

Joint CESI – UFE position on the European Commission’s fight against tax fraud and tax avoidance

The delegates welcome the fact that the new European Commission has placed the fight against tax avoidance and tax fraud practised by businesses on the top of its political agenda. This positive attitude reflects the concerns and demands of the UFE¹ and CESI, which these trade unions have been expressing for quite some time.

For instance, in their latest joint position statement from March 2013, CESI and the UFE had already highlighted *harmful business taxation, the rulings, aggressive tax planning of businesses and double non-taxation*².

However, despite some progress, some demands have not yet been met. The representatives of CESI and the UFE met on 23 February 2016 to discuss the European Commission’s new package (Communication COM(2016) 23 final) and as a result, drafted the joint position below:

Increased transparency for corporate tax

CESI and the UFE welcome the public nature of the new proposal put forward by the Commission on 12 April 2016, which introduces binding public disclosures for large corporations operating in the European Union. This partly responds to the recommendations that CESI and the UFE have been making for a long time, namely in their response to the Commission’s consultation on tax transparency. Despite this move, the proposal remains unsatisfactory and inadequate for an efficient fight against tax fraud and avoidance. Trade unions are namely sorry that this proposal only applies to multinationals that operate in the European Union, thus excluding foreign tax havens and pushing businesses to relocate. The scope of application is also limited to large “multinational corporations” with a turnover of minimum 750 million Euros a year – meaning that consequently, only 10 % of the multinationals are concerned. Following the recent Panama Papers scandal, CESI and the UFE had hoped for a more ambitious and efficient proposal from the European Commission.

¹ Since its creation in 1963, the UFE has supported all actions aiming to improve the instruments to fight tax fraud.

² [CESI and UFE joint position on the fight against tax fraud and tax evasion](#), May 2013.

Need for the TIN

In order to exchange information between countries, CESI and the UFE support the introduction of the Tax Identification Number (NIF)² in the 28 member states of the European Union. Unfortunately, this indispensable instrument for the exact identification of taxpayers has not been implemented in the area of direct taxation, despite the fact that it could help prevent both confusion and errors.

Common Consolidated Corporate Tax Base (CCCTB)

In their responses to the European Commission's consultation, CESI and the UFE have once again highlighted the need for an urgent European-level harmonisation of corporation tax. The CCCTB is an efficient instrument to prevent tax dumping and ensure efficient and fair taxation on a European level. Progress on this matter is crucial for the efficient fight against tax fraud and avoidance, which is why CESI and the UFE hope that the European Commission's next proposal will be satisfactory and that a progressive approach will not be carried out to the detriment of the part on consolidation. In their responses, CESI and the UFE have also strongly recommended that hybrid products, patent boxes and notional interests be abolished and to limit cross-border loss reporting.

Fight against tax avoidance

CESI and the UFE welcome the European Commission's legislative initiative aiming to introduce six legally binding measures to fight aggressive tax planning applied by corporations, as well as the recommendation to Member States on how to prevent the misuse of bilateral tax agreements.

However, CESI and the UFE ask themselves whether these measures are enough to abolish tax loopholes in general, tax rescripts (rulings), resolve the problem of unjustified transfer pricing, patent boxes, notional interests, hybrid products acting as a base for double non-taxation, etc. Indeed, some measures go beyond the OCDE/G20's planned fight against "Base Erosion and Profit Shifting" (BEPS).

Uncooperative third states

CESI and the UFE approve of the "External strategy for effective taxation" and welcome the creation of a grey list of third countries, which will be more efficient than a simple compilation of the various national lists that already exist. This will allow a firmer and more consistent European approach for cooperation with third states on matters relating to good tax governance. This "European" list should not necessarily be aligned with lists of a similar kind of the OECD and the G20. However, CESI and the UFE have their doubts as to the objectiveness of the criteria and the transparency of the process for the selection of third countries on the list. They namely hope that this choice will not be purely political.

Public consultation on double taxation

² Taxpayer Identification Numbers (TIN).

The deadline to respond to the consultation concerning the improvement of double taxation dispute resolution mechanisms was 10 May 2016. The two trade union associations support an Arbitration Convention on the level of the European Union and a certain level of transparency on the level of the Member States, even if this would only guarantee that each State be in possession of the necessary information required to assess the validity of a request for exemption and ensure that income or profit only be exempted once. Basically, the aim is to prevent double non-taxation, which is currently in place thanks to bilateral tax agreements (e.g. hybrid products – deductible interests, exonerated dividends). More generally, the UFE and CESI do not approve of the advocated approach, according to which efficient prevention of double taxation should be performed via a reduction in tax administration costs.

In addition, they believe that profits and losses should be taken into account in Country A only if they are the result of a real economic activity by a stable establishment in Country B. Fictitious profits and losses on transfer pricing between financial companies belonging to the same group should therefore not come under the scope of application of tax agreements to avoid double taxation.

They also believe that the European Union should establish a European tax agreement reflecting the Model Tax Convention of the OECD to uniformly prevent double taxation in the 28 Member States.

Administrative fines and/or denunciation to the Public Prosecutor

Taking the 28 different legislations concerning administrative taxes and procedures for the denunciation of tax swindling, the UFE and CESI believe that the European Commission must deal with this issue to reach a certain level of harmonisation. Concerning this matter, it is worth noting that the Member States with the lowest fines and least constraints benefit from a competitive advantage and are responsible for a certain amount of distortion of competition, thus promoting tax fraud. Regardless of the fact that tax policies are the competence of the governments of the Member States, a European approach would certainly be desirable in this area.

Limitation of cash payments

Within the framework of the fight against the funding of terrorism and the sale of weapons, limiting cash payments is definitely a topical issue. It has led the European Central Bank to decide to stop printing 500 Euro notes and progressively withdraw them from circulation in the Eurozone. Indeed, the highest bank notes are not accepted for daily commercial transactions. They are more commonly used for illicit exchanges, in the underground economy, for tax laundering, corruption and tax fraud. Due to the fact that cash payments for large transactions promote income fraud and money laundering, CESI and the UFE declare that they support capped cash payments.

Top Tax Debtors List

Like Spain, Portugal and Ireland, the UFE and CESI question whether such Tax Debtors Lists should not be extended to the 28 Member States, under the umbrella of the European Commission. However, this measure should only be implemented from a certain tax debt ceiling, for debts that are not being contested by means of appeals procedures in the respective Member States.

Protection of whistleblowers

Some information on the existence of harmful tax practices has come to light thanks to whistleblowers, so it is crucial to adapt the legislation in the Member States to protect them. The UFE and CESI therefore ask that the current protection mechanisms for whistleblowers in cases of corruption be extended to cases involving both direct and indirect taxation.

Corporate social responsibility

The payment of taxes is a moral obligation, even for businesses. This should therefore come under their social responsibility. Trade union associations welcome the Platform for Tax Good Governance's aim to study this matter and support the idea of a certification (or label) to grant socially responsible corporations who are prepared to publish their tax data in respect of fair competition by means of the payment of fair taxes.

Increase of tax administration personnel

Finally, as highlighted in the TAXE Committee's report adopted by the European Parliament on 25 November 2015, "policies of austerity and budget containment in the past few years have significantly reduced the tax administrations' ability to investigate tax crimes and harmful tax practices". That is why, more than ever before, national tax administrations should employ sufficient human and possess the material resources to be able to efficiently contribute to the prevention and detection of aggressive tax optimisation.