



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 “Bureau Plus” of the OECD Committee on Fiscal Affairs Paris, 23 January 2015

1. The TUAC welcomes the opportunity to share comments on the Base Erosion Profit Shifting (BEPS) Action Plan with the Bureau Plus of the Committee on Fiscal Affairs (CFA) on 27 January 2015 alongside civil society partners. In their submission to the G20 meeting in Brisbane, the TUAC and other international trade union organisations expressed support for the Action Plan¹. In addition to engaging with civil society partners, trade unions are also reaching out to long term 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 which was signed by 45 trade union bodies from 19 countries². Among its proposals, the declaration calls upon pension funds to support “rule changes for fair and responsible tax practices as envisioned by the G20 OECD Action Plan on Base Erosion and Profit Shifting”.

2. While we broadly support the BEPS initiative, we have a number of observations to share in light of the past 12-month implementation of the Action Plan.

Aggressive tax planning is a risk for all corporate stakeholders

3. The OECD recognises that tax planning creates risks that need to be addressed at the level of the Boards of directors of companies. According to the OECD Guidelines for Multinational Enterprises: “Enterprises should treat tax governance and tax compliance as important elements of their oversight and broader risk management systems. In particular, corporate boards should adopt tax risk management strategies to ensure that the financial, regulatory and reputational risks associated with taxation are fully identified and evaluated.” Issues that are dealt with by corporate boards are of concern for all corporate stakeholders, including workers, creditors, shareholders and affected communities of the company. Tax should not be an exemption. Corporate stakeholders have a legitimate right to information regarding the extent to which the company in which they invest is exposed to tax planning risks. In our previous submission to the CFA Bureau Plus in June 2014³, we exposed the negative impact that BEPS practices can have on workers, including their remuneration (case of a fall in local profits resulting from illicit transfer pricing, case of an abusive use of the Limited Risk Distributor status), their rights to fair collective bargaining and to information and consultation (case of corporate fragmentation into separate entities, and of absence Permanent Establishment status).

4. Tax compliance issues should not be restricted to bilateral channels between executive management and the tax collector. Provided that confidential requirements are met, they should also extend to a wider group of stakeholders, including worker representatives,

¹ <http://www.ituc-csi.org/120-recommendations-g20-leaders>

² http://www.tuac.org/en/public/e-docs/00/00/0F/74/document_news.phtml

³ http://www.tuac.org/en/public/e-docs/00/00/0E/D2/document_doc.phtml

shareholders that have a long term interest in the performance of the company, and relevant civil society organisations (CSO). Unfortunately, this stakeholder-dimension of tax risk and reporting is missing in both the initial design of the BEPS initiative and its implementation.

Access to transfer pricing documentation and to country-by-country reporting

5. Given the above, we reiterate our concern about the filing of the country-by-country (c-b-c) reporting and of the transfer pricing documentation. The mid-term report on Action 13 delivered in September 2014⁴ leaves open for further discussion the precise modalities of such filing. For TUAC, both the c-b-c reporting and the Master File should be filed directly with individual tax authorities of jurisdictions where the MNE has operations.

6. Beyond directing filing, we regret that public disclosure, or even partial disclosure of the c-b-c reporting framework is not under consideration. Concerns about business confidentiality and trade secrets are legitimate and should be taken on board. These concerns amount to technicalities however. They surely could be treated and resolved appropriately. They alone cannot be raised as a valid argument to oppose altogether the legitimate right of corporate stakeholders, and of citizens at large, to make informed judgments about the exposure of companies to tax risk.

Transparency over “rulings” and mutual agreement procedures

7. Public transparency is also an issue for other BEPS action points. The OECD proposal to facilitate exchange of information between authorities over the secretive “rulings” between a tax authority and MNEs under Action 5⁵ is a step forward. The revelations around the Luxleaks scandal, and the pivotal role played by the Big four audit companies – PwC, Deloitte, E&Y and KPMG – suggest a far more robust response is required. Automatic exchange of information on rulings, on the model the OECD Standard for automatic exchange of financial account information, should be considered. In a similar way, we would hope that outcome of Action 14 would lead to greater transparency over Mutual Agreement Procedures. This could take the form of a standardised public disclosure policy, including the listing of companies that benefit from a MAP, and regular analytical reports on their contents and main provisions.

Participation of developing countries and their civil society organisations

8. On 12 November 2014, the OECD announced new measures to increase the participation of developing countries in the implementation of the G20-endorsed Base Erosion and Profit Shifting (BEPS) Action Plan, including the participation of 10 developing countries in CFA-related meetings, the creation of five formal BEPS regional networks and a commitment to additional staff resources within the OECD Secretariat. It would be important to ensure that these much needed efforts to reach out to the developing world also benefit civil society organisations and trade unions.

Application to the financial sector

9. The tax treatment of the financial sector is creating complications for the effective implementation of at least three BEPS Action points:

⁴ <http://dx.doi.org/10.1787/9789264219236-en>

⁵ <http://dx.doi.org/10.1787/9789264218970-en>

- Action 6 (treaty abuse) delivered in September 2014⁶ contains unresolved issues around the application of the LOB rule to private pools of capital, hedge funds and private equity, and, to a lesser extent, to regulated collective investment funds (mutual funds in the US and ‘UCITS’ funds);
- Action 2 (hybrid mismatches) delivered in September last⁷ exposes similar problems with the tax treatment of bank financing, including capital requirements under Basel III, and of the “shadow banking” system (incl. the inter-banking “repo” market and money market funds);
- Current discussion on Action 4 (interest deduction)⁸ also suggests that the banking sector represents a far more serious challenge than anticipated.

10. This uncertainty about the BEPS treatment of the financial sector is of serious concern. A number of pre-BEPS papers, produced by the CTPA and by the DAF, conclude that the financial sector is particularly at risk of aggressive tax planning practices. For TUAC this uncertainty once again confirms the need for the OECD to engage in a far more comprehensive approach on tax and finance than it has done so far. At G20 level, there should be some assurance that the BEPS initiative is closely coordinated with the financial reform track which is led by the Financial Stability Board.

Meaningful consultations and follow-up mechanisms

11. The TUAC has participated in a number of BEPS Action-specific consultations. There is however an element of fatigue among our membership that is driven by the perception that trade union and civil society views are not taken on board as they should be. We appreciate the many opportunities for consultation. We hope that these are meaningful consultations.

12. Moving ahead, and once the BEPS action plan is completed, it is crucial that a stakeholder-friendly approach prevails at the OECD in the design of the follow-up mechanisms. Bilaterals between government representatives, business managers and their tax lawyers should be a thing of the past. For example, the current version of the OECD Transfer Pricing Guidelines’ Monitoring Procedures offers a privileged status to the BIAC⁹. This text could be revised and broadened to include other stakeholder groups, including the TUAC and relevant CSOs.

⁶ <http://dx.doi.org/10.1787/9789264219120-en>

⁷ <http://dx.doi.org/10.1787/9789264218819-en>

⁸ <http://www.oecd.org/ctp/aggressive/discussion-draft-action-4-interest-deductions.htm>

⁹ Annex “Guidelines for Monitoring Procedures on the OECD Transfer Pricing Guidelines and the Involvement of the Business Community”, section “C. Involvement of the business community” (#17-24)

Annex: List of TUAC and Global Union statements related to the BEPS Initiative

22/01/2015| TUAC Comments on the BEPS Action 14: Make Dispute Resolution Mechanisms More Effective¹⁰

14/01/2015| TUAC Comments on the BEPS Action 7: Preventing the Artificial Avoidance of Permanent Establishment Status¹¹

10/11/2014| Global Union Call for Action for Pension Fund Responsible Tax Practices¹²

03/11/2014| L20 Statement for the Brisbane Leaders' Summit¹³

02/10/2014| OECD Mid-Term Reports on the Base Erosion and Profit Shifting (BEPS) Action Plan - Comments by TUAC¹⁴

23/06/2014| Submission to the OECD Committee on Fiscal Affairs¹⁵

21/02/2014| Country-by-country tax reporting: TUAC submission to the OECD¹⁶

20/12/2013| Report on a global unions meeting on corporate tax planning¹⁷

¹⁰ http://www.tuac.org/en/public/e-docs/00/00/0F/D1/document_doc.phtml

¹¹ http://www.tuac.org/en/public/e-docs/00/00/0F/CC/document_doc.phtml

¹² http://www.tuac.org/en/public/e-docs/00/00/0F/70/document_doc.phtml

¹³ http://www.tuac.org/en/public/e-docs/00/00/0F/69/document_doc.phtml

¹⁴ http://www.tuac.org/en/public/e-docs/00/00/0F/57/document_doc.phtml

¹⁵ http://www.tuac.org/en/public/e-docs/00/00/0E/D2/document_doc.phtml

¹⁶ http://www.tuac.org/en/public/e-docs/00/00/0E/3D/document_doc.phtml

¹⁷ http://www.tuac.org/en/public/e-docs/00/00/0D/FE/document_doc.phtml