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PLATFORM FOR TAX GOOD GOVERNANCE

**State of play on improving double taxation dispute resolution
mechanisms in the EU**

Meeting of 16 September 2016

Contact:

Secretariat Platform, Telephone (32-2) 29.55.762

E-mail: taxud-platform@ec.europa.eu

Background

A public consultation on double taxation conventions and the internal market was launched by the Commission in 2010 (the 2010 public consultation). The consultation confirmed that despite the advantageous situation in the EU as regards the availability of DTC in the area of direct taxation, the instruments to relieve double taxation were regarded as still not functioning properly. The consultation identified that most of the issues arise in the context of business taxation.

Based on the outcome of the 2010 public consultation the Commission undertook various measures to examine the scope and magnitude of the problems and, particularly, what exactly prevents the existing double taxation dispute resolution mechanisms from a smooth functioning. Action taken by the Commission as a follow up to the public Consultation were

- November 2011: Communication from the Commission on Double taxation in the Single Market (COM (2011) 712 final)
- March 2012: Change of Statistics on functioning of the EU Arbitration Convention
- December 2012: Organisation of an inter-governmental seminars on double taxation issues and insufficiency of international agreements
- March 2013: Launch of Study to identify and describe most frequent double taxation cases in the internal market (delivered in June 2013)
- April 2013: discussion incl. questionnaires to MS and stakeholder meetings
- October 2013 to March 2015: Discussion in EU Joint Transfer Pricing Forum, (a Commission Expert Group) on improving the functioning of the Arbitration Convention
- June 2014: creation of Expert Group on cross border tax obstacles for individuals within the EU
- June 2014: creation of Expert Group on inheritance tax obstacles within the EU
- March 2015: Report of the EU JTPF on Improving the functioning of the Arbitration Convention

As a consequence of these findings, the Commission included the objective of improving double taxation dispute resolution mechanisms in its Communication of an Action Plan for a Fair and Efficient Corporate Tax System in the EU. The Action Plan foresees that in order to create greater certainty for business the Commission will propose improvements to the current mechanisms to resolve double taxation disputes in the EU.

This stakeholder consultation was launched to gather the current views of the public on how double taxation mechanisms could be improved in the EU and was open from 16 February 2016 to 10 May 2016.

In addition a data collection exercise was launched in March 2016 via the EU Joint Transfer Pricing Forum and the Platform on tax good governance.

The options presented

Option Ai): a recommendation to MS to agree on mandatory binding arbitration in their DTC or extend the scope of the EU-AC

Option Aii): a recommendation to MS to agree on referring cases to the EUCJ for a mandatory binding arbitration in cases where MS can't reach an agreement by mutual agreement

Option B: a directive extending mandatory binding arbitration to areas where not yet available, and the shortcomings identified as regards enforcement and effectiveness of these mandatory binding arbitration mechanisms would be addressed

Option C: proposing a new set of specific and targeted rules (including conflict rules) on how to solve instances of double taxation for all identified conflicting tax legislations triggering double taxation for cross-border situations at EU level. It would also contain a dispute resolution mechanism as presented under Option B

Views expressed by stakeholders

Section 1: About You:

- 87 responses were submitted to the public consultation from a broad variety of stakeholders and origin, with most responses having been submitted by industry associations (31%) and from Germany (17%).

Section 2: Your Opinion

- The vast majority of respondents considers for the case of double taxation described in the public consultation that within the European Union measures should be in place that ensure that double taxation is removed.
- The vast majority of respondents also regards the DTDRM in the EU as not sufficient /just as a starting point with respect to scope, enforceability and efficiency with efficiency being regarded as the most positive (25% fully sufficient/a good basis) (see section 2 below)
- As regards the impact of double taxation the vast majority of respondents regards double taxation as detrimental to growth, creating barriers and preventing foreign investors from investing in MS as well as driving investments away from MS. Only very few respondents think that double taxation protects the economy of MSs.

Section 3: The Objectives

- There is generally a broad support for most of the objectives suggested in the consultation. A lower support is encountered for safeguarding the financial interest of the Member States and a strongest support is encountered timely resolution, business friendly environment, and ensuring access to the mechanism as well as predictability.

Section 4: EU Action

- Respondents generally see a need for taking action. As regards the kind of action, the vast majority of respondents see a need action as regards guaranteeing elimination of double taxation, compatibility with international developments and stronger role for the taxpayer.
- There is also more support for building the EU action on mechanisms already available than for a new comprehensive legal tool. Very few respondents think that the EU should limit itself to encouraging MS to adopt mechanisms in their bilateral relationships.
- As regards the options suggested, the views are less positive on option A i), positive for A ii) and B, most positive for C. However, combining the views "will fully meet the objective" and "will partly meet the objective" together, the rating is similar.
- When it comes to the question on the way forward, half of the respondents regard Option C as fully appropriate for application in other areas of income taxation. Low support is encountered for Options A i) and A ii). For option B most respondents view it as partly appropriate for a broader application

Feedback from data collection

We received 27 responses. 25 responses were from an organization or company, 2 answers were received from a consultancy firm summarizing the responses received from its network.

In 15 cases it was the ultimate parent company responding to the questionnaire, in 4 cases an intermediate parent and in 3 cases a subsidiary.

5 respondents did not give an answer to the questions to assess the size of the respondents. 3 respondents fall under the EU definition of Small and Medium Sized Enterprises ('SME'). The others are Multinational Enterprise Groups

Impact Assessment work and next steps

The Commission's Regulatory Scrutiny Board (RSB) analysed and discussed the Impact Assessment report prepared by DG TAXUD and provided a positive opinion subject to certain comments.

The Impact assessment concludes that option B as presented above should be the preferred option.

We are currently working on the development of a legal proposal, which we plan to present together with the proposal on CCCTB and ATAD2 before the end of this year.