questionnaire for companies to fill which includes ten technical questions on corporate governance and risk management of tax planning. The questionnaire (labelled as the Corporate Tax Transparency Initiative CTTI) was sent late March 2015 to all FTSE100 companies in written form. The LAPFF has also engaged with and informed other institutional investors and forums about this initiative and intends to seek their involvement with FTSE100 company responses and beyond. On the policy front, the LAPFF is also considering a wider investor coalition in anticipation of the G20 Summit in November 2015 to help support and raise voices to support the ambition of the BEPS Action Plan as a contributor to the stability of the financial system and reform of international taxation structures which is in the long term interest of institutional investors. A timetable may be following the June LAPFF meetings, and any international support to help build a coalition would be welcomed.

Australia

Jason Ward (United Voice) also highlighted the role that pension funds can have as shareholders in engaging companies on responsible tax practices. Tax planning was an important aspect of a recent trade union campaign aiming at a global real estate investor with operations in Australia and the US, and of which tax planning schemes were creating a serious burden on the local communities and municipalities where it had investments. As the campaign unfolded, the trade unions reached out to pension funds that had joint investment deals with the real estate developer. The involvement of pension funds was a decisive factor in the success of the campaign.

Video recordings

Video playlist of the meeting:
https://www.youtube.com/playlist?list=PL43D3E8CD4FFEFB8B

Presentation by Christian Chavagneux (Alternatives Economiques)
https://youtu.be/NWGxLh_B6EQ

Comments by Sol Picciotto (BEPS Monitoring Group) https://youtu.be/oAzAE3d6Wvs

Presentation by Susana Ruiz (Oxfam) https://youtu.be/VtIFpsnflZg

Comments by Veronica Nilsson (ETUC) https://youtu.be/cThImJ_MynM

Q & A session https://youtu.be/2DVKF6BmLHY

Annex: Meeting agenda

TUAC ad hoc meeting on Corporate Tax Planning
Paris, 20 March 2015

REVISED AGENDA
As of 18 March 2015
9.00 – 18.00 Room CC13
OECD Conference Centre, 2 rue André-Pascal, Paris 16
English/French interpretation

9:00-9:05	**1**	**Opening and adoption of the agenda**
9:05-9:30	**2**	**An Australian perspective on the global tax agenda** Video conferencing with - Grant BELCHAMBER, International Officer, ACTU (Australia) - Jason WARD, United Voice (Australia)
9:30-11:00	**3**	**The G20 / OECD Action Plan on Base Erosion and Profit Shifting** - Presentation by David BRADBURY, Head of the Tax Policy and Statistics Division, OECD Secretariat
11:00-11:30		Coffee break
11:30-13:00	**4**	**Tax transparency & compliance in the context of responsible business conduct** Presentations by: - Christophe QUINTARD, Head of Economic Dpt, FGTB (Belgium) - Nadja SALSON, Policy Advisor, EPSU (Europe)
13:00-14:30		Lunch
14:30-16:00	**5**	**Beyond the OECD and the G20, a review of the global tax reform landscape** Presentations by: - Christian CHAVAGNEUX, Columnist, Alternatives Economiques - Sol PICCIOTTO, Coordinator, BEPS Monitoring Group - Susana RUIZ, Fiscal Justice Lead, OXFAM - Veronica NILSSON, Confederal Secretary, ETUC
16:00-16:15		Coffee break
16:15-17:45	**6**	**The role of institutional investors in promoting responsible tax practices** Presentations by : - Brandon REES, Deputy Director, Office of Investment, AFL-CIO (US) - Andrew WHILEY, Local Authority Pension Fund Forum (UK) - Eric LOISELET, Trustee, ERAFP & IRCANTEC (France)
17:45-18:00	**7**	**Wrap-up**

ANNOTATED AGENDA

1. Welcome remarks

The meeting will address the impact of corporate aggressive tax planning practices from two angles: (i) the broader policy and regulatory agenda, and (ii) the responsible business conduct and responsible investment perspectives. The morning sessions will address the current implementation of the OECD / G20 Action Plan on Base Erosion and Profit Shifting (BEPS) and, from there, the responsible business conduct considerations based on existing OECD instruments and standards. The afternoon sessions will address other relevant policy processes followed by a discussion on the implications for responsible investment practices and the role of workers' pension funds.

2. An Australian perspective on the global tax agenda

Given the time zone difference with Australia, a video conference call will be held at the beginning of the meeting with Australian trade union colleagues Grant BELCHAMBER of ACTU and Jason WARD of United Voice.

3. The G20 / OECD Action Plan on Base Erosion and Profit Shifting

The OECD BEPS Action Plan is a two-year policy process containing 15 action items with the goal to curb aggressive tax planning by multinational enterprises, endorsed by the G20 in St Petersburg in September 2013. While the process is to be completed by the end of 2015[i], a first batch of OECD recommendations and reports was submitted to the G20 Finance Ministers meeting in Cairns on 20-21 September 2014[ii].

Since January, an impressive number of public consultations have been held – either at the OECD or online – regarding actions 8-10 (transfer pricing), 4 (interest deduction), 6 (treaty abuse), 7 (permanent establishment), and 14 (dispute resolutions). In February, the G20 Finance adopted a final version of the country-by-country tax reporting framework (13), rules on "patent boxes" to prevent harmful tax competition (5) and a roadmap for adopting a multilateral 'umbrella' convention on BEPS (15).

Regional roundtables in developing countries have also been held: Seoul (Korea) on 12-13 February, Libreville (Gabon) on 27 February, Lima (Peru) on 26-27 February and Ankara (Turkey) on 4-5 March 2015. Prior to the TUAC meeting, the OECD Tax and Development.

This session will include a presentation by David BRADBURY, Head of the Tax Policy and Statistics Division, OECD Secretariat followed by comments by the TUAC Secretariat.

<u>Background documentation:</u>

OECD:

- Homepage of the BEPS Action Plan http://www.oecd.org/tax/beps.htm
- 06/02/2015| First steps towards implementation of OECD/G20 efforts against tax avoidance by multinationals, OECD press release,[iii]
- 06/02/2015| OECD Report to G20 Finance Ministers, Istanbul[iv]

TUAC:

- 09/02/2015| Comments on the OECD Public Discussion Draft on BEPS Action 4: Interest Deductions and Other Financial Payments[v]
- 27/01/2015| Submission to the "Bureau Plus" of the OECD Committee on Fiscal Affairs[vi]
- 22/01/2015| TUAC Comments on the BEPS Action 14: Make Dispute Resolution Mechanisms More Effective[vii]
- 14/01/2015| TUAC Comments on the BEPS Action 7: Preventing the Artificial Avoidance of Permanent Establishment Status[viii]
- 02/10/2014| OECD Mid-Term Reports on the Base Erosion and Profit Shifting (BEPS) Action Plan - Comments by TUAC[ix]
- 23/06/2014| Submission to the OECD Committee on Fiscal Affairs[x]
- 21/02/2014| Country-by-country tax reporting: TUAC submission to the OECD[xi]

NGOs & Civil Society:
- Submissions by the BEPS Monitoring Group to the OECD [xii]

4. Tax transparency & compliance in the context of responsible business conduct
At the previous TUAC ad hoc meeting on tax in November 2013, a case study of a business restructuring for tax planning purpose was presented and discussed (Colgate Palmolive operations in France). The case study involved the manipulation of transfer pricing and of the permanent establishment status and exposed the negative impact on workers with regard to (i) remuneration (impact on wages and profit sharing schemes), (ii) working conditions and collective bargaining, and (iii) workers' right to information. Recently, EPSU & EFFAT released a report in partnership with the SEIU and WarOnWant exposing the tax planning schemes of Mc Donald's operations in Europe. Between 2009 and 2013, the Luxembourg-based structure of Mc Donald's, which employs 13 people, registered a cumulative revenue of EUR3.7bn, on which it reported EUR16m in tax.
Accordingly tax compliance issues should not be restricted to bilateral channels between executive management and tax authorities because aggressive tax planning is a risk for all stakeholders, not limited to the tax collector. Provided that confidential requirements are met, they should also extend to a wider group of stakeholders, including worker representatives, shareholders that have a long term interest in the performance of the company, and relevant civil society organisations.
The session will include presentations by Christophe QUINTARD, Director of the Economic Dpt, FGTB (Belgium) and Nadja SALSON, Policy Advisor, EPSU (Europe).

Background documentation:
- 24/02/2015| UnHappyMeal: €1bn Tax Avoidance on the Menu at McDonald's, EPSU[xiii];
- 20/12/2013| Report on a global unions meeting on corporate tax planning, TUAC [xiv].

5. Beyond the OECD and the G20, a review of the global tax reform landscape
Other than the OECD-led BEPS initiative, there are a number of policy and regulatory reform processes that deal with or have bearing on tax reform. In Europe, the on-going negotiations on a financial transaction tax and the fallouts of the Luxleaks scandal (followed by the "Swissleaks", the "HSBCleaks" etc.) are creating the conditions for a change in scale of the EU-wide legislative approach to taxation, including renewed interest for the role of the financial sector and for the project of a Common Consolidated Corporate Tax Base (CCCTB).
In the developing world, civil society coalitions and NGOs, such as OXFAM and the Global Alliance for Tax Justice, are campaigning for fiscal justice to help developing countries increase and secure their own domestic tax basis. Ahead of the 2015 UN Conference on Financing for Development, a coalition of NGOs and the PSI have set up and Independent Commission for the Reform of International Corporate Taxation (ICRICT) with the support of the FES.
This session will include presentations by:
- Christian CHAVAGNEUX, Columnist, Alternatives Economiques
- Sol PICCIOTTO, Coordinator of the BEPS Monitoring Group
- Susana RUIZ, Fiscal Justice Lead, OXFAM
- Veronica NILSSON, Confederal Secretary, ETUC (Europe)

Documentation:
- ETUC draft resolution on tackling tax evasion, avoidance and tax havens, March 2015;
- Fiscal Justice to Reduce Inequality in Latin America and the Caribbean, OXFAM, September 2014[xv].

6. The role of institutional investors in promoting responsible tax practices

Aggressive tax planning is a rising issue in forums on responsible investment and the integration of Environmental, Social and Governance (ESG) criteria in the investment policy of institutional investors.

In the US, the AFL-CIO is engaging with pension funds on the risks and consequences associated with the recent wave of "corporate inversions" (US companies reincorporating abroad through a merger with a foreign-domiciled company to reduce their taxable income base). Together with the International Trade Union Confederation, the TUAC helped coordinate in November 2014 a Global Union Call for Action for Pension Fund Responsible Tax Practices which was signed by 45 trade union bodies from 19 countries. Concomitantly the UK Local Authority Pension Fund Forum (LAPFF) issued and Investor Statement on tax Transparency & Disclosure. The Global Unions Committee on Workers' Capital is also expected to create a Task Force on Tax, to help trade union appointed pension trustees better apprehend tax risk in the design of pension funds investment policy.

This session will include presentations by Brandon REES, Deputy Director, Office of Investment, AFL-CIO, and Andrew WHILEY, Local Authority Pension Fund Forum, and Eric LOISELET, trustee, French public sector pension funds ERAFP & IRCANTEC.

Background documentation:

- Global Union Call for Action for Pension Fund Responsible Tax Practices, November 2014[xvi]
- Institutional Investor Statement - Transparency & Disclosure Fundamental to Modernising International Taxation Framework & Integrity of 21st Century Financial System, November 2014, LAPFF[xvii];
- AFL-CIO Fact sheet on corporate inversions;
- UN PRI addresses multinational tax avoidance, November 2014[xviii]

7. Wrap-up

The TUAC Secretariat will sum up the meeting discussions and consider next steps.

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[i] http://www.oecd.org/ctp/beps.htm
[ii] http://www.oecd.org/ctp/beps-2014-deliverables.htm
[iii] http://www.oecd.org/newsroom/first-steps-towards-implementation-of-oecd-g20-efforts-against-tax-avoidance-by-multinationals.htm
[iv] http://www.oecd.org/tax/oecd-secretary-general-tax-report-g20-finance-ministers-february-2015.pdf
[v] http://www.tuac.org/en/public/e-docs/00/00/0F/DB/document_doc.phtml
[vi] http://www.tuac.org/en/public/e-docs/00/00/0F/D4/document_doc.phtml
[vii] http://www.tuac.org/en/public/e-docs/00/00/0F/D1/document_doc.phtml
[viii] http://www.tuac.org/en/public/e-docs/00/00/0F/CC/document_doc.phtml
[ix] http://www.tuac.org/en/public/e-docs/00/00/0F/57/document_doc.phtml
[x] http://www.tuac.org/en/public/e-docs/00/00/0E/D2/document_doc.phtml
[xi] http://www.tuac.org/en/public/e-docs/00/00/0E/3D/document_doc.phtml
[xii] https://bepsmonitoringgroup.wordpress.com/
[xiii] http://www.notaxfraud.eu/unhappy-meal
[xiv] http://www.tuac.org/en/public/e-docs/00/00/0D/FE/document_doc.phtml
[xv] http://www.oxfam.org/sites/www.oxfam.org/files/file_attachments/bp-lac-fiscal-justice-100914-summ-en.pdf
[xvi] http://www.tuac.org/en/public/e-docs/00/00/0F/70/document_doc.phtml
[xvii] http://www.lapfforum.org/LNews/InvestorStatementTransparencyG20TaxReform12thNov2014.pdf
[xviii] http://www.unpri.org/whatsnew/pri-addresses-multinational-tax-avoidance/