Green briefing - Tax Justice Priority

TOPIC: ANTI-TAX AVOIDANCE DIRECTIVE - ECOFIN DISCUSSION (17 JUNE 2016)

Short political message

The political deal expected by Ministers of Finance on Friday is disappointing as it weakens the Commission's proposal on anti-tax avoidance, which was already just a minimum step. This really shows that there is a huge gap between the political discourse of our EU leaders after each tax scandal and their concrete actions when they have the opportunity.

Background

- The proposal for an Anti-Tax Avoidance Directive (ATAD) was presented by the Commission on 28 January 2016. Its purpose was to adopt a common European approach on several aspects of the Base Erosion and Profit Shifting (BEPS) OECD Action Plan adopted in November 2015.

- The proposal contains 6 actions:
    - **a general anti-abuse clause**: a sort of joker to ensure abusive tax practices would be captured even if there is not specific rules in place for this;
    - **a limitation of interest deduction**: to avoid that some MNCs over-indebt their subsidiaries in high-tax jurisdictions and pay interests to subsidiaries in low or no-tax jurisdictions in order to globally reduce their tax bills;
    - **a controlled-foreign company (CFC) rule**: to limit the artificial deferral of income by large companies in subsidiaries in tax havens (where profits won't be taxed);
    - **a rule on hybrid mismatches**: to avoid that the same payment or entity is characterised differently in different states and is therefore not subject to taxation at all (or exempted from tax twice).
    - **an exit taxation clause**: to ensure that big companies are taxed if they move their residence or/and assets to low or no-tax jurisdictions
    - **a switchover clause**: to avoid that foreign income entering the EU internal market are exempted from taxation and can then circulate (almost free of tax) within the internal market afterwards.

- The Dutch Presidency has organised over 15 meetings at technical level (which is a lot) to find a consensus. They try to push for an agreement at the ECOFIN in May but too many countries still had comments or reservations leading to postponement. The Dutch are desperate to get to a deal on June 17 as they want a victory on tax (being pictured as a tax haven themselves).

Content of the COM proposal

WHAT IS NEW COMPARED TO THE MAY COMPROMISE / WHAT HAS CHANGED

1. CFC rules: (not all countries happy with the NL compromise)
    - The old text was saying that EU countries should tax companies' subsidiaries in tax havens at 50% of their effective tax rates (if not taxed in tax havens already). Some countries, led by Ireland were concerned that this would de facto create a minimum tax rate in Europe. So they have put an alternative text, saying the same thing but in a cumbersome way and without mentioning the 50%, while letting the choice to MS when they will transpose to put a number if they want... I'll abstain to write 'rubbish' but I mean no less.
    - In addition, the text has been changed to in practice make sure that you can't apply CFC rules within the EU. The companies would not be applied CFC rules in the EU if they can prove that they have a substantive economic activities in the country (e.g. staff, equipment, assets, and

premises). However, LU is still fighting to make sure that the burden of proof is not on companies (to show their economic activities) but on tax administrations (to prove the lack of economic activities by companies).

2. Limit on interest deduction: This paragraph has been weakened for a while already. The NL compromise does not weaken it even more but tries to please countries like Austria that do not want to apply a cap at 30% on deduction of interest. The compromise says that countries can add targeted rules but ON TOP of the 30% rule (not instead). However, this item is disappointing because loans concluded before the entry into function of the directive (2019) will not be affected!

3. Hybrid mismatches: The Compromise now includes a call on the COM to present a new legislative proposal to deal with hybrid mismatches involving third countries (the compromise only talks about hybrid mismatches between EU countries). This is a wasted opportunity as the original COM proposal included mismatches with third countries. MS are buying time here.

WHAT HAS NOT CHANGED

4. Switchover clause: this item is controversial, some countries want to delete it entirely. It is still in the compromise for the moment but NL Presidency is using it as a leverage. It could go out if the rest of the text is good enough. Translation: it will be out.
5. Exit taxation: no changes compared to May. We like this proposal
6. General anti-abuse clause: no changes compared to May. We like this proposal

Key media / political messages

1. **We are extremely disappointed with this deal today.** There is a huge gap between the political discourse of our EU leaders after each tax scandal and their concrete actions when they have the opportunity. Member States pretend that they want to lead the charge against tax avoidance but they weaken the Commission's proposal and they are going even less far than the OECD BEPS sometimes (e.g. CFC rules, interest limitation).

2. **Concrete examples of weakening to explain our concerns**
   - Interest deduction**:** Up to 30% of loans between subsidiaries of companies will be tax deductible, when the European Parliament called for 20% maximum. As Greens, we wanted 10% maximum (like the US plans to do). Creating an exemption for existing loans is scandalous. Loans contracted until December 2018 (no matter for how long) will not be affected by this rule.
   - Hybrid mismatches: MS are postponing a decision when they had the opportunity to act. Rather than trying to find a solution for cases of mismatches between an EU country and a third country (like in the IKEA case between LU and LIE), they call on the COM to make a proposal (which they did in ATAD in January!). Buying time strategy.
   - Switchover clause: is used as a bargaining ship, not matter the importance of having such a clause, to prevent cases where money enters the EU without being taxed and circulated in the internal market tax free.

3. **CZ threatening to veto a deal on ATAD in order to obtain its pilot project on VAT is another example to show that Member States do not pay attention to the collective interest and only want to protect their own model.** CZ has been asking COM for the last two years for the possibility to apply a different VAT mechanism in its country. COM is not keen and is buying time. Tired of waiting, CZ is not linking the two (different files) and threatens to veto ATAD if the COM does not please them on VAT.

4. **More corporate tax reforms will therefore be necessary in the future, if Member States really want to tackle tax avoidance in Europe.** The next big challenge will be the new proposal for a Common Consolidated Corporate Tax Base in Europe (CCCTB) to be presented by COM in November. Let's hope Member States will be more ambitious to agree on this much-needed reform (waiting since 2011 already).