Trade Union
Advisory Committee
to the OECD
Commission
syndicale consultative
auprès de l'OCDE

BASED IN PARIS 2018
FOUNDED IN LONDON 1948

Comments on the Inclusive Framework on Base Erosion and Profit Shifting (BEPS)

Lima, 27-28 June 2018

The TUAC welcomes the opportunity to contribute to the 5th meeting of the Inclusive Framework on BEPS. We have four key messages to share:

- The need for better participation of trade union and civil society organisations in the inclusive framework, because tax evasion and aggressive tax planning concerns all the stakeholders, not just businesses and the tax collector.
- The need for the OECD and the G20 to come to agreement on ambitious recommendations in 2020 on the taxation of the digital economy;
- The need to engaging a new dialogue on a public version of the country-by-country reporting framework also by 2020;
- The need to ensure effective measuring and reporting on the impact of BEPS measures, as required under BEPS Action nb 11.

Participation of trade union and civil society organisations in the inclusive framework

Looking at the number of countries that participate, this framework has proven to be successful in bringing on board non-OECD countries. 116 countries are members, up from 99 countries just a year ago. With respect to the participation of civil society organisations, businesses and trade unions, there is room for improvements.

More broadly we would like to re-iterate our past concerns about the importance of reaching out to trade unions and workers of companies affected by tax avoidance schemes and practices. The BEPS Action Plan of 2015 makes the assumption that the tax accountability of MNEs matters to governments and their tax administrations only. We contest this view. The impact of tax avoidance practices by MNEs is not limited to government revenues – workers can also be impacted. Trade unions have provided evidence that aggressive tax planning schemes can weakened the rights of workers employed by the MNE to decent wages and to a fair share of the wealth and profits created by the MNEs, to collective bargaining and to information and consultation (when aggressive tax planning schemes leads to corporate fragmentation).

Ambitious recommendations on the taxation of the digital economy

The OECD is expected to deliver a report on the taxation of the digital economy to the G20 in 2020. The most recent OECD interim report on the taxation of the digital economy offers different options to help redress for the non-taxation of digital businesses. The proposed measures amount to a patch, not a cure for the disease: adapting treaties to account for digital presence and reform transfer pricing guidelines. The tax challenges of data-driven cross border business operations remain. The official

OECD Guidelines on Transfer Pricing were 360 pages long in 2010. After the BEPS Action Plan of 2015, they are over 600 pages long. We are adding complexity of the rules while not necessarily resolving the problem. As we have advocated before, the OECD should have a fresh look at the formulary apportionment method as a credible and much simpler alternative to the arm's length principle.

Engaging dialogue on a public version of the country-by-country reporting

As the implementation of the BEPS action n13 on country-by-country reporting is unfolding, and as tax administration will being to exchange induvial company reports, we reiterate our concern that the framework excludes any possibility for public disclosure. Trade unions firmly believe that public reporting would help all the stakeholders, including the businesses themselves to ensure level playing field between competitors. We do not see an opposition or a choice to be made between tax transparency and business confidentiality. It matters for workers employed by the MNE to help them have confidence – or not – in their fair share of the wealth created by the company. We hope that the upcoming review of the framework by 2020 will include a discussion on a public disclosure mechanism. This issue was never addressed, never discussed during the preparation of the BEPS Action in plan in 2013 -2015. We need an informed debate.

Measuring and reporting on the impact of BEPS measures

The impact of the BEPS Action Plan as whole has yet to see the day, or at least we do not know the impact with certainty. Available figures in Europe suggest that thee effective tax rates paid by global business remain abnormally low however.

That is why we fully support the implementation of BEPS Action n°11 on measuring and monitoring BEPS practices, including the effective reporting on the 6 indicators + 2 "future" indicators identified in the final report of 2015. Companies subject to the country –by-country framework under BEPS action n13 should be required to report publicly on these indicators. This is particularly true of two indicators:

- The effective tax rates of large MNE and of their subsidiaries compared to the effective tax rate of non-MNE entities with similar characteristics;
- The profit rates compared to effective tax rates

As part of the implementation of BEPS Action n13, it is understood that the OECD Secretariat will receive the data of the Country-by-Country reports on an anonymised level. These data should not become proprietary information of the OECD. They should be made public and should be used to ensure that we have full information available on the indicators on BEPS.

Annex: OECD indicators (BEPS Action n*11)

What to measure	OECD indicator	Data
A. Disconnect between financial and real economic activities	1. Concentration of high levels of foreign direct investment (FDI) relative to GDP	macro-level
B. Profit rate differentials within top (e.g. top 250) global MNEs	2. Differential profit rates compared to effective tax rates 3. Differential profit rates between low-tax locations and worldwide MNE operations	firm-level firm-level
C. MNE vs. “comparable” non-MNE effective tax rate differentials	4. Effective tax rates of large MNE affiliates relative to non-MNE entities with similar characteristics	firm-level
D. Profit shifting through intangibles	5. Concentration of high levels of royalty receipts relative to R&D spending	macro-level
E. Profit shifting through interest	6. Interest expense to income ratios of MNE affiliates in high-tax locations	firm-level
Future indicators	#. Profit rates compared to effective tax rates for MNE domestic (hq) & foreign operations #. Differential rates of return on FDI investment related to special purpose entities (SPEs)	firm-level macro-level