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

Submission to the OECD Committee on Fiscal Affairs

Paris, 23 June 2014

1. TUAC welcomes the opportunity to share comments with the Bureau of the Committee on Fiscal Affairs on 23 June 2014 at the OECD with regard to the implementation of the OECD Base Erosion and Profit Shifting (BEPS) Action Plan. In light of this written submission, and the expected deliverables of the Action Plan by the end of 2014, the TUAC is calling for:

- The adoption of a robust framework for transfer pricing documentation, including public country-by-country tax reporting;
- The review of the permanent establishment status to effectively take account of the changing business model of fully digitalised businesses ;
- The mobilisation of financial resource to help tax administrations in developing countries observe the standards that are to be agreed upon as part of the Action plan.

Trade union perspective

2. Tax 'avoidance' comes at a heavy cost for governments. Tax avoidance harms government finance and the right to public services through the net loss in tax revenues. But it also affects the interests of people and groups in society beyond the government itself. Trade union experience shows that aggressive corporate tax planning by multinational enterprises (MNEs) is a form of "regulatory planning" with short-termist goals that may damage the economy and undermine the fair distribution of corporate wealth, as well as such workers' rights as collective bargaining and access to information.

3. For example illicit transfer pricing affects profit levels and thereby the capacity of the company to invest in productive capacity or to face its long-term liabilities. It also affects the fair distribution of wealth created by the company, as seen, for example, in the case of employee-profit sharing agreements. When a business restructuring for tax planning purpose leads to a fragmentation of the company into separate entities, workers have reduced access to decision making centres – some of which may be transferred outside the legal perimeter of the company if not abroad.

4. The TUAC supports the Action Plan. OECD member states and other G20 governments should demonstrate political leadership to raise the ambition of the Action Plan. Political commitment however needs to go hand in hand with adequate support to national tax administrations. We are far from it very unfortunately: among EU member countries a total of 56,865 jobs have been lost within tax administrations between 2008 and 2012, which is equivalent to a cut of -9.6% in the workforce.

5. Most of the deliverables of the Action Plan are expected end-2015, but at the G20 summit in Brisbane November 2014, the G20 will have to take action already and agree on a number of BEPS measures, including (i) approval of a country-by-country reporting framework, (ii) approach to the tax treatment of the digital economy.

Country-by-country reporting

6. The adoption of a robust country-by-country reporting framework for MNEs would help assess the risk for a mismatch between the geographical distribution of the workforce, corporate

revenues, assets, and taxes paid. It would help assess whether MNEs do comply with a central objective of the BEPS Action Plan: making sure that profits are taxed where economic activity and value creation take place.

7. At minimum, the country-by-country reporting would need to be filed with every single national tax administration where MNEs operate and would need to be supported by a robust compliance mechanism (including sanctions). Direct filing would be of precious help for national tax administrations in developing countries which do not enjoy the same level of access to tax information exchange treaties than their OECD counterparts. The alternative proposal – filing with the tax administration where the MNE is headquartered – would lead to uneven playing field: some tax administrations would have access to the country-by-country reporting via a complex web of treaties, others would not. It would be a recipe for mismatch between where value is created and where tax is reported.

8. Beyond this however, we believe that the reporting should be made public and for the following reasons:

- Opposing public disclosure on the ground of business confidentiality is contestable. There is nothing, or very little, in the current OECD proposals that have been circulated that could be considered as a threat to business confidentiality. The fact that public disclosure is required already for other country-by-country reporting frameworks in Europe[1] and in the US[2] seriously undermines the argument against public disclosure on confidentiality grounds.

- Public disclosure would help develop access to reliable data and comparables in order to have trust in intra-group transaction reporting.

- Workers have legal claims over the company: across OECD jurisdictions, workers have rights established by law to be informed about the company's business plan, any future restructuring or changes in working conditions and to "foreseeable risk factors". Tax planning is recognised by the OECD as a source of business risk. Workers and their representatives accordingly have a legitimate claim to access risk assessment tools such as the country-by-country reporting.

- Public disclosure would also help long term responsible shareholders to make informed judgment about the exposure to tax risk – including legal and reputational aspects – of the companies in which they invest.

9. Considering the above and moving forward, we believe that the CFA should adopt direct filing of the country-by-country reporting for consideration by the G20 and open, or re-open the discussion on its public disclosure.

Digital economy

10. The digital economy cannot be ring-fenced or treated as a stand-alone sector for the purpose of taxation; OECD economies are indeed gradually becoming digitalised. There are however a number of key features of fully-digitalised businesses (particularly "over the top" content providers) as exposed in a recent OECD discussion draft that needs to be taken on board.

- Business model of fully-digitalised businesses: the fact that web users and customers participate in the generation of profits and value creation, via the personal data that they share with the producer, significantly departs from the business model upon which most tax systems are based upon, namely that value creation is generated by the producer only.

- Imbalance between wealth distribution and employment: within the ICT industry, income and profits are increasingly captured by "over the top" content providers, and less with internet

[1] revised EC Accounting and Transparency Directives (June 2013) and Capital Requirement Directive (CRD IV, article 89) applying to the extractive industry and to banks respectively.
[2] section 1504 of the Dodd-Frank Act covering SEC-listed companies in the extractive industry.

service providers (the "pipes"). Yet content providers are far less employment generating than service providers.

- Accordingly, content providers are able to extract substantial value from their business without paying the corresponding amount of tax in the jurisdictions in which they operate.

11. The permanent establishment status needs a fundamental reassessment in light of the above beyond the elimination of exemptions to the current regime. Suggestions around the creation of new tax rules for "significant digital presence" should be given serious consideration.

Developing countries

12. The participation of non-OECD, non-G20 economies and their potential institutional capacity to observe BEPS Action Plan forthcoming measures should be a central concern. The OECD Task Force on Tax and Development and the OECD CTPA are conducting useful pilot country programmes with the IMF and WB in Africa and in Latin America. But more work needs to be done by the OECD, including the Development Assistance Committee. Today less than 1% of ODA is spent on tax administration capacity building, even though it is proven to be "well spent money" and rank high on all aid effectiveness standards.

13. On substance, the Action Plan should allow for necessary flexibility for developing countries to adjust and adapt. In addition to facilitating developing countries' access to transfer pricing documentation and country-by country tax reporting, the Action Plan should allow for tax administrations to depart from the arm's length principle, if conditions are for its application are not met (including the lack of comparables).

Recent TUAC statements & reports related to the BEPS Action Plan

- 11/06/2014| L20 Recommendations to the G20 - June 2014 Call for a G20 Action Plan for Comprehensive Growth and Quality Jobs
  http://www.tuac.org/en/public/e-docs/00/00/0E/BB/document_news.phtml

- 21/02/2014| Country-by-country tax reporting: TUAC submission to the OECD
  http://www.tuac.org/en/public/e-docs/00/00/0E/3D/document_doc.phtml

- 20/12/2013| Report on a global unions meeting on corporate tax planning
  http://www.tuac.org/en/public/e-docs/00/00/0D/FE/document_doc.phtml