ERT

Expert Paper

Business Taxation for the 21st Century

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The European Round Table for Industry (ERT) strongly supports a consistent, efficient, and fair business tax system in the European Union. ERT shares the aim of the European Commission to make corporate taxation more efficient and favourable to investment and economic growth, thus preserving and strengthening the global competitiveness of European companies.[1] Modernising the corporate taxation framework can contribute to Europe's recovery from the COVID-19 pandemic.

The European Commission has recently presented its Communication *"Business Taxation for the 21st Century"*, containing a series of initiatives and measures in the area of corporate taxation. ERT's view on several aspects of the Communication are listed below.

Tax transparency

ERT supports the ongoing fight against profit shifting and tax evasion. Tax transparency initiatives in the EU should target those situations where there may be a real risk of harmful tax practices. At the same time, potential misinterpretation and risks to competitiveness related to the disclosure of sensitive commercial information by regular taxpayers should be avoided.

The effective tax rate on a country-by-country basis is a very technical and complex indicator that is not straightforward to understand for the wider public. Its disclosure without providing for additional background information and explanation would increase the risk of misinterpretation and reputational damages for the taxpaying entity. Reducing the high complexity of the European tax system to a single headline figure such as the effective tax rate will not help ensuring fair and effective taxation.

There is currently no universal or EU-wide definition of a 'shell company'. Very often the term is used to describe entities set up for aggressive or illegal tax avoidance activities. While we acknowledge that there are entities

1 ERT Expert paper: *"Principles for a competitive Europe in the field of taxation"* (May 2021), https://ert.eu/wp-content/uploads/2021/06/ERT-Expert-Paper-Principles-for-a-competitive-Europe-in-the-field-of-taxation.pdf with little or no substance used for tax purposes, most of the time this is not the case. There are many different types of holding entities with limited substance without necessarily being related to tax avoidance or tax evasion. In particular, they are used for legal, regulatory, accounting, or social law reasons or due to constraints of human resources.

- Very often multiple entities will operate in a jurisdiction for corporate governance and legal reasons, as well as ringfencing risks, assets and functions whilst still being supported by full substance and activities within the jurisdiction. One employing entity might provide shared services by thousands of employees to dozens of legal entities in a single EU country.

- Holding companies are often established to avoid that the day-to-day administration related to the ultimate parent's subsidiaries must be administered by the senior management and/or the Board of Directors.

- Entities may be set up as special purpose vehicles created to finance a capital investment.

- Many companies of such types by nature do not need a significant number of employees or offices such as reinsurance captive companies.[2] In some countries like France, these entities may fully rely on third party service providers without being considered as artificial.

Therefore, ERT does not support a one-size-fits-all proposal related to substance requirements that does not differentiate between legitimate and illegitimate uses of shell companies. Legislation that obstructs European companies from carrying out legitimate practices, will lead to an unfair competitive disadvantage. ERT encourages the Commission to ensure that any new initiative does not lead to additional reporting requirements for shell companies that are already covered by DAC3, DAC4 and DAC6[3] or are covered by national cooperative compliance programs.

BEFIT – "Business in Europe: Framework for Income Taxation"

The key initiative as outlined in the Communication will be a new framework for business taxation in the EU, the so-called 'BEFIT' (Business in Europe: Framework for Income Taxation) which is planned to be adopted by the Commission in 2023.

ERT is supportive of a common framework for corporate taxation across the EU. It should build on the CCCTB proposals and aim to encourage European companies to expand into new markets within the EU by allowing consolidation of profits and losses across EU markets from its beginning to ensure a commitment of business to initiate respective investment.

ERT encourages the Commission to include measures to support investment in R&D, infrastructure, technology, and innovation in BEFIT. Accelerated capital depreciation allowances, patent boxes and 'above the line' payable tax credits for R&D, can help grow the European economy and foster and reward technological innovation in the EU. To ensure the competitiveness of the EU fiscal system, a new set of rules on R&D tax incentives should be designed for a large scope of innovations (e.g. digital technology, artificial intelligence, etc.). A comprehensive tax credit system for more research and development in Europe would thus be a first important step towards becoming a leading and competitive innovation location.

Debt-equity bias

ERT strongly supports taxation policies and specific tax-based measures that support European companies in investing in R&D, infrastructure, technology, and innovation. Taxation policy can play a vital role in the economic recovery from COVID-19.

By initiating a discussion on a tax allowance system for equity the EU Commission helps

2 A reinsurance company created or owned by an industrial, commercial, or financial group, the purpose of which is to reinsure exclusively all or part of the risks of the group it belongs to.

3 DAC refers to the European Directive on Administrative Control. Since its adoption the original Directive 2011/16/EU has been amended five times, with the aim of strengthening the administrative cooperation among Member States. The number behind DAC indicates the respective version of the directive.

overcoming the high cost of equity when investing. Hence, ERT appreciates the move to put equity on a more equal footing as compared to debt financing with respective tax measures. Details of the planned measures should take a bold step towards ending the debt/equity bias while carefully taking into account the macro impact on business.

International Tax Reform (and digital levy)

A reform of corporate taxation against the background of an increasingly digital economy is best taken forward through global agreement. ERT therefore welcomes the global agreement endorsed by G20 Finance Ministers and Central Bank Governors on 10 July 2021. A global agreement on international tax reform seems to be now within reach. The final agreement should lead to a level-playing field for the taxation of all industries including the leading digital companies and allow the exclusion from the onset of industry sectors which economic model is by essence local and already attributes most of their taxable profit to the market countries where they operate. The approach must respect and support long-term investment in infrastructure and innovation projects and must not undermine the EU's recovery package or Member States' digital and green stimulus aims. It should also be simple to administer and provide for a strong mandatory dispute resolution system, to ensure that industries will not suffer from conflicts between States.

The European Commission should not jeopardise any international agreement by pressing ahead with a legislative proposal on the digital levy. Any additional levy at European level would only stifle innovation and investment.

At the heart of the EU's recovery plan are infrastructure businesses which develop and provide many products and services essential to all economies and which rely on significant upfront R&D. These investments include amongst others those in communication networks and renewable energy. We would therefore recommend that due consideration be given to such critical enablers of innovation, digitalisation, and the green transition, and therefore want to emphasise the removal of any restrictions for loss utilisation and the retention of R&D or bonus depreciation incentives for investment.

In particular, as many EU companies have been harshly hit by the economic consequences of the pandemic it is of utmost importance that companies can fully offset their losses against future tax liabilities in the new tax system resulting from the OECD's GLOBE tax reform and its implementation in the EU. Limiting the use of such losses would result in an undue tax burden that would hinder the post-pandemic economic recovery for the companies subject to such new rules.

The European Round Table for Industry (ERT) is a forum that brings together around 60 Chief Executives and Chairs of leading multinational companies of European parentage, covering a wide range of industrial and technological sectors. ERT strives for a strong, open and competitive Europe, with the EU and its Single Market as a driver for inclusive growth and sustainable prosperity. Companies of ERT Members have combined revenues exceeding €2 trillion, providing direct jobs to around 5 million people worldwide - of which half are in Europe - and sustaining millions of indirect jobs. They invest more than €60 billion annually in R&D, largely in Europe.

This Expert Paper has been prepared by the ERT Expert Group on Corporate Taxation.

More info and previous papers on: https://ert.eu/focus-areas/finance-and-taxation/

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