BIAC THE VOICE OF BUSINESS AT THE OECD

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William Morris, BIAC Tax Committee Chair
13-15 Chausee de la Muette
Paris 75016
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Mr. Pierre Moscovici
Commissioner
Economic and Financial Affairs, Taxation and Customs
European Commission
Rue de la Loi 200
Brussels, B-1049
Belgium

Proposals for European Union ("EU") Anti-Tax Avoidance Package ("the Package") and Anti-Tax Avoidance Directive ("the Directive")

Dear Mr. Moscovici

The Business and industry Advisory Committee to the OECD ("BIAC") advises the OECD on all matters relevant to business in global markets, including taxation. BIAC's membership comprises the leading business federations in OECD countries and other major economies. We also work with other regional and international business groups, including Business Europe.

BIAC commends the European Commission's attempts to ensure swift and coordinated implementation of the internationally agreed OECD Base Erosion and Profit Shifting ("BEPS") recommendations through the Package. However, we are concerned that elements of the proposals in the Directive are not in line with the international consensus agreed and recommended by the OECD in October 2015. BIAC has been closely involved in the BEPS project at the OECD advocating for constructive solutions to BEPS issues that rebalance the international tax rules. As part of that rebalancing we have also advocated for an international tax system that is consistent and predictable as, only then, can we create an improvement in the climate for international trade and investment. We have set out below our concerns in respect of the proposed Directive.

Co-ordinated implementation of the OECD's BEPS Recommendations

The stated objective of the OECD's BEPS project was (and is) *to realign taxation with economic substance and value creation, while preventing double taxation*. To achieve this, coherence between tax systems and consistency in those tax rules which govern interactions between different jurisdictions is required.

The output of the OECD's work on BEPS represents the high level consensus achieved through more than two years of hard work on what those tax rules should look like – work in which the EU constructively participated. In order for the BEPS project to succeed it is vital that the implementation of the OECD's proposals is consistent, both inside and outside of the EU. The OECD relies on national governments and supranational organizations, such as the EU, to implement its outputs consistently. Inconsistent implementation could undermine the OECD's BEPS project and jeopardize its success for all countries.

BIAC's strongly held view therefore is that any EU Directive enacted should be consistent with the BEPS outcomes reached at the OECD.

Measures beyond the OECD's BEPS Recommendations

A number of measures in the Directive are distinct from and different to the OECD's recommendations on BEPS. In particular, the measures on a switch-over clause, a provision on exit taxation and a GAAR, do not reflect the proposals of the OECD. We also observe differences between the OECD's recommendations in relation to hybrid mismatches, interest deductibility and Controlled Foreign Companies and those put forward in the Directive. Such extensions will create complexity and increased administrative burden for businesses at a time when they are already adjusting to a rapidly changing tax environment.

As part of the BEPS Project, consultations were undertaken in order to reach consensus views between governments and to give the business community, NGOs and other keen observers of the process a chance to comment on the BEPS recommendations. Those measures in the Directive which go beyond the scope of what was agreed at the OECD should be subject to the normal consultation and impact assessment processes that all other legislation is subject to within the EU. We do not believe it is accurate to suggest that the measures in the Directive are in line with the OECD BEPS recommendations and accordingly we are surprised that no formal public consultation or impact assessment has been tabled.

Whilst BIAC welcomes instruments to ease the transfer of the OECD's recommended country by country reports between tax authorities included in the Package, we are concerned that initiatives to make such reporting public could impede the exchange of information between tax authorities.

Cross-border trade and investment

BIAC strongly supports pro-growth tax systems which facilitate cross-border trade and investment, enhancing economic growth and efficiencies in the international market place. BIAC is concerned that some of the proposals in the Directive could create double taxation and harm growth. In particular, BIAC believes that tax measures should not be extra territorial to the detriment of trade and investment. If an impact assessment, had been undertaken, the effects of the proposed measures on growth, investment and competitiveness would have been explored and may have influenced the content of the Directive.

To mitigate the risk of double taxation and its harmful impact on international commerce it is critical to strengthen cross-border dispute resolution processes. BIAC previously conducted a questionnaire of its members and published its outcomes and recommendations on BEPS Action 14 (here: http://biac.org/wp-content/uploads/2015/01/Final-BIAC-comments-Action-14.pdf). We believe that strong dispute resolution processes are crucial for building trust between governments and business and for the success of the entire BEPS project. We therefore welcome the European Commission's work on dispute resolution, and hope that it is not unduly delayed.

Conclusion

BIAC supports a uniform implementation of BEPS measures and encourages European countries to ensure the Directive is consistent with the internationally agreed BEPS recommendations. Differences to the OECD recommendations (and in particular if introduced without consultation or impact assessments) risk further fragmentation of, rather than better alignment of, international taxation.

BIAC would welcome a discussion with any of the European Institutions on the Directive and its implementation.

Sincerely,

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cc. Mr. Stephen Quest and Mr. Valere Moutarlier

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