SYNDICAT EUROPEÆN TRADE UNION

ETUC Position on a Minimum Level of Taxation for Multinationals

Adopted at the virtual Executive Committee Meeting of 16-17 March 2022

Key messages

- Tax competition and corporate tax avoidance affect workers in many ways: depletion of public budgets; reduced revenues resulting in insufficient financing of public services; inequalities of income between capital and labour; and hinder having a fair share of corporate profits through collective bargaining. For these reasons, the ETUC has been campaigning for a minimum corporate tax rate of at least 25%.
- The EU proposal on a global minimum tax represents a fundamental shift away from tax competition. However, the proposed Directive indicates a low rate of 15% and has a number of weaknesses that would seriously undermine its added value.
- The proposal does not appear to have been subject to an impact assessment. The ETUC urges the European Commission to engage with trade unions and to communicate its analysis on any potential dynamic effect of the proposed Directive on jobs.
- The global minimum tax rate must be raised to at least 25%, without carve out nor sectoral exemption. In particular, the financial sector must comply with the minimum tax level.
- Considering the limited margin of manoeuvre to amend a Directive under the unanimity requirement, a coalition of willing Member States should introduce additional domestic reforms, in addition to the EU Directive, so as to create a virtuous race to the top. The ETUC calls on the EU institutions to build in sufficient flexibility into the Directive to allow further ambition in the fight against tax competition. The ETUC calls upon its affiliates to promote to their governments these demands for improvements.
- It is also vital to remove the domestic minimum top up tax from the EU proposal as this has the potential to further exacerbate tax competition.

Introduction

A proposal for a Directive ensuring a global minimum level of taxation for multinational groups in the Union was published on 22 December 2021[1]. This proposal seeks to implement in the EU legal framework the global agreement negotiated by the OECD-hosted Inclusive Framework and endorsed by the G20 in October 2021. It is closely aligned to the highly technical model rules, which have been released by the OECD two months after the G20's political agreement[2].

In spite of requiring a unanimous vote, the French EU Presidency has announced its intention to have this Directive adopted very quickly, arguing that all EU Member States (with the exception of Cyprus) have already signalled their commitment, in the course of the G20/ OECD process.

This position paper compares the EU proposal with the ETUC demands for tax justice. It then analyses the many weaknesses of the Directive and argues that domestic reform

[1] *Proposal for a Council Directive on ensuring a global level of taxation for multinational groups in the Union COM (2021) 823 final*

[2] *OECD releases Pillar Two model rules for domestic implementation of 15% global minimum tax - OECD*

must complement the EU Directive. Trade union campaigns at national level will therefore be an important element of fair and effective corporate tax reforms.

The workers' agenda for tax justice

Corporate tax reform is gaining prominence in the public agenda because of the knowledge that multinational enterprises are not paying their fair share of tax. This debate has recently become more acute as the pandemic is putting considerable pressure on public finances and undermine quality public services in Europe and globally.

Due to the increased movement of capital and the deep weaknesses of current international taxation rules, multinational enterprises are able to shift their profits from countries where the real economic activity is to low tax countries. In addition, there is tax competition between countries to attract investment. Countries around the world are reducing their corporate income tax rates, implementing regressive structural reforms and offering tax incentives with a view to attract foreign direct investment. This is happening even though there is no evidence that reducing corporate tax rates makes a significant impact on the choice of location of real investment by businesses.

The trend over the last decade is that corporate profits have been on the increase. Yet, due to corporate tax avoidance and tax incentives, large corporations are proportionally paying less and less taxes. This affects workers in many ways. First, progressive and sound tax policies are necessary to finance public budgets and consequently public services and public policies. Social protection, public services and state support are taking us through the crisis; therefore, insufficient public revenue will be a major obstacle to the recovery. Second, corporate tax planning stands in the way of a fair share between corporate income and the workforce. Profits are indeed extracted from healthy subsidiaries and sent to tax havens, where they can no longer be invested in jobs and productive investment. Third, when corporations do not pay their fair share, the tax burden is disproportionally borne by middle and low income households. It is now well recognised that tax cuts have a direct impact on income inequalities.

For these reasons, the ETUC has been campaigning, together with the global labour movement, for higher effective tax rates[3]. Effective tax rate refers to the percentage of taxes effectively paid by companies, as opposed to the legal percentage, which does not take into account tax credits and other tax cuts. As an illustration, a 25% effective tax rate can drastically limit tax competition. It indeed guarantees that national tax incentives cannot go below the current average effective tax rate for OECD countries (between 20-25%[4]).

The potential revenue gains from a 25% effective tax rate are substantial: according to the EU tax observatory estimations it will be EUR 234.3 billion a year [5]. As evidenced by the tax estimations quoted in the annex to this paper, the revenue gains are substantial for every EU Member State.

Whilst a minimum tax rate is an important element of tax justice, it must be set at a high rate and complemented with additional reforms. The ETUC has long been urging the Commission to relaunch the CCCTB. Unitary taxation on the basis of carefully weighted allocation factors is indispensable to overcome the weaknesses of current transfer pricing rules and their incentives for fragmented corporate structures that are so detrimental to employment[6]. To strengthen enforcement and enable public scrutiny, it is

[3] *See for instance: ETUC resolution on EU taxation and own resources | CES; Fair corporate taxation - key ITUC demands; TUAC comments to OECD consultation on Pillar One and Pillar Two blueprints*

[4] *Corporate Tax Statistics: Second Edition (oecd.org)*

[5] *Note-2-Revenue-Effects-of-the-Global-Minimum-Tax-October-2021.pdf (taxobservatory.eu)*

[6] *For considerations on the impact of letterbox practices on employment see ETUC position of 23 February 2022 on shell entities*

also necessary to enhance tax transparency through in particular stronger global country-by-country reporting. Trade unions need to have access to readable and accurate information on all the countries in which companies are declaring their profits.

The Commission's proposal – a global minimum tax with concessions to tax havens

Pillar 2 of the G20/ OECD deal is not legally binding. This means that countries do not have to introduce a global minimum tax. If they choose to do so, they commit to implement rules in line with the detailed OECD model rules. If adopted, however, the Directive on a global minimum tax would have to be transposed swiftly by Member States. According to the EU Commission, non-discrimination principles require a minimum level of harmonisation in the Union.

Most EU Member States took an active part in the endorsement of the global agreement. The proposed Directive is therefore more likely to be adopted than previous proposals, in spite of the unanimity requirement.

The EU proposal is designed to ensure that large multinational enterprises pay at least 15% tax on the income arising in each country where they operate.

The global minimum tax has a limited scope of application. The Directive would apply only to multinational enterprises with an annual turnover higher than EUR 750 million, though Member States would have the option to extend that scope to large domestic companies. This is welcomed, as applying this option would strengthen the scope and revenue potentials of the minimum tax. Even if a company comes within the scope of the Directive, not all of its profits would be covered by the 15% minimum rate. The Directive foresees a "substance-based carve-out" according to which a fixed percentage of the value of tangible assets and payroll will be excluded from the tax base. For the first 10 years, that percentage is 8% of the value of tangible assets and 10% of payroll. Thus, countries would still be able to use tax incentives to attract investment .

Sectoral exemptions also bring significant limitations to the scope of the proposed Directive. Investment and pension funds, international shipping, and domestic companies seeking to expand internationally would not be affected. Yet, the financial sector is significantly under-taxed due to its tax planning activities. According to recent estimates, introducing a minimum level of taxation for European banks would bring significant revenue gains, in addition to much needed regulation[7].

Under the Directive, the Member State in which a multinational is resident would be obliged to claim, up to 15%, a top-up tax in respect of the profits enjoyed by subsidiaries and establishments of that multinational. The right to top-up tax by resident countries is called the income inclusion rule ('the IIR'). The Directive would also affect non-EU companies: if a multinational is resident in a third country and that resident country decides not to apply the IIR, EU Member States where the subsidiaries and establishments are located would be obliged to claim a top-up tax in proportion of the economic activity taking place on their respective territories. A formula apportionment based on sales and assets would determine how much profits is allocated to each Member State. The right to top-up tax by non-resident countries is called the undertaxed payment rule ('the UTPR').

Thus, the proposed Directive would be, at least in theory, a powerful incentive for low-tax countries to increase their effective tax rates to at least 15%. If they don't, the profits would still be taxed but the revenues would be collected by non-resident countries.

That said, the proposed Directive also contemplates the possibility that Member States introduce a "qualified domestic top-up tax" ('the DMTT'). According to the DMTT, a Member State can decide not to enforce a 15% effective tax rate for all corporate profits

[7] *EU tax observatory (2021), Have European banks left tax havens? Evidence from country-by-country data*

but only for the profits that fall within the scope of the Directive. A relevant element in the decision of EU tax havens to introduce DMTT instead of raising effective tax rates for all corporate profits is the so-called substance carve-out: companies would still enjoy tax cuts for their income linked to assets and payrolls. The DMTT ranks first in the order of collection, before the IIR and the UTPR. This means that the revenues collected under the DMTT would be deductible from the top-up tax otherwise payable in the resident country.

In simple words, a perverse effect of the DMTT might be to encourage EU tax havens to further decrease their corporate income tax rates – potentially down to zero - with a view to continue to attract capital but at a lower cost for their public budgets since they would collect the 15% top-up tax for the profits that are included in the tax base of the Directive. In its proposal, the Commission argues that the DMTT is necessary to preserve tax sovereignty of Member States.

ETUC analysis – a necessary but insufficient reform

The principle of a global minimum tax is a fundamental conceptual shift away from unfettered tax competition. The question is whether the Directive would provide the basis for future improvements, or whether it would set in stone progress that is far too limited to achieve tax justice. The EU proposal contains significant weaknesses.

A global minimum rate of 15% falls short of ETUC demands. Nonetheless, considering that there is today no limit to tax competition, the G20/ OECD deal and its implementing EU Directive could put a brake, albeit insufficient, to tax incentives.

It must be recalled, however, that a 15% rate has an impact on revenues prospects. According to EU tax observatory estimations, the Union is expected to gain EUR 83 billion. It would therefore cut by half its revenue prospects by settling for a 15% rate instead of 25%[8]. The substance carve-out would further diminish revenue prospects by an estimated 23%.

Most importantly, a perverse effect of the DMTT could be to encourage EU tax havens to further decrease their corporate tax rates so as to retain their role as "investment hubs", whilst at the same time ensuring that other Member States are not able to charge a top-up tax.

The question arises as to whether the Directive introduces minimum standards only, allowing willing Member States to transpose its provisions with more ambition. The extreme complexity of this Directive, which lays down detailed provisions on the computation of the tax base and the calculation of the effective tax rate on a country-per-country basis, as well as the delicate interaction between the prerogatives of residence and non-resident countries, are likely to deter Member States from going above 15% in their domestic implementation.

Furthermore, a great number of companies will remain unaffected by the 15% minimum rate because of the narrow scope of application.

The EU Commission has chosen not to publish any impact assessment. The negotiations at global level, and the numerous concessions that have resulted from it, have been driven by countries trying to optimise the revenue impact for their own budgets while at the same time avoiding excessive tax burden on their multinationals doing business abroad. It is therefore conspicuous that the proposed EU Directive is not accompanied by an impact assessment of revenue effects. The economic analysis carried during the OECD negotiations, assuming they exist for every Member State, have for the most part not been made public.

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[8] These estimations were published before the introduction of a DMTT in the proposal. If the DMTT is retained in the final Directive, revenue estimations will have to be significantly revised downwards.

In particular, the DMTT was introduced in the OECD Model Rules as a last minute change, after the political endorsement by the G20 and in the absence of any public consultation. As the DMTT has the potential to neutralise the positive effect of a global minimum tax, its likely impact must be thoroughly assessed.

A particularly worrying aspect for the ETUC is that there has not been any assessment of the impact of the various aspects of the reform on employment. This is a great concern as several of the concessions introduced in the Directive may have an effect on jobs. This is particularly in the case of the substance-based carve-out. As payroll costs would enable companies to lower their tax bills, potential dynamic effect on jobs and offshoring should have been analysed. Crucially, the DMTT would become attractive to countries – including outside the EU - that wish to attract investment and job creation on their territories through tax incentives.

In addition, the employment impact of the sectoral exemptions should have been assessed. As some pension funds are known for their short-termism governance, trade unions will consider their preferential tax treatment as particularly unfair. The exclusion of shipping is also a huge concern from an employment point of view. As regularly reported by the ITF and the ETF, the shipping industry is plagued by letterbox practices with adverse impact not only on tax but above all on employment conditions and social security contributions. A minimum tax rate would constitute a decisive step in the fight against flags of convenience.

Finally, the EU Directive would not raise sufficient revenues for development. Giving priority to EU tax havens (through the DMTT) and residence countries (through the IIR) to the right to charge the top-up tax puts low-income countries at a great disadvantage as they are home to few multinationals. Revenue prospects are particularly slim for those countries that already enforce a tax rate above 15%.

ETUC demands – the need for complementary action

First, the ETUC urges the European Commission to engage with trade unions so that the employment and public revenue effects of corporate tax avoidance, tax competition and tax incentives can be fully taken into account. The ETUC has the same demand for the EU proposal on shell entities. It is unacceptable that tax reforms continue to be discussed without any concern for their impact on working families, public services and public policies.

Second, it is vital that the EU effective corporate tax rates are raised above 15% without carve-out and for all companies in order to raise much needed public revenues and to stop tax competition. To achieve this, additional measures must be considered – either through unilateral reforms or through enhanced cooperation. A coalition of willing Member States can create a virtuous circle and a race to the top.

Building on the momentum created by the G20/ OECD agreement and the EU Directive, Member States should seriously consider introducing into their own domestic legislation a minimum level of taxation of at least 25%. Furthermore, Member States should extend the scope of the minimum tax to all sectors and to companies with a turnover below EUR 750 million. In this regard, the ETUC welcomes the recent Spanish reform seeking to apply a minimum tax to companies with a EUR 20 million turnover.

As a result, the ETUC demands that the EU Directive does not prevent, in any way, Member States from maintaining or introducing additional and more ambitious measures, targeting undertaxed overseas profits. This requires in particular that the Directive contains a strong non-regression clause. Importantly, flexibility must be built into the Directive to ensure that national measures are considered as complementary to the European minimum tax, and therefore accepted as “covered taxes” for the calculation of the effective tax rate. A strict review clause must also be introduced in the Directive so as to ensure that the minimum level of taxation in the Union can be increased in a foreseeable future.

Third, the ETUC calls on the EU institutions to remove the DMTT from the European Directive, since this has the potential to defeat the scope of a global minimum tax and to further exacerbate tax competition.

Fourth, the Directive must be considered as a first step only and not the end of the road for the fight against tax competition. The ETUC calls on the EU institutions to introduce a strict review clause together with a phase-in approach so that the European global minimum tax is increased to 25% over a short period of time. Member States may also have to adjust to the dynamic impact of the Directive.

Next steps for a trade union campaign

The ETUC is actively pursuing its engagement at EU level with the European Commission, the Parliament and the EESC. The unanimity requirement, the limited involvement of the European Parliament and the narrow margin for manoeuvring left by the G20/ OECD agreement will make it extremely difficult to achieve substantial change in the Commission's proposal. This position paper has described how the EU Directive constitutes a necessary but insufficient step towards a fair reform. Complementary action at domestic level is indispensable to effectively stop corporate tax competition and to reduce profit shifting.

The ETUC calls on its affiliates to incorporate the call for an at least 25% global minimum tax into their national demands for fairer tax systems. Member States should not stop at the EU Directive and should take active steps to introduce additional minimum tax measures at national level. Until now, countries were wary of such rules because of their concerns about deterring inward investment. The situation is now changing as influential economies (US, UK, Spain) have, or are considering, deploying strong domestic taxes.

The arguments in favour of a 25% rate are numerous. The revenue raising potentials are very significant, as evidenced by the country by country estimation annexed to this position paper. Furthermore, an effective stop to tax competition in the Union requires a rate that is close to the current effective average.

As many trade unions are fighting for more progressive taxation in the context of depleting public budgets and under-resourced public services, domestic minimum taxes will go a long way towards ensuring that foreign multinational enterprises pay their fair share in every country where they carry profitable economic activity.

In parallel, the ETUC will continue its work towards a relaunch of the unitary taxation debate in the EU, with as wide a scope of application as possible.

Tax transparency remains an important ETUC priority. The EU Commission committed to publish a proposal ensuring more transparency on effective tax rates. This might be an opportunity to address once again some of the shortcomings of the (partially) public country-by-country-reporting Directive, and in particular the lack of detailed information on effective tax payments in every country where multinationals are doing business.

Finally, further attention should be brought on the need to strengthen other BEPS actions in European and multilateral fora to ensure transparency. The ETUC recalls the resolution of the European Parliament, of 7.10.2021, for greater action at EU level in combatting tax evasion, reinforcing measures to combat harmful tax practices and for a reform of the Code of Conduct on business taxation, even more important after yet another tax scandal called Pandora Papers.

ANNEX : REVENUE EFFECTS OF THE GLOBAL MINIMUM TAX: COUNTRY-BY-COUNTRY ESTIMATES

source: EU Tax Observatory (October 2021)

Table 2

Revenues of a global minimum tax of different tax rates in 2021 billion € based on country-by-country data of the fiscal year 2017.

	Revenues in billion EUR (2021) for a minimum tax rate of...			
Parent Country	**15%**	**21%**	**25%**	**30%**
Austria	3.1	5.2	6.7	8.5
Belgium	21.2	30.5	36.9	45.1
Bulgaria				
Croatia				
Cyprus	0.2	0.4	0.8	1.4
Czech Republic	0.1	0.3	1.0	2.0
Denmark	1.8	4.6	6.6	9.1
Estonia	0.1	0.3	0.4	0.5
Finland	1.5	3.2	4.4	5.8
France	3.9	16.4	26.3	39.3
Germany	13.1	32.6	47.0	65.8
Greece	2.1	3.3	4.1	5.2
Hungary	0.6	1.3	1.9	2.6
Ireland	12.4	19.0	23.5	29.0
Italy	3.1	8.3	12.0	16.6
Latvia	0.1	0.3	0.5	0.6
Lithuania	0.0	0.0	0.0	0.0
Luxembourg	5.8	9.0	11.2	14.1
Malta	0.1	0.2	0.3	0.4
Netherlands	2.3	8.1	13.8	20.9
Poland	3.7	8.1	11.1	14.9
Portugal	0.1	0.1	0.6	1.8
Romania	0.1	0.1	0.1	0.2
Slovakia	0.0	0.0	0.0	0.4
Slovenia	0.0	0.0	0.1	0.1
Spain	5.2	10.5	14.5	19.9
Sweden	2.7	7.4	10.6	14.5
EU total	**83.3**	**169.3**	**234.3**	**318.8**