

TAXE special committee - Fabio De Masi

The following note outlines my position on the TAXE committee, its work and challenges, and our key priorities for the report currently being drafted. It can be found together with all TAXE background documents [here](#) on my website.

The setting

- Luxembourg Leaks did not reveal a singular event ("one Member State, one accountancy firm"), but a widespread practice across the European Union (EU) whereby multinational corporations (MNCs), aided by accountancy and tax advice firms as well as financial service providers, systematically minimise their tax liabilities to extremely low rates, taking advantage of loopholes and mismatches in existing tax systems and bending applicable laws in their favour. These practices thrive as political elites collude with MNCs instead of using the tools at their disposal to stop tax avoidance and aggressive tax planning. Whistleblowers played a crucial role in alerting the public to these malpractices and are in need of more robust and comprehensive protection.
- Corporate tax avoidance by MNCs deprives Member States (MS) of much needed funds for public investment and social services. It shifts taxation to labour and consumption, increases inequality and discriminates against SMEs. Its costs are born by the majority, already suffering from recessionary austerity measures across the EU.
- The EU is built on an integrated market where capital roams freely and MS compete to attract businesses. This competition in tax matters (but also regulatory standards) creates a race-to-the-bottom, as exemplified by the decline in headline corporate tax rates, for which ordinary citizens pay the price.
- Public pressure has led to some policy initiatives against tax avoidance, notably by the Commission and the OECD (BEPS Project). Those initiatives fall short of the substantive reforms needed and risk being used as a fig leaf by governments for their lack of more robust action.

The committee

- **TAXE was not able to fulfil its mandate**, i.e. to investigate breaches of EU law with respect to state aid provisions, administrative cooperation requirements and the principles of sincere and loyal cooperation between MS and EU institutions. The Commission, MS and in particular the Council did not fully comply with TAXE's requests for documents and a large majority of MNCs ignored calls for cooperation altogether. It needs thus to be upgraded to a **full inquiry committee** or at least have its current **mandate prolonged** until all investigations have been completed. The report to be voted in October/November should be an **interim report** taking stock of results so far and outlining tasks yet to be undertaken.
- In parallel, we have requested the most important documents via the public right to access to documents as developed in Regulation 1049/2001 and look into further legal steps via the ECJ in case of permanent infringements to parliamentary rights.
- In order to add to public pressure for serious reform, TAXE should not shy away from '**naming and shaming**' those who cheat on the general public, those who carry political responsibility for the current situation and those who did not cooperate with Parliament.
- TAXE should pursue **further hearings** where necessary to fulfil its mandate. It should start by following up on potential inconsistencies in statements made by Commission President Jean-Claude **Juncker** on 17/09.

He already backtracked on his claim of not having been in possession of the previously secret chapter in the so-called **Krecké report** on Luxembourg's tax ruling practice (releasing the page as a consequence). However, his insistence of not having had knowledge of the report's content at the time of the hearing still seems to contradict statements made by Jeannot Krecké. He should thus be heard again alongside Krecké and relevant other sources.

The solutions - our priorities for the TAXE report

A) Public debate and outrage has been instrumental for even minor steps towards a fairer tax system. There is hence an urgent need for more **transparency** to facilitate and encourage public scrutiny.

- **Country-by-country reporting (CBCR)** has to be comprehensive and **public**. This is in contrast to the OECD logic of calling exchange of information among tax authorities "transparency". Also unlike the OECD, CBCR needs to be widely applicable to MNCs, not just to the 20% largest.
- **Tax rulings** are not bad per se, but they should be open to **public scrutiny** in order to expose aggressive tax planning, sweetheart deals and discrimination of local corporations. They should have been exchanged spontaneously by tax authorities since 1977, but MS did not act to protect the untaxed profits made by their own MNCs abroad.
- Automatic exchange of information (**AEOI**) between tax authorities can be a significant step towards tackling certain avoidance strategies as well as (mostly private) tax evasion. The **Commission proposal** and **ECOFIN compromise** on AEOI of rulings does not entail necessary transparency provisions however. The AEOI of financial accounts and income needs to be combined with the publication of **detailed summary statistics** on the data exchanged and has to cover also **freeports** and other innovative ways of stocking and hiding wealth.
- **Corporate ownership** has to be transparent and MS should make full use of the possibility created by the fourth Anti-Money Laundering Directive to establish publicly accessible registers of ultimate beneficial owners. This should be complemented by an EU-wide financial wealth register.

B) At the heart of current problems of massive tax avoidance is a fundamentally biased balance between MNCs as well as their legal and financial aides and the state as well as citizens. Fixing this requires **stricter and fairer regulation** in the public interest.

- **Whistleblowers** need comprehensive and robust protection, much more than now. This should come in the form of a coherent and specific legal framework, take note of the wide range of not only economic, but also personal and social losses whistleblowers, including their relatives, currently face, and reinforce the protection of journalists working with whistleblowers as well. The protection of trade secrets should only be taken into account in cases where there is a demonstrable and unjustified economic loss for corporations. Despite lip service to the contrary, the Commission proposal on **Trade Secrets Directive** goes unfortunately in the opposite direction by creating a very vague definition of protectable trade secrets, increasing uncertainty for whistleblowers and making them more vulnerable.
- It is crucial to tackle the vast influence of and conflicts of interest coming with **the tax advice industry** dominated by the big 4 as well as **financial service providers**. Voluntary internal codes of conduct have demonstrably failed in preventing these industries' support for tax avoidance. Instead we need:
 - An effective functional split within large firms between auditing and tax advisory services;
 - An end to the revolving door of staff between public bodies and private firms as well as to the simultaneous consulting of public bodies in law making and private firms in tax planning. This

includes a two-step reform of Commission expert groups, first following swiftly the recommendations made by the Ombudsman and then transforming expert groups into truly independent advisory bodies;

- A robust regime of sanctions for both tax advisory firms and financial service providers (including banks) in cases of repeated assistance with or promotion of tax dodging;
 - Ban from EU funding (invite MS to ban from all public contracts);
 - No more advisory services to EU law-making;
 - Significant fines;
 - Suspension or withdrawal of business licences;
- An assessment of pay structures in order to align them with the collective aim of minimising aggressive tax planning (i.e. not conditioning pay on tax saved).
- **Tax authorities** need to be equipped with the material means and the political will to combat tax avoidance effectively. This includes significant investment in personnel and equipment, better and more international coordination and severe sanctions for political interference. Their work would also benefit from transparency requirements as public scrutiny and research will help the detection of new and evolving avoidance strategies.

C) An integrated EU also needs **more cooperative tax policies** replacing the negative-sum game tax competition.

- This could be done through a **CCCTB**, but only under conditions making sure that it will lead to less tax avoidance opportunities, less tax competition between MS and a more robust corporate taxation. This contrasts with the Commission June 2015 proposal which allows offsetting of profits and losses across borders, before consolidation may be added at a later stage. An effective CCCTB should:
 - Involve full consolidation from the start and be mandatory for all companies operating in the EU;
 - Be based on a CCTB which is set towards the highest common denominator among MS, hence preventing a further drop in revenue from corporate tax;
 - Include a limited set of (effective) minimum rates depending on the size, structure and composition of Member States' economies;
 - Feature a formula apportionment which does not give weight to intangibles but is fully based on actual economic substance.
- As a matter of urgency, the negative effect of **existing EU laws** such as the Interest and Royalties Directive have to be curtailed by integrating robust anti-abuse clauses and by re-establishing the right for MS to apply withholding taxes on payments that escape taxation altogether.
- Much stronger action than proposed by the OECD and the Commission so far should be taken on **patent boxes**. Even with the modified-nexus approach, there is a risk that they will be the basis of profit shifting models. They also form an integral part of the race-to-the-bottom in terms of corporate tax rates.
- The secrecy around EU bodies like the Council's **Code of Conduct Group** on business taxation has to end. MS' positions should be public and the mandate of the Group be amended to deal with all forms of tax avoidance and regularly report in public to ECOFIN on progress made.

D) Without substantially more powers, the European Parliament will not be able to fulfil its democratically legitimised role

- The obstacles faced by TAXE are a prime example of the EP's lack in **proper investigative powers**. The Commission and the Council must end their refusal to consent to the **Regulation on committees of inquiry** provided for in the Lisbon Treaty and proposed by the EP since 2009.
- TAXE was incapable of sanctioning even MNCs which refused any sort of cooperation. The EP's own rules therefore need to be urgently adopted to allow the withdrawal of access badges in cases of non-cooperation. With the Commission, the EP has to update provisions for the interinstitutional transparency register, making it compulsory and amending the code of conduct to allow for sanctions against corporations which refuse cooperation with parliamentary committees.