OPINION

European Economic and Social Committee

Business Taxation for the 21st Century

Communication from the Commission to the European Parliament and the Council
Business Taxation for the 21st Century
[COM(2021) 251 final]

ECO/558

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Referral	European Commission, 01/07/2021
Legal basis	Article 304 of the Treaty on the Functioning of the European Union
Bureau decision	08/06/2021
Section responsible	Economic and Monetary Union and Economic and Social Cohesion
Adopted in section	08/02/2022
Adopted at plenary	23/02/2022
Plenary session No	567
Outcome of vote (for/against/abstentions)	216/00/07

1. Conclusions and recommendations

1.1 The EESC welcomes the long-awaited Commission initiative for the strategy on business taxation in the 21st century. The EESC strongly supports and appreciates the fact that the Commission is aligning its work with the international discussions and agreements.

1.2 The EESC underlines the need to facilitate cross-border investments and to reduce compliance costs for businesses, while making the European economy greener and more digitalised.

1.3 The EESC encourages the Commission to pursue its Action Plan for Fair and Simple Taxation Supporting the Recovery Strategy[1], taking into consideration the EESC opinion *Package for fair and simple taxation*[2].

1.4 The EESC welcomes the G20 Finance Ministers' endorsement of the agreement signed on 8 October 2021 by 136 out of 140 countries in the Inclusive Framework to reach a global and consensus-based package solution on how to allocate taxation rights among countries. At the same time, the EESC underlines the effects of the complexity of such ambitious objectives, calling for uniform and globally concerted and coordinated implementation of Pillars 1 and 2 (the package).

1.5 The EESC emphasises the need for implementation of the tax package both in the EU and, at the same time, in major trading partner countries. If Pillar 1 is not implemented in the US and other major trading partners at the same time, European businesses may be at a competitive disadvantage.

1.6 The EESC underlines the importance of having exactly the same rules in Europe concerning Pillar 2 and the effective corporate minimum tax, as the agreed complex rules worked out in the global agreement. Member States should therefore allow sufficient time for a final agreed text to be available before adopting a directive.

1.7 The calculation of the effective tax rate (ETR) is intended to determine whether the ETR of a given MNE Group is above or below the minimum tax rate with regard to the jurisdiction considered. The EESC underlines that requirements to calculate effective tax rates must follow the agreed global approach, so that administrative costs are not increased.

1.8 The EESC supports the initiative taken by the Commission to issue a recommendation to Member States to allow for losses to be offset via a carry-back.

1.9 The EESC backs the Commission in fighting the abusive use of shell entities aimed at money laundering, aggressive tax planning by individuals and corporations and tax evasion. The EESC looks forward to expressing its views on a concrete proposal addressing the abusive use of shell entities.

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1 COM(2020) 312 final.

2 OJ C 155, 30.4.2021, p. 8.

1.10 The EESC welcomes the initiative of the Commission to create a Debt Equity Bias Reduction Allowance (DEBRA). Investments in new greener technology are connected with a high risk for the investor. In such situations, equity financing is particularly important and the inherent bias against equity financing built into the tax systems needs to be addressed.

1.11 The EESC welcomes the *Business in Europe Framework for Income Taxation* (BEFIT) with a single corporate tax rulebook and looks forward to being able to examine a detailed proposal.

1.12 The EESC encourages the Commission to address cross-border remote working situations as an integral part of the business taxation strategy.

1.13 Another area which needs to be reviewed is the coverage of VAT. Exclusions and loopholes create complexity and result in an uneven playing field, as well as in foregone tax revenue. The EESC encourages the Commission to review the coverage of the VAT system.

2. Commission proposal

2.1 The Commission Communication on Business Taxation for the 21st century aims to address several major challenges, which have developed over the years, along with the COVID-19 outbreak.

2.2 The EU needs a robust, efficient and fair tax framework that meets public financing needs, while supporting the recovery, and the green and digital transition, by creating an environment conducive to fair, sustainable and inclusive growth, as well as for investments so that employment opportunities can materialise.

2.3 Taxation is expected to contribute to wider EU policies, such as the *European Green Deal*, the Commission's *Digital Agenda*, the *New Industrial Strategy for Europe*, and the *Capital Markets Union*. Taxation will also need to facilitate the digital transition by providing an environment where digital businesses can thrive.

2.4 The Commission Communication takes into adequate consideration the outcomes of the BEPS project and addresses the reform of the international corporate tax framework, led by the OECD and mandated by the G20. The reform package consists of two pillars. Pillar 1 aims to adapt the international tax rules to the new business models, which enable companies to do business without a physical presence[3].

3 In-scope companies are the multinational enterprises (MNEs) with global turnover above 20 billion euros and profitability above 10% (i.e. profit before tax/revenue) calculated using an averaging mechanism with the turnover threshold to be reduced to 10 billion euros, contingent on successful implementation including of tax certainty, with the relevant review beginning 7 years after the agreement comes into force, and the review being completed in no more than one year. Extractives and Regulated Financial Services are excluded. https://www.oecd.org/tax/beps/statement-on-a-two-pillar-solution-to-address-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-october-2021.pdf.

2.5 Pillar 2, in turn, will reduce tax competition by setting a minimum effective corporate tax rate of 15 percent[4].

2.6 Once agreed upon within a multilateral convention, the application of the package will be made mandatory and the Commission will propose a directive for its implementation in the EU.

2.7 The Commission will also put forward a new proposal for the annual publication of the effective corporate tax rate of large companies, which are resident in the EU and fall within the scope of Pillar 2, using the methodology agreed for the Pillar 2 calculations.

2.8 The EU will, as part of its transparency agenda, also further tackle the abusive use of shell entities for tax purposes – i.e. companies with no or minimal substantial presence and real economic activity – through a new legislative initiative aimed at preventing aggressive tax planning, tax evasion or money laundering by individuals and corporations.

2.9 The Commission strategy will also address the debt/equity bias in corporate taxation by making equity financed investments less disfavoured via an allowance system (DEBRA) for financing with new equity.

2.10 The Commission is due to withdraw its pending proposals for a Common Consolidated Corporate Tax Base (CCCTB)[5], once a new proposal to strengthen the internal market is presented. It will be a new framework for income taxation for businesses in Europe, called BEFIT (*Business in Europe: Framework for Income Taxation*).

2.11 The BEFIT proposal will build on Pillar 1 and Pillar 2. The Commission will work closely with Member States in drawing up this proposal, also taking into account the views of the European Parliament and in consultation with the business sector and civil society groups.

2.12 The Commission strategy includes a recommendation to Member States to allow for offsetting losses via a carry-back, with the aim of improving a level playing field for companies across the Union. The recommendation applies to fiscal years 2020 and 2021.

3. General comments

3.1 The EESC welcomes the long-awaited Commission initiative for the strategy on business taxation in the 21st century. The EESC strongly supports and appreciates the fact that the Commission is aligning its work with the international discussions and agreements.

4 Pillar Two consists of: a) two interlocking domestic rules (together the Global anti-Base Erosion Rules (GloBE) rules): (i) an Income Inclusion Rule (IIR), which imposes top-up tax on a parent entity in respect of the low taxed income of a constituent entity; and (ii) an Undertaxed Payment Rule (UTPR), which denies deductions or requires an equivalent adjustment to the extent the low tax income of a constituent entity is not subject to tax under an IIR; and b) a treaty-based rule (the Subject to Tax Rule (STTR)) that allows source jurisdictions to impose limited source taxation on certain related party payments subject to tax below a minimum rate. The STTR will be creditable as a covered tax under the GloBE rules. The GloBE rules will apply to MNEs that meet the 750 million euro threshold as determined under BEPS Action 13 (country by country reporting). Countries are free to apply the IIR to MNEs with headquarters in their country even if they do not meet the threshold. The minimum tax rate used for the purposes of the IIR and UTPR will be 15%. https://www.oecd.org/tax/beps/statement-on-a-two-pillar-solution-to-address-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-october-2021.pdf.

5 COM(2016) 685 final and COM(2016) 683 final.

3.2 The EESC supports the Commission's objective of making the tax agenda contribute to the overall objective of enabling fair and sustainable growth by supporting wider EU policies, such as the European Green Deal, the Commission's Digital Agenda, the Industrial Strategy for Europe and the Capital Markets Union.

3.3 The EESC underlines the need to facilitate cross-border investments and to reduce compliance costs for businesses, while making the European economy greener and more digitalised.

3.4 The EESC is concerned about the tax gap, despite the fact that corporate tax revenues in relation to GDP, have on average been stable or even increasing during the last decade in the EU and in the OECD countries.

3.5 The EESC shares the Commission's view that governments have engaged in adopting a patchwork of anti-tax avoidance and evasion measures and that the measures have added further complexity to existing complexity. The EESC calls for a robust, efficient and fair tax framework which addresses underlying incentives to engage in base erosion and profit shifting behaviours.

3.6 The EESC calls on the European Commission to assess the impact of the series of anti-tax avoidance legislation implemented in the last six years.

3.7 The EESC encourages the Commission to pursue its Action Plan for Fair Simple Taxation Supporting the Recovery Strategy[6], taking into consideration EESC Opinion *Package for fair and simple taxation*[7]. The EESC considers it important to improve the productivity of the European economy to at least the level of competitor economies. Tax is only one of the factors impacting productivity but it is an important one[8].

4. Specific comments

4.1 The EESC welcomes the G20 Finance Ministers' endorsement of the agreement signed on 8 October 2021 by 136 out of 140 countries in the Inclusive Framework to reach a global and consensus-based package solution on how to allocate taxation rights among countries[9]. At the same time, the EESC underlines the effects of the complexity related to such ambitious objectives, calling for a uniform and globally concerted and coordinated implementation of Pillars 1 and 2. In this context, the EU proposals need to take into account the specificities of EU law requirements such as freedom of establishment and non-discrimination.

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6 COM(2020) 312 final.

7 OJ C 155, 30.4.2021, p. 8.

8 There are many reports that conclude that the impact on growth and productivity of corporate taxes is particularly harmful. This is a conclusion the OECD has drawn many times, see e.g. Tax and Economic Growth, OECD Economics Department Working Paper No. 620 or Tax Policy Reform and Economic Growth, OECD (2010). The shifting of the corporate tax onto workers, in particular onto low-skilled workers, as well as a negative effect on investments, are important factors for the conclusion. Also other taxes, like taxes on labour income, may depress growth and productivity developments.

9 The tax rules apply to all companies over a threshold level, irrespective of the sectors they are active in. It is not only for so-called digital business models or consumer-facing businesses.

4.2 The EESC notes that much more work is required for a detailed agreement to be reached. It is of paramount interest that agreements are made on many technical aspects. When rules are implemented at EU-level, companies headquartered in the EU must not be at a competitive disadvantage vis-à-vis their equivalent competitors based in other major jurisdictions[10].

4.3 The EESC emphasises the need for implementation of the tax package not only in the EU but, at the same time, in major trading partner countries. If Pillar 1 is not implemented in the US and in other major trading partners simultaneously, European businesses may be at a competitive disadvantage. It is therefore necessary to coordinate with trading partners both the implementation and the use of the multilateral convention.

4.4 The EESC underlines the importance of transposition and having exactly the same rules for a Pillar 2 directive and the effective corporate minimum tax as the agreed complex rules worked out in the global agreement. Member States should therefore allow for sufficient time for a final agreed text to be available before adopting a directive[11].

4.5 The EESC supports the initiative taken by the Commission to issue a recommendation to Member States to allow for offsetting via a carry-back. Such rules are, however, important not only in a pandemic situation, but also under normal circumstances. The net profit of a company over time should be liable to corporate tax.

4.6 The EESC backs the Commission fight against the abusive use of shell entities aimed at money laundering, aggressive tax planning by individuals and corporations and tax evasion. The EESC looks forward to expressing its views on a concrete proposal addressing the abusive use of shell entities.

4.7 The EESC welcomes the initiative of the Commission to create a Debt Equity Bias Reduction Allowance. Investments in new greener technology are connected with a high risk for the investor. In such situations, equity financing is particularly important and the inherent bias against equity financing built into the tax systems needs to be addressed[12].

4.8 The EESC notes that equity financing could be made less disfavoured both at corporate level and at shareholder level. It is important that the tax treatment does not trigger incentives to channel funds from one level to another.

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10 In the absence of an UTPR rule and if the IIR does not apply to domestic situations, we would have a situation in which foreign MNE groups, including US groups, would only impose the minimum ETR to cross-border situations. The effect would be that they would keep their domestic subsidiaries protected from the minimum effective tax rate: in this context, the low-taxed domestic subsidiaries of a US / foreign headquarter would continue to benefit for instance from tax credits for R&D and pay tax at a rate below the agreed minimum whereas an EU headquarter and its domestic subsidiaries would have their R&D tax credits neutralised via the top-up tax if they reduce their own domestic ETR below the agreed minimum.

11 If all the rules in the OECD/Inclusive Framework agreement are not known at the time when Member States agree on a directive, a process of changing the directive must be initiated to achieve a transposition of the global agreement into an EU agreement. Some Member States may oppose such a change to the directive. To achieve a proper and complete transposition, the global agreement must be fully developed and known before agreeing on a directive.

12 See EESC opinion on *The role of corporate taxes on corporate governance*, OJ C (not yet published).

4.9 In addition, it is worth observing that if statutory corporate tax rates increase, the value of interest deduction goes up and it becomes economically more suitable for a company to invest through loans. A higher inflation rate and/or interest rates would have a similar effect, thereby enhancing the current debt bias[13]. Since such a development cannot be excluded, the importance of the forthcoming Commission initiative is all the more welcome and important.

4.10 The EESC welcomes the BEFIT objectives and looks forward to being able to examine a detailed proposal. The proposal should take into consideration the specific legal regimes applicable to certain types of cooperatives and mutual societies historically adopted by different Member States. The EESC encourages the Commission to include stakeholders and civil society in the deliberations so that progress and acceptance can be achieved.

5. Some additional areas that need to be addressed for the 21st century tax policy

5.1 The EESC believes that the pandemic may have changed the workplace for many in such a way that teleworking will be more frequent in the years to come. The tax consequences of cross-border teleworking (or remote working) give rise to tax questions both for the firms and for individuals. For a company, an unintended permanent establishment, with its tax consequences, may arise. The individual may face taxation claims from multiple countries, while as social benefits and protection may be adversely affected. Pension rights may also be affected.

5.2 The EESC encourages the Commission to address cross-border working situations as an integral part of the business taxation strategy.

5.3 Another area which needs to be reviewed is the coverage of VAT. Exclusions and loopholes create complexity and result in an uneven playing field as well as in foregone tax revenues. The EESC encourages the Commission to review the coverage of the VAT system.

Brussels, 23 February 2022

Christa SCHWENG
The president of the European Economic and Social Committee

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13 See The Taxation of Income from Capital, Mervyn King and Don Fullerton, The University of Chicago Press and NBER (1984).